

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

HUBERT J. SMITH,

Complainant.

v.

Docket Number: EH-27-99

GENERAL MOTORS CORPORATION,

Respondent.

ADMINISTRATIVE LAW JUDGE'S FINAL DECISION REGARDING THE CALCULATION OF THE AWARD FOR LOSS WAGES, OVERTIME AND INTEREST PURSUANT TO RULE 9.3.1 OF THE RULES OF PRACTICE AND PROCEDURE BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION AND ATTORNEY FEES AND COSTS ALL RELATING TO THE JUNE 25, 2004 DECISION OF THE WEST VIRGINIA SUPREME COURT OF APPEALS

FINDINGS OF FACT

1. On June 25, 2004, the West Virginia Supreme Court of Appeals reversed the decision of the Circuit Court of Kanawha County which had reversed the "Final Order of the West Virginia Human Rights Commission" entered September 4, 2001.

2. The respondent, General Motors filed a Petition to Rehear which the West Virginia Supreme Court of Appeals denied on September 2, 2004.

3. The West Virginia Supreme Court of Appeals found that Mr. Smith's claims did meet the statutory definition of discrimination under the West Virginia Human Rights Act and that Mr. Smith had made a prima facie case of employment discrimination.

4. The ALJ's Final Decision, entered May 1, 2001, and the Commission's Final order are upheld in their entirety.

5. Administrative Law Judge Katherine Dooley ordered the following relief:

1. The complainant is awarded back pay beginning May 26, 1995 to the present time at the hourly rate to which the parties previously stipulated.
2. The respondent will pay the complainant back pay and interest through May 1, 2001 in the amount of \$225,945.22 plus interest of \$133, 864.26 minus any pension payments by GM in 2000 and 2001.
3. The respondent will employ the complainant at the Respondent's Martinsburg facility in the position of a power sweeper at the hourly wage dictated by the current contract between the respondent and, "The United Auto Workers."
4. The complainant is entitled to front pay for the position of a power sweeper operator until he is reinstated in that position at the rate of pay dictated by the current contract.
5. The complainant is entitled to an award of \$3,277.45 for the discrimination of GM and its effect on him.
6. The complainant is entitled to attorney fees and expenses. A Supplemental Order regarding attorney fees and costs will follow this Final Decision.
7. The respondent shall immediately cease and desist from continuing its illegal discriminatory practices.

4. On January 30, 2002, Administrative Law Judge Phyllis Carter entered a Supplemental Final Decision on Attorney's Fees and Costs awarding the complainant \$94,845.80 plus interest.

5. Respondent appealed the January 30, 2002 Supplemental Decision to the West Virginia Human Rights Commission.

6. On June 28, 2002, the Commission upheld the January 30, 2002 Supplemental Decision.

7. On November 9, 2004, the Honorable Charles E. King, Jr. affirmed in its entirety the Administrative Law Judge Carter's January 30, 2002 Order fixing the amount of attorney's fees and costs arising from the May 1, 2001 judgment awarding Mr. Smith \$94,845.80 which includes counsel's time entries through May 4, 2001 plus interest. General Motors did not appeal Judge King's decision and has paid these attorney fees and costs to Mr. Smith.

8. On October 29, 2004, the undersigned administrative law judge ordered that the complainant is entitled to file a Petition for additional attorney fees and costs arising from the respondent's appeal of the Final Order of the Commission. Further, the undersigned ordered the parties to provide the following.

1. The complainant shall have twenty days from receipt of this Order to provide the undersigned calculations needed to determine the exact amount the respondent, GM, is obligated to pay to satisfy the judgment of the Commission in full, inclusive of interest, front pay and attorney's fees and costs as well as a memorandum of law in support thereof. Please include all calculations and describe the process used to determine the dollar amounts. On the back pay award, please indicate the hourly rate of pay the parties previously stipulated to per Dooley's Final Decision.
2. Upon receipt of complainant's updated calculations regarding damages, attorney fees and costs, and memorandum of law, the respondent shall have twenty days to file its Response in Opposition and memorandum of law. Please include all calculations and describe the process used to determine the dollar amounts.
3. The parties are ordered to submit to the undersigned verification that the complainant was re-employed with GM on August 23, 2004 or applicable date as well as the status of any benefits, including but not limited to retirement, health care benefits, that complainant is entitled to receive. Please include all calculations and describe the process used to determine these amounts.
4. The parties are ordered to determine if there were pension payments made by GM in 2000 and 2001. If so, state the effect, if any, on the award made by the Administrative Law Judge in ¶ 3 of the Relief and Order May 1, 2001, Final Decision. Please provide all calculations and describe the process used to determine the dollar amounts.

9. On December 13, 2004 the respondent filed *Motion to Reinstate Appeal to the Court's Active Docket to Address Outstanding Issues* in the Circuit Court of Kanawha County. Simultaneously the respondent filed a motion with the West Virginia Human Rights Commission on December 15, 2004 requesting the Commission to stay all current proceedings to reduce the May 1, 2001 Final Order of the Commission to a sum certain. By order of the Commission, the

respondent was to have filed its damages' calculations on or before December 14, 2004 and did not do so.

10. On December 17, 2004, the complaint filed *Hubert J. Smith's Memorandum in Opposition to General Motor's Motion to Stay Proceeding Pending Ruling by Circuit Court of Kanawha County, West Virginia on Outstanding Appeal Issues*.

11. On January 13, 2005, the Circuit Court of Kanawha County entered an order granting Hubert J. Smith's Motion to Dismiss Respondent's Motion to Reinstate Appeal for Lack of Jurisdiction. The Court specifically stated the following:

Finally, this motion was vexatious and frivolous. These issues have been considered by the Administrative Law Judge, the Human Rights Commission and twice by the West Virginia Supreme Court of Appeals. By seeking to re-review the West Virginia Supreme Court's decision to reverse the Circuit Court of Kanawha County and therefore, affirm the decision of the West Virginia Human Rights Commission, GM is now inviting this Court to impermissibly invade the jurisdiction and interest of the Human Rights Commission in the enforcement of its orders without any cited authority whatsoever and in direct contravention of the West Virginia Constitution.

12. In support of its damages calculations, Mr. Smith filed the following pleading with the Commission entitled *Complainant's Damages*.

13. In response, General Motors filed the following pleading with the Commission entitled *Respondent's Damages*.

14. In response to *Respondent's Damages*, Mr. Smith filed *Complainant's Damages-Supplement* and August 5, 2005-letter with the Commission.

15. In his August 5, 2005-letter Mr. Smith notified the Commission that General Motors in a letter dated April 12, 2005, sent the complainant three checks. The first check was for \$4,540.10

for non-economic damages (distress and anguish); a second check for attorney fees and costs associated with various appeals in the matter in the amount of \$49,995.95 and a third check in the amount of \$582,359.31 covering back pay and front pay but not the interest owed on the front pay and back pays.

16. Judgment was entered in this case on May 1, 2001. Mr. Smith returned to work on August 22, 2004. Back pay and prejudgment interest as of May 1, 2001 amounted to \$344,948.96 which included an offset for pension received prior to judgment. Front pay continued to accrue from the date of judgment to August 22, 2004 when Mr. Smith was finally reinstated. Front pay amounted to \$274,767.14. Therefore, the total principal debt is \$619,716.10.

17. Post judgment interest accrues on the total award, including back pay, prejudgment interest, front pay and emotional distress damages from the date of judgment until paid in full.

18. Post judgment interest accrues on \$619,716.10 (\$344,948.96 + \$274,767.14).

19. Post judgment interest accrues from May 1, 2001 (date of judgment) until September 1, 2005 in the amount of \$266,477.92.

20. Post judgment interest of \$266,477.92 + \$619,716.10 equals \$886,194.02.

DISCUSSION

This case is entering its seventh year of litigation. The Supreme Court of Appeals has ruled once in this matter, the Circuit Court has ruled three times, the West Virginia Human Rights Commission has issued two Final Orders and the Commission's administrative law judges have issued two final decisions and countless orders. All that is left to do is for General Motors to pay what it owes Mr. Smith.

The current status of the case is that Mr. Smith returned to work on August 23, 2004. It has been represented to this administrative law judge that Mr. Smith's insurance and union seniority were restored. Although this administrative law judge requested verification of the restoration of union seniority and insurance in the October 24, 2004 Order, it has not been provided to the Commission.

Mr. Smith's counsel notified the undersigned administrative law judge that General Motors has fully restored Mr. Smith's pension benefits.

The only remaining issues are the calculation of the award for loss wages, overtime, incidental damages, interest, and the payment of attorney fees and costs.

The calculation of the award for loss wages, overtime, incidental damages, and interest is based on the Collective Bargaining Agreement, Local 1590 Agreement and the affidavits of the complainant Hubert J. Smith and Edwin Lambert, Local Union President as well as West Virginia law. General Motors has not presented any arguments to the undersigned administrative law judge opposing reliance on these documents and affidavits to determine the aforementioned calculation.

Mr. Smith is correct in his assertion that prejudgment and post-judgment interest are governed by West Virginia Code § 56-6-31. The West Virginia Human Rights Commission follows *Rodriguez v. Consolidation Coal Co.*, 206 W.Va. 317 (1999) regarding the calculation of interest on judgments. Further, the Commission's position is that all front pay damages constitute special damages pursuant to West Virginia Code §56-6-31.

With regards to unpaid attorney fees and costs, on November 9, 2004, the Honorable Charles E. King, Jr. affirmed in its entirety the undersigned's January 30, 2002 Order fixing the amount of attorneys' fees and costs arising from the May 1, 2001 judgment awarding complainant \$94,845.80

which includes counsel's time entries through May 4, 2001 plus interest. General Motors did not appeal Judge King's decision further. Counsel for Mr. Smith informs the undersigned that this amount has been paid.

By letter dated April 12, 2005, General Motors sent the complainant three checks. The first check was for \$4,540.10 for non-economic damages (distress and anguish); a second check for attorney fees and costs associated with various appeals in the matter in the amount of \$49,995.95 and a third check in the amount of \$582,359.31. The third check covers back pay and front pay but not interest owed on the back pay and front pay. This amount does not include the interest owed on the back pay and front pay nor does it represent the entire amount of \$619,716.10. These checks do not constitute an accord and satisfaction. Rather, it is another attempt by General Motors to circumvent the judgments of the Supreme Court, the Kanawha County Circuit Court and the West Virginia Human Rights Commission. These actions support a finding that General Motors continues to operate in bad faith and not cooperate with Hubert Smith's attorneys and the West Virginia Human Rights Commission in efforts to correctly determine the damage calculation.

General Motors never informed the Commission that these amounts were paid to the complainant. These amounts do not represent the total award for loss wages, overtime, incidental damages and interest, and attorney fees and costs.

Hubert Smith alleges that General Motors has not been cooperative and submits documentation to support this position in *Complainant's Damages*, *Complainant's Damages-Supplement* and August 5, 2005-letter. General Motors has not submitted any responses in opposition to the allegations of lack of cooperation.

General Motors did file a response entitled *Respondent's Damages* to Hubert Smith's

Complainant's Damages

With regards to back pay and front pay calculations, General Motors position is contrary to well-settled state law and case law as to how to calculate damages in cases such as this.

General Motors continues to take issue with matters it believes should be addressed by the Circuit Court of Kanawha County. However, Judge King dismissed General Motors appeal on these matters and takes the position that the motion was "vexatious and frivolous" and that he would not invade "the jurisdiction and interest of the West Virginia Human Rights Commission in the enforcement of its order without any cited authority." Furthermore, Judge King ruled that he would not "re-review the West Virginia Supreme Court 's decision to reverse his earlier decision." The West Virginia Supreme Court of Appeals has ruled and its decision affirming the Administrative Law Judge's May 1, 2001 Decision is **final**.

It is important to note that counsel for Hubert Smith has repeatedly sought the cooperation of counsel for General Motors. Although counsel for the parties met once, it appears that agreements were not reached on damage calculations. Rather, General Motors sends counsel for Mr. Smith a letter dated April 12, 2005 containing three checks of various amounts. Counsel for Mr. Smith alleges that they have tried to contact counsel for General Motors and that their calls and e-mails have gone unanswered. This is another example of General Motors lack of cooperation.

On November 9, 2004, the Honorable Charles E. King, Jr. affirmed in its entirety the Administrative Law Judge Carter's January 30, 2002 Supplemental Final Decision fixing the amount of attorneys' fees and costs arising from the May 1, 2001 judgment awarding Mr. Smith \$94,845.80 which includes counsel's time entries through May 4, 2001 plus interest. General Motors did not appeal Judge King's decision choosing instead to pay these attorney fees and costs

to Mr. Smith.

CONCLUSIONS OF LAW

1. The West Virginia Human Rights Commission follows *Rodriguez v. Consolidation Coal Co.*, 206 W.Va. 317 (1999) regarding the calculation of interest on judgments.
2. Pursuant to West Virginia Code §56-6-31, All front pay damages constitute special damages.
3. Pre-judgment interest is a part of and not separate from compensatory damages. Pre-judgment interest is awarded as an “additional part of the damages suffered.” It is intended to “compensate the aggrieved party for the loss of use of his money caused by the harm.” *Bond v. City of Huntington*, 166 W. Va. 581,599, 597 (1981).
4. Claims for back pay are subject to pre-judgment interest as part of the compensable damages to be awarded. *Rodriguez v. Consolidation Coal Co.*, 206 W.Va. 317 (1999); *Gribben v. Kirk*, 195 W.Va. 488 (1995).
5. Post-judgment interest accrues on the total award, including back pay, pre-judgment interest, front pay and emotional distress damages from the date of judgment until paid in full.
6. Post-judgment interest compensates an individual for “delay between the judgment and the receipt of actual payment.” *Adams v. Nissan Motor Corp.*, 182 W. Va. 234, 241 (1989); *Bruce v. Steele*, 215 W. Va., 460 (2004).
7. W. Va. Code 56-6-31 [1981], states, in pertinent part, that: “Except where it is otherwise provided by law, every judgment or decree for the payment of money entered by any court

of this State shall bear **interest** from the **date** thereof, whether it be so stated in the judgment or decree or not . . . The rate of **interest** shall be ten dollars upon one hundred dollars per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time, notwithstanding any other provisions of law.”

8. Complainant Hubert Smith met his prima facie burden and proved that Respondent engaged in unlawful discrimination, in violation of the West Virginia Human Rights Act, W. Va. Code §§ 5-11-9(1).

9. Complainant Hubert Smith proved by a preponderance of the evidence that the respondent discriminated against him in the terms, conditions or privileges of employment within the meaning of the West Virginia Human Rights Act, W. Va. Code § 5-11-1 *et seq.*

10. Hubert Smith prevailed entirely and is entitled to be made whole.

11. The respondent is liable for back pay, front pay, benefits, post-judgment and pre-judgment interest, incidental damages and attorneys’ fees and costs all more fully set out in the following pleadings: *Complainant’s Damages*, *Complainant’s Damages-Supplement* and *Complainant’s faxed letter dated August 5, 2005*.

12. The West Virginia Supreme Court of Appeals and the Kanawha Circuit Court have ruled in favor of the Complainant.

13. The Final Orders of the West Virginia Human Rights Commission are affirmed.

ORDER

Pursuant to Findings of Fact and Conclusions of Law, the administrative law judge orders the following forthwith.

1. Respondent General Motors is ordered to pay the complainant, Hubert Smith \$886,194.02 which represents as of September 2005, front pay and back pay in the amount of \$619,716.10 plus post-judgment interest accruing from May 1, 2001 until September 1, 2005 in the amount of \$266,477.92. The amount of \$619,716.10 is offset by General Motors payment to Mr. Smith of \$582,359.31 for a difference of \$37,358.79. General Motors is ordered to pay this difference plus any and all post judgment interest accruing from May 1, 2001 until September 1, 2005. Post judgment interest continues to accrue against the sum of \$619,716.10 until all post judgment interest is paid in full.

2. General Motors is ordered to pay Mr. Smith incidental damages in the amount of \$3,277.45 plus interest arising from the May 1, 2001 judgment until paid in full. This amount is offset by General Motors payment of \$4,540.10.

3. General Motors is ordered to pay attorney fees and costs in the amount of \$45,860.62 plus interest associated with appeals filed by General Motors in Circuit Court and the West Virginia Supreme Court of Appeals. General Motors has paid \$49,995.95 but not all of the interest. General Motors is ordered to pay all post judgment interest owed. Interest shall continue to accrue on the attorney fees and costs of until such time all post judgment interest is paid in full.

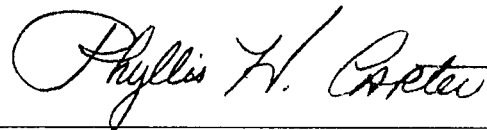
4. General Motors is ordered to pay attorney fees and costs in the amount of \$94,845.80 plus interest arising from the May 1, 2001 judgment which was awarded to Hubert Smith by the undersigned in her January 30, 2001 Supplemental Decision, said decision affirmed in its entirety by Judge Charles E. King, Jr. by Order dated November 9, a 2004. This amount has been paid in full.

14. Hubert Smith is ordered to file a Petition for Attorney Fees and Costs in the Amount

of \$1,500.00 which he alleges are additional cost incurred to recovered all damages owed by General Motors within 10 days of receipt of this Order.

15. This Order is referred to George Bearfield, Compliance Director, for the specific purpose of providing oversight on the implementation of the Order and the receipt of written verification from General Motors that Hubert Smith's pension seniority has been restored. It is so Ordered.

Enter this 13th of September, 2005.



PHYLLIS H. CARTER
CHIEF ADMINISTRATIVE LAW JUDGE
815 Quarrier Street, 2nd Floor
Charleston, WV 25301

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

HUBERT J. SMITH,

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GENERAL MOTORS CORPORATION,

Respondent.

CERTIFICATE OF SERVICE

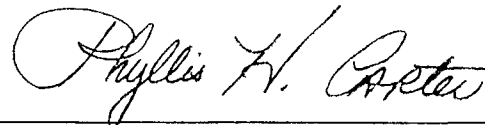
I, Phyllis H. Carter, Administrative Law Judge for the West Virginia Human Rights Commission, do hereby certify that I have served the foregoing **ADMINISTRATIVE LAW JUDGE'S FINAL DECISION REGARDING THE CALCULATION OF THE AWARD FOR LOSS WAGES, ET AL.**, by depositing a true copy thereof in the U.S. Mail, postage prepaid this 13th day of September, 2005 to the following.

Hubert J. Smith
317 Pendleton Drive, Apt. D
Martinsburg, WV 24501-2935

General Motors Corporation
P. O. Box 1248
Martinsburg, WV 24502-1248

David Hammer, Esquire
Robert Schiavoni, Esquire
HAMMER, FERRETI, & SCHIAVONI
408 W. King St.
Martinsburg, WV 25401

Ronald Rossi, Esquire
MARTIN & SIEBERT
P.O. Box 1286
Martinsburg, WV 25402-1286



PHYLLIS H. CARTER
CHIEF ADMINISTRATIVE LAW JUDGE

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

HUBERT J. SMITH,

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v.

Docket Number: EH-27-99

GENERAL MOTORS CORPORATION,

Respondent.

**ADMINISTRATIVE LAW JUDGE'S
DECEMBER 14, 2005 SUPPLEMENTAL ORDER
REGARDING ATTORNEY FEES AND COSTS**

I.

PROCEDURAL HISTORY

On September 13, 2005, I issued a final order regarding damages, attorney fees and costs. Mr. Smith, by and through his attorney, Robert F. Schiavoni, filed Complainant's Supplemental Petition for Fees and Costs with me on September 22, 2005.

In October 2005 Mr. Schiavoni notified the undersigned that General Motors Corporation ("General Motors") had agreed to satisfy the judgement and requested that I not rule on the Complainant's Supplemental Petition for Fees and Costs because it appeared that General Motors would pay the entire judgment. I received a letter dated November 28, 2005 from Mr. Schiavoni copied to Mr. Ron Rossi, counsel for General Motors indicating that he had made several unsuccessful attempts to get General Motors to satisfy the judgement and that at one point Mr. Rossi had assured him that the checks were on the way.

Mr. Smith received a partial payment in the mail from General Motors. When Mr. Smith went to the Bank to cash the check, General Motors had stopped payment on it.

Mr. Schiavoni has now filed an enforcement action, *Smith, Hubert v. General Motors Corporation*, Civil Action No. 01-AA-138, against General Motors on Mr. Smith's behalf and has notified Mr. Bearfield, Commission's Director of Enforcement.

Mr. Schiavoni now asks for a ruling on Mr. Smith's Supplemental Petition for Fees and Costs, and asks me to keep the matter open on the docket as the enforcement proceeding may result in substantial fees and costs which are recoverable by law.

II.

FINDINGS OF FACT

1. My September 13, 2005 Final Order Regarding Damages, Attorneys Fees and Costs are incorporated in its entirety in this Order.
2. Mr. Schiavoni's practice is substantially limited to handling employment claims arising under various federal and state statutes including, *inter alia*, Title VII of the Civil Rights Act, the Rehabilitation Act, the West Virginia Human Rights Act, the Fair Labor Standards Act and the Wage Payment and Collection Act.
3. The hourly fee requested by the Complainant is reasonable and the costs incurred by Complainant are likewise reasonable.
4. Mr. Schiavoni presents a detailed listing of his additional attorney fees and costs in the amount of \$4,405.00. See Exhibit A.
5. General Motors has not filed any response to Complainant's September 22, 2005 Supplemental Petition for Fees and Costs and Mr. Schiavoni's November 28, 2005 letter to me. Mr. Rossi, counsel for General Motors was copied on the Petition and the November 29, 2005 letter. General Motors Corporation did not appeal my September 13, 2005 Final Order

Regarding Damages, Attorneys Fees Costs.

III

DISCUSSION

The West Virginia Supreme Court in Aetna Casualty and Surety Co. v. Pitrolo, 176 W. Va. 190, 342 S. E. 2d 156 (1986) and Brown v. Thompson, 192 W. Va. 412, 452 S. E. 2d 728 (1994) set forth a twelve-factor test for determining reasonableness of attorneys' fees. Those factors are: (1) the time and labor required; (2) the novelty and difficulty of the question presented; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee charged in similar cases; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and the length of the professional relationship with the client; and, (12) awards in similar cases.

Mr. Schiavoni began his representation July 24, 1998. It is now December 2, 2005. After numerous Commission Orders, Circuit Court Orders and an Order by the West Virginia Supreme Court of Appeals, Mr. Smith has not been paid.

Although the complexity of the legal issues is no greater than in comparable cases arising under the West Virginia Human Rights Act, the case was defended very aggressively by the parties counsel. Many of the costs including attorney fees are a direct result of Mr. Schiavoni's effort to get General Motors to pay be responsive and cooperative. The contumacious actions of General Motors necessitated the expenditure of an inordinate amount of time by Mr. Schiavoni. A review of the hours claimed by the complainant is what would be expected given the number

of appeals taken, the General Motors contumacious actions, lack of cooperation, the stop payment on Mr. Smith's check; and General Motors refusal to fully obey an Order of the West Virginia Supreme Court of Appeals, the orders of the Circuit Court of Kanawha County and the countless orders of the West Virginia Human Rights Commission.

Hourly rates previously awarded by the West Virginia Human Rights Commission have ranged from \$100.00 to \$300.00 per hour. Mr. Schiavoni's hourly rate is within the parameters of recent fees awarded given the experience of complainant's counsel and in light of General Motors wilful disregard for an Order of the West Virginia Supreme Court of Appeals, the Circuit Court of Kanawha County and the countless orders of the West Virginia Human Rights Commission.

The case was taken on a contingency fee basis and therefore the case is not very desirable in light of the risk that no fee would have been recovered in prosecuting the complainant's claim if complainant had lost. Public policy dictates that when the complainant prevails, reasonable fees and costs are awarded so that private counsel is encouraged to prosecute actions seeking enforcement of the West Virginia Human Rights Act. The attorney's fees and costs while high are reasonable in light of the contentiousness between counsel and lack of cooperation by General Motors.

III.

CONCLUSIONS OF LAW

1. A successful party in a human rights case is entitled to an award for attorney fees and costs. See W. Va. Code § 5-1 1-1, et seq. and 77 CSR.2-9.3.c. the Rules of Practice and Procedure before the West Virginia Human Rights Commission; Kerns v. Bucklew, 178 W. Va.

68, 357 S. E. 2d 750 (W. Va. 1987) and New York Gaslight Club, Inc. v. Carey, 447 U. S> 54, 1005 S. Ct. 2024, 64 L. Ed. 2d 723 (1980). The complainant is entitled to attorney's fees on the appeal because he has prevailed and is entitled to be made whole.

2. On November 9, 2004, Judge Charles E. King, Jr. affirmed in its entirety the my January 30, 2002 order fixing the amount of attorneys' fees and costs arising from the May 1, 2001 The Kanawha County Circuit Court affirmed my earlier decisions awarding Mr. Smith Attorney Fees and Costs. General Motors did not appeal Judge King's Orders.

IV.

RELIEF AND ORDER

Pursuant to the above findings of fact and conclusions of law, I order the following relief:

1. Respondent, General Motors is ORDERED to pay the complainant, Hubert Smith supplemental attorney fees in the amount of \$4, 405.00 plus interest at the rate of ten percent per annum within 15 days from the receipt of this Order Regarding Supplemental Attorney Fees and Costs.

2. It is ORDERED that the above referenced case shall remain on my open docket for any further orders regarding attorney fees and costs which are recoverable by law resulting directly from any enforcement proceedings that might arise.

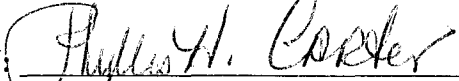
3. It is further ORDERED that the West Virginia Attorney General's Office, Civil Rights Division shall represent the interests of the West Virginia Human Rights Commission in the enforcement of my orders in the above referenced case and shall join Hubert Smith, the Complainant, in his enforcement proceeding now pending in the Circuit Court of Berkeley County and known as *Smith, Hubert vs. General Motors Corporation* Civil Action No. 01-AA-138.

4. Mr. Hubert Smith is ORDERED to immediately inform the Commission of any further or continued violations of my ORDERS and to address its correspondence to me and to Mr. George Bearfield, Director of Compliance, West Virginia Human Rights Commission, 1321 Plaza East, Room 108-A, Charleston, West Virginia 25301-1400, Telephone: (304) 558-2616.

It is so **ORDERED**.

Entered this 14th day of December, 2005.

WV HUMAN RIGHTS COMMISSION

BY:  _____

PHYLLIS HARDEN CARTER

CHIEF ADMINISTRATIVE LAW JUDGE

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

HUBERT J. SMITH,

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GENERAL MOTORS CORPORATION,

Respondent.

CERTIFICATE OF SERVICE

I, Phyllis H. Carter, Chief Administrative Law Judge for the West Virginia Human Rights Commission, do hereby certify that I have served the foregoing Chief Administrative Law Judge's December 20, 2005 Supplemental Order Regarding Attorney Fees and Costs, by depositing a true copy thereof in the U.S. Mail, postage prepaid this 20th day of December, 2005 to the following.

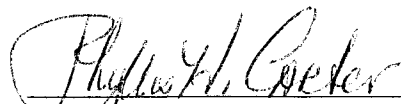
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PHYLLIS H. CARTER
CHIEF ADMINISTRATIVE LAW JUDGE