

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

JOSEPH CHEVROLET, INC. AND  
JOSEPH HOOD, INDIVIDUALLY,

Petitioners/Appellees,

Court of Appeals No. 290882

v

Lower Court No. 07-024445-CZ

LORIE HUNT,

Hon. Patrick R. Joslyn

Respondent/Appellant.

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**AMICI CURIAE BRIEF OF THE MICHIGAN CIVIL RIGHTS COMMISSION**  
**AND THE MICHIGAN DEPARTMENT OF CIVIL RIGHTS**

Henry J. Boynton (P25242)  
Assistant Solicitor General

Ron D. Robinson (P35927)  
Assistant Attorney General  
Attorneys for Amici Curiae Michigan Civil  
Rights Commission and Michigan  
Department of Civil Rights  
Cadillac Place Bldg, Ste. 10-200  
3030 W. Grand Blvd.  
Detroit, MI 48202  
(313) 456-0200

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## TABLE OF CONTENTS

	<u>Page</u>
INDEX OF AUTHORITIES.....	ii
INTRODUCTION .....	iii
STATEMENT OF FACTS .....	1
STATEMENT OF INTEREST.....	2
ARGUMENT.....	3
I.    The purpose of the attorney fee provision of the Elliott-Larsen Civil Rights Act (ELCRA) is to accomplish two goals: (1) to encourage persons deprived of their civil rights to seek legal redress as well as to ensure victims of employment discrimination access to the court; and (2) to obtain compliance with the established purpose of the ELCRA and thereby deter discrimination in the workplace. The arbitrator’s award of attorney fees to Appellant Hunt in the instant case accomplished both of these goals. Therefore, the circuit court erred in setting aside the arbitrator’s award of attorney's fees in this case .....	3
A.    State civil rights law mandates that victims of illegal sex discrimination in the workplace be able to redress those wrongs in court. ....	3
B.    A critical component to redressing any civil rights violation is the ability to attract and retain competent legal representation. ....	4
C.    An equally important purpose of the attorney fee provision of the ELCRA is the goal of obtaining compliance with the act in order to deter discrimination in the workplace.....	6
D.    The Circuit Court's ruling, vacating the Arbitrator's award of attorney's fees, will have a chilling effect not only on the ability to get attorneys to handle Elliott-Larsen claims but will also unfairly penalize plaintiffs by greatly reducing damages awarded them as fair compensation for their injuries. ....	7
II.    Public policy dictates that employees are protected from sex discrimination under the Michigan Elliott-Larsen Civil Rights Act. A ruling by the circuit court which discourages complainants from seeking redress of civil rights violations in court and discourages competent counsel from litigating these cases would create a gap in the law that would disregard the legislative intent of the Elliott–Larsen Civil Rights Act and leave employees who are similarly situated to Hunt unable to find protection for issues of workplace discrimination. ....	8
CONCLUSION.....	9

**INDEX OF AUTHORITIES**

Page

**Cases**

*Grow v W.A. Thomas Co,*  
236 Mich App 696, 714; 601 NW2d 426 (1999)..... 6

*Holmes v. Haughton Elevator Co.,*  
75 Mich App 198, 200; 255 NW2d 6 (1977), aff'd 404 Mich 36, 272 NW2d 550 (1978)..... 3

*King v General Motors Corp,*  
136 Mich App 301; 356 NW2d 626(1984)..... 3, 4, 6

*Wood v DAIIE,*  
413 Mich 573, 588; 321 NW2d 653(1982)..... 6

**Statutes**

MCL 16.575..... 2

MCL 37.2101 .....iii, iv

MCL 37.2801(3). ..... 3

## INTRODUCTION

Respondent/Appellant Lorie Hunt was employed as a finance manager by Appellees Joseph Hood and Joseph Chevrolet Inc. from 1999 to 2005. Hunt and Appellee Hood were involved in a four year consensual romantic relationship, which Hunt ended in September 2005. Following the break-up, Appellee Hood tried unsuccessfully to woo Hunt back. Ultimately, Hunt was fired in November 2005 and, subsequently, agreed to arbitrate the matter, alleging quid pro quo sexual harassment and retaliatory discharge under the Michigan Elliot Larsen Civil Rights Act (ELCRA),<sup>1</sup> and Title VII of the Civil Rights Act of 1964.

The arbitration hearing took place over an eight day period, in December, 2006 and January, 2007. Of her four claims, the arbitrator found in Hunt's favor only as to her state quid pro quo sexual harassment claim.<sup>2</sup> Based on this determination, the Arbitrator ordered Appellees to reinstate Hunt to her former position and awarded her back pay and mental anguish damages in the amount of \$168,000.00. The Arbitrator also awarded Hunt attorney's fees and costs in the amount of \$270,000.00 and \$26,730.00, respectively. The Arbitrator rejected Appellees' claim for attorney's fees, finding that Appellees were not entitled to such an award, as a non-prevailing party, and that Hunt's three unsuccessful claims were not frivolous.<sup>3</sup>

In awarding attorney's fees to Hunt, the Arbitrator took into consideration issues of public policy, such as the deterrence of such conduct in the future, issues of fairness, the economic disparity between the parties, and the adequate of the compensation to Hunt's attorneys for their legal work.<sup>4</sup>

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<sup>1</sup> MCL 37.2101, et seq.

<sup>2</sup> Arbitrator Interim Opinion and Award, dated June 8, 2007, page 2.

<sup>3</sup> Arbitrator Final Opinion and Award, dated August 3, 2007, pages 3-4.

<sup>4</sup> Arbitrator Final Opinion and Award at page 3.

Appellees appealed the Arbitrator's award of attorney's fees and costs to Hunt to the Tuscola County Circuit Court. The Circuit Court vacated the award of attorney fees to Hunt and remanded the matter to the arbitrator for a determination of attorney's fees to be awarded to Appellees Hood and Joseph Chevrolet.<sup>5</sup> In making this determination, the Circuit Court found that the Arbitrator's award of attorney fees was excessive, in light of Hunt's contingent fee arrangement, and that her attorneys' 1/3 share of her \$168,000 damage award was reasonable under the circumstances.<sup>6</sup> The Circuit Court failed to specifically address the Arbitrator's award of costs (\$26,730.14); however, in view of the court's ruling as to the sufficiency of Hunt's damage award, it is presumed that this amount was also vacated.

This brief will address the narrow legal issue of whether the Arbitrator's award of attorney's fees, in this case, was proper, notwithstanding Hunt's contingent fee arrangement, and whether the award was consistent with the attorney fee provision of the ELCRA<sup>7</sup> and its underlying goal to purge the workplace of unlawful sex discrimination.

Amici, the Michigan Civil Rights Commission and the Michigan Department of Civil Rights, believe that the Arbitrator's award of attorney's fees in the instant case was proper, and that the circuit court erred in vacating this award for the following reasons: (1) The circuit court's ruling is contrary to the attorney fee provision of ELCRA and its intent; and (2) Public policy mandates compliance with ELCRA as a deterrent to discrimination in the workplace. Apart from these issues, Amici do not take a position on the factual issues presented in this case, and have no stake in the outcome of this case.

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<sup>5</sup> Circuit Court Opinion and Order, dated December 12, 2007, page 5.

<sup>6</sup> Circuit Court Opinion and Order at page 4.

<sup>7</sup> MCL 37.2101 et seq.

**STATEMENT OF FACTS**

Amici Curiae adopts by reference the Statement of Facts of Respondent/Appellant.

## STATEMENT OF INTEREST

The Michigan Civil Rights Commission (the "Commission") is an independent body created by the Michigan Constitution of 1963 for the purpose of protecting persons from discrimination by government and private actors and ensuring fair and equal access to employment, education and economic opportunities. The Michigan Department of Civil Rights was established to act as the "investigative arm" of the Commission, and is responsible for investigating discrimination claims. The Commission and the Department are responsible for enforcing the Civil Rights Act.<sup>8</sup> Because of their broad constitutional and statutory authority, they are in a unique position to provide this Court with an interpretation of State civil rights law. The Commission and the Department believe that the ruling of the circuit court – vacating the arbitrator's award of attorney fees and costs to Hunt – is inappropriate and inconsistent with the Michigan Civil Rights Act, ELCRA, and applicable case law. Therefore, the Commission and the Department request to appear as *amicus curiae* in this matter.

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<sup>8</sup> See MCL 16.575.

## ARGUMENT

**I. The purpose of the attorney fee provision of the Elliott-Larsen Civil Rights Act (ELCRA) is to accomplish two goals: (1) to encourage persons deprived of their civil rights to seek legal redress as well as to ensure victims of employment discrimination access to the court; and (2) to obtain compliance with the established purpose of the ELCRA and thereby deter discrimination in the workplace. The arbitrator's award of attorney fees to Appellant Hunt in the instant case accomplished both of these goals. Therefore, the circuit court erred in setting aside the arbitrator's award of attorney's fees in this case**

A. State civil rights law mandates that victims of illegal sex discrimination in the workplace be able to redress those wrongs in court.

First and foremost, Amici argue there is no valid dispute that victims of unlawful sex discrimination in the workplace must be afforded access to redress these wrongs in court, and be able to rely upon the full authority of state civil rights laws to protect them. The ELCRA is remedial in nature and must be liberally construed to provide a broad remedy to prohibit discrimination.<sup>9</sup> Moreover, Article VIII of the Act specifically provides for the recovery of damages for violations of this statute by including "damages for injury or loss caused by each violation of this act, [and] reasonable attorney's fees."<sup>10</sup>

The Michigan Supreme Court in *King v General Motors Corp*<sup>11</sup> clearly articulated the intent of the Legislature in enacting the attorney fee provision of the ELCRA. First, attorney fee awards are intended to encourage persons deprived of their civil rights to seek legal redress as well as to ensure victims of employment discrimination access to the courts. A second purpose in allowing attorney fee recovery under the ELCRA is to obtain compliance with the goals of the

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<sup>9</sup> *Holmes v Haughton Elevator Co.*, 75 Mich App 198, 200; 255 NW2d 6 (1977), aff'd 404 Mich. 36, 272 NW2d 550 (1978).

<sup>10</sup> MCL 37.2801(3).

<sup>11</sup> *King v General Motors Corp*, 136 Mich App 301; 356 NW2d 626 (1984).

act and thereby deter discrimination in the work force.<sup>12</sup> Amici believes that arbitrator's award of attorney fees in this case accomplished both of these goals.

The Circuit Court, however, failed to consider the implications of its ruling in light of the overall objective of the ELCRA. The Circuit Court held that because Hunt prevailed on only one of her four claims that her lawsuit was "frivolous, unreasonable, [and] groundless."<sup>13</sup> Such an interpretation ignores the fact that, by prevailing on her single state quid pro quo claim, Hunt reclaimed her job, her life, and her future. The Circuit Court's ruling seeks to minimize the fact that, with limited resources, Hunt stood up to a very successful corporation, run by a very successful man, and won. Yet as courageous as Hunt must have been throughout this ordeal, odds stacked significantly against her, she could not have prevailed in this litigation without competent legal representation; It simply would not have been possible. Amici submit that the results achieved in this case were no small feat and simply cannot be minimized. In a very real sense, Hunt's victory is a victory for others who may find themselves in similar circumstances. Assuming the Circuit Court's decision is reversed, Hunt's victory will also encourage other private law firms to take a chance and litigate similar cases.

B. A critical component to redressing any civil rights violation is the ability to attract and retain competent legal representation.

Amici submit that in order to encourage persons to redress civil rights violations through the courts, they must be able to attract and retain competent legal representation. An essential component in achieving this goal is to ensure that attorneys who accept these cases will be reasonably compensated for their time, should they prevail in these cases. The converse is also true: Attorneys who are undercompensated for their time in litigating civil rights cases will be discouraged from litigating them in the future which, in turn, will limit the number of meaningful

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<sup>12</sup> *King*, 136 Mich App at 307-08.

<sup>13</sup> Circuit Court Opinion and Order, dated December 4, 2007, page 5.

complaints filed with the courts. The ultimate result of such a system is limited enforcement of Michigan civil rights laws and a shift towards the perpetrators of employment discrimination, and a shift away from victims of these acts. Amici submit that such a system is inconsistent with the broadly accepted intent of the ELCRA, which is to eliminate unlawful sex discrimination from the workplace.

In awarding Hunt her attorney fees, the arbitrator correctly recognized a critical factor that cannot be overlooked, a factor which Amici submits serves as a primary barrier to not only to the complainant in this case, but also to complainants in nearly all employment discrimination cases, and that is the significant economic disparity between the parties.

At the time this litigation was commenced, Appellees enjoyed a substantial economic disparity over Hunt. While Hunt essentially had no income, due in large part to the actions of Appellees in terminating her employment, Appellees continued to operate one of the largest automobile dealerships in Genesee County. In recognition of this fact and the inherent difficulties this situation presented to Hunt in retaining legal counsel to represent her, the arbitrator concluded that "an award of fees is necessary to permit civil rights litigants in Claimant's position to attract competent counsel, who would not otherwise recover for the substantial amount of time and effort invested in the case under a contingent fee arrangement because a large portion of the relief was injunctive rather than monetary."<sup>14</sup> Amici submits that the reasoning of the Arbitrator is correct.

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<sup>14</sup> Arbitrator Final Opinion and Award, dated August 3, 2007, page 3.

- C. An equally important purpose of the attorney fee provision of the ELCRA is the goal of obtaining compliance with the act in order to deter discrimination in the workplace.

Another equally important purpose of the attorney fee provision of the ELCRA is to obtain compliance with the goals of that act and thereby deter discrimination in the work force. Amici submits that if complainants are discouraged from seeking redress of civil rights violations in court and if attorneys are not reasonably compensated for their time, when they prevail in these cases, then compliance with the goal of the ELCRA to combat sex discrimination in the workplace is lost, sending out a message, loud and clear, that such conduct is acceptable in Michigan.

The awarding of attorney fees and costs are within the sound discretion of the arbitrator.<sup>15</sup> Where attorney fees are to be awarded, the court must determine the reasonable amount of fees according to the factors in *Wood v DAIIE*.<sup>16</sup> The presence of contingency fee arrangements providing for the plaintiff's attorney fees does not preclude an award of fees under § 802 but is merely one of the factors to be considered in determining a reasonable fee award.<sup>17</sup> Amici submit that the arbitrator correctly considered the reasonableness of the amount of the attorney's fees in accordance with *Wood, supra*, and in fact adjusted the amount requested in order to more accurately reflect the legal services provided.

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<sup>15</sup> See *Grow v W.A. Thomas Co*, 236 Mich App 696, 714; 601 NW2d 426 (1999).

<sup>16</sup> *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982).

<sup>17</sup> *King v General Motors Corp*, 136 Mich App 301, 308; 356 NW2d 626 (1984), lv den 422 Mich 871 (1985).

- D. The Circuit Court's ruling, vacating the Arbitrator's award of attorney's fees, will have a chilling effect not only on the ability to get attorneys to handle Elliott-Larsen claims but will also unfairly penalize plaintiffs by greatly reducing damages awarded them as fair compensation for their injuries.

In vacating the Arbitrator's award of attorney's fees, Circuit Court indicated that 1/3 of the Hunt's award was enough compensation for her attorneys.<sup>18</sup> Amici submits that the Circuit Court failed to appreciate how contingent fee agreements work. As the Arbitrator correctly noted in his ruling, "a large portion" of the relief Hunt received was injunctive in nature- associated with the reinstatement of her job- rather than monetary.<sup>19</sup> Expert testimony during arbitration placed the value of Hunt's reinstatement at some \$1.5-Million. Because this remedy is not monetary in nature, under the Circuit Court's ruling, Hunt's attorneys are not entitled to collect attorney's fees related to this award, even though their efforts are directly linked to this significant recovery. As job reinstatement is a critical component of any successful employment discrimination remedy, the clear impact of the circuit court's ruling is to artificially devalue the compensation available to attorneys who successfully litigate Elliott- Larsen claims.

While devaluing the compensation available to attorneys in civil rights cases, the Circuit Court's ruling also devalues the awards received by plaintiffs in these cases. Amici submit that the Circuit Court's ruling is, essentially, telling plaintiffs who are awarded damages for unlawful discrimination, awards intended to make them whole, that they are entitled to a less than a whole recovery by requiring that their awards be reduced by 1/3. This is true despite the fact that, in the instant case, there has been no finding on the record that the Arbitrator's award of damages to Hunt was excessive. Thus, the Circuit Court's ruling has not only a chilling effect on the ability to get attorneys to handle Elliott-Larsen claims but will also unfairly penalize plaintiffs by greatly reducing damages awarded them as fair compensation for their injuries.

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<sup>18</sup> Circuit Court Opinion and Order at page 4.

<sup>19</sup> Arbitrator Final Opinion and Award at page 3.

**II. Public policy dictates that employees are protected from sex discrimination under the Michigan Elliott-Larsen Civil Rights Act. A ruling by the circuit court which discourages complainants from seeking redress of civil rights violations in court and discourages competent counsel from litigating these cases would create a gap in the law that would disregard the legislative intent of the Elliott–Larsen Civil Rights Act and leave employees who are similarly situated to Hunt unable to find protection for issues of workplace discrimination.**

Finally, should the Circuit Court's ruling be allowed to stand, it raises the specter of creating a gap in the Michigan civil rights laws that was not intended by the Legislature that could leave employees unprotected from potential civil rights violations. The rationale of the Circuit Court's ruling reaches far beyond Appellant Hunt and her employment situation at Joseph Chevrolet; it could affect many employees in the private sector who find themselves victims of sex discrimination in the workplace. Public policy requires that all employees be free from sex discrimination in the workplace.

The Michigan Legislature enacted the attorney fee provision of the ELCRA to encourage complainants to redress civil rights violations in court and to encourage private attorneys to litigate these cases. The decision of the Circuit Court to vacate the arbitrator's award of attorney fees in this matter, if allowed to stand, will circumvent the intent of the attorney fee provision of the ELCRA, and the purpose of the act itself, by discouraging complainants from redressing civil rights violations and also discourage competent counsel from litigating these cases. The Circuit Court's ruling also frustrates the intent of the ELCRA of ensuring a workplace environment free of sex discrimination. Public policy dictates that our courts encourage the redress of civil rights violations in court and also encourage private attorneys to litigate these cases.

## CONCLUSION

This Court should reverse the circuit court, and hold that legislative intent of the attorney fee provision of the ELCRA requires the reinstatement of the Arbitrator's award of attorney's fees and costs to Hunt. The mere fact that Hunt had a contingency fee agreement does not mean that the arbitrator's award of attorney's fees and cost, in this case are excessive. The arbitrator's decision in this regard was entirely consistent with the legislative intent for enacting the attorney fee provision under the ELCRA: First, to encourage persons deprived of their civil rights to seek legal redress to the courts; and second to obtain compliance with the goals of the act and thereby deter discrimination in the work force. If the circuit court's ruling stands it would not only diminish the enforcement of civil rights laws in this state, but it could leave unprotected a large group of individuals from illegal sex discrimination in the workplace.

Respectfully submitted,

Henry J. Boynton (P25242)  
Assistant Solicitor General

Ron D. Robinson (P35927)  
Assistant Attorney General  
Attorneys for Amici Curiae Michigan Civil  
Rights Commission and Michigan  
Department of Civil Rights  
Cadillac Place Bldg., Ste. 10-200  
3030 W. Grand Blvd.  
Detroit, MI 48202  
(313) 456-0200

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