ORIGINAL

IN THE COURT OF COMMON PLEAS, ASHLAND COUNTY, OHIO

STEPHANIE SIKORA, et al.,	:	**Case No. 17-CIV-006**
Plaintiffs	:	**Judge Ronald P. Forsthoefel**
v.	:	
ASHLAND UNIVERSITY,	:	
Defendant	:	

DEFENDANT ASHLAND UNIVERSITY'S
TRIAL BRIEF AND
OBJECTIONS TO CERTAIN OF PLAINTIFFS' PROPOSED JURY INSTRUCTIONS

Defendant Ashland University ("Ashland" or "the University") respectfully submits this trial brief reviewing the facts that will be shown at trial and addressing the relatively few outstanding legal issues at this juncture. Further, because some issues overlap, the University is combines this brief with setting forth for the Court's consideration objections to certain of Plaintiffs' Proposed Jury Instructions submitted jointly by the parties on April 8, 2019.

I. INTRODUCTION

This case arises from a decision by the University to non-renew Plaintiffs' tenured faculty contracts as one part of a University-wide prioritization and restructuring effort. The Plaintiffs were among 14 tenured faculty members notified August 14, 2015 that, subject to efforts to find them other positions at the University, their tenured employment would conclude after a three-semester period (during which they could seek other employment, as many did) required by the University's Faculty Rules and Regulations ("FRR"), on December 31, 2016.

The prioritization process concluded that certain academic departments (along with many other components of the University) needed to be restructured, resulting in the reduction of faculty members in those departments. The FRR guided every step of the non-renewal process, and the University carefully followed every measure outlined therein.

The Complaint makes a single claim – breach of contract, relying on Article XII of the FRR as containing the allegedly breached provisions. But as set forth further below, the University carefully tracked Article XII. Where Article XII, sometimes very general in its guidance, required a judgment call, the University reasonably made it, as both the FRR and Ohio case law allow it to do.

II. FACTS TO BE PROVEN AT TRIAL[1]

A. Background

The University is a small private, non-profit university in Ashland, Ohio. AU was founded in 1878 as Ashland College. It offers undergraduate and graduate courses in a number of fields, which are taught by faculty members in six colleges. (Complaint and Answer ¶¶ 16-17) The Plaintiffs were tenured professors with the following primary disciplines:

- Bill Cummins – Spanish literature
- Boris Kerkez - computer programming, robotics, computer graphics and statistics
- Pravin Rodrigues - communications
- Stephanie Sikora – music courses
- Jeff Tiel - philosophy and online core courses

[1] Where a fact seemingly is undisputed from the pleadings, the applicable paragraphs of the pleadings are referenced.

- Rachel Wlodarsky - educational psychology, human development and adolescent psychology

(Complaint and Answer ¶¶22-26, 27-28)

The terms and conditions of employment for tenured faculty members are governed by a one-page Tenure Faculty Contract, which incorporates the FRR. (*E.g.*, Complaint and Answer ¶¶29-30)

B. A Prioritization Process to Improve All Operations of University Began in 2014, and One Part of That Process Resulted in the Non-renewal of Faculty Members Including Plaintiffs.

In January 2014, the University's Board of Trustees ("Board") initiated a comprehensive review of all University academic and non-academic areas and functions in an effort to use the University's resources in the most purposeful, efficient ways in the future. While any organization is of course evolving and examining itself, this process was different: The Board took the initiative to institute a review of every aspect of the University, which it felt had not been conducted in the past.

As part of this comprehensive review, the Board sought to examine across-the-board the University's underutilized programs, policies, practices, and procedures that required resources but did not provide value. The most likely source for needed resources was determined to be the reallocation of existing resources from non-academic areas on campus and from the weakest to the strongest academic programs.

To accomplish reallocation, the Board needed to undertake rigorous evaluation and responsible prioritization of all areas and programs on campus. Accordingly, in March 2014, the Board convened a Planning Committee to recommend a process for conducting review of all

academic and nonacademic programs of the University, which issued a detailed report on a process for prioritization. The report of that Planning Committee will be viewed at trial.

On the academic side, the part of the prioritization most directly applicable to the Plaintiffs, the Board formed an Academic Prioritization Subcommittee ("APS"). The [APS] conducted research on how formal academic prioritization is conducted at universities and then made recommendations for how that might take place at Ashland University. The APS was composed of faculty members, administrators, and trustees, and evaluated each academic program at the University based on detailed self-studies prepared largely by department chairs. Further, at each review meeting, the Academic Deans were invited to answer questions, to provide supplemental information, and to address the APS regarding each specific program within their respective departments.

After reviewing the data from each program, the APS categorized each academic program at the University in one of the following categories:

Enhance
Maintain
Review
Revisit
Restructure/Reorganize
Restructure/Reduce
Restructure/Discontinue

In April 2015, the APS completed its review of all academic programs and submitted a final report – which included recommendations to restructure certain academic programs; restructure the core curriculum; limit the number of hours required for a major; and revise certain policies and procedures – to the Board. On August 4, 2015, the Board accepted the APS's report

for prioritizing programs and authorized the formal restructuring of academic programs, which resulted in the non-renewal of some faculty members.

In addition to the non-renewal of tenured faculty members, a number of other changes took place as a result of the restructuring. For example, the University restructured departments considerably, so it now has a number of departments called administrative units. They exist in a different structure than they did. University witnesses will testify at trial about many other changes that have taken place beyond changes to academic departments.

C. The Reduction of Tenured Faculty Is Governed By Article XII of the Faculty Rules & Regulations, and the University Complied With Each Step in That Process.

"[I]n order to terminate Plaintiffs by not renewing their Tenured Faculty Contracts, the University must comply with the provisions of the Faculty Rules and Regulations generally, and Article XII in particular." (Complaint and Answer ¶35) The referenced Article XII is entitled "Reduction in Tenured Faculty," and is reproduced in relevant part in italics below (again at some length given the importance to this trial), each paragraph followed by what will be proved at trial.

. . .

Section B. Grounds for Reduction

1. The University may reduce the number of instructional faculty members by termination of appointments of tenured faculty members as a result of:

- *financial exigency*
- *the formal discontinuance of a program or department of instruction not mandated by financial exigency*
- *the formal restructuring of a program or department of instruction not mandated by financial exigency.*

2. *In all cases, the grounds for reduction must be bona fide. Documentation by outside audit of financial exigency will provided to the Faculty Senate by the University.*

The University intended to non-renew tenured faculty members, including but not limited to Plaintiffs, under the 3rd prong of Article XII.B.1 – the formal restructuring of a program or department not mandated by financial exigency.

Section C. Planning Faculty Reductions

1. *Prior to faculty reductions according to the section above, the administration shall convene a special committee to review the status of affected programs or departments and submit recommendations to the President. Faculty reductions due to financial exigency shall be made on a departmental or program basis. The committee shall submit its recommendations within thirty (30) days of its initial meeting.*

2. *The special committee shall consist of an equal number of instructional faculty, to be named by the Faculty Senate and administrators, including the college dean, appointed by the administration. The Faculty Senate and the administration each have the right to require replacement of one member of this committee. The committee will be chaired by the Provost.*

3. *In recommending reductions, financial considerations and student/faculty ratio will be major factors, but will not be utilized without recognizing their impact on the academic program and on the University's commitment to the mission and goals of the University. In addition, the published aims, purposes, goals and programs of the University as they affect accreditation must be considered.*

4. *The decision to reduce tenured faculty (1) due to financial exigency, (2) due to the formal discontinuance or restructuring of a program or department, or (3) due to a decrease in enrollment in a program or department* ***shall rest with the Board of Trustees****.*

(emphasis added)

On August 7, 2015, the University formed the special committee ("SC") required by Article XII.C. (Complaint and Answer ¶58) Under the terms of the FRR set forth above, the SC needed to work expeditiously, and it did. While it was not clear until August 7 that there would

be faculty reductions, the possibility was known beforehand by faculty members and administrators alike.

As required, the SC consisted of an equal number of instructional faculty to be named by the Faculty Senate and administrators, and was chaired by the Provost, Doug Fiore. The Senate Faculty appointed four faculty members: Dan Fox, Joan Knickerbocker, Gordon Swain, and Jeff Weidenhamer, leaving three appointments for the University to appoint in addition to the Provost. Because there are six college deans, Dr. Fiore and Faculty Senate members Gordon Swain and Jeff Weidenhamer discussed the interpretation of "the college dean" in Article XII.C.2 and agreed that each college dean would participate and provide consultation on all discussions regarding his or her college. This indeed took place.

Section D. Priorities in Faculty Reduction

1. ***The identification of faculty members to be terminated to meet planned reductions shall rest with the administration****, after consultation with the college dean and department chair.*

2. In effecting a faculty reduction under this article, instructional duties should be reassigned to minimize the impact on tenured and full time faculty members. Therefore, the identification of faculty members to be terminated shall be made, on a departmental or program basis, in accordance with the following priorities:

...

b. The retention of full time faculty members shall be preferred over part time faculty, except in extraordinary circumstances where a serious distortion in the academic program would otherwise result.

c. The retention of tenured faculty members shall be preferred over non-tenured faculty, except in extraordinary circumstances where a serious distortion in the academic program would otherwise result.

d. If a decision to terminate must be made between tenured faculty members, the primary determining factor shall be the impact on the academic program and on

the University's commitment to the mission and goals of the University. Other determining factors shall include:

- *instructional effectiveness as measured by peer evaluation and student evaluations*
- *education*
- *teaching experience and seniority*
- *flexibility*
- *professional and scholarly activities*
- *extraordinary activities and community service.*

(emphasis added)

As required, the college dean and department chair consulted with the administration regarding the identification of faculty members to be terminated. Each Plaintiff was provided with a document designated as an "Article XII Written Summary" that tracked the entire process and analysis of that individual in detail, including compliance with Article XII.D.2.

Section E. Relocation of Tenured Faculty

1. *Before the administration issues notice to a tenured faculty member of its intention to terminate an appointment for a reason other than for cause, all feasible alternatives to termination must be pursued. A tenured faculty member shall be given reasonable opportunity to readapt within his or her or a related discipline or to train for an administrative or professional staff position, if one is available. The President will determine if the suggested reappointment is appropriate. A tenured faculty member transferred to a non-teaching position will forfeit tenure. However, if they are later reappointed to a tenure-track position, it will be with tenure and previous rank, subject to approval of the department and dean.*

2. *Before the administration issues notice to a tenured faculty member of its intention to terminate an appointment because of formal discontinuance or restructuring of a department or program or due to a decrease in enrollment in a program or department, the University will make every effort to place the tenured faculty member concerned in another suitable position.*

a. If placement in another position would be facilitated by a reasonable period of training, release from teaching obligations may be provided to allow greater time for relocation or retraining provided that necessary schedule changes can be implemented without serious distortion of the academic program.

b. These schedule changes shall be determined by the college dean and the department chair.

c. If no position is available within the University, with or without training, the tenured faculty member's appointment may be terminated.

. . .

Once the University learned that some tenured faculty were going to be terminated and thereafter, the administration "looked at any vacancies or job openings that existed at the university at that particular point in time to see if there was anything that, using our judgment of that person's qualifications, they would be eligible for." This included regular discussions at the academic council, which includes all college deans and chaired by the Provost, as well as efforts with department chairs, human resources, and others at the University.

Many of these efforts were successful. For example, Dr. Deleasa Randall-Griffiths, who was an associate professor tenured in the Department of Communications Studies (and originally a plaintiff in this case), is one success story. Dr. Randall-Griffiths was initially offered a part-time administrator position for an online program in criminal justice, which she declined. (Plaintiff Bill Cummins was also offered this same position, which he declined.) Dr. Randall-Griffiths was later contacted with an opportunity to serve in the position as full-time director of an online communication studies program, which she accepted.

While she was not tenured, the story of Dr. Maura Grady also exemplifies the University's process to place affected faculty members. Dr. Grady, a non-tenured faculty member in her fifth year of employment in the English Department and selected for non-renewal, was offered a full-time 12-month administrative position in the writing center, which she accepted. In the fall of 2018, Dr. Grady accepted an available tenure-track position in the

English Department at the University. She has since been granted and will be tenured effective August 2019.

Not all efforts were successful. For example, Plaintiff Wlodarsky, who had taught in the College of Education, sought support from the Psychology Department in her efforts to relocate, without success. Members of the Psychology Department did not feel that she was qualified to teach the advanced courses she sought to teach. Similarly, Plaintiff Tiel discussed opportunities at some length with Dr. Campo but those were not successful. (Dr. Tiel continues to teach at the University in an adjunct capacity as he seeks other employment.)

(The University will also present both lay and expert testimony regarding Plaintiffs' mitigation efforts, some of which have been quite limited.)

Section F. Terminal Notice, Salary and Benefits

...

2. *If it is found necessary to terminate the appointment of a tenured faculty member because of declining enrollment or restructuring of a program or department of instruction, the faculty member shall be notified in writing of the decision to terminate no later than three (3) full semesters in advance of termination. The faculty may elect, at his or her option, to agree to accept an earlier termination date provided that full compensation for three (3) semesters continues to be paid for three (3) semesters beyond the date of notification (in addition to the semester then in progress).*

...

Plaintiffs do not allege a violation of Article XII(F) nor is it disputed that non-renewed tenured faculty members were served by the University President in writing of the decision to terminate his or her position dated August 14, 2015, 3 full semesters in advance of his or her contract term date of December 31, 2016.

Section G. Conference and Appeal

1. *After notification of the University's intention to terminate the appointment of a tenured faculty member, the faculty member concerned may require a conference with the Provost, the department chairperson and the Dean. The request for a conference must be made no later than ten (10) business days after the formal notification of termination. At this conference the tenured faculty member may require a written summary taking into account the reasons for his or her termination. The Faculty Senate President will be notified one (1) week prior to such conference, and the faculty member may bring a witness. The administration may also have a witness. This conference must happen within ten (10) business days of the faculty member's request.*

2. *A tenured faculty member may appeal a proposed termination or relocation under the terms of this Article, and have the right to a full, on the record adjudicative hearing before the appropriate faculty committee. A written letter of appeal must be given to the Faculty Senate President and the University Provost no later than ten (10) business days after the conference. Both the faculty member and the administration will have the right to require recusal of one member of this committee. The issues in this hearing may include the University's failure to satisfy any of the conditions specified in this Article. The hearing shall be concluded within eight (8) weeks of the appeal request by the faculty member.* ***The final decision shall rest with the Board of Trustees.***

(emphasis added)

Tenured faculty had the right to a conference with the Provost, the department chairperson and the Dean, and that each Plaintiff timely exercised his or her right to a conference, and was afforded one witness at the conference, and that the conference occurred within ten business days of the faculty member's request. The Plaintiffs received the required hearing before a faculty committee, and that committee ruled in each of the Plaintiffs' favor. (Complaint and Answer ¶¶ 80-81)

The FRR specify that the Board has the final decision on the faculty member appeals. The FRR provide no particular process for that decision. To ensure a fair and thorough review, even though not required by the FRR, the Board convened an Ad Hoc Committee of four Trustees – Board President Joyce Lamb, immediate past Board President Lisa Miller, David Bush, and Thomas Whatman. Each Ad Hoc Committee member carefully reviewed assigned

appeal files, after which that committee met and concluded that the University's administration had acted in accordance with the FRR in deciding to non-renew the faculty member.

The Ad Hoc Committee recommended to the Board that each faculty member's appeal be denied, and on March 19, 2016 the Board of Trustees acted on those recommendations.

III. POINTS OF LAW

A. Ohio Law Gives Deference To Academic Institutions In Their Academic Decision-Making, Especially Where Governing Documents Specifically Reserve Such Rights to the Institution.

Ohio courts invariably give substantial deference to Ohio universities in interpreting their own policies and regulations. The University has previously directed the Court's attention to *McKeny v. Ohio Univ.*, 2017-Ohio-8589, 99 N.E.3d 1244 (10th Dist.), relating to a faculty member's breach of contract and other claims relating to denial of his promotion and tenure, and a multi-step process (as here) set forth in a Faculty Handbook. There as here, the handbook placed the final decision with the university (there the university president, here the Ashland University Board and Administration, as in the portions of Article XII highlighted above.). "The handbook does not place any restrictions on the discretion" on the university's decision. *Id.* at ¶26. In affirming the University's decision, the *McKeny* court continued:

> "As a general rule, courts defer to the academic decisions of colleges and universities unless there has been a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment." [citations omitted][2] Here, the university followed its own process, as outlined in the handbook, in evaluating McKeny's

[2] This proposition has been stated by so many courts that it rises to the level of black letter law. *See also Walker v. University of Cincinnati College of Medicine*, Ct of Cl. No. 2009-09523, 2017-Ohio-8277, ¶15 (and cases cited). Reflecting the courts' deference to the reasonable decisions of colleges and universities generally, in the student context, they "will not interfere with a private university's right to make regulations, establish requirements, set scholastic standards, and enforce disciplinary rules absent 'a clear abuse of discretion.'" *Valente v. Univ. of Dayton*, 438 F. App'x 381, 384 (6th Cir. 2011) (and cases cited).

> application for tenure. That process plainly reserves independent and professional judgment at the different levels of review. The record demonstrates that the decision was made carefully and was heard at many levels of the university's hierarchy.

Id. at ¶27. The *McKeny* court's paragraph could have been written about this case. There as here, the university followed its processes carefully.

As in *Scarnati v. Ohio State Univ.*, Ct. of Cl. No. 2002–05247, 2003-Ohio-7122 (affirming denial of tenure by university), plaintiffs' arguments will "essentially [be] disputing a 'judgment call' made by [their] academic superiors," *Id.* at ¶36, that the FRR entitles the University to make. Of course the Plaintiffs would have made different decisions than the University made, at several steps in the process. (Their testimony about who *they* would have selected for non-renewal in their respective departments is one obvious example.) But one Ohio appellate court

> cautioned trial courts to be diligent not to intrude into faculty employment determinations ... determinations on such matters as teaching ability, research, and service simply cannot be valuated solely on the basis of objective factors.

Saha v. Ohio State Univ., 10th Dist. Franklin No. 10AP–1139, 2011-Ohio-3824, ¶ 37. These are exactly the sort of judgments reflected in the Article XII Written Summaries.

This law mandates that the jury be instructed on this deference, as the University has proposed.

B. Tenure Is Undeniably A Significant Mutual Commitment, But It Does Not Confer Rights Beyond What Are Set Forth In A Contract (and Objection to 2nd paragraph of Plaintiffs' Proposed Instruction No. 7).

Tenured status undoubtedly represents a significant commitment on the part of both the University and faculty members. (*E.g.*, Complaint and Answer ¶21) This relationship is set forth in the FRR, including the limited situations – such as that present here – where a tenured

faculty member's employment may end. However, tenure does not confer a status beyond what a contract provides. *Branham v. Thomas M. Cooley Law Sch.*, 689 F.3d 558, 566 (6th Cir. 2012).

Accordingly, the second paragraph (of four, not counting the paragraphs of asserted authority for the instructions) of Plaintiffs' Proposed Instruction No. 7 is unnecessary, prejudicial, and confusing to the jury. It is not disputed that tenure is important and meaningful, and the terms of tenure at Ashland University are governed by the FRR, not by case law related to the contracts at *other* universities. This is a breach of contract case, not a case about the deprivation of a property right. The Court should not give the jury this instruction.[3]

C. Ohio Law Does Not Provide for Emotional Distress Damages in Contract Cases (and Objection to Paragraph 8 of Plaintiffs' Proposed Instruction No. 9).

It is well settled Ohio law that non-economic damages are not allowed in breach of contract cases. *E.g., Hacker v. Natl. Coll. of Bus. & Tech.*, 2010-Ohio-380, 186 Ohio App. 3d 203, 927 N.E.2d 38 (2d Dist.) (and cases cited). This Court has already ruled that emotional distress damages will not be part of this case, yet Plaintiffs' pretrial submissions suggest Plaintiffs still hope to try a tort case.

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[3] The University also objects to the **first paragraph of Plaintiffs' Proposed Instruction No. 7**; it is undisputed and, indeed, can be stipulated that the Plaintiffs' employment contracts incorporate the FRR, and that the University is obligated to follow the FRR. To give the jury an instruction about a point it does not need to decide will be confusing and prejudicial.

The subject matter of the **third paragraph of Plaintiffs' Proposed Instruction No. 7** is well covered by the proposed instructions no. 5 and unnecessary.

The **fourth paragraph of Plaintiffs' Proposed Instruction No. 7** is also objected to but addressed below.

Any exceptions to this well-settled rule about non-economic damages are extremely narrow. The Ohio Supreme Court has held that Ohio will follow Section 353 of the Restatement of the Law of Contracts, which states with regard to a breach of contract action:

> Recovery for emotional disturbance will be excluded unless the breach also caused bodily harm or the contract or breach is of such a kind that serious emotional distress was a particularly likely result.

3 Restatement of the Law 2d, Contracts (1981) Section 353, at 149, cited in *Kishmarton v. William Bailey Constr., Inc.*, 2001-Ohio-1334, 93 Ohio St. 3d 226, 230, 754 N.E.2d 785, 788 (reversing award for loss of enjoyment in case involving homebuilder).

Likewise, the end of employment relationships are not a basis for emotional distress damages under Ohio law, even though it is known that such decisions will normally and understandably upset employees. *E.g.*, *Lehman v. Spenco Mfg., Inc.*, 5th Dist. Stark No. 98CA00208, 1998 WL 819653 (Nov. 16, 1998); Gradisher v. Barberton Citizens Hosp., 9th Dist. Summit No. No. 25809, 2011-Ohio-6243 (and cases cited).

Accordingly, on this basis alone, paragraph 8 ("Compensatory Damages") of Plaintiffs' Proposed Instruction No. 9 should not be given to the jury. (The following subsection of this brief provides additional authority and argument on this instruction as well.)

D. Plaintiffs Are Not Entitled To Front Pay (and Objection to Paragraphs 6-8 of Plaintiffs' Proposed Instruction No. 9).

In paragraph 7 of their Proposed Instruction No. 9, Plaintiffs use the words "front pay." As an initial matter it should be noted the authority for paragraphs 6-8 of this instruction is Ohio Jury Instructions, CV §533.25. Chapter 533 of OJI is entitled "Discrimination." Section 533.25

is entitled "Damages in discrimination cases." This is not a discrimination case, so no part of that chapter is good authority for an instruction in this case.[4]

The Ohio Supreme Court has recognized the possibility of front pay in certain employment disputes in *Worrell v. Multipress, Inc.* (1989), 45 Ohio St. 3d 241, 543 N.E.2d 1277. This is not one of those disputes. The Court wrote, "it is apparent that front-pay damages are temporary in nature, as they are designed to assist the discharged employee during the transition to new employment of equal or similar status. . . . [W]e agree with those courts that have refused front pay as a matter of right for long-term compensation from the date of discharge until some anticipated retirement date. Front pay should be awarded for an interim period in circumstances where the discharged employee has employable and productive years ahead." *Id.* at 247. *See also Fouty v. Ohio Department of Youth Services* (2006), 167 Ohio App. 3d 508 (10th Dist.) (citing *Worrell* and overturning a front pay award).

Here, the Plaintiffs had an appropriate transition period by the terms of the FRR, which provides three full semesters to find employment. Plaintiff Wlodarsky found comparable employment almost immediately. Other non-renewed faculty members found other work as well prior to that. Front pay is not a long-term guarantee of compensation, and should not be extended beyond the reasonable transition period built into the FRR.

[4] **Paragraph 6 of Plaintiffs' Proposed Instruction No. 9** (Back Pay) is well covered by the more appropriate contract-based instructions.

IV. ADDITIONAL OBJECTIONS TO PLAINTIFFS' JURY INSTRUCTIONS

1. Plaintiffs' Proposed Instruction No. 5 – Breach of Contract

Plaintiffs ask the Court to enumerate to the jury every way in which the University might have breached Article XII of the FRR.[5] The Ohio Jury Instructions do not suggest such an approach in a breach of contract claim. Plaintiffs in their Complaint asserted one breach of contract count, a breach of Article XII, and that is what should be put to the jury. The jury can make that determination from the Proposed Instruction No. 5 submitted by the University.

2. Plaintiffs' Proposed Instruction No. 7, 4th paragraph – Definition of "Restructure"

Plaintiffs offer a definition of "restructure" for the jury. Ashland University is not opposed to offering a plain English definition of "restructure" to the jury for its consideration and, indeed, offered a similar one in its Motion *In Limine*. The Black's Law Dictionary definition offered by Plaintiffs should not be offered, however, as it is taken entirely out of context. A review of the actual link shows that this definition is in the context of a complicated corporate transaction. The list of "Related Legal Terms" begins "Capital Restructuring, Restructuring Charge, Multinational Restructuring, Debt Restructuring Fraud," followed by a series of other references to things that have nothing to do with this case. https://thelawdictionary.org/restructuring (access April 10, 2019).

Likewise, the 8th Appellate District case referenced as authority for this paragraph is a corporate transaction case. After referencing the simple Webster's definition, the Court then quotes a complex definition of loan restructuring from the online Business Dictionary, with no

[5] Plaintiffs also seek to include a potential violation of Article XV of the FRR. Ashland University has already in its Motion *In Limine* filed April 8, 2019 set forth its position that Plaintiffs should not be able to try a breach of Article XV. It has not pled or litigated.

mention of Black's Law Dictionary. *Modern Real Estate Invest. V. McIntyre, Kahn & Kruse*, 8th Dist. Cuyahoga No. 95870, 2011-Ohio-3471, ¶¶21-22. That authority is off point for this trial.

Any instruction to the jury on definitions of "restructuring" that it might entertain should be limited to the word's everyday meaning.

Respectfully submitted,

William A. Nolan (0041891)
Taylor L. Hunter (*admitted pro hac vice*)
BARNES & THORNBURG LLP
41 S. High Street, 33rd Floor
Columbus, OH 43215
Telephone: (614) 628-0096
Facsimile: (614) 628-1433
E-Mail: bill.nolan@btlaw.com
E-Mail: taylor.hunter@btlaw.com

Attorneys for Ashland University

CERTIFICATE OF SERVICE

I certify that on April 10, 2019, a copy of the foregoing Brief and Objections was served upon the following by e-mail and regular U.S. Mail on:

Leslie Murray
Leslie Murray Law
352 Main Street
Huron, Ohio 44839