

IN THE CIRCUIT COURT OF THE  
17<sup>TH</sup> JUDICIAL CIRCUIT IN AND  
FOR BROWARD COUNTY, FLORIDA

CASE NO.: 03-8598 CACE 08

GENERAL MOTORS CORPORATION,

Petitioner,

vs.

JOSEPH CHIARAMONTE,

Respondent.

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Orlando Law Offices of  
Rumberger, Kirk & Caldwell, P.A.

**AMENDED FINAL JUDGMENT AWARDING RESPONDENT REASONABLE  
ATTORNEYS' FEES AND COSTS**

THIS CAUSE having come on to be heard upon Respondent JOSEPH CHIARAMONTE's Motion for Attorney Fees and Costs against Petitioner, GENERAL MOTORS CORPORATION, on November 9, 2004, and the Court having reviewed said Motion, attachments and Respondent's counsel's Affidavits, and having heard argument of counsel for the respective parties and being otherwise fully advised in the premises, the Court, utilizing the criteria set forth in *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985), and its progeny, makes the following,

**FINDINGS:**

A. This matter arises out of a Lemon Law arbitration proceeding. The Respondent was the prevailing party in a Florida New Motor Vehicle Arbitration. The Arbitration Board entered an order in his favor pursuant to §681.1095, Fla. Stat., and dated March 17, 2003. General Motors Corporation "appealed" that award by filing a petition with the Circuit Court on May 16, 2003. The Court found General Motors failed to file its appeal within the requisite thirty days pursuant to §681.1095(10), Fla. Stat., and after taking evidence the Court dismissed General Motors' "appeal" as untimely. Further, the Court determined that the appeal was not "pursued in a timely and good

faith manner by General Motors Corporation." (Order on Defendant's Motion for Summary Judgment, June 15, 2004.)

B. The Respondent is entitled to recover attorney fees pursuant to *Florida Statute § 681.1095(13)*, (Florida New Motor Vehicle Warranty Act).

C. The Respondent seeks to recover for 76.70 hours expended at the hourly rate of \$350 per hour plus costs of \$45.05 for a total of \$26,890, doubled for a total of \$53,780.10. The Respondent also requests a multiplier of 2.5.

D. The Court finds Respondent's counsel, Rebecca J. Covey, reasonably expended 65.4 hours representing the Respondent in this cause.

E. The Court finds the hourly rate of \$350, is reasonable for this type of case, in this community, considering the experience, reputation and ability of Respondent's counsel.

F. Therefore the Court finds the reasonable attorney fee for Rebecca J. Covey is \$22,890.00.

G. The Court finds the Respondent is entitled to recoverable costs in the amount of \$45.05.

H. The above findings are based upon the Court's consideration of the relevant market conditions, the risk of non-payment, the skill of the attorney, the preclusion of accepting other employment because of this representation, the undesirability of the case, the amount involved and the results obtained and the other factors articulated in Standard Guar. Ins. Co. v. Quanstrom, 555 So.2d 828 (Fla. 1990).

I. The Court awards attorney fees pursuant to *Florida Statute § 681.1095(13)*, (Florida New Motor Vehicle Warranty Act) which provides:

If a decision of the board in favor of the consumer is upheld by a court, recovery by the consumer shall include the pecuniary value of the award, attorney's fees incurred in obtaining confirmation of the award and all costs and damages ....

If a court determines that the manufacturer acted in bad faith in bringing the appeal...or in complete absence of a justiciable issue of law or fact, the court shall double, and may triple the amount of the total award.

J. Since the Court has previously found this action to be filed in bad faith by General Motors pursuant to §681.1095, Fla. Stat., and since this Court has previously ruled the Respondent's damages include attorney fees and costs, the attorney fees and costs are also doubled. Therefore, the attorney fees and costs are assessed in the amount of \$45,780.00 ( $\$22,890 \times 2 = \$45,780.00$ .) This is the lodestar amount.

K. The Court denies attorneys' fees expended in litigating the issue of attorneys' fees.

L. Respondent also seeks prejudgment interest on the attorney fees and costs. The Court awards prejudgment interest on the attorney fees and costs on the lodestar amount from June 15, 2004. *Inacio v. State Farm*, 550 So.2d 92 (Fla. 1st DCA 1989). The attorney fees and costs became a liquidated amount at the date the final judgment was entered in favor of Respondent on June 15, 2004. **Therefore prejudgment interest through November 15, 2004 = \$1,335.25.**

M. Because Respondent's counsel was employed on a contingency basis and the court "must consider" the application of a multiplier where the prevailing party's counsel is employed on

a contingency basis." Carmichael v. State Comprehensive Health Ass'n, 717 So.2d 174, 174 (Fla. 4th DCA 1998).

N. The case at hand falls into public policy enforcement case, category I, as delineated in Standard Guaranty Insurance Co. v. Quanstrom, 555 So.2d 828 (Fla. 1990). Quanstrom, *supra*.

The first category relates to public policy enforcement cases, which are those cases which led to the development of the lodestar approach. These cases generally present discrimination, environmental, and consumer protection issues. As noted, the primary purpose of these fee-authorizing statutes is to encourage individual citizens to bring civil actions that enforce statutory policy.

Public enforcement of the Florida Lemon Law Act requires the consumer's attorney to act as a private Attorney General. Protection of the public depends upon private enforcement of the Florida Motor Vehicle Sales Warranties. Private attorneys must be appropriately compensated for representation of consumers who have prevailed at the lemon law arbitration, to insure the arbitration awards are enforced and to uphold the stated legislative intent of the Lemon Law Act. §681.101, Fla. Stat. Since this is a public policy enforcement case, the court has taken into consideration the risk of nonpayment, the relevant market requirements and the Respondent's attorney's inability to mitigate the risk of nonpayment, the skill of the attorney, and the preclusion of accepting other employment because of this representation. In public policy enforcement cases, a contingency risk multiplier may be applicable where the movant establishes that without the adjustment for risk, substantial difficulties would be faced in finding counsel in the local or relevant market. Boardman Petroleum, Inc. v. Tropic Tint of Jupiter, Inc., 668 So.2d 308, 311 (Fla. 4th DCA 1996) Further, pursuant to Chrysler Corp. v. Weinstein, 522 So.2d 894 (Fla. 3<sup>rd</sup> DCA 1988), a lemon law case, an

enhancer is appropriate even where it appears "more likely than not at the outset of litigation that claimant would succeed on his claims."

O. Therefore, the Court awards a multiplier of 2.5, which when multiplied by the lodestar of \$47,115.25 equals \$117,788.12 + \$45.05 for a total of \$117,833.17.

**ORDERED AND ADJUDGED**

1. Respondent's Motion for Fees and Costs be, and the same hereby is, granted.
2. The Respondent, JOSEPH CHIARAMONTE, 3850 Galt Ocean Drive, Apartment 1511, Fort Lauderdale, FL 33308, does have and recover from GENERAL MOTORS CORPORATION, 300 Renaissance Center, M/C 482-C14-C66, Detroit, Michigan 48265-3000, reasonable attorneys' fees, interest and costs in the sum of \$117,833.17 (One hundred seventeen, eight hundred thirty-three thousand dollars and seventeen cents) for which sum let execution issue forthwith. Until paid in full, interest hereon shall accumulate at the rate of 7% per annum from the date of the first Final Judgment or November 15, 2004.

DONE AND ORDERED in Chambers, at Fort Lauderdale, Broward County, Florida, this  
\_\_\_\_ day of December, 2004.

J. LEONARD FLEET

DEC 06 2004

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A TRUE COPY  
J. LEONARD FLEET, Circuit Court Judge

Copies furnished:

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