

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**REM Community Options, LLC,
Defendant Below, Petitioner**

vs) No. 11-1236 (Wood County 09-C-434)

**Laura W. Cain,
Plaintiff Below, Respondent**

FILED

November 16, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner REM Community Options, LLC (“REM”), defendant below, appeals an award of punitive damages in an employment discrimination case. Petitioner is represented by Bryan R. Cokeley, Vanessa L. Goddard, and Robert L. Bailey. Respondent Laura W. Cain, plaintiff below, is represented by Walt Auvil.

This Court has considered the parties’ briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Ms. Cain asserted that her former employer, REM, terminated her employment in retaliation for her filing a workers’ compensation claim and because of her disability due to an injury received in the course of her employment. At trial, the jury found in favor of Ms. Cain on both theories of liability and awarded her \$76,000 in lost back wages, \$100,000 for emotional distress, and \$450,000 in punitive damages. After a post-trial analysis, the circuit court upheld the award of punitive damages by order entered on July 25, 2011. REM reports that it has paid the lost wages and emotional distress damages, as well as Ms. Cain’s attorney’s fees. In the instant appeal, REM only appeals the award of punitive damages.

When reviewing an award of punitive damages, we apply a de novo standard of review to the award and to the circuit court’s ruling approving, rejecting, or reducing such award. Syl. Pt. 16, *Peters v. Rivers Edge Min., Inc.*, 224 W.Va. 160, 680 S.E.2d 791 (2009).

REM argues that even when viewing the evidence in a light most favorable to Ms. Cain, the punitive damages claim should have failed as a matter of law, and the issue should not have been submitted to the jury, because Cain failed to present evidence that REM acted with malice. See, Syl. Pt. 4, *Mayer v. Frobe*, 40 W.Va. 246, 22 S.E. 58 (1895) (requiring “gross fraud, malice, oppression, or wanton, willful, or reckless conduct or criminal indifference to civil obligations affecting the rights of others” for the imposition of punitive damages); Syl. Pt. 7, *Alkire v. First*

National Bank of Parsons, 197 W.Va. 122, 475 S.E.2d 122 (1996) (holding that “a determination of whether the conduct of an actor toward another person entitles that person to a punitive damage award under *Mayer v. Frobe*” is the first step in our punitive damages jurisprudence paradigm).

In its “Findings of Fact and Conclusions of Law with Respect to Punitive Damages” order entered on July 25, 2011, the circuit court found that plaintiff did present sufficient evidence to support the award of punitive damages. Upon a de novo review of the record on appeal, the parties’ arguments, and the circuit court’s well-reasoned order, we agree with the circuit court’s findings of fact and conclusions of law. We hereby adopt and incorporate by reference the circuit court’s July 25, 2011, order. The Clerk is directed to attach a copy of the circuit court’s order to this memorandum decision.

REM argues that when awarding punitive damages, the jury was prejudiced by statements and argument of plaintiff’s counsel. However, we find that even if counsel had not made the complained-of statements and argument, there was still more than sufficient evidence to warrant the imposition of punitive damages. Accordingly, REM has asserted no meritorious grounds for reversal.¹

Affirmed.

ISSUED: November 16, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh

¹ We note that REM does not assign any error regarding the *amount* of punitive damages the jury awarded. *See* Syl. Pt. 7, *Alkire* (holding that the second step in our punitive damages jurisprudence paradigm is an examination of whether the award is excessive). The circuit court conducted a post-trial analysis pursuant to *Garnes v. Fleming Landfill, Inc.*, 186 W.Va. 656, 413 S.E.2d 897 (1991), and concluded that the amount of the award is not excessive.

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

LAURA W. CAIN,

Plaintiff,

v.

Civil Action No. 09-C-434

Judge J. D. Beane

REM COMMUNITY OPTIONS, LLC,
a West Virginia corporation,
NATIONAL MENTOR SERVICES, LLC,
and THE MENTOR NETWORK,

Defendants.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW WITH RESPECT
TO PUNITIVE DAMAGES

- 1) LAURA CAIN was formerly employed by REM COMMUNITY OPTIONS, LLC as a Lead Therapeutic Consultant. She was employed from 1998 until December 29, 2008, a period of over ten years.
- 2) It is undisputed that on December 10, 2007, LAURA CAIN was involved in an automobile accident while on the job. Plaintiff's Exhibits 6, 7 and 8.
- 3) Following her injury in the automobile accident, Laura Cain filed a workers compensation claim.
- 4) Laura Cain continued working following her accident until her physical limitations prevented her from performing the duties of her job without accommodation. This occurred on June 30, 2008.
- 5) Following her termination from employment by REM, Laura Cain filed the instant action alleging workers compensation discrimination pursuant to West Virginia Code §23-5A-1 *et seq.*, and handicap discrimination pursuant to West Virginia Code §5-11-1, *et seq.*
- 6) The Court instructed the jury as to punitive damages as requested by the Plaintiff. While the Defendant objected to instructing the jury on punitive damages, there was no objection to the instruction concerning punitive damages given by the Court.

ENTERED
____ O.B. No. ____
PAGE _____

JUL 25 2011

CAROLE JONES
CLERK CIRCUIT COURT

- 7) Following a jury trial, the jury returned a verdict in favor of Laura Cain and awarded her \$76,000 in lost wages, \$100,000 for emotional distress and \$450,000.00 as punitive damages. Defendant has challenged the punitive damage award.
- 8) 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); Community Antenna Service v. Charter Comm. IV, No. 35703 (W.Va. 2011).
- 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*, 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." 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) "When the trial court instructs the jury on punitive damages, the court should, at a minimum, carefully explain the factors to be considered in awarding punitive damages. These factors are as follows:
 - (1) Punitive damages should bear a reasonable relationship to the harm that is likely to occur from the defendant's conduct as well as to the harm that actually has occurred. If the defendant's actions caused or would likely cause in a similar situation only slight harm, the damages should be relatively small. If the harm is grievous, the damages should be greater.
 - (2) The jury may consider (although the court need not specifically instruct on each element if doing so would be unfairly prejudicial to the defendant), the reprehensibility of the defendant's conduct. The jury should take into account how long the defendant continued in his actions, whether he was aware his actions were causing or were likely to cause harm, whether he attempted to conceal or cover up his actions or the harm caused by them, whether/how often the defendant engaged in similar conduct in the past, and whether the defendant made reasonable efforts to make amends by offering a fair and prompt settlement for the actual harm caused once his liability became clear to him.
 - (3) If the defendant profited from his wrongful conduct, the punitive damages should remove the profit and should be in excess of the profit, so that the award discourages future bad acts by the defendant.
 - (4) As a matter of fundamental fairness, punitive damages should bear a reasonable relationship to compensatory damages.
 - (5) The financial position of the defendant is relevant." Syllabus point 3, Gamesv. Fleming Landfill, Inc., 186 W. Va. 656, 413 S.E.2d 897(1991).

- 15) "When the trial court reviews an award of punitive damages, the court should, at a minimum, consider the factors given to the jury as well as the following additional factors:
- (1) The costs of the litigation;
 - (2) Any criminal sanctions imposed on the defendant for his conduct;
 - (3) Any other civil actions against the same defendant, based on the same conduct; and
 - (4) The appropriateness of punitive damages to encourage fair and reasonable settlements when a clear wrong has been committed. A factor that may justify punitive damages is the cost of litigation to the plaintiff.
- 16) With respect to this inquiry concerning punitive damages, the evidence at trial cited by Plaintiff concerning Plaintiff's termination from her employment at REM was sufficient for the jury to reasonably find and determine that:
- a. Following her injury on December 10, 2007, Laura Cain continued to work although her physical limitations and time off from her job while seeking medical treatment due to the injury prevented her from performing at her former exemplary level without accommodation.
 - b. On June 24, 2008, Laura Cain requested accommodations for the physical problems she was experiencing due to her on-the-job injury in December, 2007.
 - c. REM required Laura Cain to continue to work after she presented to REM a doctor's slip stating that her physical condition precluded her from working; REM further declined to reduce Laura Cain's billable hour requirement. (Trial Transcript 486-487.)
 - d. Laura Cain began to work overtime to meet her billable hours requirements which resulted in further physical difficulties, necessitating that she have time off from the workplace in June 2008 due to her inability to perform her job duties without accommodation. (Trial Transcript 489.)
 - e. Laura Cain requested and was placed on medical leave from her position at REM as a result of her on-the-job injury beginning on June 30, 2008 through her termination on December 29, 2008.
 - f. On June 30, 2008, Jason Lynch and Ross Mason requested that Laura Cain come to the office for a meeting called for the purpose of discussing Ms. Cain's alleged performance deficiencies. They met with Laura Cain for

two and one-half hours while her daughter waited for her. Ms. Cain was extremely upset during this meeting and "profusely" sobbed. Trial Transcript 416-417.)

- g. REM resisted Laura Cain's requests to be paid accrued sick leave and Plaintiff had a number of discussions with management regarding sick leave before it was finally paid to her. (Trial Transcript 441-442.)
- h. On July 8, 2008, Defendant requested that Laura Cain return to work contrary to her physician's instructions; this attempt occurred on the same day that REM had written a letter to the Plaintiff confirming that she had requested a medical leave of absence due to a serious medical condition which rendered her unable to perform her job without accommodation. (Plaintiff's Exhibit 36; Trial Transcript 152-153.)
- i. Jason Lynch, Plaintiff's direct supervisor began to report to his superiors on Laura Cain's performance beginning on July 1, 2008. Three weeks after REM received written documentation of Laura Cain's need for accommodations in the work place, Laura Cain's proposed termination was first mentioned. (Trial Transcript 306; See also, Plaintiff's Exhibit 24.)
- j. In July 2008, Jane Ketcham, the West Virginia State Executive Director for REM received a request to terminate Laura Cain. (Transcript 234-235.)
- k. REM admitted that during the nearly eleven years Laura Cain worked for REM, there was "not one shred of documentation of any type of disciplinary action of any kind in Laura Cain's personnel file..." (Trial Tr. 18.)
- l. No later than August 20, 2008, an FMLA form completed by Laura Cain's physician was provided to REM which outlined Ms. Cain's physical limitations and prognosis.
- m. Laura Cain received temporary total disability benefits from West Virginia Workers Compensation during September and October, 2008. She was on FMLA leave from August 18, 2008 through November 10, 2008. (Trial Transcript 170; Plaintiff's Exhibit 52.)
- n. Based upon the stated belief that Laura Cain had been released to return to work, REM mailed Laura Cain a letter on December 23, 2008 by certified mail which required her to respond before December 29, 2008 or

else she would be considered to have "voluntarily resigned". (Trial Transcript 202-205.) The post office was closed for two of the six days between December 23rd and 29th, December 25th, Christmas Day and Sunday, December 29th.

- o. Laura Cain received this letter from REM on January 6, 2009. She immediately contacted her direct supervisor to explain that she had just received this letter and that it was not her intention to resign. She also corresponded with the Defendant's Human Resources Director for the State of West Virginia about this matter. (Trial Transcript 205-206, 217.)
- p. Following the phone call on January 6, 2009, Laura Cain informed her supervisors that she intended to return to work even though she hadn't been released by her physician because she needed the job. (Trial Transcript 417.)
- q. REM declined to reconsider the termination of Plaintiff and to reinstate Laura Cain, but informed her she was eligible to be rehired.
- r. REM denied that Laura Cain was terminated and maintained that "she didn't return from leave" and that she "didn't bother to come back to work."
- s. Defendant was dishonest in informing the Plaintiff and leading her to believe that she was eligible to be rehired by Defendant when in fact the documents created by Defendant recording Laura Cain's termination indicated the opposite: that Laura Cain was not eligible to be rehired by REM.
- t. Jason Lynch (Laura Cain's director supervisor) informed Laura Cain that she was eligible to be rehired, but on two different personnel forms indicated that she was not eligible for rehire because she had not provided or billed correct services to clients and had not turned in proper mileage reimbursement. (Trial Transcript 324.) This matter was first raised with Plaintiff on June 30, 2008 after Plaintiff requested accommodations at her job due to her injury. (Trial Transcript 476.)
- u. Later, Candice Merkle, Defendant's State Human Resource Manager, stated that Laura Cain was not eligible to be rehired because she had not provided a doctor's release permitting her to return to work. (Trial Transcript 730.)
- v. Jason Lynch also testified that he had received five complaints about Laura Cain from clients and presented those complaints in writing. All five complaints were dated on the same day or within a day or two, but Jason

Lynch could not explain why they were all received so close in time. (Trial Transcript 356-364.) These complaints were never shown to Laura Cain while she worked for REM. ((Trial Transcript 368-372.)

- w. During her employment with REM, Laura Cain applied for the Assistant Program Director position, a position which would have accommodated her physical limitations. Jason Lynch and Ross Mason failed to show up for the first interview. A second interview focused on why another employee had not applied for the job instead of Plaintiff's qualifications. (Trial Transcript 464-468.)
 - x. After posting a vacancy for the Plaintiff's former position, REM changed the requirements so that the Plaintiff could not reapply for this position by restricting the opening to internal applicants. This change was made only after Defendant became aware that Plaintiff had inquired about the posting of her old job.
 - y. REM introduced into the trial its contention that Laura Cain had been living with a married man, Jerry Rice. The evidence at trial did not support this fact, which the jury may have reasonably viewed as an unfair and malicious attack upon the Plaintiff. Further, Defendant has not explained why factual allegations set forth in its post-trial motions on this issue were not offered into evidence at the trial of this matter.
 - z. The testimony from the employees of REM (Jason Lynch, Ross Mason, Jane Ketcham and Candice Merkle) was contradictory, and at times the witnesses were evasive and combative. This likely impacted the jury's evaluation of their credibility.
- 17) Based upon the foregoing, the jury could properly have found based upon the evidence and testimony at trial that, despite the fact that Laura Cain had not been released to return to work, REM demanded that she report to her employer within six days of mailing a letter by certified mail on December 23, 2008, or that she respond by December 29, 2008. The jury could quite properly and reasonably have concluded that this illogical requirement imposed on the plaintiff by REM during the Christmas holiday week was motivated by malice and indifference to the Plaintiff's rights and without regard to any basic notion of fairness.

Similar to the Plaintiff in the Peters case, *supra.*, when Laura Cain contacted REM on January 6, 2009, instead of putting her back to work, REM terminated her employment. The jury clearly concluded that all of this conduct on the part of REM was calculated and intentional and that it was unfair to the Plaintiff. The facts and inferences in this case do not point so strongly and overwhelmingly in favor of REM 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.

Although the defendant had a duty under the law to return Laura Cain to her employment following her absences related to a workers' compensation covered injury, REM terminated Plaintiff's employment on December 29, 2008, and before Laura Cain had a reasonable opportunity to obtain the certified mail from the post office and respond to it. Thus Plaintiff has met the first hurdle of sustaining the jury's award of punitive damages.

18) Dealing next with each of the factors set forth in Games, supra., the Court concludes as follows:

(1) Punitive damages should bear a reasonable relationship to the harm that is likely to occur from the defendant's conduct as well as to the harm that actually has occurred. If the defendant's actions caused or would likely cause in a similar situation only slight harm, the damages should be relatively small. If the harm is grievous, the damages should be greater.

As to the amount of punitive damages awarded by the jury, the Court notes that the evidence at trial was sufficient for a jury to conclude that the Plaintiff, Laura Cain was severely harmed by the conduct of the Defendant, REM as the plaintiff lost her job, suffered economic losses, including the loss of her and her daughter's home. At times Plaintiff had no gas money and her father and her uncle helped support her and her daughter as she had difficulty supporting her child. The Defendant would not consider her for another position despite her exemplary service to the company. Throughout this litigation, the Defendant vigorously denied any wrongdoing. Moreover, the Defendant is an organization whose stated purpose is to assist individuals with disabilities. Thus, in this case, the punitive damages bear a reasonable relationship to the harm which has occurred to the plaintiff.

(2) The jury may consider (although the court need not specifically instruct on each element if doing so would be unfairly prejudicial to the defendant), the reprehensibility of the defendant's conduct. The jury should take into account how long the defendant continued in his actions, whether he was aware his actions were causing or were likely to cause harm, whether he attempted to conceal or cover up his actions or the harm caused by them, whether/how often the defendant engaged in similar conduct in the past, and whether the defendant made reasonable efforts to make amends by offering a fair and prompt settlement for the actual harm caused once his liability became clear to him.

The evidence shows that Defendant persisted in its actions towards the Plaintiff throughout the time that she sought accommodation and continuing throughout the litigation and trial. At all times, the Defendant minimized the impact of its misconduct upon the Plaintiff, and asserted that she was to blame, even defending its actions in sending her certified mail of her duty to notify them of her intention to keep her job over the Christmas holiday. 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 REM's conduct was reprehensible and warranted the imposition of punitive damages. The Defendant did not offer any reasonable settlement in this matter prior to the trial of this case.

(3) If the defendant profited from his wrongful conduct, the punitive damages should remove the profit and should be in excess of the profit, so that the award discourages future bad acts by the defendant.

The Plaintiff introduced the expert testimony of Clifford Hawley who opined to a reasonable degree of accounting certainty that Laura Cain suffered past and future economic damages in the amount of \$408,129.00, in response to which the jury could reasonably determine that there was sufficient evidence to show that the Plaintiff's damages were caused by REM's willful and malicious conduct, and that this sum was in effect "saved" by REM. Thus, the punitive damages awarded herein penalized REM and eliminated this cost savings. This award will likely act as a deterrent to REM in the future.

Based on the evidence presented at trial, the jury could reasonably conclude that the manner in which Laura Cain was treated was the way that REM did business. As the testimony of Barbara Day [another former REM employee] demonstrated, the defendant did not insist that its billings conform to the level demanded from Plaintiff, lending credibility to the Plaintiff's claim that REM could have accommodated her physical limitations.

(4) As a matter of fundamental fairness, punitive damages should bear a reasonable relationship to compensatory damages.

The ratio of punitive damages to compensatory damages (\$450,000 to \$176,000) is 2.5 to 1 which is well within the acceptable range prescribed by the West Virginia Supreme Court of Appeals.

(5) The financial position of the defendant is relevant." *Syllabus point 3, Garnes v. Fleming Landfill, Inc.*, 186 W. Va. 656, 413 S.E.2d 897(1991).

The Defendant's financial position showed gross revenues of \$44,976,899 for fiscal year 2009 as indicated in its financial statement, Plaintiff's Exhibit 61.

Thus, the punitive award is approximately one percent of Defendant's annual revenue. The punitive damage award is not excessive, and further, is reasonable in light of the financial position of the Defendant, according to the evidence presented at trial. Defendant admitted its revenues had grown, compared to the revenues reflected in Plaintiff's Exhibit 61, but it offered no current financial data during or after trial.

(6) The costs of the litigation;

The Plaintiff incurred substantial costs in the prosecution of this action, including paying an expert witness, depositions, and other miscellaneous expenses totaling over seven thousand dollars (\$7000) to date. These expenses were paid by the Plaintiff despite the fact that she was unemployed.

(7) Any criminal sanctions imposed on the defendant for his conduct;

There was no evidence of any criminal sanctions imposed on the defendant for any misconduct.

(8) Any other civil actions against the same defendant, based on the same conduct; and

There was no evidence of any other civil actions against the defendant for any misconduct.

(9) The appropriateness of punitive damages to encourage fair and reasonable settlements when a clear wrong has been committed. A factor that may justify punitive damages is the cost of litigation to the plaintiff.

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, employees or agents clearly committed the civil wrongs of failing to reinstate the Plaintiff to her former position within the company, and that her pursuit of workers' compensation benefits and the Plaintiff's handicap or disability were motivating factors in Plaintiff's discharge.

The Plaintiff adduced evidence from witnesses, including current and former employees of Defendant, from which the jury could reasonably conclude that Defendant's conduct was reprehensible and self-serving, such as mailing an important letter to Laura Cain and imposing an unduly short time-frame (six days from mailing) for her to take action to try to retain her job over the Christmas holiday.

In this case, the jury could reasonably conclude that REM specifically disregarded the rights of Laura Cain, who was injured on the job and filed a workers compensation claim, which caused the Defendant to perceive Plaintiff as an impediment to the productiveness of the company.

- (19) Also of relevance to this determination is the testimony in this case which made clear that REM and its agents were disdainful of Laura Cain's workers compensation claim and the limitations imposed following her injury; that REM refused to accommodate Laura Cain's limitations; that despite an admission from its corporate representative that Laura Cain had not been terminated for any performance based reason, REM concocted reasons to support its decision to terminate Laura Cain after this litigation commenced; that REM attempted to portray Laura Cain as a generally immoral person. Instead of accommodating Laura Cain's condition in the workplace, which Defendant admitted it could have done, a reasonable jury could clearly conclude that REM chose, instead, to disregard the law. Thus, this punitive damage award is appropriate under the facts adduced at the trial in this matter.
- (20) The testimony presented to the jury in this case also supported a finding that Defendant was aware that it had the option to require Laura Cain to undergo a fitness for duty examination, but instead, Defendant relied solely upon a Workers Compensation evaluation or "IME" conducted for the purpose of determining the degree of permanent partial disability Laura Cain had sustained in support of its demand that Laura Cain return to work. (Trial Transcript 805-806.)
- (21) In this case there was ample evidence presented to prove that REM terminated Laura Cain's employment in retaliation for filing a workers compensation claim. In fact, that is what the jury decided. Further, the jury also found that the purported "legitimate" reason that the defendant proffered at trial to explain the termination was a pretext to cover its illegal retaliatory motive to terminate Laura Cain for receiving or attempting to receive workers' compensation benefits and for her handicap or disability. This illegal retaliatory motive was apparent at trial when representatives of REM offered contradictory testimony concerning the purported reasons for Laura Cain's termination.
- (22) It is also clear from the testimony at trial that REM was well aware of the anti-retaliation provisions of the workers' compensation statutes. (Trial Transcript at pp. 156-158.) The Defendant willfully, wantonly and maliciously disregarded Ms. Cain's rights and retaliated against her for receiving or attempting to receive workers' compensation benefits.

Based upon all of the foregoing and the totality of the evidence, the Court **FINDS** that the punitive damages award is not excessive and it is accordingly **ORDERED** that the jury's verdict is hereby sustained.

This Order is a final appealable order and there is no just reason for delay and judgment is entered herein in favor of Plaintiff against Defendant pursuant to W.Va. R. Civ P. 54(b). Jurisdiction is retained to enforce this order and other orders of the Court and for such other matters as may be addressed in collection of the amounts due to Plaintiff in this action.

ENTER: 7-25-2011

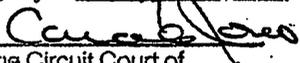


J. D. BEANE, JUDGE

STATE OF WEST VIRGINIA
COUNTY OF WOOD, TO-WIT:

I, CAROLE JONES, Clerk of the Circuit Court of Wood County, West Virginia, hereby certify that the foregoing is a true and complete copy of an order entered in said Court, on the 25 day of July 2011, as fully as the same appears to me of record.

Given under my hand and seal of said Circuit Court, this the 25 day of July 2011



Clerk of the Circuit Court of
Wood County, West Virginia

By: J. W. [Signature] Deputy