

STATE OF FLORIDA
 DIVISION OF ADMINISTRATIVE HEARINGS
 OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
 ORLANDO DISTRICT OFFICE

Malak Wasef,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 09-000086JTF
)	
Mitsubishi Electric America, Inc.,)	Accident date: 2/20/2008
)	
Employer,)	Judge: Neal P. Pitts
)	
and)	
)	
Tokio Marine,)	
)	
Carrier/Service Agent.)	
)	

ORDER ON AWARD OF CLAIMANT'S
 APPELLATE ATTORNEY'S FEES AND COSTS

This matter having come on for hearing on the 20th day of July, 2010, pursuant to the claimant's Verified Attorney Fee Petition associated in part with June 16, 2010 Order of the First District Court Of Appeals awarding appellate attorney's fees to the claimant and the November 24, 2009 Final Compensation Order which established the claimant's entitlement to reasonable attorney's fees and costs for securing the benefits awarded therein, and the EC's Verified Responses thereto, and the undersigned having heard testimony, having reviewed the documentary evidence, having heard argument of counsel, and otherwise being duly advised in the

premises, the undersigned decides as follows:

1. At the commencement of the hearing, it was undisputed that the claimant's attorney, Marshall S. Adler, Esq., is entitled to an award of reasonable appellate attorney's fees and costs pursuant to the June 16, 2010 Order of the First District Court of Appeals granting claimant's Motion For Appellate Attorney's Fees based upon the favorable ruling contained in its Opinion filed on even date therewith.
2. At the commencement of the hearing, the undersigned noted that by order of the appellate court dated December 11, 2009, jurisdiction had been released by the appellate court to determine the amount of the award of appellate fees and costs.
3. The decision on appeal from the First District Court of Appeals involved a final compensation order entered by Judge Farrell on November 24, 2009 awarding indemnity and medical benefits. This decision was upheld on appeal.
4. The parties acknowledge that a reasonable appellate attorney's fee was to be based upon a reasonable hourly rate for the number of hours which were reasonably spent in the handling of the appeal by the claimant's attorney.
5. At the commencement of the hearing, the claimant pursued a claim for both appellate attorney's fees and attorney's

fees at the trial level. However, due to time constraints during the hearing, the parties agreed to continue the hearing on the trial level fees and to proceed only the claim for appellate attorney's fees.

6. At the hearing, the following evidence was marked and admitted as follows:

JUDGE' S EXHIBITS:

1. Composite exhibit consisting of the June 16, 2010 Opinion from the First District Court of Appeals, and the June 16, 2010 Order awarding appellate attorney's fees and further relinquishing jurisdiction to the undersigned JCC to determine the amount of appellate attorney's fees; and
2. The Final Compensation Order entered by Judge Farrell on November 24, 2009 awarding PTD indemnity and medical benefits.

CLAIMANT' S EXHIBITS:

1. Verified Fee Petition; and
2. Appellee's Answer Brief.

EMPLOYER/CARRIER' S EXHIBIT:

1. EC's July 1, 2010 Verified Response To Claimant's Verified Petition Regarding Appellate Attorney's Fees;
2. EC's July 16, 2010 Verified Response To Claimant's Verified Attorney's Fee Petition; and
3. EC's February 3, 2010 Verified Response To Claimant's Verified Petition For Attorney's Fees.

Findings of Fact and Conclusions of Law.

7. During the hearing, counsel for both parties testified as expert witnesses. There were no independent expert witnesses called.

8. Counsel for the parties testified live and/or through the verified pleadings that a reasonable hourly rate in the Orlando area ranged from \$175.00 to \$250 per hour according to the EC and \$300.00 per hour according to the claimant.

9. I find that the EC put forth a vigorous defense to the claims.

10. I find that the one issue raised by the EC on appeal was not particularly complex or difficult. It involved standard citations of appellate case law regarding the standard of review of appeal; being whether competent substantial evidence supported the JCC's finding of PTD. The Answer Brief largely cited to the record for evidence which supported the JCC's findings.

11. I find that the fee was contingent and that claimant's counsel would not be paid unless he prevailed.

12. I find that the reasonable hourly rate to be awarded to claimant's counsel for his handling of the appeal to be Two Hundred and Fifty Dollars (\$250.00) per hour.

13. Taking into consideration the evidence at the hearing regarding the time spent by claimant's counsel, and based upon

my careful review of the Answer Brief, I find that the reasonable and necessary time reasonably required to be spent in the handling of this appeal to be 40 hours.

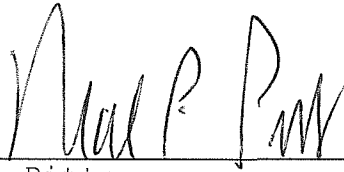
14. In reducing some of the time claimed by claimant's attorney, I do so because of the insufficient documentation of the time entries. I accept EC's arguments that such inadequate documentation precludes a thorough analysis of the time claimed to have been spent and requires a reduction in the time spent.

15. Based upon the reasonable number of hours, coupled with the reasonable hourly rate of \$250.00, it results in a reasonable appellate attorney's fee of Ten Thousand Dollars (\$10,000.00), to be paid at the expense of EC.

Based upon the foregoing findings of fact, it is therefore, **CONSIDERED, ORDERED, and ADJUDGED** that:

1. The claimant's Verified Attorney Fee Petition is hereby granted as it relates to the claim for reasonable appellate attorney's fees. Jurisdiction is hereby reserved to determine the claim for trial level attorney's fees and taxable costs at another hearing.
2. The employer/carrier shall pay claimant's attorney, Marshall S. Adler, Esq., Esq., at his address of 430 North Mills Avenue, Suite 1, Orlando Florida 32803, the sum of Ten Thousand Dollars (\$10,000.00), as a reasonable appellate

attorney's fee.



Neal P. Pitts
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing order was entered and a true copy was furnished by electronic transmission on this 20th day of July, 2010, to counsel of record, or the parties by regular U.S. mail, if unrepresented:



Secretary to Judge of Compensation Claims

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