

**LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO**

**TOM ORLANDO, Clerk
JOURNAL ENTRY
John R. Miraldi, Judge**

Date 7/17/19

Case No. 17CV193761

GIBSON BROS INC
Plaintiff

JACQUELINE BOLLAS CALDWELL
Plaintiff's Attorney (-)

VS

OBERLIN COLLEGE
Defendant

JOSH M MANDEL
Defendant's Attorney (-)

JUDGMENT ENTRY ON AWARD OF ATTORNEYS' FEES & LITIGATION EXPENSES

On July 10, 2019 a hearing was held in the above matter to determine the amount of Plaintiffs' reasonable attorney fees. On June 13, 2019 the jury concluded its deliberations and returned a verdict awarding the Plaintiffs both punitive damages and reasonable attorneys' fees. The jury was instructed prior to deliberating that if attorneys' fees were awarded, the Court would determine the amount. On June 27, 2019, the Court, per the statutory damage caps, reduced the jury verdict for compensatory and punitive damages to judgment and scheduled an attorneys' fees hearing on July 10, 2019 at 1:30 PM by separate entry.

Prior to the hearing on July 10, 2019, Defendants filed a Motion for Reconsideration, asking the Court to reconsider its June 27, 2019 ruling applying the punitive and compensatory damages caps in Ohio Revised Code §§ 2315.18 and 2315.21. Defendants' Motion for Reconsideration is denied. Defendants also filed a written Renewed Motion to Continue the Hearing on Attorney Fees which they presented on the record prior to the attorney's fees hearing. The Court denied Defendants' motion to continue the hearing and cited the reasons therefore on the record.

At the hearing, Plaintiffs presented evidence in the form of the testimony and expert report of Attorney Dennis Landsdowne, the billing invoices and advanced costs invoices of the Plaintiffs' three law firms – Tzangas, Plakas, Mannos Ltd.; Krugliak, Wilkins, Griffiths, & Dougherty Co., L.P.A.; and James Taylor Co., L.P.A.; as well as the billing statements and costs advanced invoices of Defendants' counsel. Defendants presented evidence in the form of the testimony and expert report of Attorney Eric



Zagrans. Each party also briefed the issue of attorneys' fees¹ and attached several exhibits outlining their arguments. After considering all of the evidence presented and applicable precedent the Court makes the following ruling regarding Plaintiffs' attorney's fees:

I. Applicable Standard

The Supreme Court of Ohio has adopted a two-step method for determining reasonable attorney's fees. See *State ex. rel. Harris v. Rubino*, 2018-Ohio-5109, ¶ 3 (Ohio 2018) (citing *Bittner v. Tri-City Toyota*, 58 Ohio St.3d 143, 145 (Ohio 1991)). The analysis begins by multiplying a reasonable hourly rate by the number of hours reasonably expended. *Id.* This "lodestar" number "provides an initial estimate of the value of the lawyers' services." *Id.* Next, the Court can adjust the lodestar number upward or downward by applying the factors listed in Prof. Cond. R. 1.5(a). *Id.* ("Ultimately, what factors to apply and what amount of fees to award are within [the Court's] sound discretion.").

Because of the overlap of the lodestar calculation and the Prof. Cond. R. 1.5(a), a Court, in its discretion, may choose not to adjust the lodestar number when the relevant factors are subsumed by the lodestar calculation. See *Id.* at ¶ 12 (citing *Miller v. Grimsley*, 197 Ohio App.3d 167, 173 (Ohio Ct. App. 11th Dist. 2011)).

Ultimately, there is no requirement that the fee be linked or proportionate to the underlying award. See *Welch v. Prompt Recovery Servs., Inc.*, 2015-Ohio-3867, ¶ 16 (Ohio Ct. App. 9th Dist.) ("The Supreme Court has refused to establish a rule linking reasonable attorneys' fees to the underlying monetary award."); see also *Grimsley*, at ¶ 16 ("Proportionality is not synonymous with reasonableness. A 'reasonable' fee must be related to the work reasonably expended on the case and not merely to the amount of the judgment awarded.").

II. Application of Law

Plaintiffs filed an Application for Attorneys' Fees and Litigation Expenses in an amount between \$9.5 million and \$14.5 million. This proposed amount is based on a lodestar amount of \$4,855,856.00 and a multiplier of 2 to 3 times the lodestar. Plaintiffs' counsel also believes the Court should award them \$404,129.22 in litigation expenses.

¹ On July 9, 2019, Plaintiffs filed an Application for Attorneys' Fees and Litigation Expenses with exhibits, and on July 12, 2019, Defendants filed their Brief in Opposition to Plaintiff's application with exhibits. Plaintiffs' also filed a Motion for Leave to file a reply brief instantler on July 15, 2019, but that motion is hereby denied.



Defendants requested that the Court not award fees, but if it does, to award fees only related to Plaintiffs' successful claims, and to exclude any fees related to experts that were not permitted to testify at the trial. Defendants' counsel and Defendants' expert opined that a reasonable attorneys' fee would be between \$2,000,000.00 and \$2,250,000.00 and that the combined litigation expenses should be reduced to \$241,247.84. (Ex. 2 to Defs. Brief in Opposition to Pltfs. Application).

A. Attorneys' Fees

a. Reasonable Hourly Rate

The reasonable hourly rate "[...] is the prevailing market rate in the relevant community, given the complexity of the issues and the experience of the attorney." See *Harris*, at ¶ 4 (internal citations omitted). Plaintiffs presented evidence of hourly rates for their attorneys and paralegal/support staff that ranged from \$675.00 per hour on the high end and \$115.00 per hour on the low end, creating an average hourly rate of \$395.00 per hour. Defendants' average hourly rates for attorneys and paralegals/support staff ranged from \$400.00 per hour on the high end and \$100.00 on the low end, creating an average hourly rate of \$250.00 per hour. The Court hereby finds that a reasonable average hourly rate in this community, given the complexity of the issues and experience of the attorneys handling the case, is \$290.00 per hour.

b. Hours Reasonably Expended

Next the Court must calculate the hours reasonably expended. Hours not properly billed to a client are also not properly billed to an adversary. See *Id.* at ¶ 5. In calculating the hours reasonably expended, it follows that the Court must exclude "[...] hours unreasonably expended, e.g., hours that were redundant, unnecessary, or excessive in relationship to the work done." *Grimsley*, at ¶ 14.

In sum, Plaintiffs tallied 14,417 hours of billed hours in this matter. At the hearing Plaintiffs argued that all of their hours were reasonable, and referenced the fact that Defendants' counsel – who did not bear the burden of proof – tallied 15,626 hours (1,209 more billed hours than Plaintiffs' counsel).

Defendants argued that Defendants' counsel's hours were not relevant to the reasonableness of Plaintiffs' counsel's hours simply because Defendants' counsel was not seeking to have their attorneys' fees awarded. The Court fails to understand the distinction, particularly given the fact that both Defendants' and Plaintiffs' counsel's fees are subject to the reasonableness standard of Prof. Cond. R. 1.5(a). The Court's lodestar analysis is not limited to a comparison with Defendants' fee bills, it just serves as a helpful reference point to the lodestar analysis because Defendants' counsel prepared for and tried the same case. Defendants also asserted that Plaintiffs'



counsel's invoices utilize block-billing, a practice recently criticized by the Supreme Court of Ohio in *Rubino*. See *Rubino*, at ¶ 7 (citing *Tridico v. Dist. Of Columbia*, 235 F.Supp.3d 100, 109 (D.D.C. 2017)). In *Rubino*, the Supreme Court stated that it "will no longer grant attorney-fee applications that include block-billed time entries." This appears at first glance to be a bright-line rule, but the Supreme Court's citation of *Tridico*, and the Court's later statement that "[a]pplications failing to meet these criteria [i.e. that are block-billed] risk denial in full", leaves the door open for a trial Court to determine, on a case by case basis and in its' discretion, whether any block-billed time renders all or part of an attorney fee unreasonable. See *Id.* (emphasis added). The concern in both *Rubino* and *Tridico* was that certain methods of block-billing – generally those that involve large chunks of time (more than 5 hours), and multiple tasks (particularly unrelated tasks) – may render the Court unable to determine the reasonableness of the hours expended on the case. See *Rubino*, at ¶¶ 6-9; see also *Tridico*, at 109-110.

But here, the Court has no such concern with Plaintiffs' hours. Though the case was not filed until November 2017, Plaintiffs' counsel's invoices reflect that this case began for Plaintiffs in April of 2017. After the complaint was filed, nearly every phase of the case was vigorously contested, including the trial which encompassed twenty-four days over the course of nearly six weeks. Plaintiffs' counsel's billing invoices are reflective of, and consistent with, a case of this magnitude.

Furthermore, the Court finds that due to the nature of claims at issue in this case, it is not possible to separate the time spent on recoverable punitive damage claims (or related litigation expenses for experts) from non-recoverable punitive damage claims. See *Bittner*, at 145. The Court therefore finds that Plaintiffs' counsel's 14,417 billable hours were hours reasonably expended on the case.

c. Calculation of the Lodestar

Applying the above, Plaintiffs' counsel's reasonable hourly rate (\$290.00 per hour) times the number of hours reasonably expended (14,417) equates to a lodestar amount of \$4,180,930.

d. Application of the Factors for Enhancement or Reduction

Having calculated the lodestar number, the remaining issue is whether or not the lodestar should be reduced or multiplied for enhancement based on the factors in Ohio Prof. Cond. R. 1.5(a). Ohio Prof. Cond. R. 1.5(a) provides in relevant part: the factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;



- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent.

The parties strongly debated the appropriateness of a multiplier. Plaintiffs' counsel believes the lodestar should be multiplied 2 to 3 times, which would result in a total fee between \$8,361,860 and \$12,542,790 (using the Court's lodestar amount in Paragraph C above). Plaintiffs' argument for enhancement lies in the application of factors (1), (4), (7), and (8).

Defendants believe the Court should not utilize a multiplier because the relevant 1.5(a) factors are subsumed by the lodestar analysis and based on the United States Supreme Court's decision in *Perdue v. Kenny A. ex rel Winn*, 559 U.S. 542 (2010).

In *Perdue*, the Supreme Court issued a decision that addressed lodestar fee enhancements in the context of a federal civil rights case and 42 U.S.C.A. § 1988. In *Perdue* and its progeny, the United States Supreme Court opined that the lodestar amount is presumptively reasonable and that enhancements (or multipliers) should not be based on factors that are accounted for in the lodestar analysis. *Id.* at 552-553 (citing *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992) ("We have established a 'strong presumption' that the lodestar represents the "reasonable" fee [...].") (internal citations omitted)). Recently, the Supreme Court of Ohio accepted a limited appeal² on the issue of fee enhancements or multipliers in *Phoenix Lighting Group LLC v. Glenlyte Thomas Group LLC*, Ohio S.Ct. Case No. 2018-1076, 2018-Ohio-4092 (Ohio 2018). *Phoenix* has been set for an oral argument on September 10, 2019. This Court cannot speculate as to the future holding or rationale of *Phoenix*. In *Rubino*, less than one year

² Specifically, the proposition of law accepted for appeal states: "Because there is a strong presumption that the loadstar [sic] method yields a sufficient attorney fee, enhancements should be granted rarely and only where the applicant seeking the enhancement can produce objective and specific evidence that an enhancement is necessary to compensate for a factor not already subsumed within the Court's loadstar calculation. (*Perdue v. Kenny A., ex rel. Winn*, 559 U.S. 542 (2010), followed.)"



ago, the Supreme Court of Ohio considered the appropriateness of a lodestar multiplier. See *Rubino*, at ¶ 12. It follows then, that the Court in its discretion can adjust the lodestar amount upward or downward, if the 1.5(a) factors are not entirely subsumed within the lodestar calculation.

Here, the Court has determined that not all of the factors are entirely subsumed within the lodestar calculation precluding enhancement. Here, factor (1) - the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly, while a component of the lodestar calculation, it was not entirely subsumed by it. The case presented extraordinary challenges for the plaintiffs. Similarly, factor (7) – the experience, reputation, and ability of the lawyer or lawyers performing the services – was a component of the lodestar calculation. But when considered with other relevant factors such as factor (3) – the fee customarily charged in the locality for similar legal services, factor (4) – the amount involved and the results obtained; and factor (8) – whether the fee is fixed or contingent, the Court believes a multiplier of one and a half (1.5) times the lodestar calculation is appropriate and necessary.

The Court therefore finds that the Plaintiffs' should be awarded \$6,271,395.00 in reasonable attorneys' fees.

B. Litigation Expenses

In addition to attorneys' fees, Plaintiffs' also seek \$404,139.22 in litigation expenses. Defendants and their expert believe Plaintiffs' proposed expenses are excessive and that several categories are not properly includable as expenses. Defendants believe the proper amount of litigation expenses total \$241,247.84. This Court agrees that the expenses should be limited, albeit not to the extent requested by Defendants. In calculating the amounts below, the Court included expenses for discovery transcripts, witness fees, focus groups, video discovery, trial transcripts, mediation services, expert witness fees, filing fees, travel for Marvin Krislov's deposition, and process server fees. The Court makes the following ruling regarding each Plaintiffs' firms' litigation expenses:

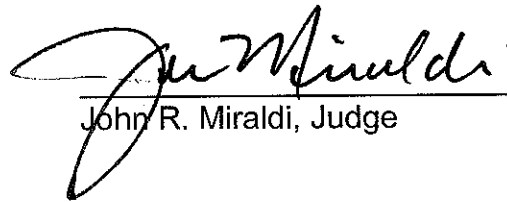
- Plaintiffs are awarded litigation expenses advanced by Krugliak, Wilkins, Griffiths, & Dougherty Co., L.P.A.'s in the amount of \$213,835.05 (reduced from \$272,645.02);
- Plaintiffs are awarded litigation expenses advanced by James N. Taylor Co., L.P.A. in the amount of \$796.00;



- Plaintiffs are awarded litigation expenses advanced by Tzangas, Plakas, Mannos Ltd. in the amount of \$79,505.74 (reduced from \$117,081.44).

Therefore, in addition to attorneys' fees of \$6,271,395.00, Plaintiffs are hereby awarded the above litigation expenses, which total \$294,136.79. In addition court costs are assessed to the Defendants. Case closed.

IT IS SO ORDERED.



John R. Miraldi, Judge

cc: All Parties

**TO THE CLERK: THIS IS A FINAL
APPEALABLE ORDER
PLEASE SERVE UPON ALL PARTIES NOT IN
DEFAULT FOR FAILURE TO APPEAR,
NOTICE OF THE JUDGMENT AND
ITS DATE OF ENTRY UPON THE JOURNAL.**