IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, et al.	:	
Plaintiffs,	:	**Case No. 2:05-CV-00056**
v.	:	
COAMERICA BANK,	:	**JUDGE ALGENON L. MARBLEY**
Defendant.	:	**Magistrate Judge Norah M. King**

AMENDED JUDGMENT

This matter is before the Court on Plaintiffs' Motion to Alter or Amend the Judgment to Award Prejudgment Interest, (Doc. 157), Plaintiffs' Application for an Award of Attorneys' Fees and Expenses, (Doc. 164), and Defendant's Motion for Stay of Execution Pending Appeal and Approval of Supersedeas Bond, (Doc. 161). For the reasons set forth herein, Plaintiff's Motion to Alter Judgment is **GRANTED** in part, Plaintiffs' application for attorneys' fees is **GRANTED** in part, and Defendant's motion for approval of bond is **DENIED**.

I. BACKGROUND

Plaintiffs, Owner Operator Independent Drivers Association, Inc. ("OOIDA") and Carl Harp and Michael Wiese, as representatives of the certified class of owner-operators, (collectively "Plaintiffs") brought this action on January 16, 2004 to enforce this Court's judgment in *OOIDA v. Artic Express, Inc.*, No. 97-750 (the "Arctic Litigation") against Defendant Comerica Bank ("Comerica"). *See Owner-Operator Independent Drivers Ass'n v. Comerica Bank* ("*Comerica Final Judgment*"), 860 F.Supp.2d 519, 522 n.1 (S.D. Ohio 2012) (citing at least eight prior published opinions memorializing the underlying material facts of the Artic Litigation).

Plaintiffs brought suit in the underlying Artic Litigation on June 30, 1997 – nearly fifteen years ago – alleging that “that Arctic and D & A violated the Truth–in–Leasing regulations of the Motor Carrier Act, 49 U.S.C. §§ 14101–02, 14704; 49 C.F.R. § 376 *et seq.,* by failing to return unused maintenance escrow fund balances to the class of owner-operators whose lease agreements with Arctic did not run full term.” *Comerica Final Judgment*, 860 F.Supp.2d at 522. In October 2003, Arctic and D&A filed a voluntary petition for bankruptcy in the United States Bankruptcy Court for the Southern District of Ohio, halting the Artic Litigation. In the course of those bankruptcy proceedings, Plaintiffs learned of Arctic's financing arrangement with Comerica and Comerica's actions in transferring the maintenance escrow funds out of Arctic's depository accounts to repay amounts owed to Comerica pursuant to its loan agreements with Arctic. *See Owner Operator Indep. Drivers Ass'n, Inc. v. Comerica Bank,* 615 F.Supp.2d 692, 695–96 (S.D. Ohio 2009) (describing in detail the lending relationship between Artic and Comerica as consisting of three revolving credit loan agreements in continuous operation from February 1991 through November 1998), *aff'd in part and rev'd in part by In re Arctic Express*, 636 F.3d 781, 788 (6th Cir. 2011) (affirming that “the particulars of Arctic's banking relationship with Comerica were accurately explained by the district court”).

In January 2004, Plaintiffs commenced an adversary proceeding against Artic, D&A and Comerica in the Bankruptcy Court. In May 2004, Plaintiffs entered into a settlement with Artic and D&A for $5,583,084, which was approved by the Court in its final judgment of July 16, 2004 (the “Artic Judgment”). That award consisted of total maintenance escrows of $4,070,190 and total statutory interest – calculated in accordance with the mandated rates set forth in the truth-in-leasing regulations – of $ 1,512,894. *Owner -Operator Indep. Drivers Ass'n v. Comerica Bank* (“*Order on Damages*”)*,* No. 05–CV–0056, 2011 WL 6009693, at *6 (S.D. Ohio Dec. 1, 2011) (quoting *Owner Operator,* 615 F. Supp. 2d at 703). This Court also authorized an

award of attorneys' fees in the amount of $1,861,028, or one third of the $5,583,084 common fund. *Artic Order Awarding Attorneys' Fees*, 2:97-cv-750, Doc. 210 at 3 (July 16, 2004). Because Plaintiffs were only able to recover $900,000 of the judgment from Artic and D & A, this Court authorized counsel to "take its fees on a pro rata basis from amounts actually collected from Defendants or from third parties." *Id*. at 4.

Given their inability to recover the entirety of their award, Plaintiffs sought to enforce the Artic Judgment against Comerica. On April 27, 2005, Plaintiffs filed their First Amended Complaint against Coamerica. (Doc. 7.) That action has resulted in yet eight more years of litigation, including an appeal to the Sixth Circuit, extraordinary discovery and a bench trial. Although Comerica has repeatedly disputed its liability for the full amount of the Artic Judgment, this Court has expressly found that the Artic Litigation definitively determined the question of base damages. *See Order on Damages*, 2011 WL 6009693, at *6-7 (quoting *Owner Operator III,* 615 F. Supp. 2d at 703; *In re Arctic Express*, 636 F.3d at 789). Accordingly, the only question at trial was whether Comerica could establish a viable statute of limitations defense. On March 20, 2012, this Court found that Comerica could not establish such a defense, and issued Final Judgment for the Plaintiffs. *Comerica Final Judgment*, 860 F.Supp.2d at 554. Noting that "Plaintiffs' base damages amount has already been established in the prior settlement between Arctic and Plaintiffs, and was reaffirmed by the Court in its post-trial Order on Defendant's Proffer Related to Damages," this Court ordered Plaintiff to pay "$5,583,084.00, comprised of the total maintenance escrows awarded to the Class of $4,070,190, and the total interest awarded at the time of the original settlement of $1,512,894." *Id*. In addition, the Court further stated that "Plaintiffs, as the prevailing party, are entitled to submit a timely petition for attorney's fees and expenses pursuant to Fed.R.Civ.P. 54(d)." *Id*.

This matter is now before the Court on Plaintiffs' Motion to Alter or Amend the Judgment to Award Prejudgment Interest, (Doc. 157), Plaintiffs' Application for an Award of Attorneys' Fees and Expenses, (Doc. 164), and Defendant's Motion for Stay of Execution Pending Appeal and Approval of Supersedeas Bond, (Doc. 161).

II. PREJUDGMENT INTEREST

1. Standard of Review

Plaintiff has moved to alter or amend this Court's Final Judgment, (Doc. 155), to award prejudgment interest. Rule 59(e) of the Federal Rules of Civil Procedure provides that a party may "motion to alter or amend a judgment" within "28 days after the entry of the judgment." The Sixth Circuit has held that "[a] Court may grant a Rule 59(e) motion to alter or amend if there is: (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice." *ACLU of Ky. v. McCreary Cnty.,* 607 F.3d 439, 450 (6th Cir. 2010) (citing *Intera Corp. v. Henderson,* 428 F.3d 605, 620 (6th Cir. 2005)). The fourth of these grounds, the prevention of manifest injustice, is relevant here.

2. Law and Analysis

The Sixth Circuit has "long recognized that the district court may [award prejudgment interest] at its discretion in accordance with general equitable principles." *Rybarczyk v. TRW, Inc.,* 235 F.3d 975, 985 (6th Cir. 2000) (alterations in original) (quoting *Ford v. Uniroyal,* 154 F.3d 613, 616 (6th Cir. 1998)). Such "[i]nterest awards should not be punitive, but should 'simply compensate a [party] for the lost interest value of money wrongly withheld from him or her.'" *Id.* (quoting Ford, 154 F.3d at 618). In cases such as this, "without an award of prejudgment interest 'the relief granted would fall short of making the [plaintiff] whole because he has been denied the use of money which was his.'" *Price v. Bd. of Trustees of Indiana Laborer's Pension Fund*, 2:07-cv-0933, 2009 WL 2047591, at *2 (quoting *Tiemeyer v. Cnty.*

Mutual Ins. Co., 8 F.3d 1094, 1102 (6th Cir. 1993)). *Similarly,* "[a]llowing a defendant 'to retain the interest it earned on funds wrongfully withheld from a beneficiary would be to approve of an unjust enrichment.'" *Id.* (quoting *Tiemeyer,* 8 F.3d at 1102).

Here, Plaintiffs' action to disgorge their property from Comerica has been ongoing since January 2004 – over eight years. Plaintiffs' damages were determined to total $5,583,084.00 as of July 16, 2004, and it has been deprived of the use of those funds in the interim. Rather, Comerica has had the benefit of those funds. The case *sub judice* is, therefore, precisely the type of case in which an award of prejudgment interest is not merely appropriate, but necessary to prevent manifest injustice. *See id* (granting Rule 59(e) motion to alter judgment to include prejudgment interest where "it would be a manifest injustice if [Plaintiff] [wa]s not granted these remedies"), *vacated on other grounds by* 632 F.3d 188 (6th Cir. 2011).

Defendant argues that interest has already been awarded in this case and, therefore, a further interest award would be unjust. In fact, the interest award included in the damages was not prejudgment interest, but statutory interest on the maintenance funds calculated pursuant to mandated rates set forth in the truth-in-leasing regulations. Thus, the $5,583,084.00 damages figure represents the full amount Plaintiffs were owed as of the date of the Artic Judgment. It is, therefore, proper for a prejudgment interest award to compensate Plaintiffs for the entirety of that deprivation. Because the base damages amount includes interest up to July 16, 2004, however, the Court will only award prejudgment interest for the period beginning from that date until March 20, 2012, the date of the Final Comerica Judgment.

The parties also dispute the appropriate rate for any prejudgment interest award. Defendant argues that a prejudgment interest must be awarded – if at all – at the statutory rate set forth in 28 U.S.C. § 1961, a rate tied to the average 52-week United States Treasury Bill rate for the relevant period. That is not, however, the only permissible prejudgment interest rate.

Indeed, the Sixth Circuit and other courts of appeals "have also upheld awards of prejudgment interest that were tied to prevailing market rates, thus reflecting what the defendants would have had to pay in order to borrow the money at issue." *Rybarczyk v. TRW, Inc.,* 235 F.3d 975, 986 (6th Cir. 2000) (approving calculation of prejudgment interest "equal to the rate of return actually earned on the principal amount of the underpayment during the prejudgment period" as "an appropriate way of avoiding unjust enrichment") (citing *EEOC v. Wooster Brush Co. Employees Relief Ass'n,* 727 F.2d 566, 579 (6th Cir. 1984) (using adjusted prime rate); *Katsaros v. Cody,* 744 F.2d 270, 281 (2d Cir. 1984) ("Expert testimony revealed that at the time ... other banking institutions were in the market to borrow at a rate of prime plus one percent. Awarding prejudgment interest in accord with prevailing interest rates is consistent with prior case law"); *Lorenzen v. Employees Ret. Plan of Sperry & Hutchinson Co.,* 896 F.2d 228, 236-37 (7th Cir. 1990) (using Defendant's actual rate of return on funds)).

Here, Plaintiffs urge this Court to adopt a prejudgment interest rate of prime plus 2% – the interest rate on Comerica's 1998 loan to Artic. *See* Comerica's Motion for Summary Judgment, Doc. 54-1 at ¶ 1.2. This rate, Plaintiffs argue, is representative of the benefit realized by Coamerica in wrongfully withholding the escrow funds for all this time. The Court agrees that a prejudgment interest "equal to the rate of return actually earned on the principal amount of the underpayment during the prejudgment period" is "an appropriate way of avoiding unjust enrichment." *Rybarczyk,* 235 F.3d at 986. The interest rate on the 1998 Artic Loan, however, cannot be equated to Comerica's actual rate of return on these funds for the period relevant to the prejudgment interest calculation, *i.e.*, from July 16, 2004 until March 20, 2012. By that time, Artic had already gone through bankruptcy and the specific revolving loans that gave Comerica possession of the funds were no longer in operation.

Without additional evidence of the actual rate of return Comerica received for funds loaned during the relevant period, this Court will use the Prime rate – the prevailing market rate for lending to the lowest risk customers. *See Rybarczyk,* 235 F.3d at 986 (approving a prejudgment interest award tied to prevailing market rates); *Wooster Brush,* 727 F.2d at 579 (same). Plaintiffs, in a sworn attorney affidavit, computed the weighted average of the annual Prime rate for the period of July 17, 2004 through March 20, 2012 and calculated the compounded annual interest on the $5,583,084 damage award. (*Black Aff*., Doc. 157-1, ¶¶3-5.) This methodology yields a prejudgment interest award of $2,647,330.62. (*Id.* at ¶6.) The Court finds Plaintiffs' methodology to be sound.

Accordingly, the Court hereby **AWARDS** Plaintiffs prejudgment interest in the amount of **$2,647,330.62**. The total Comerica Judgment for Plaintiffs is, therefore, **$8,230,414.62**.

III. ATTORNEYS' FEES

In its Final Judgment dated March 20, 2012, this Court stated that "Plaintiffs, as the prevailing party, are entitled to submit a timely petition for attorney's fees and expenses pursuant to Fed.R.Civ.P. 54(d)." *Comerica Final Judgment*, 860 F.Supp.2d at 554. Plaintiffs' counsel now requests a fee award consisting of both one-third of the total judgment (including prejudgment interest) and an enhanced lodestar figure.

As this Court stated previously,

> "[a]fter finding that a party is entitled to an attorneys' fees award, the Court must then determine whether the hours claimed by the petitioner are reasonable." *Gunasekera v. Irwin*, 774 F. Supp. 2d 882, 887 (S.D. Ohio 2011) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). The settled "starting point for determining the amount of a reasonable attorney fee is the 'lodestar' amount which is calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate." *Imwalle v. Reliance Med. Prods., Inc.*, 515 F.3d 531, 551 (6th Cir. 2008). If the party seeking the attorney fees "has established that the number of hours and the rate claimed are reasonable, the lodestar is presumed to be the reasonable fee to which counsel is entitled." *Pennsylvania v. Delaware Valley Citizens Counsel for Clean Air*, 478 U.S. 546,

> 564 (1986); *see also Bldg. Serv. Local 47 Cleaning Contractors Pension Plan v. Grandview Raceway*, 46 F.3d 1392, 1402 (6th Cir. 1995) ("There is a strong presumption that this lodestar figure represents a reasonable fee.") (citations omitted).

(Doc. 169 at 2.)

1. Fees for the Artic Litigation

Plaintiffs' attorneys argue that, in light of this Court's fee award in the Artic Litigation, they are entitled to one third of the recovery from Comerica, including any award of prejudgment interest. Plaintiffs' counsel is mistaken. The Court's fee award in the Artic Litigation provided that Plaintiffs' counsel was entitled to $1,862,028 (one third of the $5,583,084 common fund), and could "take its fees on a pro rata basis from amounts actually collected from Defendants or from third parties." *Artic Order Awarding Attorneys' Fees*, 2:97-cv-750, Doc. 210 at 4. This Court found that award reasonable after comparing it to the lodestar figure for the actual hours expended and rates charged by Plaintiffs' attorneys. The ordered fee award was equivalent to the lodestar enhanced by a multiplier of 1.46, a performance bonus that the Court considered appropriate in that case. Thus, Plaintiffs' attorneys are entitled to remuneration for work expended in the Artic Litigation (including from amounts collected from third parties such as Comerica) only up to $1,861,028. Plaintiffs recovered $900,000 from the Artic Litigation, and their counsel was entitled one third of monies collected, or $300,000. Thus, the Court hereby **AWARDS** Plaintiffs' counsel **$1,561,028** from the Comerica Judgment as payment for their services in the Artic Litigation.

2. Fees for the Comerica Litigation

Plaintiffs' counsel also seeks from the Comerica Judgment attorneys' fees for services provided in the Comerica Litigation. In determining the reasonable fees and expenses to which Plaintiffs' counsel are entitled, this Court will utilize the lodestar method. Plaintiffs' counsel has

set forth spreadsheets showing attorney and paralegal time expended over the eight years of the Comerica Litigation. (*Cullen Dec*., Doc. 164-1, Exs. B & C.) From June 1, 2004 through December 31, 2011, the Cullen Law Firm expended 3,617 hours in attorney and paralegal time with a total time value of $964,982. (Cullen Dec., Doc. 164-1, Ex. B.)[1] The Cullen Law Firm ("TCLF") bills OOIDA at attorney rates ranging from $225-$375 per hour pursuant to a larger retainer agreement under which the firm represents OOIDA on both contingency and non-contingency matters. Accordingly, Plaintiffs' counsel attests, the rates of individual timekeepers are artificially low because the retainer contemplates full compensation through fee awards from common funds. Id. at ¶ 7. Plaintiffs' local counsel, Helmer, Martins, Rice and Popham, billed $126,907 for 273 hours of services provided in the Comerica Litigation between June 30, 2005 and March 31, 2012. *Id*., Ex. B. The total time value for all attorneys and paralegals for the Comerica Litigation equals $1,091,889. *Id.* Given the complexity of and duration of the litigation, the Court finds these hours and fees to be reasonable.

Plaintiffs' attorneys also contend that their services qualify for a performance bonus. Where a party requests an enhancement of the lodestar figure, courts in this Circuit have examined fee awards in light of various factors, including: (1) the value of the benefit rendered to the plaintiff class; (2) society's stake in rewarding attorneys who produce such benefits; (3) the risk of nonpayment – whether the services were undertaken on a contingent fee basis; (4) the value of services on an hourly basis; (5) the complexity of the litigation; (6) the professional skill and standing of counsel on both sides. Multipliers of between one and four may be awarded in cases involving novel issues that require a greater risk of recovery and nonpayment for the

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[1] That includes: 219 hours in the Arctic bankruptcy for time expended for the adversary proceeding against Comerica (total time value $58,674); 1,026 attorney and paralegal hours on proceedings in the District Court, through the entry of summary judgment (total time value $264,222); 407 hours in attorney and paralegal time on the appeal to the Sixth Circuit (total time value $107,674); 1,965 attorney and paralegal hours from remand from the Sixth Circuit through post trial submissions to this Court in December 2011 (total time value $534,412). *Id.*

attorneys. *Rawlings v. Prudential-Bache Properties, Inc.,* 9 F.3d 513, 517 (6th Cir. 1993) (multiplier of 2.0 found reasonable); *In re: Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation,* 268 F. Supp. 2d 907, 939 (N.D. Ohio 2003) (effective overall lodestar multiplier of 2.4 as cross check for percentage award found reasonable in case with numerous counsel); *Bailey v. AK Steel Corporation,* 2008 WL 553764, at *2 (S.D. Ohio February 28, 2008) (multiplier of 3.04 "fully warranted given the complexity of the case and attendant risks"); *Lonardo v. Travelers Indem. Co.,* 706 F. Supp. 2d 266, 796 (N.D. Ohio 2010) (fee at multiplier of 1.3 awarded, but noting that multipliers in excess of that amount common). The determination of whether to enhance the lodestar figure and what multiplier to apply are matters for the Court's sound discretion. *Rawlings,* 9 F.3d at 517.

In the Artic Litigation, this Court found the common fund fee award reasonable in part because it represented an enhancement of the lodestar figure by a multiplier of just under 1.5. *Artic Order Awarding Attorneys' Fees*, 2:97-cv-750, Doc. 210 at 3-4. In most respects, the circumstances of the Comerica Litigation are quite similar.

First, there was benefit to the plaintiff class. This hard-won judgment, litigated over eight years (fifteen including the Artic Litigation), awards Plaintiffs 100% of the maintenance escrows withheld by Artic and then transferred to Comerica. Second, this litigation secured for the class, and for owner-operators in general, important precedents that protect and clarify their rights in relationships with motor carriers and third parties. Society, therefore, has a stake in encouraging attorneys to bringing such suits in the future.

The third and fourth factors, risk of nonpayment and value of services are present here as well. This matter was litigated by The Cullen Law Firm under a modified contingent-fee arrangement for rates markedly discounted from the full rates charged to other clients. Plaintiffs' counsel avers that TCLF rates under the OOIDA retainer agreement range from $225 - $375 per

hour for attorneys. (*Cullen Dec*., Doc. 164-1, ¶7). In contrast, TCLF has charged hourly rates ranging from $400 - $495 in False Claims Act matters and on fee applications in other successful proceedings, consistent with the published rates for the Department of Justice's Civil Laffey Matrix.[2] *Id.* Furthermore, the majority of the hours charged in both the Arctic and Comerica matters were billed by Joyce Mayers at a rate of $250 -$275 per hour, approximately half of what her 35 years of experience would justify under the Laffey Matrix. Moreover, at no stage was the outcome of the proceedings clear. Thus, throughout the Comerica Litigation, the attorneys faced a very real risk of nonpayment.

Fifth, like the Artic Litigation, the Comerica Litigation was unquestionably complex. The litigation touched on numerous matters of first impression, and every issue was vigorously contested at every stage. Thus, factors 1-5 weigh in favor of applying the same lodestar multiplier that this Court previously found reasonable in the Artic Litigation. *See Artic Order Awarding Attorneys' Fees*, 2:97-cv-750, Doc. 210 at 3-4 (finding a 1.46 multiplier to be reasonable).

The final factor is the professional skill and standing of counsel on both sides. In general, attorneys for both parties were of the highest quality. The Court notes, however, the mishandling of discovery in connection to Comerica's statute of limitations defense. Because Plaintiffs' counsel failed to produce timely the extraordinary discovery ordered by this Court, the Court continued the October 3, 2011 bench trial to give Defendant time to review Plaintiffs' late production and depose any necessary witnesses. (Doc. 132) The Court also ordered The Cullen Law Firm and Helmer, Martins, Rice & Popham to reimburse Defendant for its reasonable costs and attorneys' fees in deposing certain witnesses as a sanction for their conduct. (*Id.*) Counsel's

[2] *See* Lafferty Matrix, *available online at*: http://www.justice.gov/usao/dc/divisions/civilLaffeyMatrix2003-2012.pdf

egregious discovery violations undermined their professional skill and standing in this case. This weighs in favor of applying a lesser fee enhancement than that used in the Artic Litigation.

In light of the above, this Court finds that it is appropriate in this case to enhance the $1,091,889 Comerica lodestar figure by a multiplier of 1.25. Accordingly, the Court hereby **AWARDS** Plaintiffs' counsel **$1,364,861.25** from the Comerica Judgment as payment for services provided in the Comerica Litigation. The combined fee award to which Plaintiffs' counsel is entitled in connection with the Artic and Comerica cases is **$2,925,889.25**.

IV. SUPERSEDEAS BOND

Defendant requests that this Court stay execution on the judgment entered March 20, 2012, pending the resolution of Comerica Bank's appeal, and approve its filing of a $5,700,000 supersedeas bond. (Doc. 161.) Rule 62(d) of the Federal Rules of Civil Procedure entitles Defendant to an automatic stay of judgment pending appeal upon the filing of a satisfactory cash supersedeas bond. *Arban v. West Publ'g Corp*., 345 F.3d 390, 409 (6th Cir. 2003). The bond is security to cover the judgment, and the appropriate amount of such bond is a determination left to the discretion of the trial court. *See id*. (noting the flexibility of the bond requirement and finding no abuse of discretion where the district court dispensed with the bond entirely).

Defendant's proffered bond is no longer sufficient to cover the costs of both the $8,230,414.62 Comerica Judgment and post-judgment interest. *See* 28 U.S.C. § 1961 (post-judgment interest "shall be calculated from the date of the entry of judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield"); Federal Reserve, *Statistical Release: H.15 (519) Selected Interest Rates* (March 26, 2012) (March 20, 2012 interest rate 1-year Treasury yield is 0.21% per annum).[3] Accordingly, the Court finds that Defendant's bond does not provide sufficient security for the Court's March 20, 2012 judgment. Defendant's

[3] *Available online at*: http://www.federalreserve.gov/releases/h15/20120326/.

motion is, therefore, **DENIED**. Defendant must obtain a new bond in order to stay execution of this Court's judgment pending Defendant's appeal.

V. CONCLUSION

For the reasons stated herein, this Court hereby **GRANTS** in part Plaintiffs' Motion to Alter Judgment, **GRANTS** in part Plaintiffs' application for attorneys' fees, and **DENIES** Defendant's motion for approval of bond. The Court **AWARDS** Plaintiffs **$8,230,414.62**, consisting of base damages in the amount of $5,583,084 and prejudgment interest in the amount of $2,647,330.62. The Court further **AWARDS** Plaintiffs' counsel **$2,925,889.25** from the Comerica Judgment as payment for services provided.

IT IS SO ORDERED.

s/Algenon L. Marbley__________
Algenon L. Marbley
United States District Court Judge

DATE: March 27, 2013