

DANIEL M. HORRIGAN  
2014 SEP 29 PM 3: 30  
SUMMIT COUNTY CLERK OF COURTS  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT

PHOENIX LIGHTING GROUP LLC, et al.,	)	CASE NO. CV-2012-08-4444
	)	
Plaintiff	)	JUDGE MCCARTY
	)	
-vs-	)	
	)	
	)	<b><u>FINAL JUDGMENT ENTRY</u></b>
GENLYTE THOMAS GROUP LLC, et al.,	)	
	)	
Defendant	)	

This case comes before the Court upon a Jury Trial on that commenced on May 12, 2014. The jury rendered a verdict on June 11, 2014.

The trial of the issues commenced before a jury duly empanelled on May 12, 2014. Upon the close of evidence presented by Plaintiffs and Defendants, and following instructions by the Court, the jury retired for deliberations on June 6, 2014. On June 11, 2014, the jury returned its verdict in this cause, entering a General Verdict for Plaintiff.

On Plaintiff, Phoenix Lighting Group LLC's, claim for Tortious Interference with Business Relationship against Defendant, Genlyte Thomas Group, LLC, the jury returned a verdict in favor of Plaintiffs in the amount of \$101,500.

On Plaintiff, Phoenix Lighting Group LLC's, claim for Tortious Interference with a Contractual Relationship against Defendant, Genlyte Thomas Group, LLC, the jury returned a verdict in favor of Defendant, Genlyte Thomas Group, LLC.

On Plaintiff, Phoenix Lighting Group LLC's, claim for Misappropriation of Trade Secrets against Defendant, Genlyte Thomas Group, LLC, the jury returned a verdict in favor of Plaintiffs in the amount of \$300,000.

On Plaintiff, Phoenix Lighting Group LLC's, claim for Unfair Competition against Defendant, Genlyte Thomas Group, LLC, the jury returned a verdict in favor of Defendant, Genlyte Thomas Group, LLC.

On Plaintiff, Phoenix Lighting Group LLC's, claim that Defendant, Genlyte Thomas Group, LLC, engaged in a Civil Conspiracy with Guy Day and/or Jason Brown, the jury returned a verdict in favor of Defendant, Genlyte Thomas Group, LLC as to the Unfair Competition claim. The jury returned a verdict in favor of Plaintiffs as to the claims of Tortious Interference with Business Relationship(s); Tortious Interference with Contractual Relationship(s); Misappropriation of Trade Secrets; and Breach of Duty of Loyalty, Good Faith, and Trust. The jury awarded Plaintiff the following amounts:

Tortious Interference with Business Relationship(s)	\$476,470.00
Tortious Interference with Contractual Relationship(s)	\$0
Misappropriation of Trade Secrets	\$203,000.00
Breach of Duty of Loyalty, Good Faith, and Trust	\$600,000.00

The Court finds the Interrogatories to be consistent with the verdict forms.

In accordance with the jury's verdict, it is hereby ORDERED, ADJUDGED, and DECREED that judgment is entered in favor of Plaintiff, Phoenix Lighting Group LLC against Defendant, Genlyte Thomas Group, LLC, for a total compensatory damages award in the amount of \$1,680,970.00.

Punitive Damages

The jury reconvened on June 18, 2014 for the Punitive Damages phase of the trial. The jury retired for further deliberations on June 19, 2014. On June 20, 2014, the jury returned its verdict in the punitive damages phase. The issue of punitive damages as to the Misappropriation of Trade Secrets claim was excluded from the jury's consideration, and as to the remaining \$1,380,970.00 in compensatory damages the jury awarded \$7,000,000.00 and found that Plaintiff shall be entitled to reasonable attorney fees.

In accordance with the jury's verdict, it is hereby ORDERED, ADJUDGED, and DECREED that punitive damages are awarded in favor of Plaintiff, Phoenix Lighting Group LLC against Defendant, Genlyte Thomas Group, LLC. Applying the statutory cap set forth in R.C. 2321.21(D), the Court awards punitive damages on the claims presented to the jury in the amount of \$2,761,940.00.

As to the Misappropriation of Trade Secrets claim, the Court hereby awards punitive damages on such claim and trebles the \$300,000.00 in compensatory damages the jury awarded to a total of \$900,000.00 on that claim.

Attorney Fees

As indicated above, the jury determined that Phoenix is entitled to reasonable attorney fees in an amount to be determined by the Court. On July 18, 2014 a hearing was held on the issue of attorney fees.

In calculating attorney's fee awards, the court must first compute the "lodestar" figure -- the number of hours expended multiplied by a reasonable hourly rate. *Bittner v. Tri-County Toyota, Inc.*, 58 Ohio St. 3d 143, 569 N.E.2d 464 (1991). Once the court calculates the lodestar

figure, the court may modify that calculation by application of the factors set forth the Rules of Professional Conduct. These factors are:

- the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- the fee customarily charged in the locality for similar legal services;
- the amount involved and the results obtained;
- the time limitations imposed by the client or by the circumstances;
- the nature and length of the professional relationship with the client;
- the experience, reputation, and ability of the lawyer or lawyers performing the services;
- and
- whether the fee is fixed or contingent.

Ohio Prof. Cond. Rule 1.5(a)(1)-(8).

In addition to the above-stated factors, the court should consider the amount recovered by the successful party, the number of claims successfully litigated in relation to the total number of claims asserted, and the relation between the successful and unsuccessful claims.

*Luft v. Perry County Lumber & Supply Co.*, 10th Dist. C.A. 02AP-559, 2003-Ohio-2305, 2003 Ohio App. LEXIS 2100. The Court must also take into account the various tactics used during the entire case to detect any evidence of unnecessary delay of the proceedings and increase in attorney fees, as well as the conduct of the parties to determine at what point the quest for justice ceased and the use of the legal system as a tool for punishment, harassment, coercion, and intimidation of the other party began. *Bowen v. Bowen*, 132 Ohio App. 3d 616, 725 N.E.2d 1165 (9th Dist. 1999).

At the hearing, Attorney Jeff Witschey testified as to the fee agreements; the modification of fee agreements; the various hourly rates and adjustments of hourly rates; the bills generated by other firms and attorneys who performed work on the matter; and the time, labor, effort and level of difficulty and expertise required of the attorneys involved in the litigation of this matter.

Further, Attorney Daniel Bell testified as an expert witness on behalf of Phoenix, attesting to the reasonableness of the calculation of hours and fees. Additionally, DCO's expert witness, Attorney Orville Reed, testified that a reasonable fee amount (a figure close to the actual fees or "lodestar amount") would be approximately \$1,900,000.00. The Court finds that the causes of action in this matter all stem from the same common core of operative facts, and so all of the hours of attorney fee time are recoverable. Based on the evidence and testimony, the Court finds that the lodestar calculation of \$1,991,507.00 accurately represents the amount of attorney fees, for all five involved firms, that would have been charged to Phoenix under a standard hourly rate agreement.

Moving beyond the lodestar figure, the Court must consider, based on the applicable Ohio Prof. Cond. Rule 1.5(a)(1)-(8) factors, whether an enhancement of the amount is warranted. The Court will address and find as to those factors that weigh in favor of enhancing the lodestar calculation.

The Court first considers "the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly". This case, the record reflects, has proved quite complex, both factually and legally. The litigation involved Plaintiff's prosecution of nine claims and their defense of counterclaims presented by the Defendants – through numerous dispositive and procedural motions and to a lengthy trial.

Next, the Court considers "the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer". Due to the aforementioned complexity of this case, the attorneys involved have necessarily been forced to dedicate a great deal of their time and focus to this particular matter. Based on the testimony of Attorney Witschey and the opinion of Attorney Bell, the Court finds that Phoenix's attorneys have been

occupied by this case to such an extent that maintaining this case hindered and/or precluded this attorneys, at least to some extent, from accepting and pursuing other cases and clients.

As to the “fee customarily charged in the locality for similar legal services”, the Court finds Phoenix’s counsel’s rates are reasonable. Attorney Bell testified at the hearing that the rates of Attorney Witschey, as well as the rates of Attorney Betsy Hartschuh, were actually below market value. Attorney Bell opined that lawyers with similar experience in this market charge more for their hourly rate.

Looking then to “the amount involved and the results obtained”, the Court finds that Phoenix obtained a highly favorable outcome. At the conclusion of the jury trial, the Plaintiff was awarded compensatory damages in the amount of \$1,680,970.00, plus a punitive damages award of seven million (prior to statutory cap), and attorney fees. Furthermore, Plaintiff prevailed on the majority of its claims.

The Court addresses “the time limitations imposed by the client or by the circumstances” and “whether the fee is fixed or contingent” factors together, as Plaintiff has presented them. The Court finds that Phoenix has convincingly made its case with regard to the need for a hybrid fee arrangement when the litigation became financially overwhelming. This fee arrangement forced Phoenix’s counsel to assume a great financial risk, as the testimony reflects it is unusual for a law firm to take such a business litigation matter on a contingency basis. The Court finds these factors weigh in favor of enhancement.

Finally, the Court considers “the experience, reputation, and ability of the lawyer or lawyers performing the services”. Based on the testimony of the lawyers involved in this matter, and the opinions of their respective experts, the Court finds that it is uncontested that all of the

attorneys involved in this case are of high caliber, highly experienced, and maintain excellent reputations.

Considering the all of the relevant factors, the Plaintiff's overall success, the detailed and lengthy procedural record of this case, the Court finds that Phoenix is entitled to an enhancement of the lodestar amount by a multiplier of two. Accordingly, the Court hereby awards a total of \$3,983,014.00 in attorney fees.

Prejudgment Interest

Phoenix has moved the Court for prejudgment interest, and DCO opposed the motion. The Court entertained the motion at the hearing on July 18, 2014 and rules as follows.

R.C. 1343.03(C) governs the period during which prejudgment interest accrues in a civil action 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, provided that the court determines at a hearing held subsequent to the verdict, on motion of any party to 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. R.C. 1343.03(C)(1).

Prejudgment interest is a form of compensatory damages, which compensates a claimant for the period of time between the accrual of a claim and judgment. *Hartman v. Schachner*, 168 Ohio App. 3d 373, 2006-Ohio-3982, 860 N.E.2d 131 (6th Dist.). The purpose of a prejudgment interest award in this context is to encourage good-faith efforts to promptly settle a case, and discourage frivolously opposing and prolonging suits on legitimate claims. *Id.* Prejudgment

interest is not to intended to punish the party responsible for the underlying damages, but rather to compensate and make the aggrieved party whole. *Id.*

A party has not "failed to make a good faith effort to settle" under R.C. 1343.03(C) if he has:

- (1) fully cooperated in discovery proceedings,
- (2) rationally evaluated his risks and potential liability,
- (3) 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 the other party.

If a party has a good faith, objectively reasonable belief that he has no liability, he need not make a monetary settlement offer. *Kalain v. Smith*, 25 Ohio St. 3d 157, 159, 495 N.E.2d 572, 574 (1986).

Upon due consideration, the Court finds that DCO failed to make a good faith effort to settle this matter. During the pendency of this protracted litigation, DCO only ever made one formal offer in the amount of \$150,000.00. Under the circumstances of this case, such offer cannot be construed as a "good faith monetary settlement offer". Rather, it appears that DCO failed to rationally evaluate its potential risks and liability, and therefore failed to make a good faith offer. Phoenix also presented evidence, in the form of DCO's July 9, 2010 letter, which demonstrated a failure to avoid unnecessary delay of the proceedings and a lack of full cooperation in the discovery proceedings.

Further evidence at the hearing established that Phoenix did present DCO with settlement demands of reasonable monetary amounts. The Court finds that Phoenix did not fail to make a good faith effort to settle the case. Accordingly, the Court awards Plaintiff, Phoenix, prejudgment interest on the total compensatory jury award of \$1,680,970.00 from the date of the accrual of the cause of action, March 31, 2009, which totals \$328,319.00.



Litigation Expenses

Upon Phoenix's motion, and due consideration, the Court hereby awards litigation expenses in connection with the attorney fees awarded:

- Expert Consultant Fees: Vestige	\$5,000.00
- Expert Consultant Fees: Midcap & Company	\$19,135.00
- Expert Witness Fees (paid): CBIZ (Zeleznik)	\$42,120.00
- Expert Witness Fees (unpaid):	
o CBIZ (Zeleznik)	\$4,165.00
o Krugliak Wilkins (Lewis)	\$7,458.00
o Dan Bell	\$7,500.00
- Advanced Costs/Expenses paid by law firms:	
o Witschey, Witschey & Firestine	\$63,039.00
o Holland, Ray, Upchurch & Hillen	\$46.00
o Niekamp	\$469.00
o Roderick Linton	\$1,652.00
- Less Court costs	(\$20,739.00)

The Court hereby awards Plaintiff a total of \$129,845.00 for the litigation expenses.

Taxing of Costs

Plaintiff has requested that certain expenses be taxed as costs. In addition to the Motion to Tax Depositions as Costs, Phoenix has requested other items in addition to court costs.

As to the motion to tax depositions as costs, the Court grants the motion, in part, and taxes the following depositions as costs

- Time paid to Eric Fudo for deposition	\$1,050.00
- Transcript of Michael Zeleznik's first deposition	\$1,240.09
- Transcript of Michael Zeleznik's second deposition	\$450.75
- Transcript of Eric Fudo's first deposition	\$590.40
- Transcript of Eric Fudo's second deposition	\$833.85
- Transcripts of Jason Brown's two depositions	\$1,238.90
- Transcripts of Linda Rath, Kerry Freeborn, and Tom Sonneborn	\$596.25
- Transcript of Mark Hughes	\$1,012.50
- Transcripts of Guy Day's three depositions	\$2,197.65

Further, the Court taxes these additional expenses as costs:

- Air Travel	\$3,056.00
- Transcript Fee	\$459.00
- Transcript Fee	\$4536.00

The Court total amount of expenses taxed as costs is \$17,261.39.

Conclusion

In summary, judgment is entered as indicated above, and the following amounts are awarded:

Compensatory Damages	\$1,680,970.00
Punitive Damages	\$2,761,940.00
Treble Damages	\$600,000.00
Prejudgment Interest	\$328,319.00
Attorney Fees	\$3,983,014.00
Litigation Expenses	\$129,845.00
Expenses taxed as costs	\$17,261.39

For a total of \$9,501,349.39 plus court costs, with costs to Defendant.

This is a final appealable order. There is no just cause for delay.

Pursuant to Civ. R. 58 (B), the Clerk of the Court shall serve upon all parties notice of this judgment and its date of entry upon the journal.

**IT IS SO ORDERED.**

  
JUDGE ALISON MCCARTY

Cc: Attorney Jeffrey T. Witschey  
Attorney Betsy L.B. Hartschuh  
Attorney Stephen H. Jett  
Attorney Thomas A. Barni  
Attorney Julie Crocker