NO. 19-_____

In the Supreme Court of the United States

JOHN P. HANKINS, RAYMOND GUZALL III, and RAYMOND GUZALL III, P.C.,

Petitioners,

v.

BARRY A. SEIFMAN, and BARRY A. SEIFMAN, P.C.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the SixthCircuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This case involves the violation of settled law and the improper creation of Michigan law. The Sixth Circuit held the case law it relied upon "displaced the general rule", however those cases cited by the Sixth Circuit do not include the words "general rule", and the Sixth Circuit did not explain what it meant by replacing a non-existent "general rule".

Michigan law holds that a contingency fee agreement does not operate to determine a discharged attorney's fee and that the court is required to analyze the illegal and public policy violations of a Michigan attorney. The Sixth Circuit's decision violated Michigan law and Unlawfully created new law.

The Sixth Circuit also made new Michigan contract law allowing Michigan residents to now create and enforce a contract beyond the written word of the contract and in direct contradiction to the admitted intent of the contract, in violation of Michigan law, Sixth Circuit and U.S. Supreme court decisions.

THE QUESTION PRESENTED IS:

Can the Sixth Circuit Court of Appeals violate settled Michigan law, Sixth Circuit and U.S. Supreme court decisions and/or make Michigan law?

LIST OF PARTIES

Petitioners

- John P. Hankins
- Raymond Guzall III
- Raymond Guzall III, P.C.

Respondents and Third Party Plaintiffs/Appellees

- Barry A. Seifman
- Barry A. Seifman, P.C.

Third Party Defendants Below

Per Supreme Court Rule 12.6, counsel for Petitioners notifies the Clerk of Court that the following parties no longer have an interest in the outcome of this petition:

- City of Inkster
- Gregory Gaskin

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 14.1(b), Raymond Guzall III, P.C. has no parent corporation and no publicly traded corporation owns 10% or greater of the company.

LIST OF PROCEEDINGS BELOW

United States Court of Appeals for the Sixth Circuit

Case No. 18-1645

John Hankins, Plaintiff-Appellant, v.
City of Inkster, *Et Al.*, Defendants; *Barry Seifman; Barry Seifman, P.C.*,Third-Party Plaintiffs-Appellees; *Raymond Guzall III; Raymond Guzall III, P.C.*, Third-Party Defendants-Appellants.

Decision Date: March 22, 2019

Rehearing Denial Date: May 28, 2019

United States District Court for the Eastern District of Michigan, Southern Division

Case No. 09-13395

John P. Hankins, Plaintiff, v.
City of Inkster, Et Al., Defendants.

Decision Date: May 16, 2018

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

Page

TABLE OF CONTENTS – Continued

Page

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

STATUTES

JUDICIAL RULES

TABLE OF AUTHORITIES—Continued

PETITION FOR A WRIT OF CERTIORARI

Petitioners John P. Hankins, Raymond Guzall III and Raymond Guzall III, P.C. respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the Sixth Circuit (App.1a-8a) is unpublished. The district court Magistrate's opinion (App.26a-39a) is unpublished. The district court's opinion (App.9a-25a) is unpublished.

JURISDICTION

The court of appeals issued its judgment on March 22, 2019. (App.1a). An order of the Sixth Circuit Denying Petition for Rehearing En Banc was issued on May 28, 2019. (App.40a). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Attorney Seifman filed a lien against his former client John Hankins upon Seifman's withdrawal of counsel to determine Seifman's fee:

> "Minute Entry-Status Conference held on 2/17/2012 re: [94], [95] Motion to Withdraw. Before District Judge Arthur J. Tarnow. Disposition: *Plaintiff's counsel Barry Siefman allowed to withdraw; lien issue to be decided later*. (Mlan)" (Judge Tarnow Minute Entry, RE 118, Page ID # 2697, emphasis added).

The record is deplete of a determination of Seifmans' filed lien as no such determination was made, which is a violation of Michigan law. Seifman's lien was his remedy "[u]nder Michigan law, a "special or charging lien" is an equitable right to have the fees and costs due for services secured out of the judgment or recovery in a particular suit." *Laborers Pension Tr. Fund-Detroit & Vicinity v. Interior Exterior Specialists Co.*, 824 F.Supp.2d 764 (E.D. Mich. 2011). "The law creates a lien of an attorney upon the judgment or fund resulting from his services, . . . " *Ambrose v. Detroit Edison Co.*, 65 Mich. App. 484, 487-88, 237 N.W.2d 520, 522 (1975), cites omitted. Thus, the services rendered to John Hankins by Seifman was the sole issue by law to be determined. The district court here properly maintained jurisdiction to determine Seifman's lien, however instead of applying the law and determining Seifman's lien against Hankins, the district court determined Seifman was owed money by Hankins'

attorney Guzall. In violation of settled Michigan and Federal law and the district court's own order, the district court then unlawfully based it's decision to pay Seifman upon the prior agreements/contracts between Guzall and Seifman as former law partners.

While proceeding against attorney Guzall in violation of it's own order, Michigan law, and other Federal cases which properly applied Michigan law, the district court failed to address let alone analyze Seifman's many breaches of the agreements/contracts, which pursuant to Michigan law would prevent any recovery to Seifman. Thus, after the district court proceeded in violation of it's written order and settled Michigan law, the court also violated the law by preventing Guzall from setting forth a defense to Seifman's contract claim against attorney Guzall, and in so doing-deprived Guzall of due process. The district court also failed to address or analyze Seifman's numerous illegal acts and/or public policy violations or Seifman's material and substantial breaches of the existing Agreements/Contracts as Michigan law requires. Seifman's admitted violations are:

1. Attorney Seifman admitted in his testimony to commingling his funds with client funds in the Firm's IOLTA account over the 6 year period Seifman and Guzall were law partners and during the time the Firm represented Mr. Hankins; (Objection, RE 156, Page ID # 3763-3764, Exhibit 2, Seifman deposition, p. 110 lines 13-15 to p. 111 lines 10-12).

2. Seifman's own testimony and documents illustrate Seifman paid his wife over $88,000.00 out of the Law Firm's IOLTA account during

the time Mr. Hankins' was a client of the Firm; (Objection, RE 156, Page ID # 3772; Seifman dep., p. 154).

3. Seifman admitted to paying his and his wife's personal bills with Law Firm money when Guzall was his partner. (Objection, RE 156, Page ID # 3830-3832, Exhibit 6). The agreements did not allow Seifman to pay his wife's dental bills with Firm money. (Objection, RE 156, Page ID # 3755-3759, Exhibit 1). Seifman's wife did not work for the Firm. (Objection, RE 156, Page ID # 3821, Exhibit 5, para. 2).

4. Seifman testified he did not tell Guzall he wrote corporate checks to pay for his and his wife's personal bills. (Objection, RE 156, Page ID # 3817-3818, Ex. 4, p. 172 lines 7-8; p. 173 lines 1-8; p. 174 line 2 to p. 176 line 19). Seifman's failures to advise Guzall he was paying his wife over $88,000.00 and his wife's bills with Firm monies were material breaches of the agreements Seifman signed with Guzall. (Objection, RE 156, Page ID # 3760-3789, Exhibit 2; Page ID # 3802-3818, Exhibit 4; and Page ID # 3830-3859, Exhibit 6).

5. Seifman keeping his claimed funds of over $200,000.00 within the Firm's IOLTA account over a period of several years was tax evasion and Seifman's conduct subjected the Firm, Seifman, Seifman's wife and attorney Guzall to Michigan public policy violations and violations of State and federal law. MRPC

1.15(a)(3); 18 U.S.C.A. § 371, 26 U.S.C.A. § 7201; MCL 205.27.

6. Barry Seifman was to loan the Company $30,000.00 per written agreement between he and Guzall. (Objection, RE 156, Page ID # 3756, Ex. 1, p. 1). Siefman testified he could not account for that $30,000.00 he was supposed to loan the Firm. (RE 156, Page ID # 3777 to 3778, Ex. 2, p. 197 line 12 to p. 198 line 13). He testified it would be an IOLTA check. (*Id.*, at Ex. 2, p. 198 line 2). Because the contract between the parties states " . . . Seifman shall loan the Company Thirty Thousand and 00/100 Dollars…" and that loan never occurred, Siefman substantially breached the contract first in time, uncontroverted by his own testimony and his own written contract. (Objection, RE 156, Page ID # 3756 Ex 1, p. 1; Objection, RE 156, Page ID # 3773 Ex 2, p. 180 lines 19-22).

Here the Sixth Circuit failed to apply settled Michigan law and therefore it's Opinion directly conflicts with the herein cited Michigan Supreme Court, Sixth Circuit and U.S. Supreme Court decisions as detailed further herein including the United States Supreme Court decisions (*Erie R. Co., v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817, 822, 82 L.Ed. 1188 (1938); *Exxon Mobil Corp v. Saudi Basic Indus Corp*, 544 U.S. 280, 292; 125 S.Ct. 1517, 1526-27; 161 L.Ed.2d 454 (2005); *Donovan v. City of Dallas*, 377 U.S. 408, 412-13; 84 S.Ct. 1579, 1582 (1964)) and the Sixth Circuit decisions in (*Ram Int'l, Inc. v. ADT Sec. Servs., Inc.*, 555 F. App'x 493, 507-08 (6th Cir. 2014); *Leary*

v. Daeschner, 228 F.3d 729, 741 (6th Cir. 2000); and *City of Pontiac Retired Employees Ass'n v. Schimmel*, 751 F.3d 427, 432 (6th Cir. 2014). "performance of a duty when performance is due is a breach . . . " *Woody v. Tamer*, 158 Mich. App. 764, 772; 405 N.W.2d 213 (1987) cite omitted.

The Sixth Circuit also held the case law that it relied upon "displaced the general rule", however those cases cited by the Sixth Circuit do not include the words "general rule", and the Sixth Circuit did not explain what it meant by replacing a non-existent "general rule", thereby ruling in violation of and in direct conflict with the cited law herein. Yet assuming there does exist a "general rule", the Sixth Circuit cannot "displace" a Michigan general rule: *Erie R. Co., supra,* at 822; and " . . . it does not follow that courts may rewrite the rule." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 431, 130 S.Ct. 1431, 1456, 176 L.Ed.2d 311 (2010), emphasis added. Further "[f]ederal courts cannot make state law. Nor can the case be read to conflict with this circuit's prior precedent that in Michigan "the law imposes an obligation . . . " *Ram Int'l, Inc. v. ADT Sec. Servs., Inc.*, 555 F. App'x 493, 507 (6th Cir. 2014).

The district court's Hankins' opinion does not include the words "general rule". (App.9a-25a). To secure and maintain uniformity and prevent the unlawful creation of Michigan law, the Sixth Circuit's Opinion must be overturned as there is no "general rule" to displace, and no authority to do so even if such did exist. Without action by this Court, the improper/unlawful creation of Michigan law will have

occurred by replacing a "general rule" that never existed in Michigan law.

REASONS FOR GRANTING THE PETITION

I. THE SIXTH CIRCUIT HAS IMPROPERLY REWRITTEN MICHIGAN LAW IN DIRECT CONTRADICTION WITH MICHIGAN SUPREME COURT, SIXTH CIRCUIT AND U.S. SUPREME COURT DECISIONS.

Federal court's cannot alter or make Michigan law nor conflict with prior precedent (*Ram, supra,* at 507) and therefore must apply Michigan law: "Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern." *Erie R. Co., supra,* at 822, emphasis added. The Sixth Circuit's failure to apply Michigan law and "displace the general rule" (Sixth Circuit Opinion at the last full paragraph (App.8a)) where no general rule exists, therefore directly conflicts with the cited decisions herein.

Here, Hankins' possessed a contract with Seifman, and upon Seifman filing his lien the court was required to apply Michigan law. Michigan law is "[w]hether a lien is authorized in a particular case is a question of law." *Ypsilanti Charter Twp. v. Kircher*, 281 Mich. App. 251, 281, 761 N.W.2d 761, 780 (2008). The district court failed to abide by Michigan law in failing to determine Seifman's lien. Because Seifman filed his

motion for lien against John Hankins in the Hankins' case, Seifman's claim was before the Federal Court. Seifman's sole claim by law was against John Hankins as to what if anything Hankins owed Seifman for Seifman's services as the withdrawing attorney, as the district court initially and properly determined. (Judge Tarnow Minute Entry, RE 118, Page ID # 2697; Objection, RE 156, Page ID # 3863, Ex. 7, January 3, 2013 Order at para. 6). Seifman submitted the hours he worked on the Hankins case to the Federal court which equated to $4,050.00 at his requested hourly fee. By law that is the most Seifman could have expected to be awarded. *Ecclestone v. Ogne*, 177 Mich. App. 74, 76 (1989); *Shady Grove Orthopedic Assocs., supra,* at 431; *Erie R. Co., supra,* at 822.

As to the district court's decision at the end of the case, which was a determination that Hankins' attorney Guzall owed Seifman money based upon the prior written agreements/contracts between Guzall and Seifman, "Michigan law is settled: "'He who commits the first substantial breach of a contract cannot maintain an action against the other contracting party for failure to perform.'" *Chrysler Intern Corp v. Cherokee Exp Co*, 134 F.3d 738, 742 (CA 6, 1998); *see also Flamm v. Scherer*, 40 Mich. App. 1, 8; 198 N.W.2d 702, 706 (1972). The Sixth Circuit however failed to apply Michigan law, as it <u>failed to discuss, let alone determine Seifman's substantial breaches of his contracts with Guzall</u>. (App.1a-8a). Because the Sixth Circuit failed to apply settled Michigan law and has created new Michigan law, it's Opinion directly conflicts with a prior Sixth Circuit court decision (*Ram, supra,* at 507-508) and the U.S. Supreme Court in *Erie R. Co., supra,* at 822.

Further, because Guzall had a property interest in the monies he earned as contracted for with Hankins', Guzall's due process rights were violated. *Leary, supra*, at 741, and *see*; *City of Pontiac Retired Employees Ass'n, supra* at 432. The district court improperly allowed Seifman to assert claims against Guzall in Hankins' case and yet Guzall was deprived of his right to assert claims and defenses against Seifman to protect his property interest amounting to over $600,000.00. Because the court allowed only Seifman to assert claims and deprived Guzall, Guzall's due process rights were violated, effectively and improperly creating new law.

A. The Sixth Circuit Has Unlawfully Rewritten Michigan Contract Law by Re-Writing the Contracts Between Guzall and Seifman Under the Guise of Interpretation, and in the Face of Seifman's Admission.

The Michigan Supreme Court holds a court cannot create ambiguity in a contract where none exists "we will not create ambiguity where none exists." *Smith v. Physicians Health Plan, Inc.*, 444 Mich. 743, 759, 514 N.W.2d 150, 157 (1994). Furthermore, "[a] court cannot infer the parties' "reasonable expectations" in order to rewrite a clear and unambiguous contract." *Westfield Ins. Co. v. Ken's Serv.*, 295 Mich. App. 610, 615, 815 N.W.2d 786, 789 (2012). The Michigan Supreme Court also holds "[w]e do not rewrite the agreement of the parties under the guise of interpretation." *Vigil v. Badger Mut. Ins. Co.*, 363 Mich. 380, 383, 109 N.W.2d 793, 795 (1961). "Just as courts are not to rewrite the express language of statutes, it has long been the law in this state that courts are not

to rewrite the express terms of contracts." *McDonald v. Farm Bureau Ins. Co.*, 480 Mich. 191, 199-200, 747 N.W.2d 811, 817 (2008).

Here the Sixth Circuit never addressed nor cited to the Michigan Supreme Court cases of *Smith, supra, Vigil, supra,* or *McDonald, supra,* and has rewritten Michigan law by creating ambiguity where none existed, inferring the parties' "reasonable expectations" to rewrite the clear and unambiguous contract, and by rewriting the express agreement under the guise of interpretation. The Guzall/Seifman agreements were not fee-splitting agreements, even as admitted by Seifman. (RE 110-1, Page ID # 2418, lines 12-13, Seifman's Brief, p.9). The Guzall/Seifman agreements were shareholder agreements as discussed in greater detail below. Because the Sixth Circuit not only failed to apply Michigan law, but has effectively rewritten Michigan law, the Sixth Circuit Opinion must be reversed as it also conflicts with the U.S. Supreme Court's mandate; "[e]xcept in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state." *Erie R. Co., supra,* at 822, emphasis added.

Because the undisputed record evidence shows Seifman was the first to substantially breach the agreements he had with Guzall, the Magistrate's Report could not have been adopted as it was in direct conflict with the law. Therefore the Sixth Circuit's Opinion has unlawfully created new law in Michigan by up-holding the district court's decision which improperly relied upon the Magistrate's Report.

Yet further, the Sixth Circuit could not rewrite the contracts between Seifman and Guzall by creating

ambiguity where none existed, inferring the parties' "reasonable expectations" of rewriting the express agreement under the guise of interpretation. *See*; *Smith, supra,* at 759; *Vigil, supra,* at 383; and *Mc-Donald, supra,* at 199-200. Here, Seifman admitted there was no fee splitting agreement as there was no exact method for dividing the fees in the event of a shareholder leaving, "[w]hile the agreement between Seifman and Guzall does not provide for an exact method for dividing fees in the event a shareholder leaves . . . " (RE 110-1, Page ID # 2418, lines 12-13, Seifman's Brief, p. 9, emphasis added). The Sixth Circuit held completely the opposite of the facts and law and unlawfully altered the contracts between Guzall and Seifman by holding that there was an exact method for dividing the fees upon a shareholder leaving. (App.8a). The Sixth Circuit contradicted it's own statement that there was " . . . no provision governing fee allocation if either Seifman or Guzall left the firm and took a case with him", (agreeing with Michigan Supreme Court law as cited herein, in that the Sixth Circuit could not alter the Guzall/Seifman contracts), but then held that the agreements between Seifman and Guzall were not "shareholder" agreements, but were "fee-splitting" agreements, (in direct contradiction to the facts and law). The Sixth Circuit then unlawfully determined to pay Seifman in direct opposition to Seifman's admission that the Seifman and Guzall agreements do " . . . not provide for an exact method for dividing fees in the event a shareholder leaves . . . " (RE 110-1, Page ID # 2418, lines 12-13, Seifman's Brief, p.9, emphasis added). Therefore the Sixth Circuit has improperly re-written the contracts between Guzall and Seifman under the guise of interpretation, and in

the face of Seifman's admission to the contrary, and has improperly created new Michigan law.

i. The Sixth Circuit Violated the Law When It Failed to Discuss Let Alone Apply the Admitted Substantial Breaches of Seifman as Required by Michigan Law and This U.S. Supreme Court.

Seifman substantially breached the agreements with Guzall as detailed previously herein. The law requires the Sixth Circuit to discuss and apply Michigan law. *Erie R. Co., supra,* at 822. "Michigan law is settled: "'He who commits the first substantial breach of a contract cannot maintain an action against the other contracting party for failure to perform.'" *Chrysler Intern Corp, supra,* at 742 (CA 6, 1998), Michigan Supreme Court cites omitted. Because the Sixth Circuit and district court failed to address let alone apply Michigan law here, the lower court's must be directed to do so by this Court to maintain and uphold the law. When the admissions of Seifman as to his substantial breaches are applied, Seifman would not be entitled to any claim against Guzall, pursuant to the Michigan Supreme Court and this U.S. Supreme Court. *Chrysler Intern Corp, supra,* at 742 (CA 6, 1998); *Erie R. Co., supra,* at 822.

B. The Sixth Circuit's Ruling That the "General Rule" Was Displaced Pursuant to *Mccroskey* and *Torpey* Has Improperly Created New Michigan Law, as No General Rule Exists to Be Replaced.

The Sixth Circuit here stated " . . . the fee-splitting agreement displaced the general rule and

remained in force after Guzall left the Firm." (Opinion, last full paragraph). Yet the Sixth Circuit failed to advise what the "general rule" is. At a minimum the Sixth Circuit must articulate what the "general rule" is, as the words "general rule" do not even exist in the decisions of *McCroskey*, *supra*, or *Torpey v. Secrest, Wardle, Lynch, Hampton, Truex, Morley, P.C.*, No. 234956, 2003 WL 21958289, (Mich. Ct. App. Aug. 14, 2003), which are the two opinions the Sixth Circuit relied upon within it's last paragraph of it's Opinion. (App.8a). The Sixth Circuit relied upon *McCroskey* which entailed an admission of a fee-splitting agreement "Defendant also admitted that he told a previously departing director that he felt that the fee-splitting arrangement was valid and enforceable." *McCroskey, Feldman, Cochrane & Brock, P.C. v. Waters*, 197 Mich. App. 282, 285, 494 N.W.2d 826, 827 (1992), emphasis added. In this Hankins' case there was no such admission as there was no fee-splitting agreement, and therefore the *McCroskey* case was and is inapplicable. The agreements in this case as submitted to the court were labeled by attorney Seifman as "shareholder" agreements and the agreements were signed by Seifman and Guzall. The agreements also progressed as to Guzall's increasing shares in the Firm and Seifman repeated that he was owed $30,000.00 that he loaned the Firm, (RE 103-2, Page ID # 2239-2240; RE 156, Page ID # 3756, Ex. 1, p. 1), and yet that $30,000.00 loan never occurred as per Seifman's own testimony. (Objection, RE 156, Page ID # 3773 at Ex 2, p. 180 lines 19-22).

Nonetheless, the Sixth Circuit cannot displace a "general rule" that does not exist, and therefore has effectively created new Michigan law. *Shady Grove*

Orthopedic Assocs., supra, at 431; *Erie R. Co., supra,* at 822. Yet further, Michigan law is the direct opposite of the Sixth Circuit's ruling here as only the withdrawing attorney (which was Seifman) can be paid an hourly rate for services rendered. *Ecclestone v. Ogne*, 177 Mich. App. 74, 76 (1989); *Shady Grove Orthopedic Assocs., supra*, at 431; *Erie R. Co., supra,* at 822.

There is no "general rule" cited within *Ecclestone* nor within *Reynolds v. Polen*, 222 Mich. App. 20, 564 N.W.2d 467 (1997). There is no "general rule" cited within *Barth v. Fieger*, which analyzed and reiterated the law in a case on point:

> "[A]s long as a discharged attorney does not engage in disciplinable misconduct prejudicial to the client's case or conduct contrary to public policy that would disqualify any quantum meruit award, a district court should take into consideration the nature of the services rendered by an attorney before his discharge and award attorney fees on a quantum meruit basis." *Reynolds,* 222 Mich. App. at 27. However, "*quantum meruit* recovery of attorney fees is barred when an attorney engages in misconduct that results in representation that falls below the standard required of an attorney (*e.g.*, disciplinable misconduct under the Michigan Rules of Professional Conduct) or when such recovery would otherwise be contrary to public policy." *Id.* at 26." *Barth v. Fieger*, No. 306078, 2013 WL 238532, at *1 (Mich. Ct. App. Jan. 22, 2013), emphasis. (Objection, RE 156, Page ID # 3881).

"Plaintiffs first argue that the district court abused its discretion in failing to consider whether Fieger's alleged misconduct resulted in a forfeiture of the Fieger firm's lien interest. We agree." *Barth, supra,* at * 1, emphasis. Pursuant to the Hankins' court's January 3, 2013 Order, the only issue before the Court was, " . . . whether Mr. Seifman should take any portion of the fee under *quantum meruit*." (Objection, RE 156, Page ID # 3863, Ex. 7, January 3, 2013 Order at para. 6, emphasis added illustrating Seifman). The scope of that Order however, and subsequent "hearing" and Report failed to adhere to Michigan law-which is-paying Seifman upon quantum meruit for his services and requiring consideration of Seifman's improper and illegal acts. Here the district court appropriately stated the law within it's order (paying Seifman upon quantum meruit as illustrated within RE 156, Page ID # 3863, Ex. 7, January 3, 2013 Order at para. 6), but then failed to apply the law (and then paid Hankins' attorney Guzall quantum meruit in direct violation of Michigan law and the court's own order). The district court also violated Michigan law by improperly preventing testimony and proofs illustrating Seifman violated Michigan and Federal law, Michigan public policy, and engaged in unprofessional conduct. The Sixth Circuit's Opinion upholding the district court's ruling has therefore effectively and improperly created new Michigan law.

Furthermore the law holds, "[a]n attorney may lose his right to fees for unprofessional conduct. . . . " *Rippey v. Wilson*, 280 Mich. 233, 245, 273 N.W. 552 (1937). There is no "general rule" cited within *Rippey*, Michigan law must be followed and applied, and although argued by Petitioners, the Sixth Circuit

refused to apply the law and failed to cite to let alone apply *Rippey, supra*, and therefore has effectively unlawfully altered Michigan law:

> "Finally, the court of appeals distinguished the *Rippey* case by observing that, although *Rippey* awarded the attorneys a fee under *quantum meruit*, the court still held that "an attorney may lose his right to fees for unprofessional conduct," and the court reduced the amount of attorney fees in that case to cover only services that "produced definite valuable results to plaintiff." *Idalski v. Crouse Cartage Co*, 229 F.Supp.2d 730, 741-742 (E.D. Mich. 2002).

Here the *Hankins'* Sixth Circuit ruled in direct opposition to *Rippey, supra,* and *Idalski, supra,* (never even citing to *Idalski, supra,* or *Rippey, supra,)* and improperly rewrote "the agreement of the parties under the guise of interpretation" (*Vigil, supra,* at 383) as the Guzall/Seifman agreements were <u>not</u> fee-splitting agreements, <u>even as admitted by Seifman</u>. (RE 110-1, Page ID # 2418, lines 12-13, Seifman's Brief, p. 9). Seifman admitted there was <u>no</u> fee splitting agreement as there was <u>no</u> exact method for dividing the fees in the event of a shareholder leaving, "[w]hile the agreement between Seifman and Guzall does <u>not provide for an exact method for dividing fees in the event a shareholder leaves</u> . . . " (RE 110-1, Page ID # 2418, lines 12-13, Seifman's Brief, p. 9, emphasis added). Because Seifman <u>admitted</u> there was no " . . . exact method for dividing fees in the event a shareholder leaves . . . ", the court improperly created new Michigan law in determining the existence of a

fee-splitting agreement in direct opposition to Michigan law by going beyond the parties' admitted intent and unlawfully rewriting the contract. *Vigil, supra,* at 383; *Shady Grove Orthopedic Assocs., supra*, at 431; *Erie R. Co., supra,* at 822.

It can hardly be stressed enough that Seifman himself admitted that the shareholder agreements in the Hankins' case were not fee splitting agreements as there was no " . . . exact method for dividing fees in the event a shareholder leaves . . . ". (RE 110-1, Page ID # 2418, lines 12-13). It is therefore beyond clear that the Sixth Circuit has violated Michigan law and created new law as the Michigan Supreme Court held "[w]e do not rewrite the agreement of the parties under the guise of interpretation." *Vigil, supra,* at 383, emphasis added.

C. In Contradiction to the Sixth Circuit Court's Intimation, the District Court Did Not Rely Upon *Torpey, Supra.*

The Sixth Circuit's Opinion also directly conflicts with the district court record stating the district court's decision was consistent with "*Torpey*". (App.8a, last full paragraph). The district court did not rely upon *Torpey*, and rightfully so, as *Torpey*, like *McCroskey, supra,* included an actual fee-splitting agreement, unlike the "shareholder agreement" in Hankins' with no agreement of a fee-split upon departure as admitted by Seifman. (January 23, 2013 Transcript cited by the district court at p. 51 lines 8-25; RE 110-1, Page ID # 2418, lines 12-13).

The *Torpey* Facts are:

"If any time during the period ending two (2)

> years after the Termination, the Employee, Employee's Firm or a Referral Attorney shall undertake the representation of a Firm Client, on an existing case, Employee shall, within thirty (30) days after the Employee, Employee's Firm or a Referral Attorney has collected any fees with respect to any matter being handled for such Firm Client at the time of Termination, pay the corporation 50% of such fees." *Torpey, supra*, at *1.

The *Torpey* case is opposite of the newly created Sixth Circuit law in *Hankins*, as *Torpey, supra,* like *McCroskey, supra,* included an actual admitted fee-splitting agreement after departure. Here Seifman admitted there was no agreement to determine fees after departure, yet the Sixth Circuit ruled there was such an agreement, in direct contradiction to the written contract and facts and thus improperly rewriting Michigan law.

D. The Sixth Circuit Relied Upon the Unpublished Case of *Kohl*, in Direct Contradiction to Michigan Law — Acknowledging That There Was in Fact a Fee Splitting Agreement in *Kohl*, and Yet in This Case There Was None — As Admitted by Seifman.

The Sixth Circuit also cited to the unpublished case of *Kohl, Harris, Nolan & McCarthy, P.C., v. Peters*, 2008 WL 183294 for support, in direct contradiction to Michigan law applied in this case. (App.8a). In *Kohl*, there was a fee-split agreement " . . . Kohl's fee-splitting agreement . . . ". *Id.,* at * 2. The Hankins' court improperly attempted to "import" from *Kohl, supra,* where no "import" is allowed as Michigan law

is clear in that Seifman's claim rested upon his prior written agreement with Hankins, not Guzall, and the court could not by law rewrite Seifman and Guzall's contracts. The Sixth Circuit has therefore improperly rewritten Michigan law to allow for an "import" where no import is allowed in direct conflict with the court decisions cited and detailed herein. Binding Michigan law is:

> "If an attorney's employment is prematurely terminated before completing services contracted for under a contingency fee agreement, the contingency fee agreement no longer operates to determine the attorney's fee and the attorney is entitled to compensation for the reasonable value of his services on the basis of *quantum meruit*, ..." *Barth, supra,* at * 1, emphasis, cites omitted. (Objection, RE 156, Page ID # 3881).

No other Michigan case cites to *Kohl, supra,* for support. *Kohl, supra,* is unpublished and is not the law in Michigan. However the facts in *Barth, supra,* are the same as the Hankins' case and properly applied Michigan law. The law as applied illustrates that Seifman's employment was "prematurely terminated", "the contingency fee agreement no longer operates to determine the attorney's fee and the attorney is entitled to compensation for the reasonable value of his services on the basis of quantum meruit". *Id.* How Seifman's employment came to be terminated and whether it was Guzall or another attorney who represented Hankins thereafter are not determinative issues. *Id.* The district court not only ignored Michigan law but then feigned understanding the application of Michigan law stating

"Mr. Guzall claims that the R&R improperly "illustrates a determination against Guzall and not as against Mr. Hankins." (Dkt. 156 at 9). The Court is unclear as to Mr. Guzall's exact argument, . . . ", even though the specific argument regarding Seifman's lien with supporting law had been filed with the court on several occasions. (App.23a, at Section IV). Therefore, pursuant to Michigan law, Seifman's claim was solely against Hankins'.

In *Kohl, supra,* not only was there a "fee-splitting agreement", " . . . Kohl did not become a shareholder or employee of the corporation." *Kohl, supra,* at *1, emphasis added. The only form of payment in Kohl, *supra*, was a fee-splitting agreement to a non-employee. *Id.* "Specifically, Peters claims that he is not obligated to compensate Kohl under the fee-splitting agreement between his former law firm and Kohl because he did not enter into the agreement in his individual capacity, and that Kohl is only entitled to 50 percent of what the firm received. We disagree." *Kohl, supra,* at *2. In the Hankins' case, Guzall was a shareholder with a shareholder agreement and an admission by Seifman that there was no " . . . exact method for dividing fees in the event a shareholder leaves . . . ". The Sixth Circuit has therefore improperly rewritten Michigan law by now allowing a Michigan attorney to avoid application of Michigan lien and contract law and therefore the Sixth Circuit's Decision must by law be overturned.

Yet even if the Sixth Circuit were correct in creating new Michigan law as to an attorney's "lien" and creating a "fee-splitting agreement" in this Hankins' case despite the admission of attorney

Seifman and evidence otherwise, the Sixth Circuit could not prevent Guzall's defense of Seifman's breaches of the contracts nor overcome Michigan law as to a determination upon Seifman's public policy violations and/or illegal acts and Michigan Supreme court law regarding a fee claim-"[a]n attorney may lose his right to fees for unprofessional conduct. . . . " *Rippey, supra,* at 245. Michigan law must be adhered to and applied in order for justice to occur. It was therefore incumbent upon the Sixth Circuit to abide by and apply the Michigan Supreme Court case of *Rippey, supra,* at 245. The Sixth Circuit's failure to apply the Michigan Supreme Court case of *Rippey, supra,* violates the law as set forth by this United States Supreme Court in *Erie R. Co., supra,* at 822.

E. The Sixth Circuit Has Altered Michigan Law by Authorizing the District Court's Violation of It's January 3, 2013 Order and Rewriting Michigan's Res Judicata Law and the Law of the Case.

In determining Seifman's claims against Guzall, the district court violated it's own order by trying Seifman's Oakland County Lawsuit against Guzall "*de facto*", in direct contradiction to the Court's own order Doc. # 132. (Objection, RE 156, Page ID # 3868, Exhibit 8, p. 2-citing RE 155, Page ID # 3713). The law holds, "[a] district court fails to follow the law of the case when it revisits a matter on which this Court has already ruled." *Schumacher v. Dep't of Natural Resources*, 275 Mich. App. 121, 128; 737 N.W.2d 782 (2007). "Issues decided at an early stage of the litigation, either explicitly or by necessary inference from the disposition, constitute the law of the case." *Hanover*

Ins. Co. v. Am. Eng'g Co., 105 F.3d 306, 312 (6th Cir. 1997). The Sixth Circuit cited "res judicata" under Section II at page 4 of it's Opinion, but improperly only applied res judicata upon Guzall and not Seifman. The district court therefore improperly violated Michigan law by revisiting the matter upon which it ruled, and could not by law allow Seifman to re-litigate his claim and then in turn prevent Guzall his defenses or claims. As illustrated prior, Seifman's claim in this Federal Court was against Mr. Hankins, by law, as acknowledge by the district court and Seifman himself:

> "Minute Entry-Status Conference held on 2/17/2012 re: [94], [95] Motion to Withdraw. before District Judge Arthur J. Tarnow. Disposition: Plaintiff's counsel Barry Siefman allowed to withdraw; lien issue to be decided later. (Mlan)" (Judge Tarnow Minute Entry, RE 118, Page ID # 2697, emphasis added).

Pursuant to the court's January 3, 2013 Order, the only issue before the Court was, " . . . whether Mr. Seifman should take any portion of the fee under *quantum meruit*." (Objection, RE 156, Page ID # 3863, Ex. 7, January 3, 2013 Order at para. 6, emphasis added illustrating Seifman). Because the Sixth Circuit upheld the district court's revisiting of the matter upon which it previously ruled, the Sixth Circuit has unlawfully rewritten Michigan law. Further, because the Sixth Circuit only allowed one party (attorney Seifman) to re-litigate his case (Seifman's contract claim against Guzall), and failed to provide the same opportunity to attorney Guzall, the Sixth Circuit has unlawfully rewritten the Michigan law of res judicata

as specifically cited by the Sixth Circuit under Section II at page 4 of it's Opinion. (App.8a).

Yet regardless of the Sixth Circuit's improper creation of new Michigan res judicata law, the Sixth Circuit has also improperly rewritten Michigan contract law as it failed to analyze, let alone determine Seifman's substantial breaches with Guzall. As illustrated previously; "Michigan law is settled: '"He who commits the first substantial breach of a contract cannot maintain an action against the other contracting party for failure to perform."' *Chrysler Intern Corp, supra,* at 742 (CA 6, 1998)-citing to and quoting Michigan Supreme Court cases.

Pursuant to the Hankins' court's January 3, 2013 Order, the only issue before the Court was, " . . . whether Mr. Seifman should take any portion of the fee under *quantum meruit*." (Objection, RE 156, Page ID # 3863, Ex. 7, January 3, 2013 Order at para. 6, emphasis added illustrating Seifman). The scope of that Order however, and subsequent "hearing" and Report failed to adhere to Michigan law-which is-paying Seifman upon quantum meruit for his services and requiring consideration of Seifman's improper and illegal acts. Here the district court appropriately stated the law within it's order (paying Seifman upon quantum meruit), but then failed to apply the law (and then paid Hankins' attorney Guzall quantum meruit in direct violation of Michigan law and the court's own order). Therefore the court in Hankins' violated the law of the case by revisiting the issue of payment to attorney Seifman under quantum meruit and altering it's order by awarding attorney Guzall under quantum meruit. The present Sixth Circuit

Opinion has therefore improperly created two instances upon which a Michigan court may now violate the law of the case doctrine, in direct contradiction to Michigan law as it existed prior to the Sixth Circuit's decision in Hankins' case.

II. THE SIXTH CIRCUIT'S OPINION CONFLICTS WITH A U.S. SUPREME COURT DECISION AS TO JURISDICTION.

Because the district court maintained jurisdiction over the disputed fee claim, Seifman withdrew his State claim he filed against Guzall in State Court. The district court record is deplete of any evidence that there was an agreement between Seifman and Guzall to determine a claim of Seifman against Guzall in Federal Court, as the Federal Court already maintained jurisdiction over the fee at issue. Seifman's filed lien in the Hankins' case acknowledged the federal court's jurisdiction. Seifman therefore then withdrew his inconsequential State law claim he improperly filed against Guzall.

"This Court has repeatedly held that "the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *Exxon Mobil Corp, supra,* 1526-27. Thus, there could be no agreement to do that which was already done, being the filing of Seifman's lien to be paid his portion of the fee he claimed within the Federal Court which already possessed jurisdiction. (Minute Entry, RE 118, Page ID # 2697).

Yet further, Guzall and Seifman could not agree to federal court jurisdiction where jurisdiction was already maintained. Therefore even if the Sixth Circuit could point to an agreement regarding jurisdiction,

such would be of no consequence because the parties could not agree to jurisdiction over Seifman's fee claim, as jurisdiction never left the Federal Court where Seifman filed his lien. The Sixth Circuit's ruling that Guzall somehow agreed to existing jurisdiction is not accurate and is violative of the law:

A. The Sixth Circuit's Ruling That Guzall Was Afforded the Opportunity to Litigate the Hankins' Case in State Court Is Incorrect and Violative of the Facts and Law.

The Hankins' case was and is separate from the litigation in Oakland County Circuit Court. (Motion, RE 118, Page ID # 2682-2793). The *Hankins v. Inkster*, case before the court was not the 'same matter'. The State court could not bar or interfere in the Federal Court proceedings. *Exxon Mobil Corp, supra,* 1526-27. Further, the Federal court was obligated to exercise it's jurisdiction. *Moses H. Cone Mem Hosp v. Mercury Const Corp*, 460 U.S. 1, 15; 103 S.Ct 927, 936; 74 L.Ed. 2d 765 (1983).

> " . . . state courts are completely without power to restrain federal court proceeding in personam actions like the one here. '* * * where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right cannot be arrested or taken away by proceedings in another court." *Donovan v. City of Dallas*, 377 U.S. 408, 412-13; 84 S.Ct. 1579, 1582 (1964).

Thus Seifman's claim against Guzall in State court to obtain the same monies he claimed in Hankins' case

was not only improper, it was inconsequential. By application, the Sixth Circuit's ruling in Hankins' also directly conflicts with *Donovan, supra,* at 412-13. The Sixth Circuit's ruling also avoids application of Seifman's filed lien against Hankins. Seifman's only legal claim in Hankins' case was against Mr. Hankins. The court's ruling that Guzall could agree to waive the Federal court's jurisdiction or a claim that he could not have filed in State court (RE 159, Page ID # 3992-3993) is inapposite of and directly conflicts with the cited law and facts in this case. Yet regardless, the Sixth Circuit was required by Michigan law to apply and determine the alleged and admitted public policy violations of Seifman, unprofessional conduct and the substantial breaches of the agreements as admitted by Seifman. *Rippey, supra,* at 245; *Chrysler Intern Corp, supra,* at 742 (CA 6, 1998). Because the Sixth Circuit failed to apply Michigan law as required by *Erie R. Co., supra,* at 822, the Hankins' case must be remanded to apply Michigan law.

III. THE SIXTH CIRCUIT HAS RE-WRITTEN MICHIGAN LAW AS IT APPLIES TO A VIOLATION OF MICHIGAN PUBLIC POLICY AND THE UNCLEAN HANDS DOCTRINE.

Attorney Seifman had a duty to abide by the Michigan Rules of Professional Conduct and to advise his partner Guzall and his Clients (including John Hankins) that he commingled his funds with Client funds. Because the district court failed to address let alone apply Seifman's ethical and public policy violations, the Sixth Circuit Court's Opinion has effectively altered Michigan law:

> "In this case, there is no question that Lewis lied to his clients about the commingled funds. Lewis had a duty to inform his clients of his conduct. * * * "The attorney not only has duties of care and professional skill, but he must also conduct himself in a spirit of loyalty to his client, assuming a position of the highest trust and confidence. The false representation element "may be satisfied by the failure to divulge a fact or facts the defendant has a duty to disclose." *Idalski*, *supra,* at 739 (E.D. Mich. 2002), citations omitted, emphasis added.

The law holds, "[i]n the third situation, the attorney engages in conduct contrary to public policy or which amounts to an ethical violation. The court determined quantum meruit recovery of fees is not available under those circumstances." *Idalski*, *supra,* at 741, citations omitted, emphasis added.

The district court erroneously and contrary to law failed to analyze and determine whether or not Seifman's misconduct prevented payment to him in this case, as an example, Seifman knowingly violated MRPC 1.15(a)(3), MRPC 1.15(f) and MRPC 8.4(a), (b)), and (c)):

> "The Michigan Court of Appeals recently confirmed that the Michigan Rules of Professional Conduct play a major role in determining the validity and enforceability of attorney fee agreements. *Evans & Luptak v. Lizza*, 251 Mich. App. 187, 650 N.W.2d 364 (2002). In that case, the court rejected the argument that the M.R.P.C. are rules for

> discipline only and cannot evidence public policy. Rather, the court held that the M.R.P.C. establish the state's public policy, and contracts which contravene them will not be enforced. *Id.* at 196, 650 N.W.2d at 370.
>
> We do not accept the contention that an attorney can receive fees for representation which from the outset gives the appearance of impropriety and is violative of established rules of professional conduct. An attorney may not recover for services rendered if those service are rendered in contradiction to the requirements of professional responsibility and inconsistent with the character of the profession." *Idalski, supra,* at 742 (E.D. Mich. 2002), citation omitted, emphasis added.

The Michigan Rules of Professional Conduct state as follows:

> "(3) "IOLTA account" refers to an interest- or dividend-bearing account, as defined by the Michigan State Bar Foundation, at an eligible institution from which funds may be withdrawn upon request as soon as permitted by law. An IOLTA account shall include only client or third person funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held." MI. R. MRPC 1.15(a)(3).
>
> "(f) A lawyer may deposit the lawyer's own funds in a client trust account only in an amount reasonably necessary to pay financial

> institution service charges or fees or to obtain a waiver of service charges or fees." MI. R. MRPC 1.15(f).[1]
>
> "It is professional misconduct for a lawyer to:
>
> (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
>
> (b) engage in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer;
>
> (c) engage in conduct that is prejudicial to the administration of justice; . . . " MRPC 8.4(a), (b), (c), emphasis added.

The Michigan Attorney Grievance Board has previously stated "[w]e can perceive of no excuse for an attorney's failure to be aware of the requirement under Rule 1.15 of the Michigan Rules of Professional Conduct [formerly DR 9.102(a) that client funds be held separately from the lawyer's own money." (Ob-

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[1] Seifman testified he paid his wife money out of the Law Firm IOLTA account of Seifman & Guzall P.C. (Objection, RE 156, Page ID # 3772, Ex. 2, p. 154, lines 12-25). He also testified he left $36,000.00 of his own money commingled with client funds in the IOLTA account for 6 years, up to Guzall's departure. (*Id.*, at Page ID # 3784, Ex. 2, p. 225, lines 13-22; p. 144-148). Seifman also testified he did not know how much of the $211,000.00 in the IOLTA account was his. (*Id.*, at Page ID # 3787, Ex. 2, p. 228 line 6-12).

jection, RE 156, Page ID # 3891, Exhibit 10, *Grievance Administrator v. Brent S. Hunt*, emphasis added).

As of December 23, 2014, Seifman still did not know how much money in the Firm IOLTA account was his versus client monies. (Objection, RE 156, Page ID # 3897-3898, Ex. 11, Dec. 23, 2014 Seifman dep., p. 275 lines 5-24; p. 287 lines 7-16). Seifman also retained earnings in the IOLTA account over tax years. (Objection, RE 156, Page ID # 3763, Ex. 2, Seifman's dep, p. 110 lines 13-15 to p. 111 lines 10-23).

Seifman's conduct was illegal as he engaged in tax evasion and tax fraud by retaining his funds in the Firm's IOLTA account over tax years. 26 U.S.C.A. § 7201. Seifman further improperly commingled his funds with client funds in violation of MRPC 1.15(a)(3).

"Under Michigan law, a "special or charging lien" is an equitable right to have the fees and costs due for services secured out of the judgment or recovery in a particular suit." *Laborers Pension Tr. Fund-Detroit & Vicinity v. Interior Exterior Specialists Co.*, 824 F.Supp.2d 764 (E.D. Mich. 2011). By commingling Seifman's funds with client funds, Seifman violated Rule 1.15 of the Michigan Rules of Professional Conduct preventing any award to him in the Hankins' case and Seifman came to court with unclean hands. Seifman also breached his agreements with Guzall by failing to advise Guzall that Seifman was paying his wife a salary out of the Law Firm's IOLTA account until the year 2011. A party cannot benefit when it comes to court with unclean hands, *Morris v. Clawson Tank Co*, 459 Mich. 256, 275; 587 N.W.2d 253, 262 (1998). Because Seifman came to court with unclean hands by violating the law and Michigan Rules of Professional

Conduct, he was not entitled to the relief granted by the district court, and yet the Sixth Circuit failed to cite to or address *Morris, supra,*. The Sixth Circuit Court's Opinion has re-written Michigan law, now allowing Michigan court's to refuse to analyze or apply the facts and law involving a Michigan attorney who admittedly violates Michigan Public Policy. The Sixth Circuit Court's Opinion has also improperly re-written Michigan law, now allowing Michigan court's to award a benefit to a party who comes to court with unclean hands. The Sixth Circuit's Decision must therefore be overturned.

IV. THE COURT'S DECISION DIRECTLY CONFLICTS WITH TWO OTHER U.S. SUPREME COURT DECISIONS AND ANOTHER MICHIGAN SUPREME COURT DECISION.

The record illustrates that the *Hankins'* district court never took the position that Guzall was going to be paid at an hourly rate until it's Magistrate's Report was issued. (App.26a-39a). Michigan law only provides that the withdrawing attorney (which was Seifman and not Guzall) may be paid an hourly rate for services rendered. *Ecclestone, supra,* at 76. Pursuant to the court's January 3, 2013 Order, the only issue before the Court was, " . . . whether Mr. Seifman should take any portion of the fee under *quantum meruit*." (RE 156, Page ID # 3863, Ex. 7, at paragraph 6). The district court therefore disregarded Michigan law and it's own order. If this Court determines contrary to Michigan law that Guzall is entitled to an hourly fee for the hours he worked and not the contingency fee agreement between he and Hankins, Guzall must be allowed to present evidence of the actual amount of his hourly attorney rate at the time of the Hankins'

award determination, which was $500.00 per hour according to the State Bar of Michigan's Law Practice Survey and the applicable law, being the leading Michigan Supreme Court case of *Pirgu v. United Services Auto Ass'n.*, 499 Mich. 269, 884 N.W.2d 257 (2016). The district court violated the law in failing to provide it's analysis as to how it determined Guzall's hourly rate in accord with *Pirgu, supra,* and erred by law in not allowing Guzall to provide evidence of his hourly rate. The Magistrate's report did not cite to nor apply *Pirgu, supra.* (App.26a-39a). The district court did not cite to nor apply *Pirgu, supra.* (App.9a-25a). The Sixth Circuit did not cite to nor apply *Pirgu, supra,*. (App.1a-8a). The Sixth Circuit has remanded a case previously where a district court failed to apply *Pirgu, supra*, " . . . the district court did not follow the correct process required by Michigan law when it calculated this fee. We agree. . . . This mandatory framework was not followed here. Because this oversight constituted an abuse of discretion, we vacate the district court's order and remand for recalculation in line with *Pirgu*." *Reeser v. Henry Ford Hosp.*, 695 F. App'x 876, 877-78 (6th Cir.2017), emphasis added.

Furthermore, where a delay occurs, attorney fees are adjusted as follows:

> "First is the matter of delay. When plaintiffs' entitlement to attorney's fees depends on success, their lawyers are not paid until a favorable decision finally eventuates, which may be years later. . . . Meanwhile, their expenses of doing business continue and must be met. In setting fees for prevailing

> counsel, the courts have regularly recognized the delay factor, either by basing the award on current rates or by adjusting the fee based on historical rates to reflect its present value." *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 282, 109 S.Ct. 2463, 2468-69, 105 L.Ed.2d 229 (1989), emphasis added.

Because the district court delayed determination of fees in this case for over 5 years from the time of the only hearing, *Missouri, supra,* illustrates Guzall's fee should have been determined in the year 2018 at the time of the decision by the court, and not 5 years prior. Because the court's decision in *Hankins'* is in direct conflict with *Missouri, supra,* the Sixth Circuits Decision in *Hankins'* must be remanded to conform to the law.

This U.S. Supreme Court has also held that "[w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified." *Hensley v. Eckerhart*, 461 U.S. 424, 435, 103 S.Ct. 1933, 1940, 76 L.Ed.2d 40 (1983). Attorney Guzall settled the Hankins' case on a Sunday, two days prior to trial in excess of $1,700,000.00 after working approximately 300 hours on the case. Because the court's *Hankins'* decision directly conflicts with *Hensley, supra,* (Guzall being paid underwhelmingly below his full compensatory fee) the *Hankins'* decision must be remanded to conform to the law.

CONCLUSION

CONCLUSION AND REQUEST FOR RELIEF

The Sixth Circuit improperly created new Michigan law-as-instead of determining the lien filed by Seifman against his former client John Hankins, the court determined Seifman was owed money by Hankins' attorney Guzall. The Federal court decision violated settled Michigan law and conflicts with United States Supreme Court decisions by failing to apply Michigan law and Unlawfully creating new Michigan law.

While proceeding in violation of the law against attorney Guzall based upon a contract claim made by attorney Seifman, the court enforced the contracts beyond the written word and in direct contradiction to the admitted intent, in violation of Michigan law. The court also failed and refused to address let alone analyze Seifman's many substantial breaches of the agreements/contracts in violation of settled Michigan law. Thus, after the district court proceeded against Guzall in violation of settled law, the court continued to violate the law and created new Michigan law by preventing Guzall from setting forth any defense to the district court's newly created law and standards. "Michigan law is settled: "'He who commits the first substantial breach of a contract cannot maintain an action against the other contracting party for failure to perform.'" *Chrysler Intern Corp, supra,* at 742 (CA 6, 1998). It was therefore required by law that the district court determine the delineated substantial breaches of Seifman.

The Sixth Circuit held the cases it relied upon "displaced the general rule", however those cases do not include the words "general rule", and the Sixth Circuit did not explain what it meant by replacing a non-existent "general rule". The effect of the Sixth Circuit's *Hankins'* Opinion is the Unlawful creation of new Michigan law by creating a non-existent general rule and then displacing it. The Sixth Circuit cannot displace a Michigan "general rule" even if such did exist. *Shady Grove Orthopedic Assocs., supra*, at 431; *Erie R. Co., supra,* at 822.

Even if it is decided that the court properly determined attorney Guzall should be awarded fees based upon his hourly work, the court's decision is still violative of the law as set forth by this U.S. Supreme Court in *Missouri, supra,* and *Erie, supra,*. Therefore the *Hankins'* case must be remanded for a determination of the proper hourly rate and full time spent by Guzall in *Hankins'*, in accord with *Pirgu, supra,*.

A party cannot benefit when it comes to court with unclean hands. *Morris, supra,*. Because Seifman came to court with unclean hands by violating the law and Michigan Rules of Professional Conduct, he was not entitled to the relief granted. The Sixth Circuit failed to cite to or address *Morris, supra,* and several other Michigan Supreme Court decisions cited herein which were required to be followed. The Sixth Circuit also failed to abide by, address or apply several U.S. Supreme Court and other Federal Court cases which were required to be followed.

Attorney Seifman's filed lien must be determined in accord with Michigan law. The evidence of Seifman's

illegal acts, public policy violations, unprofessional conduct and substantial breaches must also be determined in accord with Michigan law no matter which form of analysis is undertaken to legally determine if Seifman is entitled to any payment in the Hankins' case. Your Petitioners therefore respectfully request their petition for writ of certiorari be granted to overturn the Sixth Circuit *Hankins'* decision and prevent the unlawful creation of Michigan law and/or unlawful precedent and to secure and maintain uniformity within Michigan and the Sixth Circuit. Petitioners also request they be awarded all other relief this Court deems appropriate in their favor.

Respectfully submitted,

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