

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

FILED  
LORAIN COUNTY

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GIBSON BROS., INC., et al.,

Plaintiffs,

-vs.-

OBERLIN COLLEGE, et al.,

Defendants.

Case No.: 17CV19376 OF COMMON PLEAS  
TOM ORLANDO

Judge: Hon. John R. Miraldi

Magistrate: Hon. Joseph Bott

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PLAINTIFFS' BENCH BRIEF:

CALCULATION OF COMPENSATORY & PUNITIVE  
DAMAGES UNDER OHIO'S DAMAGES CAPS

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I. INTRODUCTION

In an effort to assist the parties and the Court in the calculation of damages, Plaintiffs<sup>1</sup> submit this bench brief discussing Ohio's caps on noneconomic and punitive damages. The filing of this bench brief is not a waiver of any other arguments regarding the application and/or constitutional viability of Ohio's damages caps. Instead, it is intended to assist the parties and the Court on the calculation of noneconomic and punitive damages should the caps apply.

I. LAW & ARGUMENT

A. Pursuant to R.C. 2315.18, noneconomic damages are capped for each tort action.

By statute, compensatory damages for noneconomic loss are capped:

[T]he amount of compensatory damages that represents damages for noneconomic loss that is recoverable in a *tort action* under this section ... shall not exceed the *greater* of two hundred fifty thousand dollars [\$250,000.00] or an amount that is equal to *three times* the economic loss, as determined by the trier of fact, of the plaintiff in that tort action to a maximum of three hundred fifty thousand dollars

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<sup>1</sup> "Plaintiffs" refers to Gibson Bros., Inc. ("Gibson's Bakery"), David Gibson ("Dave"), and Allyn W. Gibson ("Grandpa Gibson").

[\$350,000.00] for each plaintiff in that tort action[.]

R.C. 2315.18(B)(2) [emphasis added]. As the statute indicates, noneconomic damages are capped for *each tort action*, which is defined as “a civil action for damages for injury or loss to person or property.” R.C. 2315.18(A)(7). Thus, each plaintiff is permitted to receive up to \$250,000.00 or three times the economic damages up to \$350,000.00 (whichever is greater) for *each tort action*. See, R.C. 2315.18(B)(2).

Because of Ohio’s liberal policy on the joinder of claims as expressed in the Ohio Rules of Civil Procedure, a more refined definition of “tort action” is required to determine the exact amount of recoverable noneconomic damages under the statute. Pursuant to Ohio R. Civ. P. 18(A), “[a] party asserting a claim to relief as an original claim ... may join, either as independent or as alternate claims, *as many claims ... as he has against an opposing party* [emphasis added].” Thus, a plaintiff may join numerous different claims covering various issues into a single case. See, *id.* Because each case could include various issues, a “tort action” under R.C. 2315.18(A)(7) cannot mean an entire case. Instead, “tort action” or “civil action” means *each individual claim for relief*. See, *Black’s Law Dictionary* (11th Ed. 2019) (defining “civil action” as “an action brought to enforce, redress, or protect a private or civil right.”).<sup>2</sup>

In this case, Dave and Grandpa Gibson each asserted two (2) claims for relief against Defendants: (1) libel; and (2) intentional infliction of emotional distress (“IIED”). For each of these claims, Dave and Grandpa Gibson sought noneconomic damages. Thus, the R.C. 2315.18(B)(2) noneconomic damages cap is applied to each claim, not both claims combined.

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<sup>2</sup> Indeed, the statute itself envisions this definition because it provides a ceiling of “five hundred thousand dollars [\$500,000.00] for each *occurrence* that is the basis of that tort action.” R.C. 2315.18(B)(2) [emphasis added]. Occurrence is further defined as “all claims resulting from or arising out of any one person’s bodily injury.” R.C. 2315.18(A)(5). Thus, in a case involving one bodily injury and multiple claims, the plaintiff or plaintiffs would only be entitled to \$500,000.00 in noneconomic damages unless one of the exceptions applies. Because this case does not involve bodily injury, the \$500,000.00 cap per occurrence does not apply.

1. *The calculation of noneconomic damages for Grandpa Gibson.*

The jury awarded Grandpa Gibson \$3 million in compensatory damages. All of Grandpa Gibson's damages were noneconomic:

COMPENSATORY DAMAGES FOR ALLYN W. GIBSON	
Please specify the amount of damages, past and future, you are awarding to Plaintiff Allyn W. Gibson:	
Total Compensatory Damages: \$	<u>3,000,000.00</u>
Amount of total compensatory damages that represents past economic loss:	
\$	<u>0</u>
Amount of the total compensatory damages that represents past non-economic loss:	
\$	<u>1,500,000.00</u>
Amount of the total compensatory damages that represents future economic loss:	
\$	<u>0</u>
Amount of the total compensatory damages that represents future non-economic loss:	
\$	<u>1,500,000.00</u>

(AWG Comp. Inter., p. 13). Of the \$3 million in damages, the jury allocated \$2 million to the libel claim and \$1 million to the IIED claim:

Defamation:	\$ <u>2,000,000.00</u>
	+
Intentional Infliction of Emotional Distress:	\$ <u>1,000,000.00</u>
Total Compensatory Damages:	= \$3,000,000.00

(Allocation Inter., p. 1).

Because Grandpa Gibson was not awarded any economic damages, his noneconomic

damages are capped at \$250,000.00 *per claim* when applying R.C.2315.18:

Allyn W. Gibson Damages				
Claim	Economic Damages	Noneconomic Damages	Capped Noneconomic Damages	Total Compensatory Damages
Libel	\$ -0-	\$ 2,000,000.00	\$ 250,000.00	\$ 250,000.00
IIED	\$ -0-	\$ 1,000,000.00	\$ 250,000.00	\$ 250,000.00
<b>Compensatory Damages after Applying R.C. 2315.18:</b>				<b>\$ 500,000.00</b>

**2. The calculation of noneconomic damages for Dave Gibson.**

The jury awarded Dave Gibson \$5.8 million in compensatory damages, broken down as follows:

COMPENSATORY DAMAGES FOR DAVID R. GIBSON	
Please specify the amount of damages, past and future, you are awarding to Plaintiff David R. Gibson:	
Total Compensatory Damages:	\$ <u>5,100,000.00</u>
Amount of total compensatory damages that represents past economic loss:	\$ <u>0</u>
Amount of the total compensatory damages that represents past non-economic loss:	\$ <u>2,000,000.00</u>
Amount of the total compensatory damages that represents future economic loss:	\$ <u>1,800,000.00</u>
Amount of the total compensatory damages that represents future non-economic loss:	\$ <u>2,000,000.00</u>

(DRG Comp. Inter., p. 13). Of the \$5.8 million in total compensatory damages, the jury allocated \$4.8 million to the libel claim and \$1 million to the IIED claim:

Defamation:	\$ 4,800,000.00
	+
Intentional Infliction of Emotional Distress:	\$ 1,000,000.00
Total Compensatory Damages:	= \$5,800,000.00.

(Allocation Inter., p. 2).

Dave was awarded both noneconomic damages and economic damages for the libel claim and *only* noneconomic damages for the IIED claim.<sup>3</sup> Thus, Dave's noneconomic damages for the libel claim are capped at three times \$1.8 million up to \$350,000.00, and Dave's noneconomic damages for the IIED claim are capped at \$250,000.00 when applying R.C. 2315.18:

David R. Gibson Damages				
Claim	Economic Damages	Noneconomic Damages	Capped Noneconomic Damages	Total Damages
Libel	\$ 1,800,000	\$ 3,000,000.00	\$ 350,000.00	\$ 2,150,000.00
IIED	\$ -0-	\$ 1,000,000.00	\$ 250,000.00	\$ 250,000.00
<b>Compensatory Damages after Applying R.C. 2315.18:</b>				<b>\$ 2,400,000.00</b>

**B. Under R.C. 2315.21, punitive damages are capped at two times the compensatory damages awarded by the jury.**

By statute, punitive damages are capped as follows:

The court shall not enter judgment for punitive or exemplary damages in excess of *two times the amount of the compensatory damages* awarded to the plaintiff[.]

R.C. 2315.21(D)(2)(a) [emphasis added].

Capping punitive damages based on the compensatory damages awarded raises an important question: are the punitive damages limits based on the compensatory damages awarded by the jury or based on the compensatory damages after application of the noneconomic damages

<sup>3</sup> Plaintiffs did not seek *any* economic compensatory damages for the IIED claims.

cap found in R.C. 2315.18? Based on the clear statutory language and interpretive case law, punitive damages are capped at two times the amount *awarded by the jury*:

*First.* The statutory language is clear: judgment for punitive damages is based on the uncapped compensatory damages awarded by the jury. Pursuant to R.C. 2315.21(B)(2), where a case is tried to a jury and where the plaintiff is seeking compensatory and punitive damages, “the court shall instruct the jury to return, and the jury shall return, a general verdict and, if that verdict is in favor of the plaintiff, answers to an interrogatory that specifies the total compensatory damages recoverable by the plaintiff[.]” This statutory provision does not discuss, describe, or incorporate the noneconomic damages caps found in R.C. 2315.18.

Then, when the court applies the punitive damages cap, the statute expressly instructs the court to apply the cap according to the compensatory damages *awarded by the jury* pursuant to R.C. 2315.21(B)(2):

The court shall not enter judgment for punitive or exemplary damages in excess of two times the amount of the compensatory damages *awarded to the plaintiff ... as determined pursuant to division (B)(2) ... of this section.*

R.C. 2315.21(D)(2)(a) [emphasis added]. Indeed, when the Court enters judgment on a compensatory award after application of the noneconomic damages cap, it is not awarding anything. Instead, it is reducing and finalizing the judgment awarded by the jury. *See*, Civ.R. 58(A)(1) [emphasis added] (“*upon a general verdict of a jury ... the court shall promptly cause the judgment to be prepared and, the court having signed it, the clerk shall thereupon enter it upon the journal.*”).

Thus, according to the clear statutory language, punitive damages are capped at two-times the compensatory damages *awarded by the jury*.

*Second.* The relevant case law confirms this position. In *Faieta v. World Harvest Church*,

10th Dist. Franklin No. 08AP-527, 2008-Ohio-6959, the court found R.C. 2315.21(D)(2)(a) to be unambiguous and held that punitive damages are capped at two-times the compensatory damages awarded by the jury:

R.C. 2315.21(D)(2) explicitly provides that the “compensatory damages awarded to the plaintiff from that defendant, as determined pursuant to [R.C. 2315.21(B)(2) or (3)],” are to be used to calculate the cap on punitive damages. Those statutory provisions refer to the uncapped, total compensatory damages the jury awarded ... Both R.C. 2315.21(B)(2) and (3) direct the trier of fact to make factual findings that specify the total compensatory damages to be awarded to the plaintiff from each defendant. R.C. 2315.21(B)(2) and (3) make no reference to statutory caps on damage awards, and R.C. 2315.18(F)(2) expressly precludes the trial court from informing the jury of the existence of statutory caps. The court applies statutory caps on compensatory damages only after the jury has rendered its verdict and made an award of compensatory damages in the case. See R.C. 2315.18(E)(1). *Accordingly, we conclude the total compensatory damages referenced in R.C. 2315.21(B)(2) are the uncapped compensatory damages the jury awarded.*

*Faieta* at ¶ 90 [emphasis added]. Although it was considering a separate issue, the First District has confirmed that the statutory analysis used by the Tenth District in *Faieta* is correct. See, *Guiliani v. Shehata*, 2014-Ohio-4240, 19 N.E.3d 971, ¶¶ 36-37 (1st Dist.).<sup>4</sup>

Therefore, based on the interpretive case law, punitive damages are capped at two-times the compensatory damages awarded by the jury.

In this case, the jury awarded compensatory damages and punitive damages to Grandpa Gibson, Dave Gibson, and Gibson’s Bakery. The calculation for each individual plaintiff will be discussed in turn.

**1. *The calculation of punitive damages for Grandpa Gibson.***

As discussed in detail above, the jury awarded Grandpa Gibson \$3 million in compensatory damages, with \$2 million allocated to his libel claims and \$1 million allocated to his IIED claim. (Allocation Inter., p. 1). During the second phase of trial, the jury found that Grandpa Gibson was

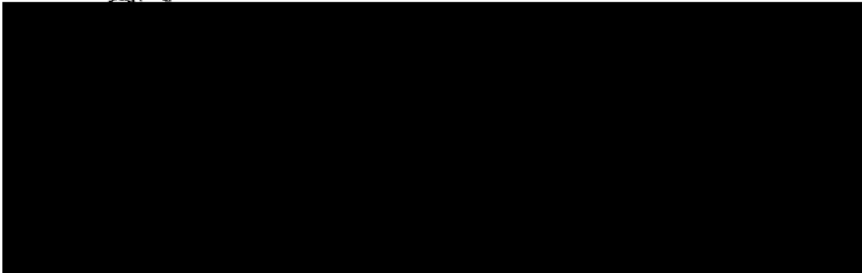
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<sup>4</sup> Importantly, in the *Wayt* case, the Ohio Supreme Court expressly refused to rule upon this issue. *Wayt v. DHSC, LLC*, 155 Ohio St.3d 401, 2018-Ohio-4822, 122 N.E.3d 92, ¶¶ 35-36.

entitled to punitive damages on both claims:

**GENERAL VERDICT - ALLYN W. GIBSON'S PUNITIVE  
DAMAGES ON CLAIM FOR INTENTIONAL INFLECTION OF EMOTIONAL  
DISTRESS AGAINST DEFENDANT OBERLIN COLLEGE**

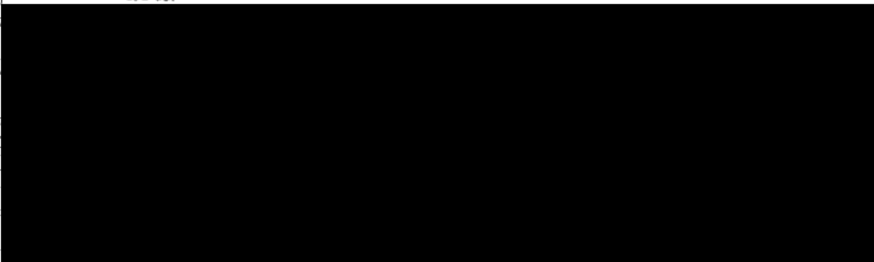
A. We, the jury, do hereby find for Allyn W. Gibson, and against Oberlin College, on Allyn W. Gibson's punitive damages claim related to Allyn W. Gibson's claim for intentional infliction of emotional distress.



(AWG Pun. Inter., p. 1).

**GENERAL VERDICT - ALLYN W. GIBSON'S PUNITIVE  
DAMAGES ON CLAIM FOR LIBEL AGAINST DEFENDANT OBERLIN COLLEGE**

1. We, the jury, do hereby find for Allyn W. Gibson, and against Oberlin College, on Allyn W. Gibson's punitive damages claim related to Allyn W. Gibson's claim for libel.



(Id., p. 5).



**GENERAL VERDICT - ALLYN W. GIBSON'S PUNITIVE DAMAGES ON CLAIM FOR LIBEL AGAINST DEFENDANT MEREDITH RAIMONDO**

A. We, the jury, do hereby find for Allyn W. Gibson, and against Meredith Raimondo, on Allyn W. Gibson's punitive damages claim.



(Id., p. 9).

In total, Grandpa Gibson was awarded \$8.75 million dollars in punitive damages:

**PUNITIVE DAMAGES FOR ALLYN W. GIBSON**

Please specify the amount of punitive damages you are awarding to Plaintiff Allyn W. Gibson and against Defendant Oberlin College and/or Defendant Meredith Raimondo:

Punitive Damages:

\$ 8,750,000.00

(Id., p. 10). Because the punitive damages awarded to Grandpa Gibson exceed the R.C. 2315.21 cap (*i.e.* two-times the compensatory damages awarded by the jury), Grandpa Gibson is entitled to judgment for punitive damages as follows when applying R.C. 2315.21:

Allyn W. Gibson Punitive Damages		
Claim	Compensatory Damages	Capped Punitive Damages
Libel	\$ 2,000,000.00	\$ 4,000,000.00
IIED	\$ 1,000,000.00	\$2,000,000.00
<b>Punitive Damages after Applying R.C.2315.21:</b>		<b>\$ 6,000,000.00</b>

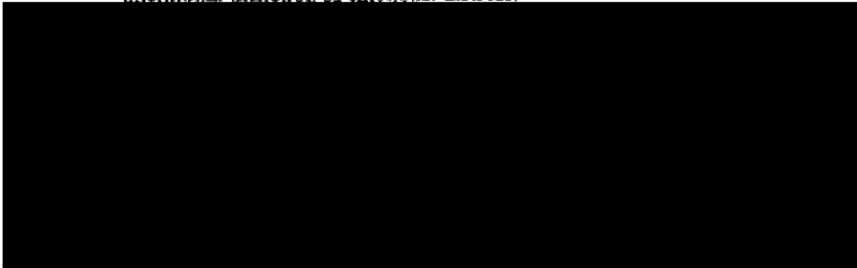
**2. The calculation of punitive damages for Dave Gibson.**

As discussed in detail above, the jury awarded Dave Gibson \$5.8 million in compensatory damages, with \$4.8 million allocated to his libel claims and \$1 million allocated to his IIED claim.

(Allocation Inter., p. 1). During the second phase of trial, the jury found that Dave Gibson was entitled to punitive damages on both claims:

**GENERAL VERDICT – DAVID R. GIBSON'S PUNITIVE DAMAGES ON CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST DEFENDANT OBERLIN COLLEGE**


A. We, the jury, do hereby find for David R. Gibson, and against Oberlin College, on David R. Gibson's punitive damages claim related to David R. Gibson's claim for intentional infliction of emotional distress.



(DRG Pun. Inter., p. 2).

**GENERAL VERDICT – DAVID R. GIBSON'S PUNITIVE DAMAGES ON CLAIM FOR LIBEL AGAINST DEFENDANT OBERLIN COLLEGE**

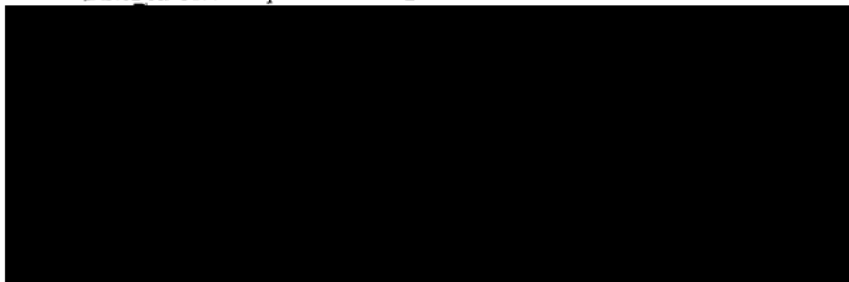
1. We, the jury, do hereby find for David R. Gibson, and against Oberlin College, on David R. Gibson's punitive damages claim related to David R. Gibson's claim for libel.



(Id., p. 5).

**GENERAL VERDICT – DAVID R. GIBSON'S PUNITIVE DAMAGES ON CLAIM FOR LIBEL AGAINST DEFENDANT MEREDITH RAIMONDO**

A. We, the jury, do hereby find for David R. Gibson, and against Meredith Raimondo, on David R. Gibson's punitive damages claim.



(Id., p. 9).

In total, the jury awarded Dave Gibson \$17.5 million in punitive damages:

**PUNITIVE DAMAGES FOR DAVID R. GIBSON**

Please specify the amount of punitive damages you are awarding to Plaintiff David R. Gibson and against Defendant Oberlin College and/or Defendant Meredith Raimondo:

Punitive Damages:  
\$ 17,500,000.00

(Id., p. 10). Because the punitive damages awarded to Dave Gibson exceed the R.C. 2315.21 cap (i.e. two-times the compensatory damages awarded by the jury), Dave Gibson is entitled to judgment for punitive damages as follows when applying R.C. 2315.21:

<b>David R. Gibson Punitive Damages</b>		
<b>Claim</b>	<b>Compensatory Damages</b>	<b>Capped Punitive Damages</b>
Libel	\$ 4,800,000.00	\$ 9,600,000.00
IIED	\$ 1,000,000.00	\$ 2,000,000.00
<b>Punitive Damages after Applying R.C.2315.21:</b>		<b>\$ 11,600,000.00</b>

**3. The calculation of punitive damages for Gibson's Bakery.**

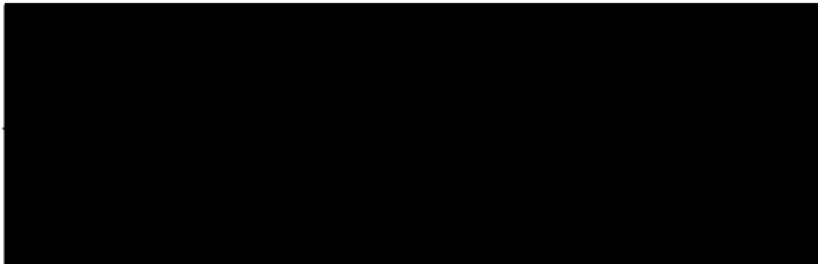
For Gibson's Bakery, the jury awarded \$2,274,500.00 in compensatory damages, which were equally apportioned between Gibson's Bakery's claims for libel and tortious interference

with business relationships:<sup>5</sup>

JURY INTERROGATORY #3: APPORTIONMENT OF COMPENSATORY DAMAGES FOR GIBSON BROS., INC	
Please specify the amount of the total compensatory damages that you have apportioned to each of the following claims for which you found in favor of Gibson Bros., Inc. The total amount of the compensatory damages must equal your verdict of \$2,274,500.00. You may apportion any amount from "0" to "\$2,274,500.00 for each claim BUT the total of for all must equal \$2,274,500.00.	
Defamation:	\$ <u>1,137,250.00</u>
	+
Intentional Infliction of Emotional Distress:	\$ <u>1,137,250.00</u>
Total Compensatory Damages:	= \$2,274,500.00.

(Allocation Inter., p. 3).

The jury found that Gibson's Bakery was entitled to punitive damages on the libel claims, but not on the claim for tortious interference with business relationships:

GENERAL VERDICT - GIBSON BROS., INC.'S PUNITIVE DAMAGES ON CLAIM FOR LIBEL AGAINST DEFENDANT OBERLIN COLLEGE
1. We, the jury, do hereby find for Gibson Bros., Inc., and against Oberlin College, on Gibson Bros., Inc.'s punitive damages claim related to Gibson Bros., Inc.'s claim for libel.


(GB Pun. Inter., p. 3).

<sup>5</sup> The allocation interrogatory contains a typographical error. The jury was apportioning damages among the claims for libel and tortious interference with business relationships, not intentional infliction of emotional distress.

**GENERAL VERDICT - GIBSON BROS., INC.'S PUNITIVE DAMAGES ON CLAIM FOR LIBEL AGAINST DEFENDANT MEREDITH RAIMONDO**

A. We, the jury, do hereby find for Gibson Bros., Inc., and against Meredith Raimondo, on Gibson Bros., Inc.'s punitive damages claim related to Gibson Bros., Inc.'s claim for libel.



(Id., p. 6).

B. We, the jury, do hereby find for the Defendant Meredith Raimondo, and against Gibson Bros., Inc., on Gibson Bros., Inc.'s punitive damages claim related to Gibson Bros., Inc.'s claim for intentional interference with business relationships.



(Id., p. 8).

In total, the jury awarded Gibson's Bakery \$6,973,500.00 in punitive damages:

**PUNITIVE DAMAGES FOR GIBSON BROS., INC.**

Please specify the amount of punitive damages you are awarding to Plaintiff Gibson Bros., Inc. and against Defendant Oberlin College and/or Defendant Meredith Raimondo:

Punitive Damages:

\$ 6,973,500.00

(Id., p. 10). Because the punitive damages awarded to Gibson's Bakery exceed the R.C. 2315.21 cap (*i.e.* two-times the compensatory damages awarded by the jury), Gibson's Bakery is entitled

to judgment for punitive damages as follows when applying R.C. 2315.21:

<b>Gibson's Bakery Punitive Damages</b>		
<b>Claim</b>	<b>Compensatory Damages</b>	<b>Capped Punitive Damages</b>
Libel	\$ 1,137,250.00	\$ 2,274,500.00
Tortious Interference	\$ 1,137,250.00	\$ -0-
<b>Punitive Damages after Applying R.C.2315.21:</b>		<b>\$ 2,274,500.00</b>

## II. CONCLUSION

Therefore, if the statutory caps on noneconomic and punitive damages are viable and apply to this case, the Court should enter judgment as follows:

For Allyn W. Gibson:

- **Total Compensatory & Punitive Damages:** \$ 6,500,000.00
  - Total Compensatory Damages: \$ 500,000.00
    - Economic Damages: \$ -0-
    - Noneconomic Damages: \$ 500,000.00
  - Total Punitive Damages: \$ 6,000,000.00

For David R. Gibson:

- **Total Compensatory & Punitive Damages:** \$ 14,000,000.00
  - Total Compensatory Damages: \$ 2,400,000.00
    - Economic Damages: \$ 1,800,000.00
    - Noneconomic Damages: \$ 600,000.00
  - Total Punitive Damages: \$ 11,600,000.00

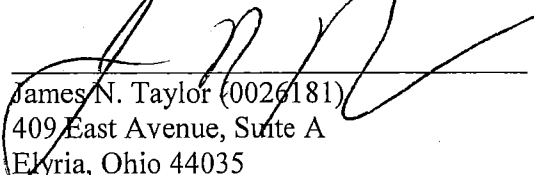
For Gibson Bros., Inc.:

- **Total Compensatory & Punitive Damages:** \$ 4,549,000.00
  - Total Compensatory Damages: \$ 2,274,500.00
    - Economic Damages: \$ 2,274,500.00
    - Noneconomic Damages: \$ -0-
  - Total Punitive Damages: \$ 2,274,500.00

DATED: June 21, 2019

Respectfully submitted,

**JAMES N. TAYLOR CO., L.P.A.**



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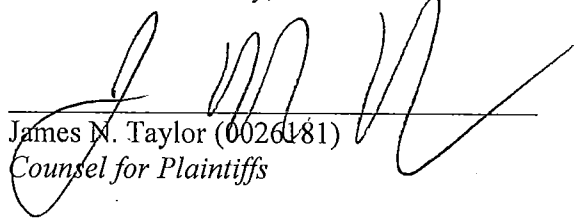
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**PROOF OF SERVICE**

A copy of the foregoing was served on June 21, 2019, pursuant to Civ.R. 5(B)(2)(f) by sending it by electronic means to the e-mail addresses identified below:

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