IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

GIBSON BROS., INC., et al.,

Plaintiffs,

-vs.-

OBERLIN COLLEGE, et al.,

Defendants.

Case No.: 17CV193761

Judge: Hon. John R. Miraldi

Magistrate: Hon. Joseph Bott

PLAINTIFFS' EVIDENTIARY MATERIALS IN SUPPORT OF PREJUDGMENT INTEREST

In accordance with the Court's August 30, 2019 Order, Plaintiffs[1] hereby submit their evidentiary materials supporting an award of prejudgment interest against Defendants.[2] Plaintiffs also proffer the evidentiary materials which would normally exist in a case of this nature and would be in the exclusive possession of the Defendants, but which Defendants have objected to producing. Defendants failed to engage in good faith settlement offers prior to trial and Plaintiffs are entitled to $105,264.93 in prejudgment interest:

I. INTRODUCTION

"[T]he purpose of a prejudgment interest award…is the encouragement of settlement of meritorious claims, and the compensation of a successful party for losses suffered as a result of the failure of an opposing party to exercise good faith in negotiating a settlement." *Lovewell v.*

[1] "Plaintiffs" refers to David R. Gibson ("David" or "David Gibson"), Allyn W. Gibson ("Grandpa Gibson"), and Gibson Bros., Inc. ("Gibson's Bakery").
[2] "Defendants" refers to Oberlin College & Conservatory ("Oberlin College") and Meredith Raimondo ("Dean Raimondo").

Physicians Ins. Co. of Ohio, 79 Ohio St.3d 143, 147, 679 N.E.2d 1119 (1997); see also, *Galayda v. Lake Hosp. Syst. Inc.*, 71 Ohio St.3d 421, 427, 644 N.E.2d 298, 303 (1994).

Throughout the entirety of this case, Defendants have failed to engage in good faith settlement negotiations and Defendants have no evidence which justifies their failure to make a good faith effort to settle this case. Therefore, Plaintiffs are entitled to prejudgment interest.

II. EVIDENCE SUPPORTING AN AWARD OF PREJUDGMENT INTEREST

A. Standard of Review.

The procedure for awarding prejudgment interest for tort litigation is codified in R.C. 1343.03:

> (C)(1) If, upon motion of any party to a civil action that is based on tortious conduct, that has not been settled by agreement of the parties, and in which the court has rendered a judgment, decree or order for the payment of money, the court determines at a hearing held separate to the verdict or decision in the action that the party required to pay the money failed to make a good-faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good-faith effort to settle the case, interest on the judgment, decree or order shall be computed as follows:
>
> ***
>
> (b) In an action in which the party required to pay the money engaged in the conduct resulting in liability with the deliberate purpose of causing harm to the party to whom the money is to be paid, from the date the cause of action accrued to the date on which the order, judgment, or decree was rendered
>
> (c) In all other actions, for the longer of the following periods:
>
> > (i) From the date on which the party to whom the money is to be paid gave the first notice described in division (C)(1)(c)(i) of this section shall apply only if the party to whom the money is to be paid made a reasonable attempt to determine if the party required to pay had insurance coverage for liability for the tortious conduct and gave to the party required to pay and to any identified insurer, as nearly simultaneously as practicable, written notice in person or by certified mail that the cause of action has accrued.

(ii) From the date on which the party to whom money is to be paid filed the pleading on which the judgment, decree or order was based to the date on which the judgment, decree or order was rendered.

In order to be entitled to prejudgment interest, Plaintiffs are not obligated to demonstrate "bad faith." *Kalain v. Smith*, 25 Ohio St.3d 157, 159, 495 N.E.2d 572 (1986)[3]. In other words, malice, a dishonest purpose, or conscious wrongdoing need not be shown. *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 661-662, 635 N.E.2d 331 (1994).

All that is required is a failure "to make a good faith effort to settle," which is to be determined by considering whether Defendants (1) fully cooperated in discovery proceedings, (2) rationally evaluated their risks and potential liability, (3) had not attempted to unnecessarily delay any of the proceedings, and (4) made a good faith monetary settlement offer or responded in good faith to an offer from Plaintiffs. *Kalain*, 25 Ohio St.3d at 159, 495 N.E.2d at 574; see also, *Felden v. Ashland Chem. Co., Inc.*, 91 Ohio App.3d 48, 67, 631 N.E.2d 689 (8th Dist.1993).

Whether Plaintiffs meet the requirements of R.C. 1343.03(C) relies "heavily on findings of fact." *Algood v. Smith*, 8th Dist. No. 76121, 2000 WL 426554 (Apr. 20, 2000). A trial court is in the best position "to assess the reasonableness of parties' settlement postures." *Urban v. Goodyear Tire & Rubber Co.*, 8th Dist. No. 77162, 2000 WL 1800679 (Dec. 7, 2000). This Court is therefore afforded "wide discretion in deciding whether to award prejudgment interest based upon the evidence of the parties' settlement efforts." *Miller v. Leesburg*, 10th Dist. No. 97APE10-1379, 1998 WL 831404, *12 (Dec. 1, 1998).

[3] "Appellant argues that the statutory language 'failed to make a good faith effort' necessarily requires a finding of bad faith. We disagree. The statute requires all parties to make an honest effort to settle a case. A party may have 'failed to make a good faith effort to settle' even when he has not acted in bad faith."

B. The Available Evidence Supports an Award of Prejudgment Interest.

1. *Defendants failed to rationally evaluate their risks and potential liability before, during and after this litigation.*

It is well settled that a party is not entitled to rely upon faulty defenses as a justification for refusing to earnestly explore settlement options. *Loder v. Burger*, 113 Ohio App.3d 669, 675, 681 N.E.2d 1357 (11th Dist.1996); *Miller v. Leesburg*, 10th Dist. No. 97APE 10-1379, 1998 W.L. 831404, p. *12 (Dec. 1, 1998) (citations omitted). The Eighth District Court of Appeals has held:

> A party who has not rationally evaluated his risks and potential liability cannot then be said to have made or responded to a settlement offer in good faith, and cannot be said to have a good faith, objectively reasonable belief that he has no liability.

Urban v. Goodyear Tire & Rubber Co., 8th Dist. No. 77162, 2000 W.L. 1800679, *7 (December 7, 2000); see also, *Szitas*, 165 Ohio App.3d 439; *Hughey v. Lenkauskas*, 11th Dist. No. 12-014, 1987 WL 18001, *8 (Sept. 30, 1987).

"A party holding an objectively unreasonable belief in non-liability is not excused from the obligation to enter into settlement negotiations, and cannot insulate himself from liability for prejudgment interest by relying on his own naivete." *Krieger v. Cleveland Indians Baseball Co.*, 176 Ohio App.3d 410, 892 N.E.2d 461, ¶ 83 (8th Dist.2008), *rev'd on other grounds,* 123 Ohio St.3d 278, 2009-Ohio-5030, 915 N.E. 1205; *Whitmer v. Zochowski*, 10th Dist. No. 15AP-52, 2016-Ohio-4764, ¶ 118 ("A defendant who does not rationally evaluate his risks and potential liability cannot hold a good faith, objectively reasonable belief of no liability."). In light of the substantial risks that Defendants faced in this defamation action, the refusal to tender a meaningful settlement offer was objectively unreasonable and lacked good faith.

Defendants attempted to rely on their pervasive erroneous notion that the First Amendment protected their defamatory conduct. But it is clear that Defendants unreasonably ignored the evidence and unrealistically assessed the settlement value of this case in light of their own production of evidence, which included numerous internal communications demonstrating Defendants' malice and vitriolic feelings towards Plaintiffs.

Furthermore, Defendants cannot fall back upon any beliefs that they might escape liability on First Amendment grounds based on the language contained within the flyer and the resolution. The case law utilized by this Court in reaching its decision on Defendants' motions for summary judgment was available to Defendants to evaluate and assess potential liability. It is evident that Defendants failed to do so, and that failure necessarily results in a lack of good faith in their responses to offers of settlement.

Even if Defendants tried to claim that they did rationally evaluate their risks and potential liability, it is undeniable that even following the compensatory phase, during which Plaintiffs were awarded more than $11,000,000, Defendants still were evaluating the case irrationally:

10	Q. The position following the jury verdict clearly
11	said that Oberlin College did not agree -- "regretted
12	that the jury did not agree with the clear evidence our
13	team presented." That was one pronouncement publicly,
14	correct?
15	A. Correct.
16	Q. And in addition, Oberlin College, to thousands
17	of people in the public domain, said that neither
18	Oberlin College nor Dean Raimondo defamed a local
19	business or its owners, correct?
20	A. Correct.

21	Q. And it said that they never endorsed statements
22	made by others, correct?
23	A. That is also true.

[June 12, 2019 Trans., p. 140]. These and other potential indicia of Defendants' refusal to rationally evaluate its potential litigation risks, as further noted in Section C, *infra*, including the potential that Defendants may have ignored third party factors such as focus groups or mock juries that forecast multi-million-dollar verdicts for Plaintiffs, all show that Defendants did not act in good faith.

2. *Defendants failed to fully cooperate in the discovery proceedings.*

From the outset of litigation, Defendants failed to fully cooperate in the discovery proceedings. Indeed, as early as February 28, 2018, Plaintiffs notified this Court of Defendants' discovery violations and deficiencies. [See, Plaintiffs' Notice of Discovery Violations and Deficiencies by Defendants filed February 28, 2018]. But even after this, Defendants continued their attempts to railroad Plaintiffs and delay discovery.

For example, Defendants refused to produce electronically stored discovery ("ESI") despite agreeing to the methodology and protocols for retrieving it. Plaintiffs were forced on two different occasions to file motions to compel Defendants to produce both ESI and other non-ESI discovery. In the second instance, it was only after months of briefing that the Court ordered Defendants to produce the requested ESI, a privilege log, and identify all Oberlin College social media accounts by January 9, 2019. [See, December 7, 2018 Entry and Order]. Yet, despite this, Defendants did not produce any of the required items identified by the Court. [See, Plaintiffs' Amended Notice of Defendant Oberlin College AKA Oberlin College and Conservatory's Noncompliance with Court Order Filed 12-10-18 filed January 17, 2019]. Some of these deficiencies continued even into February 2019.

These instances illustrate that Defendants failed to fully cooperation in the discovery proceedings.

3. *Defendants attempted to unnecessarily delay the proceedings.*

Defendants attempted to unnecessarily delay the proceedings on various occasions. Not only did Defendants attempt to extend the case management deadlines, including the trial date, but they also failed to timely identify persons with relevant knowledge, they refused to preserve, search, and produce the relevant ESI, and they wasted significant time during depositions. Plaintiffs described some of these tactics in their Response to Defendants' Motion to Immediately Suspend and Extend Case Management Deadlines, filed with the Court on January 25, 2019.

As this Court is well aware, Defendants unnecessarily delayed and extended deposition proceedings. The Plaintiffs were subjected to multiple day depositions: 90-year-old Grandpa Gibson was deposed for nearly ***nineteen (19)*** hours over five (5) days and 65-year-old David Gibson was subjected to ***twenty (20)*** hours of questioning over three (3) days. And these tactics were not limited only to the Plaintiffs. Defendants deposed Clarence "Trey" James for more than eleven (11) hours over two days, they deposed Brent Gingery for more than seven (7) hours, 85-year-old Dr. Roy Ebihara for more than five (5) hours over two days, and Lorna Gibson for more than nine (9) hours. These actions by Defendants contributed to their attempts to unnecessarily delay the proceedings.

4. *Defendants did not make good faith monetary settlement offers nor respond in good faith to offers by Plaintiffs.*

The lack of a good faith effort to settle is not evidenced simply by comparing the settlement offer and the verdict; however, a "substantial disparity" between the offer and the verdict is a factor in making the determination. *Szitas*, 165 Ohio App. 3d 439, ¶ 31 (noting that

the defendant's offer of half of the ultimate verdict was relevant in determining that the defendant did not act in good faith). A comparison of Defendants' offers in this case, which reached a maximum of $4,674,500 and was made while Plaintiffs' counsel was actually presenting closing arguments on punitive damages, and the jury verdict in this matter clearly shows a substantial disparity, thereby evidencing Defendants' lack of good faith.

Even setting aside the final verdict and Defendants' highest settlement offer, Defendants failed to engage in good faith settlement discussions throughout this case.

a. Pre-filing settlement discussions.

Before Plaintiffs initiated this litigation with the filing of their Complaint, Plaintiffs issued a settlement letter opining that a jury verdict expectancy in this case could approach $30 million. Defendants scoffed at this evaluation of jury verdict potential, included it as an exhibit to several briefs filed with this Court, and even attempted to use it as evidence during trial. (See, April 30, 2019 Tr. Trans., pp. 49-54). However, Plaintiffs' pre-trial jury verdict expectancy approximation was inherently reasonable considering the jury awarded in excess of $44 million at trial and the final judgment was over $32 million including attorneys' fees.

Still, despite the reasonableness of this evaluation of verdict potential, Defendants made no response to the offer.

b. The parties' pre-mediation communications

After Plaintiffs' settlement letter identifying the jury verdict potential, the only settlement discussions occurred during mediation. In May of 2018, Defendants sent a communication requesting a private mediation. Plaintiffs initially rejected this offer because of the Defendants' conduct thwarting meaningful discovery. As of May of 2018, Defendants had not produced a single page or document of ESI discovery and depositions had just gotten underway.

However, during the deposition of Connie Rehm on May 15, 2018, Plaintiffs' Attorney Lee Plakas informed Defendants' Attorney Ron Holman that Plaintiffs would agree to an early mediation so long as Defendants came into the mediation agreeing to a settlement bracket of between $5 million and $15 million. Again, considering the jury verdict and final judgment, this suggested bracket was highly reasonable. On May 24, 2019, Defendants rejected this mediation proposal out of hand in a letter from their counsel:

> Dear Lee:
>
> I am following up on our discussion at the deposition of Constance Rehm on Tuesday, May 15th. You will recall that I inquired as to whether Plaintiffs were interested in exploring a potential resolution of our litigation in mediation. You responded favorably and shared your thoughts on the subject, which included retaining a private mediator and using a settlement bracket of $5 million to $15 million for any such possible mediation. Of course, as you must necessarily concede, nothing in the case supports or compels such a generous settlement.

(Ex. 1).[4]

c. Mediation Scheduled

After Defendants' initial refusal to agree to a reasonable mediation bracket, in November of 2018, after substantial discovery had taken place, Plaintiffs attempted to schedule a mediation. Plaintiffs sent Defendants a letter on November 28, 2018 to discuss mediation and also suggest four respected Ohio mediators: Judge James McMonagle, Attorney Jerome Weiss, Attorney Frank Ray, and Attorney Robert E. Hanson.[5] While Defendants initially refused to be limited to Plaintiffs' suggested mediators, during the December 21, 2018 pretrial with the Court, Defendants finally agreed to proceed with Attorney Jerome Weiss. Although none of Plaintiffs' counsel had any previous mediation experience with Mr. Weiss, several of Defendants' attorneys did have prior experience with Mr. Weiss and apparently were satisfied with his ability and credentials.

[4] A true and accurate copy of Defendants' May 24, 2019 communication is included herein as **Exhibit 1**.
[5] A true and accurate copy of Plaintiffs' November 28, 2018 communication is attached hereto and incorporated herein as **Exhibit 2**.

To further provide this court with appropriate evidence upon which to base its decision, Plaintiffs are willing to waive any putative Mediation privilege as it relates to a pre-judgment interest evidentiary hearing to allow the court to examine mediation demands and offers, proposed brackets and responses thereto, mediator's proposals, and mediator's written communications sent to both parties to explain the basis of any mediator's proposals.

In January of 2019, the parties engaged in two days of private mediation, during which Plaintiffs moved and worked to find common ground. The parties continued to engage with mediator Jerry Weiss through the spring of 2019, but no ground was gained.

d. The parties' settlement efforts during the final pre-trial.

Defendants' settlement tactics continued into the final pre-trial. When the parties arrived at the Court on April 16, 2019 for the final pre-trial, the Court offered as much of its time as necessary to attempt to reach a settlement for this case. Each of the parties encouraged the Court's efforts and accepted the Court's offer to explore the potential settlement. During this time, the Court worked with the parties to try and encourage a resolution. Remarkably, during this final pre-trial process, at least one of Defendants' insurance adjusters left without seeking the Court's permission.

Further, Defendants only offered a conditional $3.125 million at the end of two days of these discussions with the Court, conditioned on Oberlin College Board's approval of contributing $1 million as part of the package of $3.125 million. As noted in Section C below, Plaintiffs believe relevant discovery, which Defendants have refused, would answer the interesting question of whether the Oberlin Board was ever presented with the proposal to join with the insurance companies in offering a settlement and contributing $1 million to said package. Again, considering the jury verdicts, this offer was substantially low and may not have

been made in good faith if there is a possibility it was never an offer authorized and intended to be honored by Oberlin's Board.[6]

e. Settlement discussions during trial.

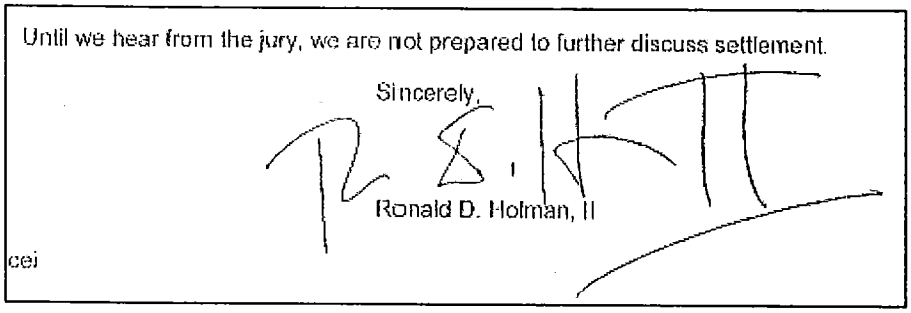
Despite Defendants' failure to participate in good faith settlement discussions throughout this case, during trial, Plaintiffs made every attempt to resolve this dispute, both during the compensatory phase and during the punitive phase.

On June 2, 2019, before the jury issued its verdicts during the compensatory phase, Plaintiffs issued a settlement offer to Defendants.[7] This highly reasonable settlement offer included the following terms:

- Payment of $13.5 million by Defendants;
- A 10-year contract between Oberlin College and Gibson's Bakery;
- A joint statement to be signed by all parties discussing the lack of any evidence regarding racism by Plaintiffs; and
- Voluntary dismissal with prejudice of all claims by Plaintiffs.

(See, Ex. 3, pp. 1-2).

Defendants rejected this offer out of hand and failed to counter:


Until we hear from the jury, we are not prepared to further discuss settlement.

Sincerely,

Ronald D. Holman, II

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(Ex. 4, p. 2).[8]

[6] Below, Plaintiffs discuss their good faith belief as to why this settlement offer during the final pre-trial mediation was so low. *See, infra* Sec. II(C).

[7] A true and accurate copy of Plaintiffs' settlement offer is included herein as **Exhibit 3**.

After the jury's compensatory verdict in excess of $11 million, Plaintiffs again contacted Defendants in an attempt to settle this matter prior to the punitive phase. On June 9, 2019, Plaintiffs issued a settlement communication with the following terms:

- Payment by Defendants of $16 million;
- A contract between Gibson's Bakery and Oberlin College for the provision of baked goods for 15 years; and
- The voluntary dismissal of all claims with prejudice by Plaintiffs.

(Ex. 5, pp. 1-2).[9]

Defendants responded to this communication on June 11, 2019[10] by offering approximately $4.6 million, which represented Defendants' incorrect calculation of the compensatory damages after application of the damages cap. [11]

Again, wishing to resolve this case, on June 11, 2019 Plaintiffs responded with a substantially reduced settlement offer following the following terms:

> - Payment by Defendants in the amount of Fifteen Million Dollars ($15.000.000.00) within thirty (30) days of acceptance;
> - Plaintiffs' voluntary dismissal of all claims against Defendants, with prejudice; and
> - The Court shall retain jurisdiction to enforce the terms of the settlement agreement.

(Ex. 7, p. 1).[12]

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[8] A true and accurate copy of the June 4, 2019 settlement communication from Defendants is included herein as **Exhibit 4**.
[9] A true and accurate copy of Plaintiffs' June 9, 2019 settlement communication is included herein as **Exhibit 5**.
[10] A true and accurate copy of the June 11, 2019 settlement communication from Defendants is included herein as **Exhibit 6**.
[11] As applied by this Court, the compensatory damages after application of the damages caps totaled $5,174,500.00. [See, June 27, 2019 Judgment Entry, pp. 1-2].
[12] A true and accurate copy of Plaintiffs' June 11, 2019 settlement communication is included herein as **Exhibit 7**.

In what epitomizes Defendants' lack of good faith, Defendants submitted their last offer on June 13, 2019 at 10:47 AM, while Plaintiffs' counsel, Attorney Lee Plakas, was actually presenting his closing argument on punitive damages.[13] Defendants conditioned that offer on it being accepted ***before*** the jury began deliberations on punitive damages:

> Defendants Oberlin College and Meredith Raimondo reject the settlement offer presented in your correspondence dated June 11, 2019. Defendants respond with a counteroffer of $4,674,500—the maximum amount Plaintiffs are entitled to recover in this matter pursuant to the statutory cap on non-economic damages under R.C. 2315.18(B). Defendants' counteroffer requires Plaintiffs' stipulation to a Judgment Notwithstanding the Verdict regarding all verdicts against Dr. Meredith Raimondo in her individual capacity, and Plaintiffs' voluntary dismissal of Dr. Raimondo from this matter entirely. This offer expires when the jury retires to deliberate after the punitive damages phase of this matter.

(Ex. 9, p. 1).[14]

Thus, in order to evaluate and respond to this communication, Plaintiffs' counsel would have needed to check his email, stop in the middle of closing arguments, then provide a response to Defendants. Furthermore, the offer was the same incorrect calculation of compensatory damages after the wrong application of Ohio's damages cap that Plaintiffs already rejected two days before. The offer did not take into account the substantial possibility that the jury, which had just awarded $11,000,000 in compensatory damages, would award significant punitive damages and also find that Plaintiffs were entitled to an award of reasonable attorneys' fees.

Throughout the entire litigation process, Defendants failed to make good faith offers to settle this case and should be assessed prejudgment interest as a result.

C. The History of the Defendants' Conduct Creates a Circumstantial Basis that the Post-Trial Discovery Sought by Plaintiffs would have Offered Further Support for an Award of Prejudgment Interest.

Had Defendants not refused to respond to Plaintiffs' efforts to conduct limited discovery on prejudgment interest,[15] Plaintiffs suggest that the circumstances surrounding Defendants'

[13] A true and accurate copy of the email transmitting Defendants' final settlement offer is included herein as **Exhibit 8.**

[14] A true and accurate copy of Defendants' June 13, 2019 settlement communication is included herein as **Exhibit 9.**

conduct during the course of the litigation would support a reasonable belief that Defendants' and their counsels' discovery responses could have answered the following questions and provided additional evidence showing that Defendants failed to make a good faith effort to settle this case:

1. Did Defendants consistently recommend to their insurance carriers and/or the Oberlin College Board that Plaintiffs' claims had absolutely no merit and there was no risk of a verdict adverse to Defendants? Plaintiffs respectfully suggest that this answer could be "yes."
2. Did Defendants communicate to either their insurance carriers or the Oberlin College Board that Plaintiffs' claim was so meritless that Plaintiffs would be required to reimburse Defendants' attorney fees and litigation expenses for bringing this suit? Plaintiffs respectfully suggest that this answer could be "yes."
3. Did Defendants recommend to their insurance carriers and/or the Oberlin College Board to not make any offers of settlement between the time of the November 9, 2016 criminal incident up to the time of mediation conducted on January 23, 2019? Plaintiffs respectfully suggest that this answer could be "yes."
4. Did Defendants ignore the results of one or more focus groups or mock trials, which are typically conducted in cases of this magnitude, and which could have forewarned the Defendants that there was a probability of a multi-million-dollar jury verdict in favor of Plaintiffs? Plaintiffs respectfully suggest that this answer could be "yes."
5. Did Defendants' administrative or board leadership ever commit to having Oberlin College contribute to a potential settlement, even after the three insurance companies

[15] In their August 14, 2019 Motion for Prejudgment Interest, and the supplement filed on August 19, 2019, Plaintiffs requested limited expedited discovery on prejudgment interest and identified the document requests they had presented to Defendants.

providing coverage made a commitment to each offer funds for settlement in pre-trial proceedings confirmed in open court? Plaintiffs respectfully suggest that this answer could be that prior to trial, Oberlin College never committed to offer funds to settle this case.

6. Did the Defendants share any mediator's proposal and/or related case evaluation communications with Oberlin's Board and/or the three insurance companies providing coverage? Plaintiffs respectfully suggest that this answer could be that the mediator's proposal and related communications were never shared with the Board or the insurance companies.

Had Plaintiffs been granted the opportunity to conduct discovery on prejudgment interest, Plaintiffs believe these questions could have been answered as indicated above and would have further supported an award of prejudgment interest.

D. Plaintiffs are Entitled to $105,264.93 in Prejudgment Interest.

Defendants owe prejudgment interest for the period of time from November 10, 2016, to the date that judgment was entered by the Court on June 27, 2019, pursuant to R.C. 1343.03(C)(1)(b). Plaintiffs are entitled to prejudgment interest dating back to the first day that Defendants caused harm to Plaintiffs, which would have been the first day of the protests, where, by example, Meredith Raimondo distributed the defamatory flyer, because said actions were deliberate. R.C. 1343.03(C)(1)(b) ("In an action in which the party required to pay the money ***engaged in the conduct resulting in liability with the deliberate purpose of causing harm to the party*** to whom the money is to be paid, from the date the cause of action accrued to the date on which the order, judgment, or decree was rendered...") Moreover, prejudgment interest is not permitted on amounts awarded for future damages. R.C. 1343.03(C)(2).

In this case, the damages awarded to Plaintiffs, as reduced by the Court, are as follows:

- David R. Gibson – total compensatory damages in the amount of $2,400,000, of which $600,000 is noneconomic. Therefore, based on the jury's award, $300,000 is subject to prejudgment interest.
    - Jury Award
        - $2,000,000 past non-economic
        - $1,800,000 future economic
        - $2,000,000 future non-economic
- Allyn W. Gibson – total compensatory damages in the amount of $500,000, comprised solely of noneconomic damages. Therefore, based on the jury's award, $250,000 is subject to prejudgment interest.
    - Jury Award
        - $1,500,000 past non-economic
        - $1,500,000 future non-economic
- Gibson Bros., Inc. – total compensatory damages in the amount of $2,274,500, of which $420,000 is for past economic damages. Therefore, $420,000 is subject to prejudgment interest.
    - Jury Award
        - $420,000 past economic
        - $1,854,500 future economic

Based on the foregoing, the total amount of judgment subject to prejudgment interest is $970,000.

The interest rate on judgments arising from tort cases is the statutory rate. *Calahan v. Babcock*, 21 Ohio St. 281, 1871 WL 61 (1871). The annual interest rates for the years at issue are as follows: 2016 - three percent (3%); 2017 - four percent (4%); 2018 - four percent (4%); and 2019 - five percent (5%). See R.C. 1343.03(A). Prejudgment interest for the jury's verdict in this case is as follows:

- 2016 = $4,145.75 (((.03 x $970,000) / 365) x 52 days)
- 2017 = $38,800 (.04 x $970,000)
- 2018 = $38,800 (.04 x $970,000)
- 2019 = $23,519.18 (((.05 x $970,000) / 365) x 177 days)

Total Prejudgment Interest = $105,264.93

III. CONCLUSION

Accordingly, Plaintiff respectfully requests that the Court award prejudgment interest in the amount of $105,264.93.

DATED: September 9, 2019

Respectfully submitted,

TZANGAS | PLAKAS | MANNOS | LTD

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PROOF OF SERVICE

A copy of the foregoing was served on September 9, 2019, pursuant to Civ.R. 5(B)(2)(f) by sending it by electronic means to the email addresses identified below, to:

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May 24, 2018

VIA EMAIL TRANSMISSION
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Re: *Gibson Bros., Inc., et al. v. Oberlin College aka Oberlin College and Conservatory, et al.*
Lorain County Court of Common Pleas
Case No. 17CV193761

Dear Lee:

I am following up on our discussion at the deposition of Constance Rehm on Tuesday, May 15th. You will recall that I inquired as to whether Plaintiffs were interested in exploring a potential resolution of our litigation in mediation. You responded favorably and shared your thoughts on the subject, which included retaining a private mediator and using a settlement bracket of $5 million to $15 million for any such possible mediation. Of course, as you must necessarily concede, nothing in the case supports or compels such a generous settlement.

You mentioned when we spoke on May 15 that you would consult with your clients and send a letter regarding the possibility of mediation and your proposed parameters. I have not yet received any letter from you regarding this topic. But our clients and I do remain interested in mediation. Accordingly, please send me a letter with a firm mediation proposal so that I may confer with our clients and determine our response. Specifically, please advise whether you are willing to participate in mediation, and if so, whether you maintain that the settlement bracket should be $5 million to $15 million.

I look forward to hearing from you.

Very truly yours,

Ronald D. Holman, II

cc: Brandon W. McHugh, Esq.
Owen J. Rarric, Esq.
Terry A. Moore, Esq.
Matthew W. Onest, Esq.
James N. Taylor, Esq.

PLAINTIFF'S EXHIBIT
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November 28, 2018

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Re: ***Gibson Bros., Inc., et al. v. Oberlin College aka Oberlin College and Conservatory, et al.,*** **Lorain Cty. Ct. Cmmn. Pleas Case No. 17CV193761**

Dear Mr. Holman,

In preparation for this week's pre-trial conference with the court, it may be helpful to anticipate certain issues to endeavor to have a productive session. Pursuant to its local rules, one of the inquiries the Court may make is whether the parties are amenable to a mediation, whether court sponsored or with a private mediator.

In light of the fact that significant discovery has taken place, it may be that the parties can engage in mediation efforts that have a potential of being helpful. In this regard, Plaintiffs would consider participating in a private mediation if a mutually agreeable mediator can be selected. Because of the volume of the issues and evidence, and the time the mediator will have to invest in preparing for and conducting the mediation, Plaintiffs believe that a private mediator would be preferable to a court-employed mediator.

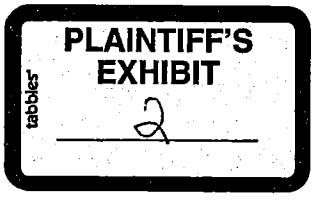
Plaintiffs suggest that the mediators that are recognized as very capable in major cases by both individual plaintiffs and institutional defendants include the following:

Judge James McMonagle – Cleveland;

Attorney Jerome Weiss – Cleveland;

Attorney Frank Ray – Columbus;

Attorney Robert E. Hanson – Columbus.



Please advise if Oberlin College wants to explore whether it is interested in a private mediation with one of the mediators noted above so we can respond to any such potential inquiry by the Court.

Best,

/s/ Lee E. Plakas
Lee E. Plakas
lplakas@lawlion.com

cc: Terry A. Moore, Esq. (*via email*)
Owen J. Rarric, Esq. (*via email*)
Matthew W. Onest, Esq. (*via email*)
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CONFIDENTIAL SETTLEMENT COMMUNICATION PURSUANT TO EVID.R. 408

June 2, 2019

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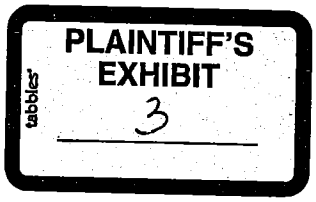
Re: ***Gibson Bros., Inc., et al. v. Oberlin College aka Oberlin College and Conservatory, et al.*, Lorain Cty. Ct. Cmn. Pleas Case No. 17CV193761**

Dear Counsel:

In a good faith effort to bring the above case to a resolution prior to the jury being charged and to confirm the settlement positions of the parties in any necessary post-verdict hearings, please find Plaintiffs' below settlement offer:

- Payment by Defendants in the amount of thirteen million five hundred thousand dollars ($13,500,000.00) within thirty (30) days of acceptance;
- A contract with a term of at least ten (10) years during which Defendants will purchase a minimum of one hundred and fifty thousand dollars' ($150,000.00) worth of Gibson's Bakery products per year during the first five (5) years and a minimum of two hundred thousand dollars' ($200,000.00) worth of Gibson's Bakery products for the next five (5) years;



- Issuance of a public statement by Defendants identifying that the Gibson family, including David R. Gibson and Allyn W. Gibson, and Gibson's Bakery are not racist and do not have a long history or account of racial profiling and discrimination (a proposed copy of the joint statement is attached hereto as **Exhibit 1**);
- Plaintiffs' voluntary dismissal of all claims against Defendants, with prejudice; and
- The Court shall retain jurisdiction to enforce the terms of the settlement agreement.

This settlement offer will remain open until **10:00 AM** on **Tuesday June 4, 2019**.

We look forward to hearing from you.

Best,

/s/ Lee E. Plakas
Lee E. Plakas
lplakas@lawlion.com

cc: Jeananne M. Ayoub, Esq. (*via email*)
Brandon W. McHugh, Esq. (*via email*)
James N. Taylor, Esq. (*via email*)
Jacqueline Bollas Caldwell, Esq. (*via email*)
Terry A. Moore, Esq. (*via email*)
Owen J. Rarric, Esq. (*via email*)
Matthew W. Onest, Esq. (*via email*)

Joint Public Statement: Oberlin College & Gibson's Bakery

After substantial discussions, Oberlin College and Gibson's Bakery have agreed to resolve their differences and move forward as business partners and longstanding pillars of the Oberlin and Lorain County community.

Oberlin College as an institution regrets any mistaken impression that it supported or agreed with any claims that Gibson's Bakery or the Gibson family are racists or have a history of racial profiling. Based on the longstanding relationship between Gibson's Bakery and Oberlin College, which has existed continuously since before World War I, and Gibson's Bakery's history of community involvement, Oberlin College does not believe that Gibson's Bakery or the Gibson family are racists or practice racial profiling.

Oberlin College, in conjunction with its good neighbor program, wants Gibson's Bakery to prosper as a key downtown business and urges its faculty, staff, and students to recognize and support Gibson's Bakery as an integral part of the Oberlin community. Oberlin College and Gibson's Bakery are ready to put the past behind them and are excited to move forward with a renewed relationship to remain business and community partners into the future.

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June 4, 2019

VIA EMAIL TRANSMISSION

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lplakas@lawlion.com

Re: *Gibson Bros., Inc., et al. v. Oberlin College aka Oberlin College and Conservatory, et al.*
Lorain County Court of Common Pleas
Case No. 17CV193761

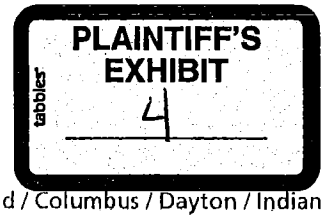
Dear Mr. Plakas:

Defendants Oberlin College and Meredith Raimondo reject the settlement offer presented in your correspondence dated June 2 and 3, 2019.

As an initial matter, whether Oberlin College again does business with Gibson's Bakery cannot be determined while the parties are adverse to one another in litigation. The college remains open to such a relationship in the future, but it is premature to address this subject now.

In addition, Plaintiffs declined Defendants' settlement offer of $3.125 MM with a commitment to work toward restored business relations before the start of trial.

On a related point, we do not believe that the evidence produced at trial supports and justifies the settlement numbers you have proposed.



Until we hear from the jury, we are not prepared to further discuss settlement.

Sincerely,

Ronald D. Holman, II

RDH/cei

cc: Owen J. Rarric, Esq.
Terry A. Moore, Esq.
Matthew W. Onest, Esq.
Brandon W. McHugh, Esq.
Jeananne M. Ayoub, Esq.
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Jacqueline Bollas Caldwell, Esq.
Ms. Marti Wolf

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CONFIDENTIAL SETTLEMENT COMMUNICATION PURSUANT TO EVID.R. 408

June 9, 2019

VIA EMAIL

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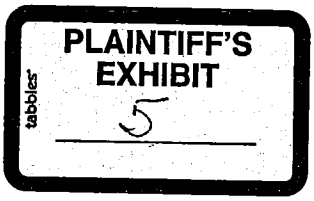
Re: ***Gibson Bros., Inc., et al. v. Oberlin College aka Oberlin College and Conservatory, et al.*, Lorain Cty. Ct. Cmn. Pleas Case No. 17CV193761**

Counsel:

With the jury entering verdicts in Plaintiffs' favor on Friday for in excess of $11 million, we are making a last good faith effort to bring the above case to a resolution prior to the initiation of the punitive damages phase of trial. Therefore, Plaintiffs are willing to settle this case on the following terms:

- Payment by Defendants in the amount of Sixteen Million Dollars ($16,000,000.00) within thirty (30) days of acceptance;
- A contract with a term of at least fifteen (15) years during which Defendants will purchase a minimum amount of Gibson's Bakery products based on the following schedule:
    - First Five-Year Term: one hundred and seventy-five thousand dollars ($175,000.00) per year.



- Second Five-Year Term: two hundred and twenty-five thousand dollars' ($225,000.00) per year.
- Third Five-Year Term: two hundred and seventy-five thousand dollars ($275,000.00) per year.

The contract will follow the general terms identified in our June 3, 2019 communication, meaning the contract pricing for products and services shall be set at Gibson's current prices as established by Gibson's Bakery with an annual 5% escalator. The business relationship cannot be terminated without mutual agreement of the parties. Any disputes shall be arbitrated, the arbitrator to be picked by Judge John Miraldi, who shall maintain continuing jurisdiction.

- Plaintiffs' voluntary dismissal of all claims against Defendants, with prejudice; and
- The Court shall retain jurisdiction to enforce the terms of the settlement agreement.

To assist in your review of this settlement proposal, please consider the following points:

First, under R.C. 2315.21 and interpretive case law, punitive damages are capped at two times the amount of compensatory damages ***awarded by the jury***. *See, Faieta v. World Harvest Church*, 10th Dist. Franklin No. 08AP-527, 2008-Ohio-6959, ¶ 90 ("Accordingly, we conclude the total compensatory damages referenced in R.C. 2315.21(B)(2) are the uncapped compensatory damages the jury awarded."). Because the jury awarded Plaintiffs in excess of $11 million in compensatory damages, Defendants' total punitive damages exposure is greater than **$22 million**.

Second, R.C. 2315.21(D)(2)(c) also contemplates that attorneys' fees may be awarded where a party is awarded punitive damages. *See, Faieta v. World Harvest Church*, 147 Ohio Misc.2d 51, 2008-Ohio-3140, 891 N.E.2d 370, ¶ 37 (C.P.). Importantly, the number of attorneys used, number of hours expended, and hourly rates of an opposing party's attorneys are relevant to the trial court's reasonableness/lodestar analysis. Plaintiffs anticipate that their attorneys' fees in this case will exceed **$5 million**.

This settlement offer will remain open until **10:00 AM** on **Tuesday June 11, 2019**.

We look forward to hearing from you.

Best,

/s/ Lee E. Plakas
Lee E. Plakas
lplakas@lawlion.com

cc: Jeananne M. Ayoub, Esq. (*via email*)
Brandon W. McHugh, Esq. (*via email*)
James N. Taylor, Esq. (*via email*)
Jacqueline Bollas Caldwell, Esq. (*via email*)
Terry A. Moore, Esq. (*via email*)
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SETTLEMENT OFFER SUBJECT TO EVID.R. 408

June 11, 2019

VIA EMAIL

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lplakas@lawlion.com

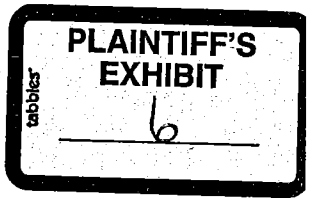
RE: *Gibson Bros., Inc. et al. v. Oberlin College, et al.*
Lorain County Court of Common Pleas
Case No. 17CV193761

Dear Messers. Rarric and Plakas:

This letter serves as Defendants' official response to your settlement offer issued June 9, 2019. Defendants hereby reject your offer because, among other reasons, it does not accurately reflect Plaintiffs' recoverable damages at this time. Defendants hereby respond with a counteroffer of $4,674,500 – the maximum amount Plaintiffs are entitled to recover in this matter pursuant to the statutory cap on non-economic damages under R.C. 2315.18(B).

Further, Defendants' offer of settlement requires Plaintiffs' stipulation to a Judgment Notwithstanding the Verdict regarding all verdicts against Dr. Meredith Raimondo in her individual capacity, and Plaintiffs' voluntary dismissal of Dr. Raimondo from this matter entirely.

This offer expires at the time the jury retires to deliberate after the punitive damages phase of this matter.



Feel free to contact me with any questions or concerns.

Sincerely,

/s/ Ron D. Holman, II

Ronald D. Holman, II

RDH/cei

cc: Lee E. Plakas, Esq.
Terry A. Moore, Esq.
Matthew W. Onest, Esq.
Brandon W. McHugh, Esq.
Jeananne M. Ayoub, Esq.
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CONFIDENTIAL SETTLEMENT COMMUNICATION PURSUANT TO EVID.R. 408

June 11, 2019

VIA EMAIL

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mrnakon@wickenslaw.com

Re: ***Gibson Bros., Inc., et al. v. Oberlin College aka Oberlin College and Conservatory, et al.*, Lorain Cty. Ct. Cmn. Pleas Case No. 17CV193761**

Dear Counsel:

We are in receipt of your settlement communication dated June 11, 2019. Plaintiffs hereby reject your settlement offer as it does not account for Defendants' substantial exposure on punitive damages and attorneys' fees. However, in a good faith effort to resolve this matter, Plaintiffs are willing to settle this case on the following terms:

- Payment by Defendants in the amount of Fifteen Million Dollars ($15,000,000.00) within thirty (30) days of acceptance;
- Plaintiffs' voluntary dismissal of all claims against Defendants, with prejudice; and
- The Court shall retain jurisdiction to enforce the terms of the settlement agreement.

Please note that this settlement offer represents a $1 million reduction in the upfront settlement amount with the removal of any continuing contract after the completion of the case.

We look forward to hearing from you.

Best,

/s/ Lee E. Plakas
Lee E. Plakas
lplakas@lawlion.com

cc: Jeananne M. Ayoub, Esq. (*via email*)
Brandon W. McHugh, Esq. (*via email*)
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Terry A. Moore, Esq. (*via email*)
Owen J. Rarric, Esq. (*via email*)
Matthew W. Onest, Esq. (*via email*)

Brandon W. McHugh

From: Ilko, Crystal <CIlko@taftlaw.com>
Sent: Thursday, June 13, 2019 10:47 AM
To: Lee E. Plakas
Cc: 'Rarric, Owen'; 'tmoore@kwgd.com'; 'monest@kwgd.com'; Brandon W. McHugh; Jeananne M. Ayoub; 'taylor@jamestaylorlpa.com'; 'jcaldwell@kwgd.com'; 'Wolf, Marti'; Crocker, Julie A.; Snyder, Cary M.; Doyle, William A.; Mandel, Josh M.; 'Nakon, Matthew W.'; 'MRNakon@WickensLaw.com'; 'RPanza@wickenslaw.com'; 'RZidar@wickenslaw.com'; 'wfarrell@wickenslaw.com'; Holman, Ronald D. II
Subject: Gibson Bros., Inc., et al. v. Oberlin College
Attachments: Letter to Lee Plakas 6-13-19_0001.pdf

Dear Mr. Plakas:

Please see attached correspondence from Ron Holman.

Crystal

Taft /

Crystal E. Ilko / Legal Assistant
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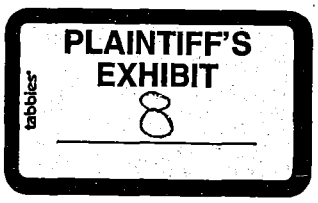

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rholman@taftlaw.com

SETTLEMENT OFFER SUBJECT TO EVID.R. 408

June 13, 2019

VIA EMAIL TRANSMISSION
Lee E. Plakas, Esq.
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220 Market Avenue South
8th Floor
Canton, OH 44702
lplakas@lawlion.com

Re: *Gibson Bros., Inc., et al. v. Oberlin College aka Oberlin College and Conservatory, et al.*
Lorain County Court of Common Pleas
Case No. 17CV193761

Dear Mr. Plakas:

Defendants Oberlin College and Meredith Raimondo reject the settlement offer presented in your correspondence dated June 11, 2019. Defendants respond with a counteroffer of $4,674,500—the maximum amount Plaintiffs are entitled to recover in this matter pursuant to the statutory cap on non-economic damages under R.C. 2315.18(B). Defendants' counteroffer requires Plaintiffs' stipulation to a Judgment Notwithstanding the Verdict regarding all verdicts against Dr. Meredith Raimondo in her individual capacity, and Plaintiffs' voluntary dismissal of Dr. Raimondo from this matter entirely. This offer expires when the jury retires to deliberate after the punitive damages phase of this matter.

Sincerely,

Ronald D. Holman, II

RDH/cei

cc: Owen J. Rarric, Esq.
Terry A. Moore, Esq.
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Brandon W. McHugh, Esq.
Jeananne M. Ayoub, Esq.
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Ms. Marti Wolf

PLAINTIFF'S EXHIBIT 9