

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
AT CINCINNATI**

WILLIAM A. FISH,	:	Case No. 1:10-cv-380
	:	
Plaintiff,	:	
	:	Wehrman, M.J.
vs.	:	
	:	
JOSEPH J. HENNESSY	:	
	:	
	:	
Defendant.	:	

MEMORANDUM OPINION AND ORDER¹

Plaintiff William Fish filed suit on June 11, 2010, seeking recovery against defendant Joseph Hennessy as the guarantor of a promissory note. The Court granted summary judgment for Fish against Hennessy in April 2011. Doc. 33. Shortly thereafter, the Court granted Hennessy’s motion for leave to file a third-party complaint against Midwest Opportunity Fund, LLC (“Midwest”), the debtor on the promissory note for which Hennessy was a guarantor. Doc. 37.

When Midwest did not timely answer or otherwise respond to Hennessy’s third-party complaint, Hennessy filed an application for entry of default with the Clerk of Court. Doc. 43. The Clerk of Court properly issued the entry of default on October 31, 2011. Doc. 44. The Court granted Hennessy’s motion for default judgment on January 23, 2012 [Doc. 58] and directed Hennessy to submit a brief addressing his claim for

¹All parties have consented to disposition by the magistrate judge pursuant to 28 U.S.C. §636(c).

attorney fees and costs. Hennessy has filed his brief and motion for attorney fees [Docs. 62, 63] and costs, to which Midwest failed to respond.

Hennessy's complaint and the other evidence in the record demonstrate that he is contractually entitled to indemnification from Midwest under the terms of Midwest's operating agreement. Hennessy's motion seeks indemnification from Midwest for the amount of the final judgment granted in favor of Fish against Hennessy (\$964,521.00 plus interest at the rate of 15% per annum from June 11, 2010). Hennessy also seeks \$51,218.79 in attorney fees and \$722.09 in costs.

Hennessy has been represented by two law firms. The first firm, Esposito & Staubus from Burr Ridge, Illinois, has submitted documentation showing that Hennessy has incurred attorney fees totaling \$38,722.79, as well as \$307.29 in costs. Hennessy has also submitted documentation showing that he has incurred attorney fees of \$11,496.00 and costs of \$414.80 from his second firm, Brickler & Eckler from West Chester, Ohio. In sum, Hennessy seeks to recover \$51,218.79 in attorney fees and \$722.09 in costs.

Third-party defendant filed no objection to Hennessy's itemization of costs and fees. Having examined the materials submitted by Hennessy, and in the absence of an objection, the Court concludes that the hours expended on behalf of Hennessy were reasonable and proper, and that the total fee requested is reasonable. Thus, the Court will grant Hennessy's request to be awarded a total of \$51,940.88 (\$51,218.79 in attorney fees and \$722.09 in costs) from Midwest, in addition to indemnification for the amount of the judgment granted to Fish against Hennessy.

Accordingly, it is **ORDERED**:

1. Third-party plaintiff Joseph Hennessy's motion seeking \$51,218.79 in attorney fees and \$722.09 in costs [Doc. 62] from third-party defendant Midwest Opportunity

Fund, LLC is **granted**; and

2. A final judgment will be issued herewith.

This the 13th day of March, 2012.

s/ J. Gregory Wehrman
J. Gregory Wehrman
United States Magistrate Judge