IN THE COURT OF APPEALS
NINTH APPELLATE DISTRICT
LORAIN COUNTY, OHIO

GIBSON BROS., INC., et al.

Plaintiffs-Appellees/Cross-Appellants,

-vs.-

OBERLIN COLLEGE, et al.

Defendants-Appellants/Cross-Appellees.

Case No.: ~~19CA011563~~ & 20CA011632
(Consolidated)

Appeal from Lorain County
Court of Common Pleas,
Case No. 17CV193761

BRIEF OF PLAINTIFFS/CROSS-APPELLANTS GIBSON BROS., INC., LORNA GIBSON, EXECUTOR OF THE ESTATE OF DAVID R. GIBSON, DECEASED, & ALLYN W. GIBSON

ORAL ARGUMENT REQUESTED

Lee E. Plakas (0008628)
Brandon W. McHugh (0096348)
Jeananne M. Wickham (0097838)
TZANGAS | PLAKAS | MANNOS | LTD
220 Market Avenue South
Eighth Floor
Canton, Ohio 44702
Telephone: (330) 455-6112
Facsimile: (330) 455-2108
Email: lplakas@lawlion.com
bmchugh@lawlion.com
jwickham@lawlion.com
-and-

Terry A. Moore (0015837)
Jacqueline Bollas Caldwell (0029991)
Owen J. Rarric (0075367)
Matthew W. Onest (0087907)
KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO., L.P.A.
4775 Munson Street, N.W.
P.O. Box 36963
Canton, Ohio 44735-6963
Telephone: (330) 497-0700

Benjamin C. Sassé (0072856)
Irene Keyse-Walker (0013143)
TUCKER ELLIS LLP
950 Main Avenue, Suite 1100
Cleveland, Ohio 44113
Telephone: (216) 592-5000
Facsimile: (216) 592-5009
Email: benjamin.sasse@tuckerellis.com
ikeyse-walker@tuckerellis.com
-and-

Ronald D. Holman, II (0036776)
Julie A. Crocker (0081231)
TAFT STETTINIUS & HOLLISTER LLP
200 Public Square
Suite 3500
Cleveland, Ohio 44114
Telephone: (216) 241-2838
Facsimile: (216) 241-3707
Email: rholman@taftlaw.com
jcrocker@taftlaw.com
-and-

Richard D. Panza (0011487)

Facsimile: (330) 497-4020
Email: tmoore@kwgd.com
jcaldwell@kwgd.com
orarric@kwgd.com
monest@kwgd.com
-and-

James N. Taylor (0026181)
JAMES N. TAYLOR CO., L.P.A.
409 East Avenue, Suite A
Elyria, Ohio 44035
Telephone: (440) 323-5700
Email: taylor@jamestaylorlpa.com

Attorneys for Plaintiffs-Appellees/Cross-Appellants Gibson Bros., Inc., Lorna Gibson, Executor of the Estate of David R. Gibson, Deceased, & Allyn W. Gibson

Matthew W. Nakon (0040497)
Rachelle Kuznicki Zidar (0066741)
WICKENS HERZER PANZA
35765 Chester Road
Avon, Ohio 44011
Telephone: (440) 695-8000
Facsimile: (440) 695-8098
Email: RPanza@WickensLaw.com
MNakon@WickensLaw.com
RZidar@WickensLaw.com
-and-

Seth Berlin (PHV #21649-2020)
Lee Levine (PHV #21648-2020)
BALLARD SPAHR LLP
1909 K St., NW
Washington, D.C. 20006
Telephone: (202) 661-2200
Facsimile: (202) 661-2299
Email: berlins@ballardspahr.com
levinel@ballardspahr.com
-and-

Joseph Slaughter (PHV #21599-2019)
BALLARD SPAHR LLP
1675 Broadway, 19th Floor)
New York, NY 10019
Telephone: (212) 223-0200
Facsimile: (212) 223-1942
Email: slaughterj@ballardspahr.com

Attorneys for Defendants-Appellants/Cross-Appellees Oberlin College & Conservatory and Dean of Students Meredith Raimondo

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ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The Trial Court Erred when it Applied the Punitive Damages Cap Contained in O.R.C. § 2315.21 to the Facts of this Case.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

ISSUE NO. 1: Whether the application of a mathematical formula for punitive damages cap is arbitrary or unreasonable as applied to the facts of this case under the due course of law/due process clauses under the Ohio and United States Constitutions.

ISSUE NO. 2: Whether the application of a mathematical formula for punitive damages under the facts of this case unconstitutionally infringed on the Gibsons' right to trial by jury under the Ohio Constitution.

I. SUMMARY OF ARGUMENT

"To speak evil of any one, unless there is unequivocal proofs of their deserving it, is an injury for which there is no adequate reparation."

George Washington
Letter to George Washington Parke Custis
November 28, 1796[1]

A Lorain County jury unanimously determined Defendants Oberlin College ("Oberlin College" or the "College")) and Vice President and Dean of Students Meredith Raimondo ("Dean Raimondo") acted with reckless disregard, hatred, animus, and ill will in damaging the Gibsons[2] through their libel and intentional infliction of emotional distress. The jury awarded the Gibsons compensatory damages in the total amount of $11,074,500 and punitive damages in the total amount of $33,223,500. The jury determined that a punitive damages award constituting ***less than 3% of Oberlin College's more than $1 Billion of assets*** appropriately responded to the dual purpose of punitive damages: to appropriately punish and sufficiently deter.

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[1] *See*, From George Washington to George Washington Parke Custis, 28 November 1796, https://founders.archives.gov/documents/Washington/99-01-02-00034 (last visited, June 6, 2020).

[2] The "Gibsons" means Cross-Appellants Gibson Bros., Inc. ("Gibson's Bakery"), Lorna Gibson, Executor of the Estate of David R. Gibson, Deceased ("David Gibson"), and Allyn W. Gibson ("Grandpa Gibson").

The punitive damages cap in R.C. 2315.21(D) is unconstitutional **as applied to the facts of this case**, because application here would:

- Violate the due course of law/due process clause of the Ohio and United States Constitutions, as the cap does not bear a real and substantial relation to the general welfare of the public and provides no rational connection between the amount of punitive damages and Oberlin College and Dean Raimondo's wrongful conduct; and
- Violate Ohio's constitutional right to trial by jury.

Therefore, the Gibsons are entitled to the total punitive damage amounts awarded by the jury, without any application of the statutory punitive cap. A mere mechanical application of the punitive cap does not appropriately and reasonably serve the purposes of punitive damages—to punish Oberlin College and Dean Raimondo and also deter them from future tortious conduct. To rigidly rely upon a simple mathematical formula when setting punitive damages violates due course and due process of law under the Constitutions of the United States and the State of Ohio and also violates the constitutional right to trial by jury. As a result, the trial court erred when it applied R.C. 2315.21's punitive damages cap to the Gibsons' punitive damages award under the circumstances of this case.

II. STATEMENT OF THE CASE

This case was filed in the Lorain County Court of Common Pleas. The case proceeded to trial on May 9, 2019. On June 7, 2019, at the conclusion of the compensatory phase of trial, the jury returned verdicts in favor of Gibsons on their claims of libel, tortious interference with business relationships, and intentional infliction of emotional distress against Oberlin College and Dean Raimondo and awarded them compensatory damages totaling $11,074,500.00.

Oberlin College and Dean Raimondo moved for and were granted bifurcation pursuant to R.C. 2315.21(B)(1) based on the request for punitive damages in the Complaint. Thus, after the compensatory phase, the case moved to the punitive phase of trial where on June 13, 2019 the

jury awarded the Gibsons $33,223,500.00 in punitive damages. On June 27, 2019, the trial court issued an order reducing the verdicts to judgment and also applying the punitive damages cap found in R.C. 2315.21.

III. STATEMENT OF FACTS

On November 9, 2016, three Oberlin College students were arrested for shoplifting at Gibson's Bakery in Oberlin, Ohio. Gibson's Bakery is a small family-run business that has been in operation since 1885. Grandpa Gibson is a 91-year-old man and part owner of Gibson's Bakery who has worked at Gibson's Bakery for his entire life. The late David Gibson was a man in his sixties who was an owner of Gibson's Bakery and worked for Gibson's Bakery his entire life.[3]

Even though the students admitted they were guilty of shoplifting and further publicly admitted that their arrests were not the result of racial profiling [Tr. Trans. Vol. V, P. 32], Oberlin College and its most senior administrators, including Dean Raimondo, started defaming, bullying, and intentionally inflicting emotional injury on the Gibsons on November 10, 2016 and continued its tortious conduct for **more than a year thereafter**. The defamatory statements included false accusations that David Gibson and Grandpa Gibson committed the crime of assault and also that the Gibsons had a long history of racial profiling and discrimination. [See, Pl. Ex. 263]. The students' arrests were not an issue at trial. In fact, Oberlin College and Dean Raimondo admitted during opening statements that the students were appropriately arrested and "**got exactly what they deserved**":

[3] After a year-long fight with pancreatic cancer, David Gibson passed away on November 16, 2019. On February 7, 2020, this Court substituted Lorna Gibson, Executor of the Estate of David Gibson, Deceased as a party for David Gibson.

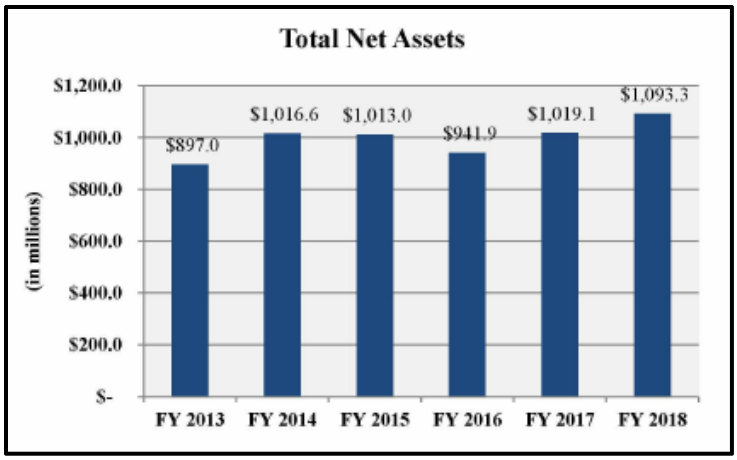
16	You will learn in this case the three students
17	who were involved in shoplifting at Gibson's Bakery were
18	made to account for their crimes. They had their day in
19	Court. They actually pled guilty in Court, and the
20	judge who was assigned to that case declared them to be
21	guilty, he convicted them, and they sentenced them, and
22	they got exactly what they deserved.

[Tr. Trans. Vol. II, p. 130 (emphasis added)].

On June 13, 2019, a Lorain County, Ohio jury unanimously determined that Oberlin College and Dean Raimondo acted with actual malice when they libeled the Gibsons and caused intentional emotional harm to Grandpa Gibson and David Gibson. After deciding that Oberlin College and Dean Raimondo acted with actual malice on the libel and intentional infliction of emotional harm claims, the jury determined that an award of $33,223,500 in punitive damages was the necessary amount to appropriately punish and sufficiently deter Oberlin College and Dean Raimondo.

A. During the Punitive Phase of Trial, the Jury Learned that Oberlin College is a Billion-Dollar Institution with Power and Money to Bully Anyone in the Oberlin Community.

At trial, Oberlin College's Vice President for Finance and Administration testified that Oberlin College is a tax-exempt institution with **total assets of over $1,400,000,000.00**, with total net assets (after liabilities and debts) of $1,093,300,000.00. [Tr. Vol. XXIII, pp. 54-55]. These assets include a large endowment that grows from investment income. For instance, the endowment increased by $66,000,000.00 from 2016 to 2017 and another $67,000,000.00 from 2017 to 2018. [Id. at pp. 57-59]. Indeed, according to the financial reports, Oberlin College's net assets experienced significant growth over the past several years:



[Pl. Tr. Ex. 231, p. 3]. Moreover, Oberlin College receives over $70,000.00 per student for tuition, room and board. [Tr. Vol. XXIII, pp. 57-59]. In addition, the VP for Finance and Administration testified that Oberlin College possesses one of the largest and most prestigious collections of artwork of any college in the United States. [Id., p. 108]. Oberlin College's art collection is not even included in its $1.4 billion total assets identified above, and if it were included, it would result in a material increase in the College's net assets. [Pl. Tr. Ex. 231, p. 21].

Further, Oberlin College is by far the largest property owner in the City of Oberlin, and it has a stranglehold on downtown Oberlin real estate. During trial, Oberlin College and Dean Raimondo stipulated to the accuracy of a parcel map of downtown Oberlin created by the Lorain County Auditor depicting the land ownership of Oberlin College. [See, Tr. Trans. Vol. VIII, pp. 16-17; Pl. Tr. Ex. 457]. The parcels shaded red are owned by Oberlin College and the parcels shaded blue are owned by the Gibsons:

[See, id.].

Oberlin College's abundance of riches has enabled the **tax-exempt institution** to pay its senior administrators generous compensation. For instance, former President Marvin Krislov received over $945,000.00 in compensation in 2015, $550,000.00 in 2016, and over $1,100,000.00 in 2017. [Id. at pp. 60, 64-67]. Moreover, Oberlin College's "Chief Investment Officer" raked in over $575,000.00 in compensation in 2015, over $640,000.00 in compensation in 2016, and more than $600,000.00 in 2017. [Id., pp. 65-67].

B. The Actions of Oberlin College's Administrators Revealed a Conscious Disregard of the Gibsons' Rights and Callousness, Ill Will, and Hatred Towards the Gibsons.

The jury heard substantial evidence revealing how Oberlin College and Dean Raimondo callously and maliciously used their power to defame, bully, and damage the Gibsons:

1. Oberlin College demanded that Gibsons drop charges against the three students arrested for shoplifting. When the Gibsons refused, Oberlin College Vice President Ben Jones said "Fuck 'em" and called Gibsons' supporters "idiots."

Oberlin College demanded that the Gibsons "drop charges" that ***prosecutors*** filed against the three students arrested for shoplifting. When Oberlin College saw that the charges were not

being "dropped" against the three students, Oberlin College Vice President of Communications Ben Jones responded with vitriol and hatred, even though the Gibsons had no power or authority to "drop" criminal charges:

> On Nov 23, 2016 5:52 PM, "Ben Jones" <bjones@oberlin.edu> wrote:
>
> Here is the text I just sent to Meredith:
>
> We should just give all business to Leo at IGA. Better donuts anyway. And all these idiots complaining about the college hurting a "small local business" are conveniently leaving out their massive (relative to the town) conglomerate and price gouging on rents and parking and the predatory behavior towards most other local business. Fuck 'em.
>
> I wanted this to work out in a restorative way with shared responsibility (albeit generous on our part) because it's what's best for the town. But they've made their bed now...

[Pl. Tr. Ex. 134]. Special Assistant to the President for Community and Government Relations Tita Reed wholeheartedly agreed with V.P. Jones:

> **From:** Tita Reed <treed@oberlin.edu>
> **Sent:** Wednesday, November 23, 2016 6:45 PM
> **To:** Ben Jones
> **Subject:** Re: Gibsons Protest
>
> 100%!!!!!!!

[Id.].

2. Still angry that their demands to drop charges were refused, Oberlin College Assistant Dean Toni Myers threatened to rain fire and brimstone on the Gibsons when the students accepted responsibility, pled guilty, and confirmed their arrests were not the result of racial profiling.

After the three students took responsibility for their actions, pled guilty to shoplifting at Gibson's Bakery, and admitted their arrests were not the result of racial profiling, Assistant Dean Toni Myers texted Dean Raimondo from the courtroom where the students were pleading guilty that Oberlin College should "***rain fire and brimstone***" on Gibson's Bakery:

> From: From: + REDACTED Toni Myers
> Timestamp: 8/11/2017 12:11(UTC-4)
> Source App: iMessage: + REDACTED
> Body:

> This is the most egregious process. Alan is here and Dave will make a statement. After a year, I hope we rain fire and brimstone on that store.

[Pl. Tr. Ex. 206].

3. Oberlin College's administrators admitted that they did not believe the Gibsons had a history of racism or racial profiling.

Oberlin College's administrators did not believe the Gibsons were racists. During trial, Chief of Staff Ferdinand Protzman confirmed that ***no one in the Oberlin College administration thought the Gibsons were racists***:

> "Question, Did the college privately challenge the protesters' statement?"
> "Answer, I don't think we did in part because I don't think any of us thought the Gibsons are racists?"

[See, Tr. Trans. Vol. III, p. 23].[4] This was confirmed by other high-level administrators, including Special Assistant Tita Reed. [Tr. Trans. Vol. III, pp. 75-76]. Even President Krislov admitted that prior to November of 2016, he had never heard any complaints or accusations of racial profiling against the Gibsons. [M. Krislov Dep. Vol. I, p. 106].[5]

4. Despite the College's knowledge that the Gibsons did not have a history of racial profiling, the College conducted its own door-to-door community investigation into the Gibsons. When the investigation revealed the Gibsons had no history of racial profiling, Dean Raimondo <u>dodged</u> disclosing the results to the community and media.

In an email communication from Dean Raimondo and President Krislov to the entire student body, Oberlin College promised to "commit every resource to determining the full and

[4] Mr. Protzman was impeached with this quote from his deposition and confirmed the accuracy of the statement later in his testimony. [See, Tr. Trans. Vol. III, p. 23-24].

[5] This section of President Krislov's deposition testimony was played for the jury during trial. [Tr. Trans. Vol. III, p. 176]. The excerpts played for the jury can be found at Pl. Tr. Ex. 460. [See, Tr. Trans. Vol. XII, pp. 13-14]. President Krislov's deposition was filed with the trial court on March 15, 2019 and is part of the record on appeal.

true narrative, including whether [the Gibson's Bakery incident] is a pattern and not an isolated incident." [See, Pl. Tr. Ex. 67]. With regard to the College's investigation, evidence was received that Dean Raimondo "sent people door to door into the neighborhoods to find out about [the Gibsons'] racism, and not one person admitted that [the Gibsons] were racist[.]" [Tr. Trans. Vol. X, p. 182]. However, when the investigation revealed that the Gibsons had no history of racism or racial profiling, Dean Raimondo looked for a way to "***dodge***" the question. [Pl. Tr. Ex. 158]. Eventually, when the College's investigation revealed no evidence of racial profiling, Oberlin College's Director of Media Relations, Scott Wargo, told the media that the "***College is not investigating Gibsons***." [Pl. Tr. Ex. 160].

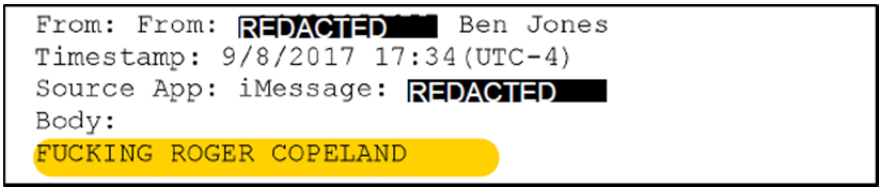
5. Even though the College's high-ranking administrators knew the Gibsons did not have a history of racial profiling, the College still refused to issue a retraction to correct its defamatory statements.

In several meetings with high-level College administrators including Dean Raimondo and President Krislov, David Gibson requested that the College issue a letter retracting the defamatory statements in the Flyer and Resolution, which included accusations that the Gibsons had a long history of racism and racial profiling and that Grandpa Gibson and David Gibson committed an assault on a member of the Oberlin community. [Tr. Trans. Vol. X, pp. 183-184]. However, even though the College's high-ranking administrators knew that the Gibsons did not have a history of racism or racial profiling, Oberlin College continuously refused to issue any form of retraction or corrective statement. [F. Protzman Rule 30(B)(5) Dep., pp. 15-17].[6]

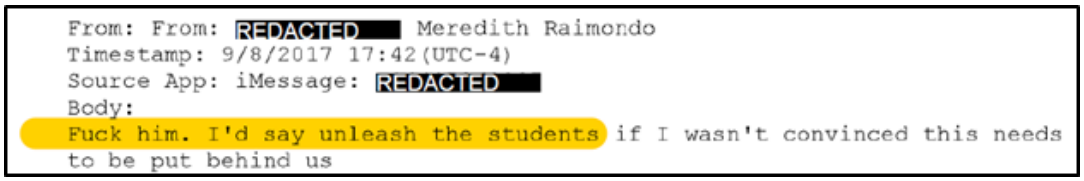
6. The College and its high-ranking administrators had such ill will towards the Gibsons, they cursed and threatened to unleash attacks on Gibsons supporters.

[6] Mr. Protzman's Rule 30(B)(5) testimony was played for the jury and used to impeach the testimony of President Krislov. [Tr. Trans. Vol. XIV, p. 186]. Mr. Protzman's Rule 30(B)(5) testimony was filed with the trial court on [March 15, 2019]

Even after the students admitted their crimes and admitted their arrests were not the result of racial profiling, Dean Raimondo still evidenced animus toward the Gibsons and their supporters. When professor emeritus Roger Copeland wrote a critical article in the campus newspaper about how the college was continuing to mishandle the situation with the Gibsons, Dean Raimondo was sent a copy of the article by V.P. Ben Jones with a text message saying "FUCKING ROGER COPELAND":


From: From: REDACTED Ben Jones
Timestamp: 9/8/2017 17:34(UTC-4)
Source App: iMessage: REDACTED
Body:
FUCKING ROGER COPELAND

Dean Raimondo responded by saying "Fuck him" and threatening to ***unleash the students***:


From: From: REDACTED Meredith Raimondo
Timestamp: 9/8/2017 17:42(UTC-4)
Source App: iMessage: REDACTED
Body:
Fuck him. I'd say unleash the students if I wasn't convinced this needs to be put behind us

[Pl. Tr. Ex. 211].

7. Oberlin College's high-ranking officials, including Dean Raimondo and V.P. Ben Jones, consistently used language that shows animus and hatred toward the Gibsons and their supporters to defame and intentionally inflict emotional harm on the Gibsons.

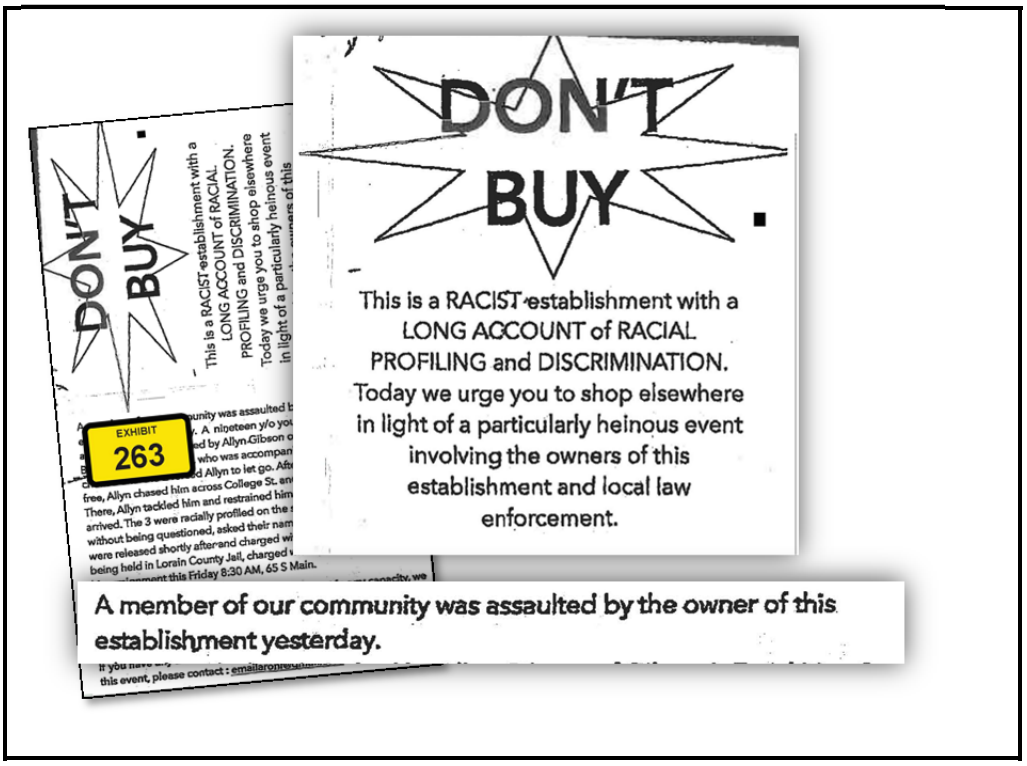
As is evident from the communications depicted above, Oberlin College's executive team, including Dean Raimondo and V.P. Ben Jones consistently used language confirming the College's animus and hatred towards the Gibsons:

"Fuck 'em" [Pl. Tr. Ex. 134]	"[R]ain fire and brimstone" [Pl. Tr. Ex. 206]
"Fuck him" [Pl. Tr. Ex. 211]	"FUCKING ROGER COPELAND" [Pl. Tr. Ex. 211]

C. Oberlin College and Dean Raimondo Actively Defamed and Directed the Defamation of the Gibsons Despite Knowledge that the Defamatory Statements were False.

1. Oberlin College and Dean Raimondo handed out stacks of Flyers that libeled the Gibsons.

During protests in front of Gibson's Bakery on November 10 and 11 of 2016, Oberlin College, through Dean Raimondo,[7] published a libelous flyer (the "Flyer") that made two defamatory statements: (1) the Flyer accused Gibson's Bakery and its owners, Grandpa Gibson and David Gibson, of being a **racist establishment** with a **long account of racial profiling and racial discrimination**; and (2) the Flyer accused the owners of Gibson's Bakery, *i.e.* Grandpa Gibson and David Gibson, of committing an **assault**:



[Pl. Tr. Ex. 263].

During trial, the jury heard evidence from several witnesses that ***Dean Raimondo and***

[7] During trial, the parties agreed to the following stipulation regarding Dean Raimondo's conduct: "Oberlin College agrees that it will be vicariously and jointly and severally liable from any verdict and/or judgment entered in any plaintiff's favor against the defendant, Meredith Raimondo, regardless of whether a separate verdict and/or judgment is entered against Oberlin College." [Tr. Trans. Vol. XX, p. 41]. Thus, the Defendants agreed that Oberlin College is responsible for any actions taken by Dean Raimondo.

other College employees published numerous copies of the Flyer in front of Gibson's Bakery on November 10 and 11, 2016:

- ***First***, Dean Raimondo approached and published a copy of the Flyer to local newspaper reporter, Jason Hawk. [Tr. Trans. Vol. III, p. 104]. Before she handed him the Flyer, Mr. Hawk identified himself to Dean Raimondo as a reporter with the *Oberlin News-Tribune*. [Id., p. 99]. By handing a copy of the Flyer to a newspaper reporter, Dean Raimondo knew the libelous statements published about the Gibsons would be spread far and wide through online and print news stories.

- ***Second***, Clarence "Trey" James, witnessed Dean Raimondo distributing a ***stack*** of copies of the Flyer to the public in front of Gibson's Bakery. [Tr. Trans. Vol. V, pp. 178-79].

- ***Third***, Rick McDaniel, an Oberlin community member and former director of Oberlin College campus security, testified that Jose Reyes, the Assistant Director of the College's Multicultural Resource Center, who reported to Dean Raimondo, had a ***stack of Flyers and was passing them out to the public in front of Gibson's Bakery***. [Tr. Trans. Vol. IV, pp. 15-18].

2. With a bullhorn, Oberlin College and Dean Raimondo actively directed and orchestrated the dissemination of the defamatory statements.

Oberlin College's administrators did not limit themselves to directly distributing the Flyer. Instead, Oberlin College and Dean Raimondo actively directed and orchestrated the continued distribution of the defamatory Flyer:

- ***First***, numerous witnesses, including, but not limited to, Rick McDaniel, Jason Hawk, Clarence James, and Sue McDaniel testified that Dean Raimondo was actively directing and orchestrating the publication of the Flyer by addressing students with a bullhorn. [See, Tr. Trans. Vol. IV, p. 28; Tr. Trans. Vol. III, p. 111; Tr. Trans. Vol. V, pp. 178-179, 190; Tr. Trans. Vol. VI, pp. 6-7].

- ***Second***, while using the bullhorn, Dean Raimondo announced that more copies of the defamatory Flyer could be made at College administration offices. [Tr. Trans. Vol. V, pp. 178-179].

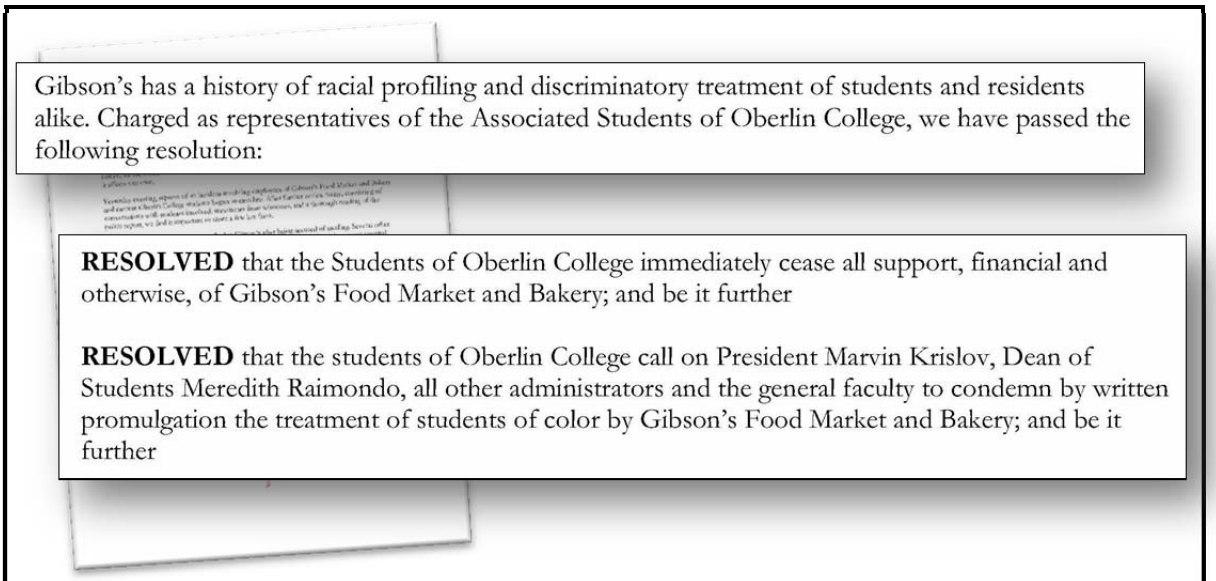
- ***Third***, the jury saw documentary evidence that Dean Raimondo approved the use of Oberlin College funds to purchase gloves for the protesters so they would stay warm enough to continue distributing the defamatory Flyers. [Pl. Tr. Ex. 74].

- ***Fourth***, rather than correcting the defamatory statements, Dean Raimondo authorized the use of Oberlin College funds to pay for a limousine service to take one of the

three students arrested for shoplifting to be represented by an attorney in Columbus, Ohio. [Tr. Trans. Vol. XIII, pp. 175-76].

3. Although it had the authority to remove libelous statements from its buildings, Oberlin College permitted a libelous student senate resolution, which it knew was false, to remain posted in a conspicuous place for more than a year.

On the evening of November 10, 2016, the Oberlin Student Senate passed the following resolution that blatantly libels the Gibsons and calls for a boycott of Gibson's Bakery (the "Resolution")::


Gibson's has a history of racial profiling and discriminatory treatment of students and residents alike. Charged as representatives of the Associated Students of Oberlin College, we have passed the following resolution:

RESOLVED that the Students of Oberlin College immediately cease all support, financial and otherwise, of Gibson's Food Market and Bakery; and be it further

RESOLVED that the students of Oberlin College call on President Marvin Krislov, Dean of Students Meredith Raimondo, all other administrators and the general faculty to condemn by written promulgation the treatment of students of color by Gibson's Food Market and Bakery; and be it further

Pl. Tr. Ex. 35.

During trial, Dean Raimondo, who is the ***faculty adviser*** to the Student Senate, testified that the Resolution remained posted in Wilder Hall, where Dean Raimondo's office is located, ***for more than a year***. [Tr. Trans. Vol. IV, p. 55]. The Resolution was posted in a very conspicuous glass case located in Wilder Hall, which is ***on Oberlin College property***, that was visible to all visitors. [See, Pl. Tr. Ex. 299].

During trial, President Krislov testified that the Resolution was posted in the best place

for maximum visibility. [M. Krislov Dep. Vol. I, pp. 210-211].[8] President Krislov further testified that the Resolution could have been removed by College personnel. [Tr. Trans. Vol. XIV, p. 180]. Indeed, the Resolution remained posted for more than a year and was only removed when the Gibsons initiated litigation against the College in November of 2017. [Tr. Trans. Vol IV, p. 55].

Importantly, the libelous Resolution remained posted ***even after the three students were found guilty of attempted theft and aggravated trespass for trying to steal from the Gibsons***. [Cf., Tr. Trans. Vol. IV, p. 55; Pl. Tr. Exs. 203, 204, & 205]

4. Oberlin College blatantly ignored evidence showing that the libelous statements in the Flyer and Resolution were false.

At the time of the protests, Oberlin College and Dean Raimondo ignored blatant evidence showing that the claims of racism and racial profiling in the Flyer were false, including the following:

a. Oberlin College's administrators admitted that they did not believe the Gibsons had a history of racism or racial profiling.

Oberlin College and Gibson's Bakery had a business relationship stretching back to ***before World War I***. [Tr. Trans. Vol. VII, p. 17]. Indeed, President Krislov confirmed that during his entire ten-year tenure as president, no one had ever suggested to him that the Gibsons were racists or had a history of racial profiling. [M. Krislov Dep. Vol. I, p. 106].[9] Further, other Oberlin College administrators did not believe the Gibsons had a history of racial profiling or

[8] This section of President Krislov's deposition testimony was played for the jury during trial. [Tr. Trans. Vol. III, p. 176]. The excerpts played for the jury can be found at Pl. Tr. Ex. 460. [See, Tr. Trans. Vol. XII, pp. 13-14]. President Krislov's deposition was filed with the trial court on March 15, 2019 and is part of the record on appeal.

[9] This section of President Krislov's deposition testimony was played for the jury during trial. [Tr. Trans. Vol. III, p. 176]. The excerpts played for the jury can be found at Pl. Tr. Ex. 460. [See, Tr. Trans. Vol. XII, pp. 13-14]. President Krislov's deposition was filed with the trial court on March 15, 2019 and is part of the record on appeal.

discrimination. During trial, Chief of Staff Ferdinand Protzman confirmed that ***no one in the Oberlin College administration thought the Gibsons were racists***. [See, Tr. Trans. Vol. III, p. 23].[10]

b. High ranking Oberlin College administrators ignored evidence from a credible and respected employee showing that the Gibsons do not have a history of racial profiling or discrimination.

Revealing that Oberlin College and its high-ranking administrators recklessly disregard the truth, on November 11, 2016, Emily Crawford, who was an Oberlin College employee at that time in the communications department, sent the following email to V.P. Ben Jones as to the experience of persons of color ("POC") in the community:

From: Emily Crawford <ecrawfor@oberlin.edu>
Subject: Re:
Date: November 11, 2016 at 11:42:47 AM EST
To: Ben Jones <bjones@oberlin.edu>

i have talked to 15 townie friends who are poc and they are disgusted and embarrassed by the protest. in their view, the kid was breaking the law, period (even if he wasn't shoplifting, he was underage). to them this is not a race issue at all and they do not believe the gibsons are racist. they believe the students have picked the wrong target.

the opd, on the other hand, IS problematic. i don't think anyone in town would take issue with the students protesting them.

i find this misdirected rage very disturbing, and it's only going to widen the gap btw town and gown.

and sure you can share if you want.

[Pl. Tr. Ex. 63].[11] Oberlin College's administrators blatantly ignored Ms. Crawford. Special Assistant to the President Tita Reed responded as follows to Ms. Crawford's email:

On Fri, Nov 11, 2016 at 12:25 PM Tita Reed <treed@oberlin.edu> wrote:

Doesn't change a damned thing for me.

[Pl. Tr. Ex. 63]. While the truth did not matter to Oberlin College, it certainly did to the jury.

[10] Mr. Protzman was impeached with this quote from his deposition and confirmed the accuracy of the statement later in his testimony. [See, Tr. Trans. Vol. III, p. 23-24].

[11] Emil Crawford's supervisor at Oberlin College, V.P. of Communications Ben Jones, confirmed that Ms. Crawford was a respected and credible employee. [Tr. Trans. Vol. VI, p. 45].

c. Special Assistant to the President Tita Reed confirmed that she never experienced any form of racism from David Gibson or Gibson's Bakery.

Special Assistant to the President Tita Reed testified at trial that she, as a person of color, had never experienced any racism from David Gibson or Gibson's Bakery in the 25 years she had lived in Oberlin. [Tr. Trans. Vol. III, pp. 75-76]. Despite her personal experience, Ms. Reed, in a text message to a former colleague, accused the Gibsons of "basic racial profiling" even though she had ***no evidence suggesting the three students were wrongfully arrested***:

17	Q. Okay. And during that text message exchange,
18	when Mr. Estes asked what had happened, your response
19	was, "Basic racial profiling by Gibson's Bakery and the
20	Oberlin Police Department." That's what you told him,
21	right?
22	A. That is what I said.
23	Q. But you had at that time, and to this date, no
24	information to believe that the three students were
25	wrongfully accused of stealing, right?
1	A. Correct.

[Id., pp. 78-79].

d. Oberlin College ignored statements from alumni and community members informing the College that the Gibsons do not have a history of racism.

Oberlin College's administrators completely ignored numerous communications from alumni and community members, some of which were persons of color, that supported the Gibsons and informed the College that the Gibsons do not have a history of racial profiling or discrimination. [See, Pl. Tr. Exs. 111, 134, 161, & 485]. These communications were either ignored or the senders were outright ridiculed, with V.P. Ben Jones even calling Gibsons supporters "***idiots***." [See, Pl. Tr. Ex. 134].

e. Dean Raimondo knew that the owners of Gibson's Bakery did not commit an assault but refused to issue a correction or retraction.

Dean Raimondo was well-aware that the owners of Gibson's Bakery did not commit an assault as the Flyer claimed. Former Oberlin Police Sergeant Victor Ortiz testified that he explained the circumstances and charges related to the arrest of the three students to Dean Raimondo on November 9, 2016. [Tr. Trans. Vol. III, pp. 149-150]. However, Dean Raimondo refused to issue a correction or retraction.

5. Numerous people of color with lifelong experience with the Gibsons testified that the Gibsons did not have a history of racism or racial profiling. Oberlin College did not present <u>any</u> evidence showing that the Gibsons had a history of racial profiling.

During trial, numerous people of color from the Oberlin community came forward to testify that the Gibsons did not have a history of racial profiling or discrimination:

- Sharon Patmon, a woman of color, former resident of Oberlin, Ohio, and currently a financial professional, testified that her first job was with Gibson's Bakery and that in her fifty (50) year relationship with the Gibsons she had never witnessed a hint of racism or racial profiling from the family [Tr. Trans. Vol. III, pp. 89, 93-94];

- Henry Wallace, a man of color and 30-plus year employee with the Oberlin Police Department, testified that he had never witnessed any racial profiling or discrimination from the Gibsons or Gibson's Bakery [Tr. Trans. Vol. III, pp. 139-140, 143-144];

- Vicky Gaines, a long-time resident of the City of Oberlin, employee of Oberlin College, and woman of color, testified that she had a decades-long relationship with the Gibson family and had never witnessed any racism or racial profiling from David or Grandpa Gibson [Tr. Trans. Vol. IV, pp. 31, 33];

- Clarence "Trey" James, a gentleman of color and former employee of Gibson's Bakery, testified that he had never experienced even a hint of racism or racial profiling from the Gibson family or Gibson's Bakery [Tr. Trans. Vol. V, pp. 171-73];

- Roy Ebihara, a prominent Oberlin resident who was interred with his family in the internment camps for Japanese Americans during World War II and who recently received the Distinguished Service Award from Oberlin College, testified that he had never witnessed any form of racism or racial profiling from the Gibson family or Gibson's Bakery [Tr. Trans. Vol. VI, pp. 11-15];

- Eric Gaines, a person of color and resident of Oberlin, testified that he has had a life-long relationship with the Gibson family, that Gibson's Bakery was his sanctuary as a child, and that he never witnessed even a hint of racism or racial profiling from the Gibsons [Id., pp. 18, 20-23]; and

- Eddie Holoway, a person of color who grew up in Oberlin, testified that the Gibson family did not exhibit any racism or racial profiling, and he powerfully and emotionally testified about the strain the false allegations of racism placed on 91-year old Grandpa Gibson:

10	A. He was accused of being something that I know
11	he's not. And that's a reason. In my -- I have been a
12	marginalized person, so I know what it feels like to be
13	called something that you know you are not. And I
14	could, I could feel his pain. You know, I knew where he
15	was coming from.

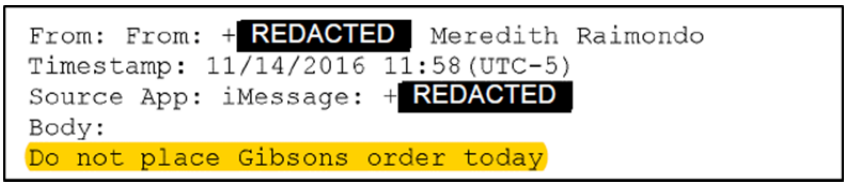
[Tr. Trans. Vol. VII, p. 60].

D. Shortly after the Arrests of the Three Students, Dean Raimondo, without any Justification, Terminated Gibson's Bakery's 100-Year Business Relationship with Oberlin College. Then, after the Cancelation, <u>Oberlin College Attempted to Bully the Gibsons to "Drop" Criminal Charges against the Three Students in Exchange for a Resumption of Business</u>.

1. Because Oberlin College administrators admitted that Gibsons provided good products, at a reasonable price, with good service, Dean Raimondo and Oberlin College revealed their reckless disregard, ill will, and animus towards the Gibsons by terminating Bon Appetit's relationship with Gibson's Bakery.

As indicated above, Gibson's Bakery had been doing business with Oberlin College, directly and indirectly, since before World War I. [See, Tr. Trans. Vol. VII, p. 17]. In 2016, Gibson's Bakery would receive orders, including standing or recurring orders, and payment from Bon Appetit, a food management company hired by Oberlin College to manage its dining operations. [See, Tr. Trans. Vol. V, pp. 49, 77-80]. Further, Chief of Staff Protzman confirmed during trial that Gibson's Bakery provided high quality products at a reasonable price. [See, Tr.

Trans. Vol. III, pp. 8-9]. Despite this long and beneficial relationship, on November 14, 2016, Dean Raimondo instructed Michele Gross, the head of dining services at Oberlin College, to instruct Bon Appetit to not place orders with Gibson's Bakery:

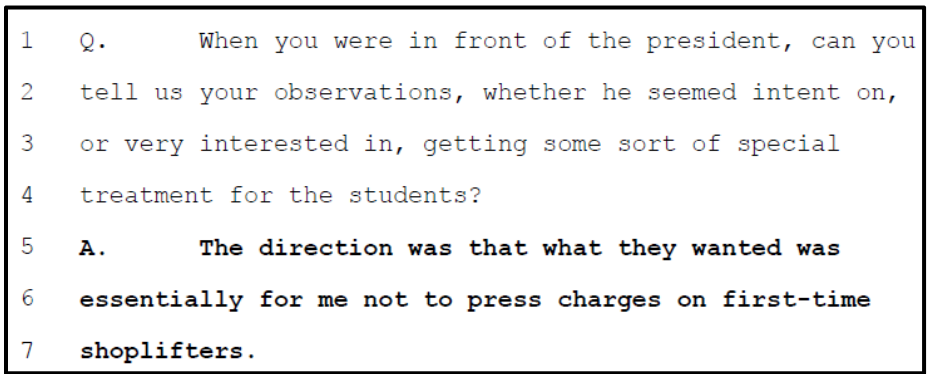

From: From: +REDACTED Meredith Raimondo
Timestamp: 11/14/2016 11:58(UTC-5)
Source App: iMessage: +REDACTED
Body:
Do not place Gibsons order today

[Pl. Tr. Ex. 55].

2. Oberlin College and Dean Raimondo revealed their malice towards the Gibsons when they bullied them by insisting that their students were above the law and demanding a <u>student shoplifting exemption</u> outside the criminal justice system, which would jeopardize the Gibsons' personal and business future, causing the Gibsons' substantial emotional pain and suffering.

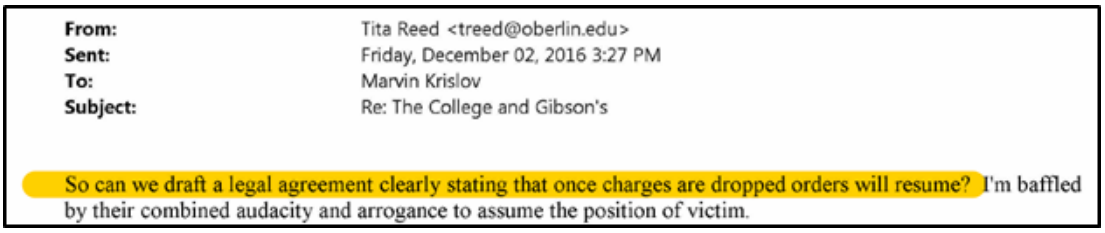
Despite the fact that the students arrested for shoplifting at Gibson's Bakery "got exactly what they deserved" [Tr. Trans. Vol. II, p. 130], Oberlin College demanded special treatment for its students in exchange for a resumption of business with Gibson's Bakery:

- Oberlin College ***demanded a "first-time pass" for students caught shoplifting at Gibson's Bakery***:


Q. When you were in front of the president, can you tell us your observations, whether he seemed intent on, or very interested in, getting some sort of special treatment for the students?
A. The direction was that what they wanted was essentially for me not to press charges on first-time shoplifters.

[Tr. Trans. Vol. X, p. 172].

- Special Assistant to the President Tita Reed, ***advocated for contractually linking the dropping of charges against the three students for a resumption of business with Gibson's Bakery***:



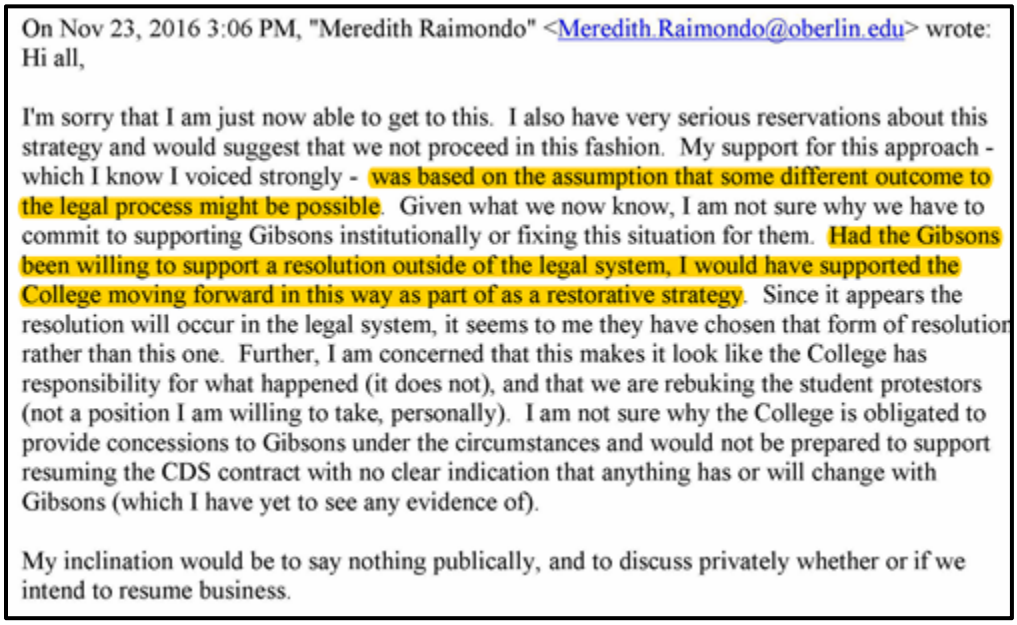
From: Tita Reed <treed@oberlin.edu>
Sent: Friday, December 02, 2016 3:27 PM
To: Marvin Krislov
Subject: Re: The College and Gibson's

So can we draft a legal agreement clearly stating that once charges are dropped orders will resume? I'm baffled by their combined audacity and arrogance to assume the position of victim.

[Pl. Tr. Ex. 145].

- During a meeting between David Gibson, Dean Raimondo, Chief of Staff Protzman, and Oberlin community member Eddie Holoway, Dean Raimondo and Protzman handed David and Mr. Holoway business cards and requested that David call ***the College*** instead of the police when students were caught shoplifting. [Tr. Trans. Vo. VII, pp. 68-69].

- Dean Raimondo even sent an email to several high-ranking College administrators, including President Krislov, Special Assistant Tita Reed, and V.P. of Communications Ben Jones, indicating that she did not want to proceed with a resumption of business with Gibson's Bakery because the Gibsons would not resolve the criminal charges outside of the legal system:



On Nov 23, 2016 3:06 PM, "Meredith Raimondo" <Meredith.Raimondo@oberlin.edu> wrote:
Hi all,

I'm sorry that I am just now able to get to this. I also have very serious reservations about this strategy and would suggest that we not proceed in this fashion. My support for this approach - which I know I voiced strongly - was based on the assumption that some different outcome to the legal process might be possible. Given what we now know, I am not sure why we have to commit to supporting Gibsons institutionally or fixing this situation for them. Had the Gibsons been willing to support a resolution outside of the legal system, I would have supported the College moving forward in this way as part of as a restorative strategy. Since it appears the resolution will occur in the legal system, it seems to me they have chosen that form of resolution rather than this one. Further, I am concerned that this makes it look like the College has responsibility for what happened (it does not), and that we are rebuking the student protestors (not a position I am willing to take, personally). I am not sure why the College is obligated to provide concessions to Gibsons under the circumstances and would not be prepared to support resuming the CDS contract with no clear indication that anything has or will change with Gibsons (which I have yet to see any evidence of).

My inclination would be to say nothing publically, and to discuss privately whether or if we intend to resume business.

[Pl. Tr. Ex. 135 (emphasis added)].

E. Oberlin College Recognized that Wrongfully Labeling Someone as a Racist is one of the Worst Things that can be Done to a Person.

During trial, President Krislov admitted that being called a racist is one of the worst

things that can be done to a person:

> Q. You would agree that, in your words, "being called a racist is one of the worst things a human being can be called," correct?
> A. **Yes.**

[Tr. Trans. Vol. XIV, p. 179]. David Gibson confided with President Krislov that 91-year-old Grandpa Gibson was afraid he was going to die being labeled a racist:

> I looked at the president at one point and I told him, I said to him -- I said to him, my father had looked in my eyes -- sorry -- and he explained that "at my age, I'm going to die and they're going to claim I'm a racist." Pardon me. I'm sorry. "And they're going to claim I'm a racist." And I looked at him and I said, "We're not going to let that happen." His response to

[Tr. Trans. Vol. X, p. 169].

The jury heard Grandpa Gibson's emotional distress, determined that he and his family did not have a history of racism or racial profiling, and issued an appropriate punitive damages verdict for Oberlin College and Dean Raimondo's tortious conduct in libeling, bullying, and intentionally inflicting emotional distress on the Gibsons. The jury's decision and award of punitive damages should not be disregarded.

IV. LAW & ARGUMENT

A. <u>Assignment of Error No. 1:</u> The Trial Court Erred when it Applied the Punitive Damages Cap Contained in O.R.C. § 2315.21 to the Facts of this Case.

For centuries, the right to a trial by jury in Ohio has included the right to ask the jury to determine an amount of damages that would appropriately punish the defendant and sufficiently deter similar conduct in the future. *Rayner v. Kinney*, 14 Ohio St. 283, 284 (1863) (exemplary damages "are intended to punish the defendant, and to operate as an example to deter others from

committing the like offense."); *Atlantic & G.W. Ry. Co. v. Dunn*, 19 Ohio St. 162, 170 (1869). Likewise, the Ohio Supreme Court in *Arbino v. Johnson & Johnson* concurred that punitive damages are "levied by civil juries to punish reprehensible conduct and to deter its future occurrence." *Arbino*, 116 Ohio St.3d 468, ¶ 97.

In deciding the proper amount of punitive damages, juries consider the following factors: (1) nature of the conduct; (2) financial condition of the defendant(s); (3) amount necessary to deter future similar conduct; (4) relationship between the parties; (5) probability of reoccurrence unless the conduct is deterred; (6) reprehensibility of the conduct; (7) removal of financial profit so that future conduct results in a loss; (8) whether the conduct involved repeated actions or was an isolated incident; and (9) whether the harm was a result of intentional malice, trickery or deceit. See, e.g., *Wightman v. Consol. Rail Corp.*, 94 Ohio App.3d 389, 640 N.E.2d 1160 (6th Dist.1994); *Angus v. Ventura*, 9th Dist. Medina No. 2740-M, 1999 WL 33287, *4; *Smith v. Gen. Motors Corp.*, 168 Ohio App.3d 336, 859 N.E.2d 1035 (2nd Dist.2006).

Yet, under R.C. 2315.21(D), all but one of these critical factors is ignored. The only factor considered in capping punitive damages is the amount of compensatory damages. R.C. 2315.21(D) provides in relevant part:

> (1) In a tort action, the trier of fact shall determine the liability of any defendant for punitive or exemplary damages and the amount of those damages.
>
> (2) Except as provided in division (D)(6) of this section, all of the following apply regarding any award of punitive or exemplary damages in a tort action:
>
> > (a) 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*** from that defendant, as determined pursuant to division (B)(2) or (3) of this section. (Emphasis added.)

Regardless of whether this mechanical application of the statute's mathematical formula may be appropriate in other cases, it is wholly inappropriate in this case. Here, casting aside key factors such as the nature of the conduct, the financial condition of the defendant, and the amount necessary to deter such conduct results in an arbitrary and unreasonable award that improperly ignores the jury's carefully reasoned determination of the amount necessary to appropriately punish and sufficiently deter.

1. Standard of review.

There are two methods for challenging a statute on constitutional grounds – a facial challenge (unconstitutional in all instances) and an as-applied challenge (unconstitutional as applied to a particular case). *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 26 (2007), citing *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, 836 N.E.2d 1165 (2005). The Gibsons' challenge is an "as-applied" challenge against R.C. 2315.21's punitive damages cap. An appellate court reviews the constitutionality of a statute, including when that statute is subject to an as-applied challenge, de novo. *DHSC, L.L.C. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. Franklin No. 11AP-424, 2012-Ohio-1014, ¶ 40.

2. As applied to this case, the punitive damages cap violates the due course of law/due process clause of the Ohio and United States Constitutions.

In *Arbino*, the Ohio Supreme Court found R.C. 2315.21 was constitutional *on its face*. However, the decision left open "as applied" challenges to the constitutionality of this statute. As applied to the facts of this case, R.C. 2315.21(D)(2)'s punitive cap violates the Gibsons' right to due course of law under Article I, Section 16 of the Ohio Constitution. This "due course of law" provision is equivalent to the "due process of law" protections under the United States Constitution. *Arbino*, 116 Ohio St.3d 468, at ¶ 48. When reviewing R.C. 2315.21(D) on due process grounds, courts apply the rational basis test. *Id*. at ¶¶ 49, 99. A statute must (1) bear a

real and substantial relation to the public health, safety, morals or general welfare of the public, and (2) be neither unreasonable nor arbitrary. *Id.* at ¶ 49. The statute fails both prongs when applied to the facts at hand.

In *Arbino*, the Court discussed the General Assembly's reason for enacting the punitive damages cap. *Id*. at ¶¶ 100-101. The cap was intended to avoid "occasional multiple awards * * * that have no rational connection to the wrongful actions or omissions of the tortfeasor." *Id*. The cap was not intended to protect billion-dollar institutions from a punitive damages award that is rationally related to their malicious conduct.

The *Arbino* Court noted that the legislature considered the impact that punitive damage awards may have on small employers for purposes of striking a balance between punishment and ensuring that small businesses are not destroyed in the process. *Id*. Oberlin College is no small employer. Here, the statute's mathematical formula does not serve to "strike a balance" between proper punishment/deterrence and the defendant's financial wherewithal. See *Burns v. Prudential Securities, Inc*., 3rd Dist. No. 9-03-49, 167 Ohio App.3d 809, 2006-Ohio-3550, 857 N.E.2d 621, ¶ 146 (defendant's net worth is proper factor to be considered when deciding the reasonableness or excessiveness of a punitive damages award); *Weaver v. Fenwick*, 9th Dist. Summit No. 17995, 1997 WL 416323, *5 (same); *LeForge v. Nationwide Mut. Fire Ins. Co.*, 82 Ohio App.3d 692, 702, 612 N.E.2d 1318 (12th Dist.1992) (same).

a. As applied to this case, the punitive damages cap bears no real and substantial relation to the general welfare of the public.

In the instant case, R.C. 2315.21 is unconstitutional as applied and the jury's punitive damages award of $33,223,500 should not have been reduced. Application of the cap to the facts of this case does not bear a real and substantial relation to the public health, safety, morals, or general welfare of the public.

To apply a statutorily-capped punitive award to the facts of this case does not serve the public welfare because it would, in effect, permit a billion-dollar institution to consider its tortious conduct as nothing more than the cost of business and to continue such conduct. In fact, Oberlin College's VP for Finance and Administration testified about a financial report that the College prepared and sent to board members, stakeholders, donors and the public. [Tr. Vol. XXIII (June 12, 2019), pp. 67-73] The report stated that claims like the Gibsons' simply arose from "the normal course of operations" at Oberlin College and that the "ultimate outcome of such litigation and claims…will not have a material adverse effect" on how the College operates or its financial position. *Id*. at pp. 71-72. The administrator agreed that the College's conclusion in the report was that a Lorain County jury's decision in this case would have no material effect on the College's financial position or how it operates. [*Id*. at pp. 72-73]

When a powerful, dominant, billion-dollar entity commits malicious conduct in a community, the community jury must be able to assess a punitive damage figure that is sufficient to punish and deter. And, the trial court's remittitur power along with the *Gore* guideposts[12] to avoid excessive punitive damages provide the appropriate additional backstop to guard against an excessive award that is not reasonably related to the factors set forth above.

If the statute's mathematical formula is rigidly applied in this case, then it is being imposed in a case where it does not fit and where it does not serve the interests that punitive damages must address. The U.S. Supreme Court has held that: "We need not, and indeed **we cannot, draw a mathematical bright line** between the constitutionally acceptable and the constitutionally unacceptable [punitive damages] **that would fit every case**." *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 18, 111 S.Ct. 1032, 1043, 113 L.Ed.2d 1 (1991) (emphasis added);

[12] *BMW of N. America, Inc. v. Gore*, 517 U.S. 559, 582, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996)

See also Rieger v. Giant Eagle, Inc., 8th Dist. No. 105714, 2018-Ohio-1837, 103 N.E.3d 851, ¶ 40, reversed on other grounds by *Rieger v. Giant Eagle, Inc.*, 157 Ohio St.3d 512, 2019-Ohio-3745, 138 N.E.3d 1121 (2019), *quoting Dardinger*, at para. 178 ("We are mindful that there is no magic formula for determining the proper amount of punitive damages. Rather, the amount that should be awarded is the amount that best accomplishes 'the twin aims of punishment and deterrence as to that defendant. . . .'"); *Barnes v. Univ. Hosps. of Cleveland*, 119 Ohio St.3d 173, 2008-Ohio-3344, 893 N.E.2d 142, ¶ 34 (2008) ("But the United States Supreme Court, like this court, has ***consistently rejected the notion of a bright-line mathematical formula for assessing the reasonableness of punitive damage awards***.") (Emphasis added.); *Kassay v. Niederst Mgt., Ltd.*, 8th Dist. No. 106016, 2018-Ohio-2057, 113 N.E.3d 1038, ¶ 64.

Here, R.C. 2315.21's mathematical formula "need not, and indeed [] cannot" "fit every case." It does not fit this case. It violates due process and is unconstitutional as applied.

b. As applied to this case, the punitive damages cap is arbitrary and/or unreasonable because there is no rational connection between the amount of punitive damages and the malicious conduct.

Application of the punitive damages cap in this case is arbitrary and unreasonable because it removes any rational connection between: (a) the amount of the punitive damages award and (b) the defendants' malicious conduct and financial wherewithal. The purpose of punitive damages is not to compensate a plaintiff, but to punish the guilty, deter future misconduct, and demonstrate society's disapproval of the defendant's actions. *Arbino*, *supra*, at ¶ 97; *see Rieger*, *supra,* at ¶ 19. When dealing with punitive damages, the societal element, i.e. society's disapproval of the defendant's conduct, is the most important. *Dardinger v. Anthem Blue Cross & Blue Shield*, 98 Ohio St.3d 77, 2002-Ohio-7113, 781 N.E.2d 121.

The evidence of Oberlin College's relentless bullying and cruel attacks on the Gibsons

was overwhelming for anyone sitting within the courtroom during the five-week jury trial. Even Oberlin College's counsel recognized that reality in the opening statements of the punitive damage phase: "Before you rendered your [compensatory] verdict last Friday, we already knew things had to change." [Tr. Trans. Vol. XXIII, p. 32] Counsel went on to say that the jury's compensatory verdict "sent a profound message", "we have heard you" and "colleges across the country have heard you" and that they recognized that they needed to make tremendous changes. [*Id*.] However, the jury soon learned that this was mere lip service. During the punitive phase, an Oberlin College high-ranking administrator testified about sending a public pronouncement to thousands of people (**just prior to the commencement of the punitive phase**) stating that the jury was wrong and that the jury failed to understand the "clear evidence our team presented." [Tr. Trans. Vol. XXIII, pp. 139-140]. While Oberlin College's own counsel told the jury that "change by order of magnitude" was necessary, the College itself clearly did not receive the message. The jury determined that the necessary magnitude to send the message was the amount of $33,223,500, which is less than 3% of Oberlin College's assets and only three times the compensatory award.

3. As applied to this case, the punitive damages cap infringes on the constitutional right to a trial by jury.

"[T]he assessment of punitive damages by the jury stems from the common law and is encompassed within the right to trial by jury." *Zoppo v. Homestead Ins. Co*., 71 Ohio St.3d 552, 557, 644 N.E.2d 397 (1994). Rigid application of the statutory mathematical formula in the unique circumstances of this case violates the Gibsons' right to a trial by jury found in Article I, Section 5 of the Constitution of Ohio.

The Sixth Circuit Court of Appeals recently struck down a very similar statutory punitive damages cap on the basis that it violated the right to a trial by jury under Tennessee's

Constitution. *Lindenberg v. Jackson Natl. Life Ins. Co*., 912 F.3d 348, 367 (6th Cir.2018), cert. denied sub nom. *Jackson Natl. Life Ins. Co. v. Lindenburg*, 140 S.Ct. 624, 205 L.Ed.2d 385 (2019), and cert. denied sub nom. *Tennessee v. Lindenburg*, 140 S.Ct. 635, 205 L.Ed.2d 385 (2019). In *Lindenberg*, a Tennessee statutory cap was applied to reduce the jury's award of punitive damages to two times the compensatory damages awarded. *Id*. at 353. On appeal, the plaintiff argued that the statutory cap was unconstitutional. The Sixth Circuit agreed, holding that the "categorical punitive damages cap" "bears no relationship" to due process concerns relating to punitive damages awards. *Id*. at 368. The Sixth Circuit referred to United States Supreme Court case law in which the Court has "consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual and potential damages to the punitive award." *Id*. quoting *Gore*, 517 U.S. 559.

Imposing a bright-line mathematical formula in this case violates due process and also "impairs the traditional function of the jury in determining the appropriate amount of damages." *Zoppo*, 71 Ohio St.3d at 557. For the reasons stated above, and as determined by a unanimous jury after five-plus weeks of evidence, the punitive award of $33,223,500 appropriately considered all relevant factors in arriving at an amount that achieves the twin objectives of proper punishment and sufficient deterrence as to Oberlin College and Dean Raimondo, under these particular circumstances.

4. As applied to this case, the jury's award of $33,223,500 is within a constitutionally acceptable range and is not excessive.

As previously discussed, the limits on punitive damages set forth in R.C. 2315.21(D)(2) were based on guidance provided by the United States Supreme Court in *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003) and *Gore*, 517 U.S. 559. See *Rieger*, 2018-Ohio-1837. Three guideposts for determining whether punitive damages

are excessive have been set forth:

> (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

Id. at 860. The Ohio Supreme Court instructed lower courts to apply these principles when reviewing punitive damage awards, even when constrained by the statutory cap. *Barnes*, 119 Ohio St.3d 173 at 181.

The Ohio Supreme Court, in cases such as *Wightman* in 1999 ($15 Million award and 6250:1 ratio) and *Dardinger* in 2002 ($15 Million and 3:1 ratio), has consistently upheld large punitive damage awards and has found a ratio of compensatory damages to have less relevance based on the egregiousness of Oberlin College and Dean Raimondo's conduct and the likelihood that deterrence to prevent future similar conduct is necessary. *Dardinger*, 98 Ohio St.3d 77, ¶ 178. The punitive damage award determined by a unanimous jury in this case was not excessive under Ohio punitive damages jurisprudence.

V. CONCLUSION

The Court should reverse the trial court's June 27, 2019 decision applying the statutory punitive cap and reinstitute the jury's punitive damages award of $33,223,500.

DATED: June 8, 2020

Respectfully submitted,

KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO., L.P.A.

Terry A. Moore (0015837)
Jacqueline Bollas Caldwell (0029991)
Owen J. Rarric (0075367)
Matthew W. Onest (0087907)
4775 Munson Street, N.W.
P.O. Box 36963
Canton, Ohio 44735-6963
Telephone: (330) 497-0700

TZANGAS | PLAKAS | MANNOS | LTD

Lee E. Plakas (0008628)
Brandon W. McHugh (0096348)
Jeananne M. Wickham (0097838)
220 Market Avenue South
Eighth Floor
Canton, Ohio 44702
Telephone: (330) 455-6112

Email: tmoore@kwgd.com
jcaldwell@kwgd.com
orarric@kwgd.com
monest@kwgd.com

Email: lplakas@lawlion.com
bmchugh@lawlion.com
jwickham@lawlion.com
-and-

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

James N. Taylor (0026181)
409 East Avenue, Suite A
Elyria, Ohio 44035
Telephone: (440) 323-5700
Email: taylor@jamestaylorlpa.com
Counsel for Plaintiffs/Cross Appellants

PROOF OF SERVICE

A copy of the foregoing was served on June 8, 2020 by electronic means to the e-mail addresses identified below:

Ronald D. Holman, II
Julie A. Crocker
Taft Stettinius & Hollister LLP
rholman@taftlaw.com;
jcrocker@taftlaw.com;

Richard D. Panza
Matthew W. Nakon
Rachelle Kuznicki Zidar
Wickens, Herzer, Panza, Cook & Batista Co.
RPanza@WickensLaw.com;
MNakon@WickensLaw.com;
RZidar@WickensLaw.com;

Benjamin C. Sasse
Irene Keyse-Walker
Tucker Ellis LLP
benjamin.sasse@tuckerellis.com
ikeyse-walker@tuckerellis.com
Co-Counsel for Defendants Oberlin College aka Oberlin College and Conservatory, and Meredith Raimondo

Seth Berlin
Lee Levine
Joseph Slaughter
Ballard Spahr LLP
berlins@ballardspahr.com
levinel@ballardspahr.com
slaughterj@ballardspahr.com
Co-Counsel for Defendants Oberlin College aka Oberlin College and Conservatory, and Meredith Raimondo

Lee E. Plakas (0008628)
Counsel for Plaintiffs/Cross-Appellants

APPENDIX

Appendix A: June 27, 2019 Judgment Entry

ORIGINAL

LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

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

Date 6/27/19 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

Pursuant to Ohio Revised Code Section 2315.18 (Compensatory Damages in Tort Actions) and Ohio Revised Code Section 2315.21 (Punitive or Exemplary Damages) the Court hereby reduces the jury's verdicts to judgment as follows:

On June 6, 2019, the parties stipulated and agreed that Oberlin College would be vicariously, jointly, and severally liable for any verdict or judgment rendered against Meredith Raimondo, regardless of whether a separate verdict or judgment was entered against Oberlin College.

On June 7, 2019, the jury returned a compensatory damages verdict in favor of David R. Gibson in the amount of $5,800,000.00, which included $4,000,000.00 in non-economic damages and $1,800,000.00 in economic damages. The jury completed an interrogatory further specifying that $4,800,000.00 of the $5,800,000.00 was awarded to David R. Gibson and against Oberlin College and Meredith Raimondo on the libel claim, and that the remaining $1,000,000.00 was awarded to David R. Gibson and against Oberlin College on the intentional infliction of emotional distress claim. On June 13, 2019, the jury returned a punitive damages verdict in favor of David R. Gibson in the amount of $17,500,000.00.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

Judgment is hereby rendered against Defendants and in favor of David R. Gibson for compensatory damages for economic loss in the amount of $1,800,000.00.

Judgment is hereby rendered against Defendants in favor of David R. Gibson for compensatory damages for noneconomic loss in the amount of $600,000.00. ($350,000.00 on the libel claim and $250,000.00 on the intentional infliction of emotional distress claim)

Judgment is hereby rendered against Defendants and in favor of David R. Gibson for punitive damages in the amount of $11,600,000.00 (two times the amount the jury awarded to the plaintiff for compensatory damages in accordance with Ohio Revised Code Section 2315.21).

TOTAL DAMAGES FOR DAVID R. GIBSON: $14,000.000.00

On June 7, 2019, the jury returned a compensatory damages verdict in favor of Allyn W. Gibson in the amount of $3,000,000.00 in non-economic damages and $0.00 in economic damages. The jury completed an interrogatory further specifying that $2,000,000.00 of the $3,000,000.00 was awarded to Allyn W. Gibson and against Oberlin College and Meredith Raimondo on the libel claim, and that the remaining $1,000,000.00 was awarded to Allyn W. Gibson and against Oberlin College on the intentional infliction of emotional distress claim.

One June 13, 2019, the jury returned a punitive damages verdict in favor of Allyn W. Gibson in the amount of $8,750,000.00.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

Judgment is hereby rendered against Defendants and in favor of Allyn W. Gibson for compensatory damages for noneconomic loss in the amount of $500,000.00. ($250,000.00 on the libel claim and $250,000.00 on the intentional infliction of emotional distress claim)

Judgment is hereby rendered against Defendants and in favor of Allyn W. Gibson for punitive damages in the amount of $6,000,000.00 (two times the amount the jury awarded to the plaintiff for compensatory damages in accordance with Ohio Revised Code Section 2315.21).

TOTAL DAMAGES FOR ALLYN W. GIBSON: $6,500.000.00

On June 7, 2019, the jury returned a compensatory damages verdict in favor of Gibson Bros., Inc. in the amount of $2,274,500.00 in economic damages. The jury completed an interrogatory further specifying that $1,137,250.00 was awarded to Gibson Bros., Inc. and against Oberlin College and Meredith Raimondo on the libel claim, and that the remaining $1,137,250.00 was awarded to Gibson Bros., Inc. and against Meredith Raimondo on the intentional interference with business relations claim.

On June 13, 2019, the jury returned a punitive damages verdict in favor of Gibson Bros., Inc., on the libel claim only, in the amount of $6,973,500.00.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

Judgment is rendered against Defendants and in favor of Gibson Bros., Inc. for compensatory damages for economic loss in the amount of $2,274,500.00. ($1,137,250.00 on each claim: libel and intentional interference with business relations).

Judgment is rendered against Defendants and in favor of Gibson Bros., Inc. for punitive damages in the amount of $2,274,500.00 (two times the amount the jury awarded to the plaintiff for compensatory damages in accordance with Ohio Revised Code Section 2315.21).

TOTAL DAMAGES FOR GIBSON BROS. INC.: $4,549,000.00

IT IS SO ORDERED.

VOL___PAGE___

John R. Miraldi, Judge

cc: All Parties