13-1084

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

SHARON GRIFFITH and,
LOU ANN WALL,
Plaintiffs,

vs. // Civil Action No. 11-C-26
(Judge Thomas C. Evans, III)

ALCAN ROLLED PRODUCTS RAVENSWOOD, LLC, a Delaware corporation, MELVIN LAGER and LARRY A. KEIFER,
Defendants.

ORDER

(Re: Defendants' Post-Trial Motion and Plaintiffs' Motion for Attorney Fees")

On April 25, 2013, Plaintiffs appeared in person and by counsel, WALT AUVIL and Defendants appeared by CHRISTOPHER SLAUGHTER and VANESSA GODDARD. for hearing upon "*Defendants Constellium Rolled Products-Ravenswood LLC and Melvin Lager's Motion for Reconsideration;*" "*Defendants' Post-Verdict Motion Under Rules 50(b) and 59(a) for Judgment as a Matter of Law and/or for New Trial, and Request for Review of Punitive Damages Award;*" and "*Plaintiff's Motion for Attorney Fees and Costs.*"

Findings of Fact and Conclusions of Law

1) This case involves Plaintiffs' claims brought pursuant to the *West Virginia Human Rights Act* (West Virginia Code §5-11-1 *et seq.*), to the effect that they were each subjected to gender discrimination in the workplace. Plaintiffs advanced the theory that they were compelled to work in a hostile work environment and were subjected to disparate treatment on account of their gender - - female.

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2) This case was tried before a jury on December 18, 19 and 20, 2012.

3) Neither Plaintiff suffered any monetary loss of income, had not been demoted, and claimed damages from the emotional toll that they had suffered due to the hostile workplace environment based upon their gender. (Vol. II, 118; Vol. II, 142.)

4) The Court instructed the jury as to punitive damages as requested by the Plaintiffs. While the Defendants objected to instructing the jury on punitive damages, there was no objection to the content of the instruction concerning punitive damages given by the Court.

5) Following a jury trial, the jury returned a verdict in favor of Plaintiffs and awarded each Plaintiff $250,000 for emotional distress as compensatory damages and to each Plaintiff $250,000.00 as punitive damages.

6) By virtue of the foregoing, the Plaintiffs prevailed in this case.

7) At the trial in this matter, and viewing the evidence in the light most favorable to the Plaintiffs, evidence and testimony was presented which reasonably permitted the jury to find as follows:

a) SHARON GRIFFITH is employed by ALCAN ROLLED-PRODUCTS RAVENSWOOD LLC, now known as Constellium, (hereafter "the company") in the "Project Maintenance" department. She has been employed at that facility since 1977, a period of over thirty-five years and remained employed as of the trial in this matter. (Vol. II, 136, 137.)1

1 There are three volumes of transcripts prepared of the jury trial in this matter conducted on December 18, 19 and 20, 2012. References to such transcripts will be to the volume and page number.

b) LOU ANN WALL is employed as a millwright by ALCAN ROLLED PRODUCTS RAVENSWOOD, LLC now known as Constellium, (hereafter "the company") in the "Project Maintenance" department. She has been employed by the company for thirty-four (34) years and remained employed as of the time of the trial in this matter. (Vol. II, 57, 59.) Her husband works there and her father is retired from the plant. Id. at 58.

c) SHARON GRIFFITH and LOU ANN WALL were the only two females who worked in the Project Maintenance department of the company out of a total of 17 employees. (Vol. I, 40, 60.)

d) LARRY KEIFER also works at the plant. On October 12, 2009 he was working in the Plate Department, a totally different department within the company than where the Plaintiffs worked. (Vol. I,. 34, 35)

e) From September 2009 until February 2010, the company had a suggestion box into which employees could submit comment cards. During this time period, the company had a policy of posting the comments from every comment card submitted, after they were retyped with redactions and the CEO response was added. (Vol. I, 129-130.)

f) On or about October 12, 2009, LARRY KEIFER wrote and submitted three comment cards regarding LOU ANN WALL and SHARON GRIFFITH. (Vol. I, 35; Plaintiffs' Exhibits 1, 3 and 5.)

g) After writing out Plaintiffs' Exhibits 1, 3 and 5, LARRY KEIFER deposited these comment cards into the comment box. (Vol. I, 37.)

h) LARRY KEIFER understood that there was a practice at the plant of the

comments contained in such cards being retyped and posted in front of both gates of the plant, but testified that he was unaware of what part of the contents of the comment cards he had submitted would be published. (Vol. I, 37-38.)

i) The comments were also posted on the company's "intranet," an internal communication system. (Vol. I, 141.)

k) It was well known that anybody - - other employees, contractors, sub-contractors, vendors - - coming into or leaving the plant would be able to observe and read these comment cards when posted. (Id. at 39.)

l) Plaintiffs' Exhibit 1 referred to SHARON GRIFFITH as a "lazy ass" who sat on her ass in the lunchroom which was "bullshit." (Id at 39.)

m) Plaintiffs' Exhibit 3 referred to Plaintiffs as "lazy asses."

n) Plaintiffs' Exhibit 5 referred to SHARON GRIFFITH as a "lazy, worthless bitch" who should "stay home" if she couldn't do the work." (Vol. I 40).

o) The company had a policy of posting the comment cards in the plant with redactions only of names and profanity. Thus, for instance in Plaintiffs' Exhibit 2, the phrase "lazy ass" was retyped to state "lazy a_ _. (Vol. I, 65-67.)

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n) These comment cards were reviewed by MEL LAGER, the company CEO before being retyped and posted. (Vol. I, 68; Plaintiffs' Exhibits 2, 4 and 6.) The company acknowledged that it had received a comment card referring to Plaintiff Griffith as a "lazy, worthless, bitch" but did nothing to determine who had submitted this comment card, typed the comments from the card "leaving in a clear reference that described the person referred to as a lazy, worthless bitch" and posted it at the gates to the plant for everyone to see. (Vol.I, 88.)

o) CEO MEL LAGER or (MR. ZELZANY) then added a "CEO response" to these comment cards. (ID. at 69.) As to the comment regarding a female employee being a lazy, worthless b _ _ _ _ _, the CEO responded that "we need everyone to be fully engaged and productive." (Id. at 78, 95.) As to the comment that Plaintiff Griffith was a "lazy ass," the CEO response was "[t]his doesn't seem to be the best use of time or equipment." (Plaintiffs' Exhibit 4; Vol. I 104.) The CEO responses to these comments never noted that the language used by LARRY KEIFER was inappropriate. (Vol. I, 105.)

p) Although the Plaintiffs' names were redacted from LARRY KEIFER's comment cards about the Plaintiffs before the information therein was published, the references to the two women in the project maintenance department was understood as identifying LOU ANN WALL and SHARON GRIFFITH, the only women who worked in that department. Thus, the removal of the names of the two women "really didn't do anything to keep them from being identified." The company acknowledged that the redactions "could have been done more effectively." (Vol. I, 43, 44, 77, 86, 97.)

q) This matter was brought to the attention of the union by Sharon Griffith, who requested assistance from the union. (Vol. I, 156.) When the union called and complained about the comment cards concerning Plaintiffs, they were taken down. (Vol. I, 105.) However, the comments remained on the company's "intranet" computer system. (Vol. I, 142.) The comments were also copied, "were passed around on lunch tables" and "taped to the walls, shower room" and were circulated around the plant. (Vol. II, 24-25.)

r) LARRY KEIFER readily agreed that the posting of such comments was bound to be embarrassing and humiliating to Plaintiffs and that the posting of

these comments caused the Plaintiffs to be the subject of discussion and "scuttlebutt" around the plant. (Vol. I, 45, 141.) It was the topic of discussion in the lunchroom. (Vol. I, 144.)

s) Plaintiff Sharon Griffith was on vacation when the comment cards were posted, but several people called her to tell her that she needed to come to the plant and see the bulletin boards. (Vol. II, 138.) She went to the plant, read the cards, and then went straight to the union hall. (Id.) Ms. Griffith was observed to be mad, upset, "shaken" and "just about in tears" after the comments were posted. (Vol. I, 143, 157; Vol. II, 53.) Ms. Griffith described the comments as "degrading." (Vol. II, 138.) No one from management ever asked Sharon Griffith anything about these comment cards. (Vol. II, 141.)

t) Plaintiff Lou Ann Wall took Ron Barton, union steward, to the bulletin board and showed him the comments. "She was very, very upset..." and felt degraded and humiliated. (Vol. II, 13, 53, 72.) Lou Ann Wall felt that these comments were discriminatory based on her gender. (Vol. II, 74.) Ron Barton recalled seeing Plaintiffs' Exhibits 3, 4, 5 and 6 and was "totally shocked." (Vol. II, 17.) On one occasion in December 2009, Paul Spence found Lou Ann Wall crying in the workplace. (Vol. II, 112.) Ms. Wall often came home from work crying as well and no longer enjoyed going to work due to this hostile work environment. (Vol. II, 159.)

u) There were instances in the past when Lou Ann Wall had been called names, such as when a sign was placed on her fork truck stating "fat whore." She reported that matter, and after the company consulted with a handwriting expert, the identity of the author was reported to be inconclusive. The next day, a sign on her computer said "suck me raw." Accordingly, Ms. Wall was reluctant to bring her complaints to management regarding the comment cards.

(Vol. II, 75-76.)

v) Before the comments were posted, the atmosphere in the Plaintiffs' workplace "was a friendly atmosphere, where everyone got along." (Vol. II, 60.) After these comments were posted, in the maintenance shop, Mr. Barton observed that "[i]t became almost a class thing, almost male against female" where there "was almost a total shunning by some of the employees toward" Plaintiffs. (Vol. II, 20-22.) Sharon Griffith noted that two employees changed lunchrooms, and another employee, who she regarded as a son, quit speaking to her entirely. (Vol. II, 140, 143.)

w) Charles Bennett saw Plaintiffs' Exhibit 2 and said "it was kind of evident it was referring to Sharon and Lou Ann..." (Vol. II, 35.) He recalled discussions in the lunchroom about the comments cards concerning Plaintiffs. (Vol. II, 37.) Co-worker Ralph Gibbs agreed that he was "immediately" able to determine from the posted comment cards who was being referred to, as Plaintiffs were "the only two females in project maintenance." (Vol. II, 52.)

x) Sharla Rose, another women who worked for the company opined that these comments should not have been posted "out front for somebody to make fun of [Plaintiffs]" and to "downgrade" them. She further felt this had created a hostile work environment which invited workers to make fun of Plaintiffs. (Vol. I, 145.)

y) The company made no attempt whatsoever to determine who had made the comments regarding the Plaintiffs. (Vol. I, 102.) LARRY KEIFER was not disciplined in any manner regarding these comments cards after it was determined he had written them. As of the date of the trial, he remained employed by the Defendant company. (Vol. I, 46, 71.)

z) At this industrial facility, rough language was used by the workers throughout the plant. (Vol. I 53.) LOU ANN WALL learned to accept it and not take offense because it was not directed at her. (Vol. II, 61-62.) Ms. Wall acknowledged that she herself used the work "bitch" at times. (Vol. II, 116.) However, after the posting of the comment cards, Ms. Wall reported that "the whole relationship with [her] co-workers ... changed" and that she felt "isolated and shunned." (Vol. II, 78.)

aa) The Plaintiffs filed their complaint on February 24, 2011, a year and four months after the comment cards were posted. The Defendant company never inquired of LARRY KEIFER during this time if he had written the comment cards is question. (Vol. I, 55-56.) Plaintiffs originally alleged disparate treatment based upon gender and later amended the complaint to allege hostile work environment and sexual harassment. Lou Ann Wall and Sharon Griffith stated that they believed suing was the only way to get the harassment to stop. (Vol. II, 79, 144.)

8) Defendants have challenged the punitive damage award on two bases. West Virginia punitive damage jurisprudence includes a two-step inquiry: first a determination of whether the conduct of an actor toward another person entitles that person to a punitive damage award is required under ***Mayer v. Frobe***, 40 W.Va. 246, 22 S.E. 58 (1895); second, if a punitive damage award is justified, then a the punitive damage award must be reviewed to determine if it is excessive. ***Garnes v. Fleming Landfill, Inc.***, 186 W.Va. 656, 413 S.E.2d 897 (1996.)

9) With regard to the initial inquiry which must be undertaken concerning

punitive damages, "[i]n actions of tort, where gross fraud, malice, oppression, or wanton, willful or reckless conduct or criminal indifference to civil obligations affecting the rights of others appear, or where legislative enactment authorizes it, the jury may assess exemplary, punitive, or vindictive damages; these terms being synonymous." *Syl. pt. 4,* ***Mayer v. Frobe,*** 40 W. Va. 246, 22 S.E. 58. *Accord Syl. pt. 1,* ***O'Brien v. Snodgrass,*** 123 W. Va. 483, 16 S.E.2d 621 (1941). A wrongful act, done under a bona fide claim of right, and without malice in any form, constitutes no basis for such damages." *Syl. pt. 3,* ***Jopling v. Bluefield Water Works & Improvement Co.,*** 70 W. Va. 670, 74 S.E. 943 (1912).

10) "The foundation of an inference of malice is the general disregard of the rights of others, rather than an intent to injure a particular individual." ***Addair v. Huffman,*** 156 W. Va. 592, 603, 195 S.E.2d 739, 746 (1973).

11) Additionally, "[i]n determining whether the verdict of a jury is supported by the evidence, every reasonable and legitimate inference, fairly arising from the evidence in favor of the party for whom the verdict was returned, must be considered, and those facts, which the jury might properly find under the evidence, must be assumed as true." *Syl. pt. 5,* ***Poe v. Pittman,*** 150 W. Va. 179, 144 S.E.2d 671 (1965). See also *Syl. pt. 5,* ***Orr v. Crowder,*** 173 W. Va. 335, 315 S.E.2d 593 (1983)

12) "In determining whether there is sufficient evidence to support a jury verdict, the court should: (1) consider the evidence most favorable to the prevailing party; (2) assume that all conflicts in the evidence were resolved by the jury in favor of the prevailing party; (3) assume as proved all facts which the prevailing party's evidence tends to prove; and (4) give to the prevailing party the benefit of all favorable inferences which reasonably may be drawn from the

facts proved."2

Moreover, "[c]ourts must not set aside jury verdicts as excessive unless they are monstrous, enormous, at first blush beyond all measure, unreasonable, outrageous, and manifestly show jury passion, partiality, prejudice or corruption." ***Addair v. Majestic Petroleum Co., Inc.,*** 160 W. Va. 105, 232 S.E.2d 821 (1977).

13) It is the peculiar and exclusive province of the jury to weigh the evidence and to resolve questions of fact when the testimony of witnesses regarding them is conflicting and the finding of the jury upon such facts will ordinarily not be disturbed. ***Peters v. Rivers Edge Mining,*** *Syl. Pt. 12,* 224 W.Va. 160, 680 S.E.2d 791 (2009).

14) The factors to be considered during a post-trial review of a punitive damages award are found in ***Garnes v. Fleming Landfill, Inc.,*** 186 W. Va. 656, 413 S.E.2d 897 (1991) are as follows.

i. The relationship of harm likely to occur from the defendant's conduct as well as harm that has actually occurred.

ii. The reprehensibility of the defendant's conduct.

iii. How long the defendant continued in its actions.

iv. Whether the defendant was aware its actions were causing or were likely to cause harm.

2 As an example, in this case, the evidence supported the Jury drawing a reasonable (in the court's view) inference that Plaintiffs were "shunned" and "isolated" in the Project Maintenance department because they filed a lawsuit over the incident, not because of their gender, and that Plaintiffs instead of sustaining emotional distress, actually saw the publication of the comment cards as a way to achieve a sort of "jackpot justice." The Jury rejected this interpretation of the evidence, which the court believes was within their authority under the law.

v. Whether the defendant attempted to conceal or cover up its actions or the harm caused by them.

vi. Whether the defendant engaged in similar conduct in the past.

vii. Whether the defendant made reasonable efforts to make amends by offering a fair and prompt settlement for the actual harm caused once its liability became clear.

viii. The costs of litigation.

ix. Any criminal sanctions imposed on the defendant for his conduct.

x. Any other civil actions against the same defendant based on the same conduct.

xi. The appropriateness of punitive damages to encourage fair and reasonable settlements when a clear wrong has been committed.

15) With respect to this inquiry concerning punitive damages, the evidence at trial cited by Plaintiffs concerning the CEO's intentional publication of the comment cards with identifiable and derogatory information regarding Plaintiffs, was sufficient for the jury to reasonably find and determine that:

a. On or about October 12, 2009, three separate comment cards were submitted to the company suggestion box. Those cards referred to Plaintiffs, the only two female employees in the project Maintenance Department as "lazy worthless bitches" and "lazy asses." Specifically, Plaintiffs' Exhibit 1 referred to SHARON GRIFFITH as a "lazy ass" who sat on her ass in the lunchroom which was "bullshit;" Plaintiffs' Exhibit 3 referred to Plaintiffs as lazy asses and Plaintiffs' Exhibit 5 referred to SHARON GRIFFITH as a "lazy, worthless bitch" who should "stay home" if she couldn't "do the work

b. These comment cards were reviewed by company management. The names were redacted and the profanity redacted (all but the first letter), but the content of the comments regarding Plaintiffs was clear. Management then posted a response to these comments which did not

repudiate the derogatory and sexist nature of the comments. These responses were at best vague and at worst implied agreement with the comments about Plaintiffs' work ethic. The company acknowledged that the redactions "could have been done more effectively."

c. The three comment cards were published on the company bulleting board, on the company's intranet, and were also copies and circulated and posted in the plant. The comment cards were removed from the bulletin board after the union complained.

d. The posting of these comments was embarrassing and humiliating to Plaintiffs and caused the Plaintiffs to be the subject of discussion and "scuttlebutt" around the plant. ."

Thus, the relationship of the harm likely to occur from posting such comment cards and the harm that actually occurred according to Plaintiffs' evidence, supports punitive damages.

e. Sharon Griffith was observed to be mad, upset, "shaken" and "just about in tears" after the comments were posted. The comments were "degrading" to her.

f. No one from management ever asked Sharon Griffith anything about these comment cards.

g. Lou Ann Wall was also very, very upset..." and felt degraded and humiliated by the posting of these comments. Ms. Wall often came home from work crying as well and no longer enjoyed going to work due to this hostile work environment.

h. The comments contained within these comment cards (Plaintiffs' Exhibits 1-6) were discriminatory based upon Plaintiffs' gender, female.

i. Following the posting of the comment cards, the work environment deteriorated for Plaintiffs. They were shunned by many of their male co-workers, and reported that they felt isolated. For the three years since the incident preceding trial, Plaintiffs underwent great emotional distress.

j) The company made no attempt whatsoever to determine who had made the comments regarding the Plaintiffs. (Vol. I, 102.) LARRY KEIFER, the

author of the cards was not disciplined in any manner regarding these comments cards after it was determined he had written them. As of the date of the trial, he remained employed by the Defendant company.

16) The type of language used in these comment cards in reference to female employees is in and of itself evidence of a hostile work environment based on gender and imposes upon an employer a duty to investigate and take effective action to correct the problem. ***Fairmont Speciality Servs.v. West Virginia Human Rights Comm,*** 206 W.Va. 86, 93-97, 522 S.E.2d 180, 187-191 (1999). Further, referring to the only two female employees with gender identifying pronouns (such as "she" and then referring to those two employees as "lazy asses" is not gender neutral. Thus, it reasonable to interpret a reference in the posted comment cards to the only two female employees in a seventeen person work group as "lazy asses" was also evidence of gender discrimination.

17) Additionally, the undisputed evidence was that the Defendants did absolutely nothing to either investigate or correct the problems resulting from the CEO's endorsement of such negative comments about Plaintiffs once Defendants were aware of those problems. Contrary to the Defendants' argument that a review of the undisputed evidence demonstrates conclusively no reasonable jury could have found for Plaintiffs on this claim, quite the converse is true. A reasonable jury could conclude from the evidence presented that Defendants - -through its Chief Executive Officer and other members of management - - participated in, created and permitted to exist a work environment for the Plaintiffs which was hostile to them, specifically on account of their gender. Defendants then did nothing to investigate this work environment once brought to their attention and finally, did nothing to correct this hostile work environment.

18) Based upon the foregoing, the jury could properly have concluded that Defendants' posting of this information about Plaintiffs was motivated by

malice and criminal indifference to the Plaintiffs' rights and without regard to any basic notion of fairness.

19) The jury clearly concluded that all of this conduct on the part of Defendants was calculated and unfair to the Plaintiffs. The facts and inferences in this case do not point so strongly and overwhelmingly in favor of Defendants so as to lead to the conclusion that the jury was wrong in reaching this conclusion. In fact, the facts and inferences in this case point strongly support the jury's conclusion.

20) Although the Defendants had a duty under the law to provide a workplace that was free of discrimination related to gender and to provide a workplace free from such hostility, Defendants undertook no action to meet this legal obligation and in fact, helped to create such an environment by the posting of these comment cards. Thus Plaintiffs have met the first hurdle of sustaining the jury's award of punitive damages.

21) As to the amount of the punitive damages awarded by the jury, while Plaintiffs suffered no monetary losses, the jury was entitled to conclude that regularly working in a work environment rendered hostile by the discriminatory animus fueled by gender was sufficient for a jury to conclude that the Plaintiffs were severely harmed by the conduct of the Defendants.

22) The ratio of punitive damages to the emotional distress damages is 1 to 1 which is well within the acceptable range prescribed by the West Virginia Supreme Court of Appeals. The punitive damages award is not excessive, and further, is reasonable in light of the financial position of the Defendant, according to the evidence presented at trial.

23) There was sufficient evidence as outlined herein from numerous witnesses, including Defendant's own employees, for the jury to determine that Defendant, through the actions of its officers, (including its CEO) employees or agents committed the civil wrongs encouraging the discord within the company through the posting of the comment cards at issue, and in failing to rectify that problem.

24) The Plaintiffs adduced evidence from witnesses, including current and former employees of Defendants, from which the jury could reasonably conclude that Defendant's conduct was reprehensible and self-serving, such as failing to note the admittedly inappropriate nature of the comments concerning Plaintiffs, which Defendants voluntarily posted, thereby giving the imprimatur of management's approval to such commentary.

25) In this case, the jury could reasonably conclude that Defendants specifically disregarded the rights of Plaintiffs.

26) The testimony in this case made clear that Defendants and its agents were disdainful of Plaintiffs to such an extent that the jury could clearly conclude that Defendants chose to disregard the law.

27) Based on the evidence presented at trial, the jury could reasonably conclude that the manner in which Plaintiffs were treated was the way that Defendant conducted itself towards female employees.

28) Defendants were not subjected to any criminal sanctions nor other civil liability, so far as the evidence shows, for its conduct.

29) From this evidence and all the other evidence adduced at trial, this jury, being a

rational trier of fact, had sufficient evidence before it to conclude that Defendants' conduct was reprehensible and warranted the imposition of punitive damages.

30) The evidence at trial was clearly sufficient for a jury to properly conclude that the Defendants continued in their damaging conduct for an extensive period of time through and preceding the trial of this matter.

31) No reasonable offers of settlement or attempts to correct its wrongful conduct are reflected in the record of these proceedings and none have been made post-verdict.

32) The Plaintiffs incurred substantial costs in the prosecution of this action, including paying for depositions, and other miscellaneous expenses totaling over eight thousand seven hundred dollars ($8711.00) to date.

33) Based upon the totality of the evidence, the punitive damages award is not excessive and is hereby sustained.

34) It is also incorrect as matter of law that Plaintiffs are prohibited from recovering punitive damages and damages for emotional distress and mental anguish as is posited by Defendants. ***Sheetz Inc. v. Bowles Rice McDavid Graff & Love, PLLC***, 209 W. Va. 318, 547 S.E.2d 256 (2001) held that "the recovery of both emotional distress damages (where such distress, of course, is proven) and punitive damages (where the employer's conduct is sufficiently egregious to meet the standards established in our punitive damages jurisprudence) has been held to be authorized in employment law cases generally. ***Id***, at pp. 337, 275. The Sheetz Court specifically notes that the ***Vandevender*** opinion (which

gave rise to the *Sheetz* opinion) had recognized that where the claims "were not based on the tort of intentional or reckless infliction of emotional distress, but rather on claims of termination and retaliation in violation of our Human Rights and Workers Compensation statutes (footnote omitted)...[t]he specific "double recovery" concerns that arise in the case of the tort of intentional or reckless infliction of emotional distress... are not applicable." Thus, "[t]he specific principles and procedures established in Syllabus Points 14 and 15 of ***Tudor v. Charleston Area Medical Center***, 203 W. Va. 111, 506, S.E.2d 554 (1997), are limited to the tort of the intentional or reckless infliction of emotional distress" and Defendants' reliance upon this case is misplaced.

35) Plaintiffs filed a motion seeking recovery of reasonable attorney fees and litigation costs.

36) In support of this motion, Plaintiffs have submitted detailed and contemporaneously maintained time records reflecting that 182.65 hours were expended in this case by attorney Walt Auvil and 3 hours were expended by Michele Rusen.

37) Defendants did not challenge any specific hours expended by Plaintiffs' counsel or the hourly rates billed.

38) Plaintiffs' request for attorney fees and costs is reasonable and the hours expended by Plaintiffs' counsel were reasonable given the nature of the litigation.

39) In terms of hourly rates, Plaintiffs requested $350 per hour for work performed in prior to 2013 and $400 for work performed beginning in 2013.

40) Plaintiffs submitted affidavits from their attorney and a prior Order from this Court approving attorney fees at the hourly rate of $450 per hour in a similar case.

41) Plaintiffs' attorney has considerable background and experience in this type of litigation and has been successful in pursing this type of employment claims. In addition, the complexity of the factual and legal issues is quite substantial, and the two lead attorneys for the parties who tried this case are two of but a handful of lawyers in W. Va. qualified and competent to do so.

42) Considering all of the circumstances in this case, and based upon the record, Plaintiffs have sufficiently supported their request for reasonable hourly rates for similar services by attorneys of comparable experience and skill in West Virginia.

43) The hourly rate of $350 and of $400 is a reasonable hourly rate for Walt Auvil.

44) Plaintiffs also submitted itemized costs, verified by affidavit, in the amount of $8711.06.

45) Defendants did not challenge any specific expenditure, and given the circumstances of the case, the Plaintiffs' costs are reasonable.

46) An award of attorney fees and litigation costs is authorized pursuant to the ***West Virginia Human Rights Act*** (W.Va. Code §5-11-13c) for legal claims upon which Plaintiffs prevailed.

47) Plaintiffs counsel is awarded the sum of $60,105,50 as attorney fees and $8711.06 as costs expended in this litigation.

48) In light of the evidence adduced by Plaintiffs at trial and viewing that evidence in the light most favorable to the Plaintiffs, Defendants' motion for judgment notwithstanding the verdict or for new trial are denied.

This is a final order.

The clerk shall dismiss this civil action from the active docket.

The clerk shall also forward true copies of this order to Walt Auvil, Esq., attorney for the Plaintiffs and to Christopher Slaughter, Esq., attorney for the Defendants.

All of which is **ORDERED**, accordingly.

ENTER: August 29, 2013

Thomas C. Evans, III
Chief Judge, Fifth Judicial Circuit
State of West Virginia

ENTERED THE 3rd DAY OF Sept 2013
ORDER BOOK 111 PAGE 222
Bruce W Dellker
CLERK CIRCUIT COURT

A TRUE COPY, CERTIFIED THIS THE

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Bruce W Dellker
CLERK CIRCUIT COURT
OF JACKSON COUNTY, WEST VIRGINIA