

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

SYLVIA ROLAND, :
 : C.A. No. 02A-02-004 WLW
 Claimant Below - :
 Appellant, :
 :
 v. :
 :
 PLAYTEX PRODUCTS INC., :
 :
 Employer Below - :
 Appellee. :

Submitted: August 14, 2003
Decided: August 26, 2003

Upon Appellant's Motion for
Attorney's Fees. Granted.

Walt F. Schmittinger, Esquire of Schmittinger & Rodriguez, P.A., Dover, Delaware,
attorneys for the Claimant Below - Appellant.

J. R. Julian, Esquire of J.R. Julian, P.A., Wilmington, Delaware, attorneys for the
Employer Below - Appellee.

WITHAM, J.

Upon consideration of the Appellant's Motion for Attorney's Fees, the Appellee's response, the supplemental submissions of each party, and the oral arguments heard, it appears that:

1. The Industrial Accident Board (IAB) awarded the Appellant, Sylvia Roland, \$20,813.63 for her injury. She was also awarded \$2,500.00 in attorney's fees. She appealed the attorney's fee award contending that because the IAB failed to consider all of the factors set forth in *General Motors v. Cox*,¹ the fee award was an abuse of discretion. This Court agreed with the Appellant and remanded the case to the IAB directing them to apply each *Cox* factor before making an award of attorney's fees.

2. The Appellant has now filed a motion pursuant to title 19, § 2350 (f) of the Delaware Code seeking an award of attorney's fees for the work of her attorney on the appeal in this Court.² Appellant contends that the Court's decision affirmed her position before the IAB and that an award is appropriate at this time. Appellee opposes this request claiming that an award at this time is premature.

3. This Court finds that the Superior Court's prior decision of *Woodall v. Playtex Products*³ is directly on point and fully dispositive of the arguments presented by the Appellee in this action concerning the timing of the award. In

¹ 304 A.2d 55 (Del. 1973).

² DEL. CODE. ANN. tit. 19, § 2350(f).

³ 2002 Del. Super. LEXIS 524 (Del. Super. Ct. 2002).

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adopting Judge Vaughn's rationale in *Woodall*, this Court finds that an award of attorney's fees is appropriate at this time.

4. Turning now to the amount of the award. When this application was initially filed, the Appellant was requesting a fee of \$4,560.00 representing 15.6 hours of work by Walt Schmittinger, Esquire at an hourly rate of \$200.00 and 1.0 hour of work by John Schmittinger, Esquire at an hourly rate of \$300.00, plus an additional one-third for the contingent nature of the litigation. Subsequent to the initial application for attorney's fees, the Appellee presented a motion to compel discovery relating to the application for attorney's fees. The motion to compel was granted by the Commissioner and some discovery took place. Consequently, at oral argument, the Appellant's attorney submitted a request for additional time the attorney spent for the discovery in this matter. The additional amount that the Court will approve is 6.2 hours at \$200.00 or \$1,240.00.

5. Appellee argues that the amount requested is excessive because the Appellant's attorneys have filed these applications in the past and thus have the benefit of prior research and electronic copies of prior applications. In addition, initially the Appellee argued that the hourly fee was excessive, however, at oral argument the Appellee abandoned that argument. Appellant's attorney agrees that he has the benefit of prior research and prior electronic applications, but asserts that the hours stated in the initial application and the supplemental application represent actual time spent going through the transcripts, writing the facts of the case, and so forth to tailor this application to the facts of the present case.

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6. With respect to the amount of attorney's fees to award, first this Court again agrees with the *Woodall* decision that the request for the additional one-third multiplier is not warranted in this case because, like in *Woodall*, the issues presented in the case at bar are not novel or difficult.⁴ Therefore, this Court awards the Appellant \$4,460.00 in attorney's fees which represents 20.8 hours at \$200.00 per hour and 1 hour at \$300.00.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution

File

⁴ *Id.* at *10.