

FILED
Lorain County Common Pleas Court
by Fax dated
8-14-19
Tom Orlando, Clerk of Courts

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

ENTERED

PLAINTIFFS' MOTION FOR PREJUDGMENT INTEREST

For the entirety of this litigation, Defendants¹ failed to engage in good faith settlement negotiations. Because Defendants failed to engage in good faith settlement negotiations, this case went to a jury trial on both compensatory and punitive damages wherein the jury awarded Plaintiffs in excess of \$44 million. Therefore, in accordance with R.C. 1343.03(C)(1), Plaintiffs² move this Court for prejudgment interest, an oral hearing on prejudgment interest, and limited expedited discovery related to prejudgment interest.

Pursuant to R.C. 1343.03(C)(1):

(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:

¹ "Defendants" refers to Defendant Oberlin College and Conservatory ("Oberlin College") and Defendant Meredith Raimondo ("Raimondo").

² "Plaintiffs" refers to Gibson Bros., Inc. ("Gibson's Bakery"), David Gibson ("Dave"), and Allyn W. Gibson ("Allyn").

(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.

Because Defendants failed to make a good faith effort to settle this case and because Plaintiffs did not fail to make a good faith effort to settle, Plaintiffs are entitled to prejudgment interest. Additionally, the prejudgment interest analysis relies "heavily on findings of fact." *Algood v. Smith*, 8th Dist. No. 76121, 2000 WL 426554 (Apr. 20, 2000). Because the analysis is fact driven, Plaintiffs are entitled to post-trial discovery including any communications between Defendants or their counsel and insurance providers related to potential settlements and any insurer's claims file related to this case. *See, Peyko v. Frederick*, 25 Ohio St.3d, 495 N.E.2d 918 (1986), ¶ 1 of the syllabus.³

Therefore, Plaintiffs request an expedited discovery period of twenty-one (21) days, a briefing schedule, and an oral hearing so that Plaintiffs' request for prejudgment interest may be properly assessed.

³ See also, *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 662-63, 635 N.E.2d 331 (1994) ("We hold that in an RC 1343.03(C) proceeding for prejudgment interest, neither the attorney-client privilege nor the so-called work product exception precludes discovery of an insurer's claims file. The only privileged matters contained in the file are those that go directly to the theory of the defense of the underlying case in which the decision or verdict has been rendered.").

DATED: August 14, 2019

Respectfully submitted,

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