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United States Court of Appeals, Sixth Circuit.

John J. HORRIGAN, James F. Burke, Lauretta M. Burke, Robert W. Cohen, Paul F. Drexler, Leslie S. Radwany, Jr., Michael D. Sapp, Susan K. Vanburen, Bernard F. Zaucha. Plaintiffs-Appellees,

v.

William J. THOMPSON, Defendant-Appellant (99-3433), Defendant-Appellee (99-3434), SHARP & LANKFORD, Appellant (99-3434).

Nos. 99-3433, 99-3434.

Aug. 24, 2000.

On Appeal from the United States District Court for the Northern District of Ohio.

Before NELSON and COLE, Circuit Judges, and QUIST, District Judge. FN*

FN* The Honorable Gordon J. Quist, United States District Judge for the Western District of Michigan, sitting by designation.

NELSON, Circuit Judge.

*1 These consolidated appeals involve two agreements: a settlement agreement in which the appellees, John J. Horrigan, James F. Burke, Jr., *et al.*, promised to make a substantial payment to appellant William J. Thompson, and a contingent fee agreement in which Thompson promised to transfer a portion of that payment to appellant Sharp & Lankford, a law firm. Payments were made pursuant to the two agreements, but neither Mr. Thompson nor the law firm was satisfied that the payments were sufficient. Mr. Thompson sought to enforce the settlement agreement against the appellees, while Sharp & Lankford moved to intervene in order to collect from Thompson. The district court rebuffed both claimants. It held that Mr. Thompson had been paid in full, and it denied Sharp & Lankford's motion for intervention of right.

Mr. Thompson's claims turn on the language of the settlement agreement-which all parties agree is unambiguous-and on the absence, in our view, of any evidence that the appellees acted unreasonably or in bad faith when taking actions that reduced Thompson's payment. In all respects but one, we agree with the district court that the amount of the settlement payment was calculated appropriately. Although our reasoning differs somewhat from the district court's, we further agree that Sharp & Lankford's motion for intervention of right was not well taken. The challenged judgment will therefore be affirmed except insofar as it holds that Mr. Thompson's settlement payment properly excluded a share of excess tax distributions. We shall reverse on that issue only.

I

The appellees and appellant Thompson were shareholders, directors, and officers of a closely-held Ohio corporation called Cellwave, Inc. The appellees sued Mr. Thompson in 1991 for securities fraud and other violations of federal and state law. The parties settled the lawsuit several months later. The settlement agreement, including various documents incorporated therein, provided that Thompson would relinquish all of his shares of Cellwave stock and resign from his positions as president and chairman of the board. In exchange Thompson would be paid a specified share of the proceeds of a sale of Cellwave's corporate assets.

Mr. Thompson's payment was to be equal to:

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"the same monetary amount a shareholder of Cellwave would receive, and in the same specie, as if such person owned 22 of Cellwave's 79 currently outstanding shares of capital stock or Twenty-Seven point Eight Four Eight One percent (27.8481%) of Cellwave's capital stock, all net of all liabilities existing on the date of sale. However, if Cellwave issues additional capital stock hereafter for the purpose of funding its construction obligations or working capital needs, then the percentage specified herein shall be adjusted downward, prorata, on a basis consistent with the dilution suffered by all Cellwave shareholders."

The dilution provision was modified by the following language:"In the event a venture capital firm or any other unrelated third party invests funds in Cellwave and the investment results in the dilution of all shareholders the amount payable [to Thompson] shall be reduced pro-rata consistent with the dilution suffered by Cellwave shareholders. However, if Cellwave issues additional stock to any of its shareholders or any other person or entity controlled by or under common control with any Plaintiff, such a stock issuance shall not result in a reduction of the Twenty-Seven point Eight Four Eight One percent (27.8481%) amount payable to Thompson. Notwithstanding the foregoing, any additional contributions by the Plaintiffs to Cellwave shall result in a dollar-for-dollar reduction in the final payment due...."

*2 In July of 1995, Cellwave closed a sale of its corporate assets, thereby triggering Mr. Thompson's right to payment under the settlement agreement. The appellees calculated the amount due Thompson and offered him just over $12,590,000 as payment in full. Mr. Thompson declined to accept that amount as full satisfaction of the appellees' obligation, and he moved for an order requiring the appellees to pay him $16,560,370. The amount demanded by Mr. Thompson was not reduced "dollar-for-dollar" by the amount of contributions that the appellees claimed to have made to Cellwave. The district court granted Mr. Thompson's motion in part: it ordered the appellees to pay Thompson $10,626,714.61 ($16,560,370 less $5,933,655.39 that the appellees claimed to have contributed to Cellwave), and it ordered the parties to submit briefs and evidence with respect to the appellees' claimed contributions.

The appellees subsequently determined-based in part on an adjustment in the sales price received by Cellwave-that Thompson was entitled to a total payment of $13,181,411.92. In December 1995 the appellees tendered Thompson a check for $2,554,697.31 ($10,626,714.61 having already been paid in October 1995 as ordered by the district court). The check was eventually cashed.

The case was apparently dormant for the next three years. On March 1, 1999, the district court ruled that Mr. Thompson had been paid in full and terminated its jurisdiction. The district court rejected each of a number of arguments advanced by Thompson that he had been underpaid.

II

Mr. Thompson was represented during the settlement negotiations and the ensuing disputes with the appellees by Sharp & Lankford, a District of Columbia law firm, and A. Russell Smith, an Ohio attorney. On March 16, 1991, Mr. Thompson, Mr. Smith, and Sharp & Lankford entered a contingent attorney fee agreement. That agreement provided that in exchange for representation in the federal lawsuit and a related state court action, Mr. Thompson would pay Mr. Smith and Sharp & Lankford a total of 25 percent of whatever Thompson received from his interest in Cellwave.

Pursuant to the contingent fee agreement, Mr. Thompson paid Sharp & Lankford 12.5 percent of the $10,626,714.61 he received from the appellees in October 1995. Thompson did not pay the attorneys any portion of the $2,554,697.31 he received from the appellees in December 1995.

Paul V. Castellitto was the Sharp & Lankford attorney who worked on Mr. Thompson's case. Sharp & Lankford terminated its relationship with Mr. Castellitto during the first week of March 1996. The firm then informed Thompson that his representation would thereafter be handled by

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James E. Sharp and V. Thomas Lankford, Jr. The firm also requested immediate payment of 12.5 percent of the $2,554,697.31 Thompson had recently received from the appellees. Mr. Thompson, preferring to have Mr. Castellitto continue to represent him, discharged Sharp & Lankford and terminated the contingent fee agreement.

*3 Mr. Thompson also filed a lawsuit against Sharp & Lankford in an Ohio court of common pleas. Thompson sought (among other relief, including damages for breach of the contingent fee agreement) a declaration that Sharp & Lankford was entitled to no portion of the $2,554,697.31.

In April 1996, Sharp & Lankford moved to intervene in the settlement enforcement proceedings that were pending in the district court. That motion was denied on September 10, 1996, in a marginal entry. Sharp & Lankford appealed, and this court remanded the case to the district court for additional findings, particularly on the issue of whether Sharp & Lankford could adequately protect its interests in a separate state court action. See *Horrigan v. Thompson,* No. 96-4138, 1998 WL 246008 (6th Cir. May 7, 1998).

While Sharp & Lankford's appeal was pending, the Ohio court held a series of conferences concerning the substantive issues and the possibility of settlement or alternative dispute resolution. After this court's remand, however, the Ohio court stayed all proceedings pending further action by the district court.

In its March 1, 1999, order ruling that Mr. Thompson had been paid in full, the district court again denied Sharp & Lankford's motion to intervene. The court held that the motion was moot (because the court had terminated its jurisdiction over the underlying case) and that, in any event, Sharp & Lankford was not entitled to intervention of right. Sharp & Lankford appealed to this court, and the Ohio court chose to continue its stay pending the resolution of the appeal.

III

Mr. Thompson challenges several deductions from his payment and asserts an interest in several distributions of which he did not receive a share. We believe that the district court properly rejected all but one of Mr. Thompson's claims.

1. *Deduction of the Appellees' Contributions to Cellwave*

Mr. Thompson's primary argument is that the settlement agreement does not authorize the reduction of his payment by the full amount of the appellees' contributions to Cellwave. The district court's interpretation of the settlement agreement is reviewed *de novo.* See, *e.g., Gencorp, Inc. v. American International Underwriters,* 178 F.3d 804, 817-18 (6th Cir.1999).

The disputed provision of the settlement agreement states that

"if Cellwave issues additional stock to any of its shareholders . . ., such a stock issuance shall not result in a reduction of the Twenty-Seven point Eight Four Eight One (27.8481%) amount payable to Thompson. Notwithstanding the foregoing, any additional contributions by the Plaintiffs to Cellwave shall result in a dollar-for-dollar reduction in the final payment due...."

Mr. Thompson contends that this provision has two purposes: (1) to prevent the appellees from diluting Thompson's 27.8481 percent interest by issuing additional stock to themselves, and (2) to ensure, at the same time, that Thompson's payment is reduced in an appropriate amount to reflect any bona fide contributions by the appellees. If both purposes are to be given effect, Mr. Thompson argues, his payment cannot be reduced by the full amount of the appellees' contributions, because that would result in his receiving less than a 27.8481 percent share.

*4 Thus, Mr. Thompson argues that his payment should be reduced by only $2,290,182.64, calculated as follows. The appellees' contributions of $5,933,655.39 should be treated as 72.1519 percent (100 percent less 27.8481 percent) of a

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hypothetical total contribution from Thompson and the appellees together. The total contribution would be $8,223,838.02 ($5,933,655.39 divided by .721519), and Thompson's hypothetical share of that contribution would be $2,290,182.64 (.278481 times $8,223,838.02). Only this amount, says Thompson, should be subtracted from his payment.

The problem with Mr. Thompson's calculation is that it bears little relationship to the language of the settlement agreement. The agreement states that the appellees' contributions "shall result in a dollar-for-dollar reduction" in the payment due Thompson. As the district court found, that language is unambiguous. The agreement does not prescribe the complicated calculation urged by Mr. Thompson; rather, it straightforwardly requires that Thompson's payment be reduced "dollar-for-dollar" by the amount of the appellees' contributions. In our view, "dollar-for-dollar" can only mean that the reduction should be exactly equal to the amount of the appellees' contributions.

Mr. Thompson argues that this reading of "dollar-for-dollar" contravenes the requirement that additional stock issuances to Cellwave shareholders "shall not result in a reduction of" Thompson's 27.8481 percent share. He points out that an agreement must be interpreted so as to harmonize its provisions. But the agreement harmonizes itself: it states that the "dollar-for-dollar" reduction must occur "notwithstanding the foregoing"-*i.e.*, notwithstanding the provision against dilution of Thompson's share. "Notwithstanding the foregoing" is as clear as "dollar-for-dollar," and the parties' unambiguous and fully integrated agreement should be enforced as written. See, *e.g.*, *Gencorp. Inc.*, 178 F.3d at 817-18. In spite of the "anti-dilution" provision, the appellees properly deducted $5,933,655.39 from the 27.8481 percent share due Mr. Thompson.

2. *Legitimacy of the Appellees' 1995 Contributions*

In addition to challenging the manner in which the appellees' contributions to Cellwave were used to decrease his payment, Mr. Thompson challenges the legitimacy of certain of those contributions. In May of 1995, Cellwave issued five shares of stock for $2,750,000; slightly more than $2.4 million of that capital was contributed by the appellees. Mr. Thompson argues that these contributions had no legitimate business purpose and were made in bad faith solely to effect a "dollar-for-dollar" reduction of Thompson's payment. We find the argument unpersuasive.

It is undisputed that in May 1995 Cellwave had a $2,750,000 debt to Northern Telecom and that Cellwave was required to pay off the debt before closing the sale of its assets in July 1995. The appellees say that Cellwave issued the additional stock in order to raise funds to pay Northern Telecom. Thompson maintains that the appellees' contributions were unnecessary because Cellwave had $2.1 million in cash or cash equivalents on July 31, 1995, and Cellwave made a $300,000 charitable contribution in April 1995. As of May 15, 1995, however, Cellwave had only $1,741,030 in cash or cash equivalents, and it had current liabilities and long-term debts totaling $3,692,504. It was not unreasonable, in our view, for the appellees to conclude that additional capital was needed in order to pay Northern Telecom and to satisfy Cellwave's other obligations going forward. We believe that the district court was therefore right not to second-guess the appellees' business decision. Even if the challenged stock issuance were not presumed to be proper pursuant to the business judgment rule, [FN1] Thompson has failed to demonstrate that it was in any way improper.

FN1. Mr. Thompson argues that the business judgment rule is inapplicable because the appellees acted as interested directors in issuing stock to themselves. This was not the typical "interested director" transaction, however, in which a director profits at the expense of the corporation. The appellees profited only in their capacity as shareholders, from the decrease in the corporation's liability to Thompson.

*5 We find little in the record to support Mr. Thompson's allegations that the appellees acted in bad faith. Thompson suggests that the appellees'

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plan from the first was to minimize Thompson's payment by issuing many new shares, but the challenged stock issuance is hardly reflective of such a plan. Only five new shares were issued, at a time when Cellwave had a documented need for an infusion of capital We find it significant, moreover, that less than the entire amount of the $2,750,000 raised in the May 1995 stock issuance was contributed by the appellees. More than $300,000 of that amount was contributed by other shareholders, whose contributions would not reduce Thompson's payment. This fact strongly suggests that the issuance was not motivated by bad faith

3. *Deduction of Closing Expenses*

Before calculating Mr Thompson's 27.8481 percent share of the proceeds from Cellwave's sale of its assets, the appellees determined a net selling price by deducting liabilities and closing expenses. The expenses that were deducted amounted to $5,368,143 90. Thompson contends that these expenses are illegitimate and should not have been deducted. He suggests, in particular, that payments totaling $3.8 million in "closing compensation" to appellees Horrigan and Burke were excessive. Again, however, Mr Thompson has not shown that the expenses in question-including the payments to Mr. Horrigan and Mr. Burke, which were approved by a majority of disinterested shareholders-are anything other than legitimate business costs incurred in good faith. We see no error in the district court's refusal to disturb the appellees' business judgment based only on Thompson's supposition of *mala fides*.

4. *Deduction of Liabilities*

Mr. Thompson argues that the appellees should not have deducted liabilities of $564,495 before computing Thompson's 27 8481 percent share of the proceeds from Cellwave's sale of its assets He points out that the purchaser of Cellwave's assets assumed those liabilities, and that the appellees therefore did not deduct the liabilities when determining the amount of their own distributions following the sale.

Mr. Thompson's argument has some logical appeal, but it is inconsistent with the plain language of the settlement agreement. The agreement states that Thompson should receive

"the same monetary amount a shareholder of Cellwave would receive, and in the same specie, as if such person owned . 27.8481% .... of Cellwave's capital stock, *all net of all liabilities existing on the date of sale* " (Emphasis added.)

It is undisputed that the liabilities in question existed on the date of sale. Therefore, notwithstanding that they were assumed by the purchaser of Cellwave's assets, the liabilities were properly deducted from the selling price before Mr Thompson's share was calculated. There might seem to be no reason for the deduction, given that the assumed liabilities did not reduce the net selling price received by the appellees, but the settlement agreement makes no distinction between liabilities that are assumed by the purchaser and liabilities that are not The agreement dictates that "*all* liabilities existing on the date of the sale" be deducted.

5. *Distribution of $2.1 Million Cash*

*6 Mr. Thompson's next argument is that he should receive a share of $2.1 million in cash or cash equivalents that Cellwave retained after the sale of its assets. Mr. Thompson points to a provision of the settlement agreement stating that Thompson " shall be entitled to receive as and for contingent interest the applicable percentage adjusted as set forth above with respect to any Cellwave distribution." He contends that this provision entitles him to 27.8481 percent of the retained cash that presumably was distributed to Cellwave's shareholders sometime after the sale of Cellwave's assets

As the appellees point out, however, the agreement states that Mr. Thompson should be deemed paid in full after receiving his share of the proceeds from the sale. It follows that Thompson is not entitled to a share of any funds distributed thereafter. Thus, Thompson is not entitled to a share of the $2 1 million, which was not distributed until after Thompson received his final payment on December

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28, 1995. Mr. Thompson contends that the appellees improperly caused Cellwave to "hoard" the cash until the sale of its assets was closed, but that contention is not supported by the record. Cellwave was conducting an ongoing business until July 31, 1995, and we do not think it was unreasonable for the appellees to keep cash on hand until the sale had closed

6. *$300,000 Charitable Contribution*

Mr. Thompson argues next that he is entitled to a proportionate share of a $300,000 charitable contribution that Cellwave made in April 1995. His logic runs as follows: Cellwave's financial statement shows the $300,000 "as a charge to retained earnings rather than a current expense since the contribution will not be deducted by the corporation for tax purposes, but rather by the individual shareholders." Therefore, like any other charge to retained earnings, the $300,000 was a distribution to shareholders. In effect, Mr. Thompson argues, Cellwave distributed the $300,000 to the shareholders, and the shareholders-not Cellwave-made the charitable contribution. As this " distribution" occurred before Cellwave's sale of assets, Thompson claims he is entitled to a share.

The fact is, however, that the $300,000 was not distributed to the shareholders. It was paid directly to the charitable organization. Cellwave's 1995 tax return shows the $300,000 as a charitable contribution by the corporation. Although the shareholders might have received a tax benefit as a result of the charitable contribution, it was Cellwave-not the shareholders-that actually contributed the $300,000. The funds in question were never transferred to and controlled by individual shareholders; they were disposed of by corporate action. There simply was no "distribution" of which Mr. Thompson can claim a share.

7. *Distributions for Tax Payment*

Mr. Thompson's final argument is that he should receive a share of distributions that were supposed to allow Cellwave's shareholders to pay income taxes on corporate income but that exceeded the shareholders' actual income tax obligations. The settlement agreement provides that

*7 "[a]s long as Cellwave remains an S corporation .. it may distribute cash to its shareholders so that they may pay their United States and Ohio income tax obligations with respect to Cellwave income includible in each shareholder's income, all without incurring any obligation hereunder to make any distribution to [Thompson]."

Pursuant to this provision, Cellwave distributed a total of $2,821,000 to its shareholders for the years 1992 through 1995. This amount apparently exceeded the shareholders' actual tax obligations by more than a million dollars, because a $2.2 million tax loss in 1992 reduced the shareholders' tax burdens in subsequent years. Mr. Thompson maintains that he is entitled to a proportionate share of the excess distributions.

We agree. The settlement agreement provides that Cellwave may distribute funds to its shareholders, without incurring any obligation to distribute funds to Mr. Thompson, only "so that [the shareholders] may pay their United States and Ohio income tax obligations." Distributions in excess of the shareholders' income tax obligations were not made "so that" those tax obligations could be met. Therefore, such distributions are within the ambit of Cellwave's commitment, expressed elsewhere in the agreement, to pay Thompson a proportionate share of any "Cellwave distribution." We shall remand the case to the district court for a determination of the amount owed Mr. Thompson in this respect.

IV

Sharp & Lankford argues that it has satisfied the requirements for intervention of right pursuant to Rule 24(a)(2), Fed.R.Civ.P. Those requirements are as follows: (1) the motion to intervene is timely; (2) the person seeking to intervene claims an interest relating to the subject of the action; (3) that person's ability to protect its interest may be impaired or impeded absent intervention; and (4) that person's interest is not adequately represented by any existing party. The district court determined that

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Sharp & Lankford did not satisfy the second and third requirements: the law firm had no substantial legal interest relating to the settlement enforcement proceedings, and it could pursue its claims against Mr. Thompson adequately in state court. FN2 Upon *de novo* review, see, *e.g., Purnell v. City of Akron,* 925 F.2d 941, 945 (6th Cir.1991), we agree with the latter determination.

FN2. It is undisputed that Sharp & Lankford satisfies the first and fourth criteria: its motion to intervene was timely, and its interest is not represented by Mr. Thompson or by any of the appellees.

1. *Sharp & Lankford's Interest*

Sharp & Lankford argues that it has a clear interest in the litigation between Mr. Thompson and the appellees-namely, a right under the contingent fee agreement to 12.5 percent of the approximately $2.5 million that the appellees paid Thompson in December 1995 and of any future payments made pursuant to the settlement agreement. We agree that the contingent fee agreement gives Sharp & Lankford a substantial interest that is "relat[ed] to the property or transaction which is the subject of" Mr. Thompson's dispute with the appellees. Fed.R.Civ.P. 24(a)(2).

*8 Mr. Thompson maintains that Sharp & Lankford has no legally protectible interest in the December 1995 payment or future payments because he discharged the law firm in March 1996. He relies on Ohio case law holding that a discharged attorney can recover for his services only in *quantum meruit.* See, *e.g., Fox & Associates Co., L.P.A. v. Purdon,* 541 N.E.2d 448, 450 (Ohio 1989).

It is clear, however, that the rule of *Fox & Associates* applies only when the attorney is discharged before he has substantially performed the required legal work. See *Fox & Associates,* 541 N.E.2d at 450; *see also Reid, Johnson v. Lansberry,* 629 N.E.2d 431, 434 (Ohio 1994) (syllabus) (noting that "the trial court referred to *Fox* for the proposition that when an attorney is discharged ... *prior to final resolution of the case (or prior to substantial performance),* the discharged attorney may recover only the reasonable value of services rendered" (emphasis added)). As this court has previously noted, "Thompson's discharge of Sharp & Lankford occurred after the settlement agreement between Thompson and the [appellees], and after the law firm performed a considerable amount of post-judgment work to enforce the settlement." *Horrigan v. Thompson,* No. 96-4138, 1998 WL 246008, at **2. Sharp & Lankford is thus not limited to *quantum meruit* recovery under *Fox & Associates.* FN3 The interest created by the parties' contingent fee agreement is enforceable.

FN3. Mr. Thompson's argument also rests on the premise that he has already paid Sharp & Lankford more than the law firm could recover in *quantum meruit.* Whether that premise is correct need not be decided, given that Sharp & Lankford is not limited to *quantum meruit* recovery.

2. *Adequacy of State Court Action*

Notwithstanding Sharp & Lankford's interest in the litigation, the district court properly denied the motion to intervene because the law firm can adequately protect its interest in state court. Deciding whether Sharp & Lankford is entitled to a percentage of the appellees' payments to Mr. Thompson-and deciding related questions, such as whether Mr. Castellitto has a right to any portion of what Sharp & Lankford might recover-requires interpretation of the contingent fee agreement and application of Ohio law. An Ohio court is well-suited to perform those tasks, and nothing that has happened in the district court would prevent the state court from adjudicating Sharp & Lankford's interest fully and fairly.

This court stated previously that "requiring Sharp & Lankford to defend its interest in state court when a federal judge who has presided over this case for many years is already familiar with the relevant facts and legal issues appears, from our vantage point, to create a practical impediment to the firm's ability to protect its interests." *Horrigan v. Thompson,* No. 96-4138, 1998 WL 246008, at **3.

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We then invited a finding from the district court on that issue. See *id* Accepting the invitation, the district court found unequivocally that
"the firm's interests are not impaired [by state court adjudication]. This case was originally filed in this Court as a federal question case. This Court retained jurisdiction to interpret the *settlement agreement* only..... This Court did not retain jurisdiction over any other issues and is not familiar with the facts and legal issues concerning the disputes between Thompson and his attorneys, or between the firm and Castellitto; nor does the Court find that its knowledge in this case would assist in resolving those disputes "

***9** We accept the district court's findings. Familiarity with the issues in Mr Thompson's dispute with the appellees-whether expenses and liabilities were properly deducted, for example, or whether Thompson is entitled to a share of retained cash-would be of little or no value in resolving Sharp & Lankford's fee dispute. The state court can decide whether Sharp & Lankford is entitled to a percentage of Mr Thompson's payment without concerning itself with the manner in which that payment was calculated

In addition to the Ohio court's relative unfamiliarity with the underlying lawsuit, Sharp & Lankford cites two other factors that it claims would undermine its ability to protect its interest in state court. The first is Sharp & Lankford's inability to "participate in, and/or oversee" the proceedings in district court We understand that the firm would like an opportunity to bolster Mr. Thompson's claims against the appellees-the more Thompson recovers, the more Sharp & Lankford stands to gain if it prevails against him. That is no basis for intervention, however, because Mr Thompson's interest-and therefore Sharp & Lankford's derivative interest-is adequately represented in the district court. See Fed R Civ.P. 24(a)(2).

The second additional factor cited by Sharp & Lankford is the seal under which the district court litigation has been placed. The firm argues that it will not know whether Mr. Thompson has recovered additional payments in which it might have an interest The argument is unpersuasive. Our decision today establishes what type of additional payments Thompson will recover, and if the Ohio court should order Mr. Thompson to pay Sharp & Lankford a percentage of all payments he receives pursuant to the settlement agreement we are confident that the district court would see that its seal did not interfere with the enforcement of the order.

3. *Judicial Economy*

In Sharp & Lankford's first appeal, this court observed that "in addition to the four factors derived from [Rule 24(a)(2)] itself, judicial economy is a relevant consideration in deciding a motion for .... intervention." *Horrigan v Thompson,* No. 96-4138, 1998 WL 246008, at **3 (quotation omitted). We suggested that judicial economy might weigh in favor of Sharp & Lankford's motion to intervene. See *id.* Noting that Mr. Thompson's fee agreement with Sharp & Lankford concerned representation in a state court action as well as in this federal court action, and noting that Thompson's pending action in the Ohio court involves breach of contract and other state law issues, the district court disagreed:
"The Court has considered [the interests of judicial economy] and finds that they will not be furthered by granting Sharp & Lankford's motion..... This Court retained jurisdiction *only* over the settlement agreement between the plaintiffs and Thompson ..... not over any breach of contract disputes between Thompson and any other party, not over any other contracts, and not over fee disputes related to state law cases; nor will this Court exercise its supplemental jurisdiction over those claims...... Judicial economy will not be furthered by granting the motion to intervene, as the parties must resolve those issues in state court."

***10** We see no reason to question the district court's judgment in this regard. The state court seems to be the proper forum for resolution of Mr Thompson's breach of contract claim against Sharp & Lankford; it would not be uneconomical for that court also to decide how the appellee's payments should be distributed to Mr. Thompson, Sharp & Lankford, and Mr. Castellitto. Moreover, and contrary to the

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law firm's arguments, that decision would not require relitigation of any issues already decided in the district court

The judgment of the district court is AFFIRMED in all respects except for the determination that Mr Thompson is not entitled to a share of Cellwave's excess tax distributions. On that issue alone, we REVERSE and REMAND for further proceedings

C.A.6 (Ohio),2000.
Horrigan v. Thompson
229 F.3d 1152, 2000 WL 1234346 (C.A.6 (Ohio))

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