

**THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MARYLAND**

UNITED STATES  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION, et al.,

Civil No. BEL-04-3127

Plaintiffs,

v.

WORTHINGTON, MOORE,  
& JACOBS, INC.,

Defendant.

\* \* \* \* \*

**REPORT AND RECOMMENDATION**

The United States Equal Employment Opportunity Commission (“EEOC”) has brought this action on behalf of seven female former employees of the commercial debt collection company, Worthington, Moore, & Jacobs (“WMJ”), and two of the former employees have intervened to file their own claims for damages. The EEOC and individual intervenors are referred to collectively as the “Claimants.” Chief Judge Legg issued a default judgment against the defendant, Paper Nos. 150 & 160, and referred this case to me for the purpose of holding a hearing regarding damages, and to submit a report and recommendation regarding the damages that ought to be awarded. Paper No. 151. I issued a Letter Order dated April 15, 2009, Paper No. 156, setting forth how the hearing would be conducted, and in it directed the Claimants to serve WMJ with all submissions filed regarding the hearing, as well as provide WMJ with actual notice of the hearing date. Claimants have filed with the court evidence of having complied with the order to serve WMJ. Paper No. 161.

The hearing was held on June 18-19, 2009. WMJ did not appear. During the hearing, testimony was taken from each of the Claimants, and documentary evidence and legal memoranda

were received. At the conclusion of the hearing, I issued on the record my findings of fact and conclusions of law, which are incorporated here in by reference and attached to this Report and Recommendation as **Exhibit A**. For the detailed reasons stated on the record on June 19, 2009, I recommend that, following the time in which to file objections to this Report and Recommendation,<sup>1</sup> Chief Judge Legg issue a final judgment that awards the Claimants the following relief:

1. Claimant Jill Hennen Iovacchini: Back Pay<sup>2</sup> of \$75,256.00; Compensatory Damages and Punitive Damages totaling \$50,000.00; post-judgment interest from the date of final judgment;

2. Claimant Elizabeth Ford: Back Pay of \$21,966.00; Compensatory Damages and Punitive Damages totaling \$50,000.00; post-judgment interest from the date of final judgment;

3. Claimant Diana Bantom : Back Pay of \$0.00 (none was sought on her behalf); Compensatory Damages and Punitive Damages totaling \$50,000.00; post-judgment interest from the date of final judgment;

4. Claimant Lynne Geers: Back Pay of \$17,734.00; Compensatory Damages and Punitive Damages totaling \$50,000.00; post-judgment interest from the date of final judgment;

5. Claimant Melanie Sandy Goldsberry: Back Pay of \$75,042.00; Compensatory Damages and Punitive Damages totaling \$50,000.00; post-judgment interest from the date of final judgment;

6. Claimant Laura Thomas: Back Pay of \$114,737.00; Compensatory Damages and Punitive Damages totaling \$50,000.00; post-judgment interest from the date of final judgment;

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<sup>1</sup>Any objections to this Report and Recommendation must be filed within ten days after a copy of the proposed findings and recommendations is served on the party wishing to object. See 28 U.S.C. § 636(b)(1)(C) (2009); Fed. R. Civ. P. 72(b)(2); Local Rule 301.5.b.

<sup>2</sup>The amount recommended for back pay for each of the Claimants includes pre-judgment interest, as requested by the Claimants and included in the damages calculations of their expert witness, Amy McCarthy, PhD, whose report was admitted into evidence. Paper No. 165.

7. Claimant Nancy Guzman: Back Pay of \$23,591.00; Compensatory Damages and Punitive damages totaling \$50,000.00; post-judgment interest from the date of final judgment.

In addition, it is recommended that the Court grant non-monetary relief pursuant to Section 706(g)(1) of Title VII, 42 U.S.C. § 2000e-5(g)(1) (2009), as stated in the proposed order submitted by the EEOC, and attached as **Exhibit B** hereto, and incorporated herein by reference.

Finally, once the court has entered a final judgment, counsel for the Claimants may, within 30 days, submit a motion for attorneys' fees and costs, if any. **The Clerk of the Court is directed to serve each party electronically, and in addition, serve Defendant WMJ by regular mail.**

Respectfully Submitted,

\_\_\_\_\_/S/\_\_\_\_\_  
Paul W. Grimm  
United States Magistrate Judge

1 (UNITED STATES EEOC V. WORTHINGTON,  
2 MOORE & JACOBS, INC.; CASE NO. BEL-04-3127.  
3 FINDINGS OF FACT BY MAGISTRATE JUDGE GRIMM,  
4 JUNE 19, 2009)

5  
6 THE COURT: Well, I want to thank you all for your  
7 preparation and organization in this case, which made it possible  
8 to do a good deal of work in a short period of time.

9 The first thing I want to do is to note that at the  
10 EEOC's memorandum, which is Document Number 167, it contains a  
11 discussion of the legal foundation for various components of  
12 damages. The issue of liability here has previously been  
13 established by virtue of the default entered by Chief Judge Legg.

14 So my findings, my conclusions of law include and  
15 incorporate by reference the discussion beginning at Page 2 of  
16 Paper, Document Number 167, that analyzes the back pay, the legal  
17 support for back pay. In addition, it incorporates by reference  
18 the legal foundation for compensatory damages under Section  
19 1977(a) of the Civil Rights Act of 1991 and found at 42 United  
20 States Code Section 1981(a)(b)(3).

21 And I find, as was established by the testimony of the  
22 witnesses, that the number of employees for the relevant period  
23 at Worthington, Moore & Jacobs was approximately 30, which  
24 results in a maximum combined cap of, for compensatory and  
25 punitive or exemplary damages, at \$50,000 per claimant.

1           In addition, the conclusions of law I reach incorporate  
2 the discussion on punitive damages at Pages 6 and 7 of Paper  
3 Number 167, as well as the discussion at Pages 7 through 9 on  
4 post-judgment interest and noneconomic relief.

5           Similarly, the helpful memorandum prepared by Ms.  
6 Thomas' counsel, found at Document Number 169, contains a  
7 significant analysis of the legal underpinnings for the various  
8 types of damages that were sought. Specifically, beginning at  
9 Page 11, there's a discussion of the elements of what is required  
10 for punitive damages. Either malice or reckless indifference, of  
11 course, will warrant the award of these types of damages. And  
12 I'll have more to say about that in just a minute.

13           Now I'm going to move into my findings of fact. And  
14 I'll say for the record that if any conclusion of law I stated is  
15 actually a finding of fact or if any finding of fact is actually  
16 a conclusion of law, then each is cross-designated by me.

17           Let me start with facts I find regarding Worthington,  
18 Moore & Jacobs. The senior officers at Worthington, Moore &  
19 Jacobs included Dave Caprario, who was the CEO. And his  
20 deposition testimony at Page 25 establishes that he was one of  
21 the founders of Worthington, Moore & Jacobs. He actually  
22 obviously was there before Mr. Muffoletto, who I find achieved or  
23 was brought in subsequently as the President.

24           And at Page 35 of his deposition, Mr. Caprario  
25 established that the company was formed in April of 1995. And

1 Mr. Caprario was one of the original officers of the company.  
2 Mr. Muffoletto, Page 64, came to Worthington, Moore & Jacobs in  
3 September of 1999 and in the capacity of President of the  
4 company. The significance of this, obviously, is great because  
5 the two individuals mentioned throughout the testimony of the  
6 claimants as the individuals who were either doing the harassing  
7 or to whom they reported the harassment included the CEO of the  
8 company, Mr. Caprario, and Mr. Muffoletto, who was the President.

9 In addition, I find from the exhibits that were  
10 introduced and accepted into evidence that the sexual harassment  
11 "policy", I use the word "policy" with quotes around it, that was  
12 adopted by Worthington, Moore & Jacobs, first, did not come into  
13 existence until May of 2001, as established by Exhibit One to the  
14 documents filed for Ms. Thomas' submission. And most glaringly,  
15 at Page Two, Mr. Sam Muffoletto and Dave Caprario were the two  
16 individuals to whom one was to report.

17 This was no policy at all. If it was anything, it was  
18 simply an insult to the employees of the organization and  
19 communicated in writing what had previously been communicated by  
20 indifference, which was that there was no policy in the company  
21 regarding sexual harassment and the ability to report this in any  
22 effective way by employees.

23 So I find that throughout the period that was relevant  
24 here that the company had no effective sexual harassment  
25 reporting mechanism and therefore it was a document on its face

1 that was ineffective.

2 Mr. Muffoletto's responsibilities as President, since  
3 he was the one who was the most, the front line harasser, as  
4 established by the Caprario deposition, Page 94, was that he was  
5 primarily involved in sales management, which is particularly  
6 important here because he was a supervisor for many of the  
7 claimants who were involved in generation of sales, selling  
8 commercial collection services to businesses.

9 He also advised the legal department. And I say with  
10 some regret that Mr. Muffoletto, in addition to being the  
11 President, was also an attorney. And so he had this profession,  
12 as well as his business responsibilities.

13 His responsibilities were described at Page 95 as  
14 including organization of the Client Service Department, which  
15 would include the contacts between the clients and the Collection  
16 Department. And he had direct managerial authority over  
17 Worthington, Moore employees.

18 This is important because, as the testimony of the  
19 claimants indicated, many of them reported to him directly, and  
20 those that did not report to him directly could not disassociate  
21 themselves from his contact when he approached them, such as Ms.  
22 Bantom, who was a secretary and not involved in sales. And the  
23 fact that he was the President and had disciplinary authority and  
24 supervisory authority means that he was using his position as the  
25 President of the company for purposes of the harassing activity

1 that was described.

2 At Page 97, Mr. Caprario acknowledged that Muffoletto  
3 had the authority to discipline employees.

4 Beginning at Page 100 is the discussion where Mr.  
5 Caprario was asked about whether he had ever heard of any  
6 disturbing behavior by Mr. Muffoletto regarding sexual harassment  
7 of female employees prior to the time he was brought in, which  
8 was denied. When he was questioned, beginning at Page 260, about  
9 what happened when he began to hear reports, which he didn't deny  
10 hearing reports, of the harassing behavior that was described by  
11 the claimants, he stated that he talked to several of the other  
12 women in the organization, a Ms. Dubois, D-U-B-O-I-S, and Ms.  
13 Horwath, H-O-R-W-A-T-H, and Ms. Payton, P-A-Y-T-O-N. He was asked  
14 if he did anything else regarding the allegations. He said, no,  
15 he didn't, because he knew there were enough inaccuracies that  
16 the allegations were not believable.

17 It is clear from the testimony that was brought before  
18 me that, given the frequency and the severity of the complaints  
19 that were made to Mr. Caprario, that to conclude from having  
20 talked to several women there is no evidence that they had any  
21 basis of knowledge of what was or wasn't happening with regard to  
22 Mr. Muffoletto's conduct, and then to conclude from that that  
23 there were inaccuracies, was virtually no, constituted certainly  
24 deliberate indifference by him and his company on his behalf to  
25 the allegations against Mr. Muffoletto. And this constitutes the

1 reckless harm that would be justified to support a basis of  
2 punitive damages.

3 In addition, the testimony, uninvited, from all of  
4 witnesses was that when they reported activity of Mr. Muffoletto  
5 to Mr. Caprario, that he would laugh or say, That's just Sam and  
6 he doesn't mean anything by it, or otherwise be dismissive.  
7 That, too, is the essence of indifference to the rights of the  
8 plaintiffs.

9 Moreover, to have a policy that was put into effect,  
10 written policy in 2001, which was well after the complaints had  
11 first surfaced, that put Mr. Muffoletto as one of the people to  
12 go to is a poster child for reckless indifference to the rights  
13 of the claimants. And further, it would support, does support an  
14 award of punitive damages.

15 I am struck, by having read his deposition, at the  
16 conclusory nature of certain statements he made, such at 264,  
17 where it was obvious that a lot of the complaints were  
18 fabricated. There was absolutely no evidence of any reasonable  
19 investigation or having done an inquiry that would have been a  
20 sufficient basis to make a determination as to whether or not the  
21 claims were legitimate or not.

22 And I also note that when trying to determine if there  
23 was an indifference on behalf of the company towards the rights,  
24 beginning at Page 266, Mr. Caprario testified that a Ms. Vogel,  
25 who was an employee of Mark Muffoletto, who was one of

1 Muffoletto's sons who did work on behalf of the company, was an  
2 employee of his, was his secretary, and that she was involved  
3 with legal matters. As part of the record before me there are a  
4 series of exhibits that were offered and have been accepted that  
5 include e-mail communications between Mr. Caprario and Ms. Vogel.  
6 And although Ms. Vogel is not a claimant here, one wonders -- the  
7 relevance of these documents are such that they establish a  
8 factual basis to support the conclusion that Mr. Caprario was  
9 indifferent to the types of complaints that the complainants  
10 brought to his attention because he himself behaved in exactly  
11 the same type of behavior.

12 His e-mail to Ms. Vogel on August 7, 2002, where he  
13 told her that if he she weren't married and he weren't married  
14 they could go to the beach together, and advised her not to  
15 forget her thong. The August 15th, 2002 e-mail where he stated  
16 that he missed her and it's his birthday. The September 9th,  
17 2002 e-mail where he said that she looked nice and he liked the  
18 blouse and the color. There's a whole series of e-mails, one of  
19 which, September 9th, Hey, if you got it, flaunt it, right?  
20 Nothing wrong with that. Help make the world a better place to  
21 live, a ha ha ha ha, thanks.

22 And then the one on September 9th to Ms. Vogel. That's  
23 how you make all that tip money! Your hubby must trust you  
24 immensely letting you leave the house like that.

25 September 11th e-mail. You have a way about you,

1 that's for sure.

2 And then September 11th, 2002, where he e-mails her, I  
3 could not tell what you were wearing as you had a stack of papers  
4 in front of you. I could not even make eye contact when you  
5 talked to me. You're the kind that needs a couple of drinks to  
6 loosen up a bit, I bet. And then other similar e-mails.

7 This, plus the complaints, plus the testimony of the  
8 witnesses as to his reaction just creates a very strong factual  
9 record to support the legal basis for punitive damages, that  
10 there was an indifference to the important rights of the female  
11 employees of this company to work in an environment free of the  
12 type of harassment that was discussed here.

13 Additional noteworthy matters in the deposition include  
14 Page 315, where it was acknowledged that Mr. Muffoletto, who was  
15 one of the harassing officers of the company, participated in the  
16 decision to change Laura Thomas' base pay. And the testimony at  
17 316 that he had involvement in the decision to change Ms. Thomas'  
18 pay scale, as well as the testimony beginning at Pages 327 and  
19 328, where a number of the individuals who filed the EEOC  
20 complaints had reported harassing conduct prior to the time that  
21 Ms. Thomas was ever even hired.

22 Therefore, it's very clear that the company was on  
23 notice that there were things that had to be, that should have  
24 been addressed in a real fashion.

25 The testimony at Page 330 further supports the

1 indifference to the rights of the claimants. He read Ms. Thomas'  
2 charges to the EEOC and he admitted that it struck him that they  
3 were very similar to the ones previously made to Mr. Muffoletto.  
4 It seemed it didn't have any impact whatsoever on Mr. Caprario, a  
5 rather incurious man; that the fact that these women had all gone  
6 before Thomas had gotten there and had told remarkably similar  
7 tales, that that somehow would corroborate what her complaints  
8 were. But that didn't, it didn't trigger any inquiry on his  
9 part. So again, indifference to the rights.

10 The discussion of his so-called investigation into Ms.  
11 Thomas's complaint, beginning at Page 334, again shows the  
12 indifference, to include an admission on Page 335 that after Ms.  
13 Thomas' complaint, that he didn't deny that he could have  
14 referred to her as, quote-unquote, "that bitch." And when asked  
15 if he had referred to her in language similar to, quote, "that  
16 bitch", close quote, in front of Sam Muffoletto, he acknowledged  
17 on Page 336, I could have, I'm not completely certain.

18 And when asked whether Mr. Muffoletto referred to Ms.  
19 Thomas in similar language, he was evasive. The exact  
20 terminology that he used, "I'm not, I'm not sure." And when  
21 asked, Any other term, he says, Pig comes to mind. Pig, the  
22 question is. Do you recall Sam referring to Laura as pig? Yes.

23 When asked by counsel if he could give a little more  
24 explanation, his comment was, I don't know. A pig is a pig. I  
25 don't know. I don't know a good example of where a pig is used.

1           That type of smug, cutesy response permits the  
2 inference that is supported overwhelmingly by the facts of the  
3 record, particularly including his own e-mails to Ms. Vogel.  
4 That just supports the conclusion that Mr. Caprario was an  
5 enabler, if not an actual participant, of the type of harassment  
6 of Mr. Muffoletto.

7           And that factual basis is more than sufficient to  
8 support the noneconomic relief that the EEOC seeks in this case  
9 because even though the company may be in a questionable  
10 financial position now, it continues to operate. And if there  
11 continue to be female employees there, then they are no doubt in  
12 an environment where the same type of behavior can occur. And  
13 while I acknowledge that there has been testimony in these  
14 proceedings that Mr. Sam Muffoletto has died, he had sons who  
15 were affiliated with it. And the mere fact that Mr. Caprario  
16 alone is there, and given the record of his attitude and his  
17 failure to take reasonable steps, the noneconomic relief  
18 requested by the EEOC is warranted in this case.

19           Finally, what I want to say about the indifference is  
20 at Page 373 he was asked whether he thought Sam Muffoletto had  
21 any issues.

22           Answer: Did Sam have any issues? I think everyone can  
23 have some issues.

24           Question: Well, do you think he had a boundary issue  
25 with respect to personal conduct against females?

1 Answer: I never witnessed any of it.

2 Oh, I understand that, but female employees -- well,  
3 employees told you about it, correct?

4 Some employees, right.

5 Again, a notion of, if I didn't see it, it didn't  
6 happen, coupled with no effective policy, coupled with putting  
7 the harasser as the person to complain to, all of this supports  
8 the basis for the indifference standard to support punitive  
9 damages.

10 As for the actual malice damages, I will discuss that  
11 when I go through the facts supporting each of the claimants'  
12 claims. But suffice it to say that collectively and individually  
13 the testimony of those individual claimants demonstrate that Sam  
14 Muffoletto engaged in the type of conduct that was persistent,  
15 intentional, malicious and predatory.

16 There are those who say that there's very little sex in  
17 sexual harassment and a good deal of control and domination and  
18 just simply an exercise of power. And that comes through in this  
19 record in great detail.

20 So as for all of the complainants who had involvement  
21 with Mr. Muffoletto, his behavior amply provides a factual basis  
22 for the actual malice or the malicious component necessary for  
23 punitive damages and thus justifies it for each of them, as I  
24 will say in more detail when I go through the facts supporting  
25 them.

1           At this time I'm going to provide Mr. Davis, our very  
2           esteemed courtroom deputy, with the book containing Mr.  
3           Caprario's deposition testimony. Let me continue with my factual  
4           findings with regard to individual claimants.

5           Ms. Hennen, H-E-N-N-E-N, her last name today as a  
6           result of her marital status is I-O-V-A-C-C-H-I-N-I, began  
7           working for Worthington, Moore & Jacobs in December of 1999. And  
8           she almost made it a year before she was fired in December of  
9           2000. She was at the time separated. She had two children. And  
10          she came to work. At the time Mr. Muffoletto was the President  
11          and Mr. Caprario was the CEO.

12          She reported to Mr. Caprario and then she reported to  
13          Mr. Muffoletto because she was a Client Services Rep. As the  
14          deposition testimony of Caprario established, as I referred to a  
15          moment ago, the responsibilities of Mr. Muffoletto included the  
16          Client Services Department. And of course the testimony, the  
17          deposition testimony by Mr. Sowers established that when Mr.  
18          Muffoletto was inclined to, he could be quite a boon to a service  
19          rep by helping them locate new business that would produce income  
20          for Worthington, Moore & Jacobs, that would generate commissions.

21          As the testimony of the claimants establish as well,  
22          when he was not so inclined to be of help, that it would have a  
23          negative impact on their income, about which we will hear more in  
24          just a moment.

25          Ms. Hennen, I will refer to by the name that was used

1 most often in the testimony and in the records, although  
2 originally hired for the Delaware office, reported a number of  
3 times a week to the Baltimore office. When she encountered Mr.  
4 Muffoletto, he would ask her improper personal questions. He  
5 flirted with her. The intensity increased over time. He would  
6 also accompany his comments with touching.

7 She testified that he referred to her as his girl and  
8 asked her to date him, said he could take care of her  
9 financially, and frequently stood closer to her than was  
10 comfortable for her, and attempted to touch her. He offered her  
11 the money. She denied that she encouraged or condoned or  
12 acquiesced in these actions of his by any part.

13 She did not tell Mr. Caprario because she was dealing  
14 with the President of the company and she felt intimidated. And  
15 given the factual record I have just summarized regarding the  
16 appalling indifference of Mr. Caprario to the rights of the  
17 claimants in this case and his own apparent engaging in those  
18 with regard to Ms. Vogel, his secretary, who is not a claimant,  
19 there was no failure. No reasonable employee could be expected  
20 to have reported to Mr. Caprario, given his remarkable record of  
21 indifference to their legitimate complaints.

22 She testified there was no sexual harassment policy  
23 when she got there, and that's proven by the fact that it wasn't  
24 until May, 2001, when the policy, such as it was, was put into  
25 effect.

1 She testified about a number of instances, an instance  
2 at a country club where Muffoletto asked her to stay in his home  
3 and at dinner offered her money. When they were on business  
4 trips, he said that they would have to share the same room and  
5 said this in front of other employees, which caused her great  
6 embarrassment. Told employees they were dating. Insisted on  
7 having a room adjacent to her.

8 She testified that she is a single mom and felt  
9 trapped, and that she was being taken advantage of by Mr.  
10 Muffoletto.

11 When he visited the Dover office, he would come to her  
12 office, continue with the touching, asking her for companionship,  
13 saying that he could afford her. She testified as to how she  
14 felt degraded and humiliated by that.

15 The conduct increased in October, 2000. He said he  
16 wanted her to live with him. And he tried to trap her in a room  
17 one time. And her reaction to this was it made her upset,  
18 discouraged. She cried, she feared retaliation. In one instance  
19 when she avoided his attentions, the next day he was angry and  
20 abrupt and told her that she had blown it and could have had it  
21 made.

22 Thereafter, her employment conditions changed for the  
23 worse. He started removing clients from her, including one  
24 referred to as EBI. And this had an adverse impact on her  
25 income. And she was ultimately fired shortly before Christmas in

1 December of 2000.

2 She felt devastated. She had never had such type of  
3 adverse consequences in her employment. She testified that even  
4 today, that she's defensive. She has a difficult time relating  
5 to male coworkers. Her self-esteem continues to be affected.  
6 She was unemployed for six months. And when she became employed,  
7 she did not immediately recapture the income that she had had.

8 Dr. McCarthy, whose report I had previously admitted  
9 into evidence and found that the methods used were reliable and  
10 that the factual basis was sufficient as required by Federal Rule  
11 of Evidence 702, calculated the back pay for Ms. Hennen at  
12 \$75,256. And I find that to be the proper calculation for back  
13 pay. That includes interest.

14 My award, recommended award would include post-judgment  
15 interest as well. And that will be for all of the claimants, if  
16 I fail to say it for any one individual claimant.

17 As for damages, compensatory damages, the record's  
18 ample with respect to her to show that \$50,000 alone would be  
19 ample for punitive damages, as well as for compensatory damages.  
20 Regrettably, because of the limited number of employees, the  
21 single cap of \$50,000 would be imposed.

22 But I do find that, for the reasons that I've explained  
23 at some length already, that both the malice component of the  
24 award from Mr. Sam Muffoletto, as well as the indifference to  
25 known constitutional and other rights by Mr. Caprario, is of

1 course the action of the company itself by its highest officers  
2 and therefore warrants this.

3 So it's \$75,256, plus \$50,000, plus post-judgment  
4 interest.

5 Next we heard from Elizabeth Ford. She commenced her  
6 work as an administrative assistant in the Dover office in July  
7 of 1998. She had 15 prior years of experience. She was  
8 separated then and ultimately divorced. She had a three-year-old  
9 daughter and was a single mom.

10 Caprario was her boss but Muffoletto came on board a  
11 year after she got there. And she was told that Mr. Muffoletto  
12 was the President and also an attorney and had a large client  
13 base. She was told that by Caprario.

14 Muffoletto's conduct towards her was of a nature  
15 previously described by Ms. Hennen. Shortly after Muffoletto  
16 arrived, they had worked late, trying to meet some sort of a  
17 business deadline. He asked to take her out to dinner. At  
18 dinner, he asked her if she would like to come to the Maryland  
19 office, dangled a \$60,000 salary before her, which to her as a  
20 single mom sounded like a dream job.

21 After dinner, he pulled out his wallet, offered her a  
22 hundred dollars to buy something for her child. She refused  
23 initially, but he insisted. She took the hundred dollars, after  
24 which he grabbed her and kissed her on the mouth. She ran from  
25 the car, drove home, and was ill after she got home.

1           He continued with these types of comments, often  
2           commented about the way she looked. She testified that she  
3           complained to Mr. Caprario. I've already established what  
4           insufficient response she got from him.

5           Caprario said she would be fired if she didn't move to  
6           the Maryland office. So she felt helpless and she needed a job,  
7           so she actually relocated from Delaware, came to Maryland. The  
8           company helped set up an apartment for her.

9           She got there, the pay raise didn't materialize. So  
10          the \$60,000 was never paid. And Mr. Muffoletto worked with her  
11          in close quarters. They had the top floor of a converted  
12          residence. It was just herself, Mr. Muffoletto, and one of Mr.  
13          Muffoletto's sons. So there she was, book-ended by those two.  
14          And she described it as a nightmare.

15          The company had provided her the hotel and at one point  
16          Mr. Muffoletto hinted that he might have a key to her apartment.  
17          This caused her to put a chair in front of the door on the  
18          inside. In the event that he had a key, it would prevent him  
19          from coming in. She became irritable and exhausted and it had an  
20          impact on her relationship with her daughter.

21          He would touch her, get close to her and touch her.  
22          There was an incident in the supply closet where she was getting  
23          supplies and the light got darker. And there he was, Mr.  
24          Muffoletto. And he said to her, if I was 30 years younger, that  
25          you would be mine, words to that effect.

1 She described the work experience there as horrific.  
2 And he would say things her such as, I miss you, you don't love  
3 me. He said her to stay at his home. As she described it, she  
4 was physically upset, she testified, even today.

5 He would engage in misbehavior, not just simply when he  
6 was with her, but when he was with other employees. At one point  
7 he said to her, in front of another employee, that he wanted a  
8 threesome. And when he did not get the type of attention in  
9 return that he wanted, he directed his anger towards her.

10 At one point he asked her to be his date at the office  
11 Christmas party, and then at some point confronted her angrily  
12 and said, Is it ever going to happen? When she said no, he was  
13 hostile thereafter. He took away her client book of business and  
14 that prevented her from getting commissions.

15 At one point she encountered one of the other  
16 claimants, Ms. Bantom, B-A-N-T-O-M, who was visibly upset and  
17 crying, could not calm down. And Ms. Bantom related to her that  
18 she had experienced the same type of conduct by Mr. Muffoletto in  
19 a long meeting behind closed doors that had taken place. This  
20 caused Ms. Ford to go to Mr. Caprario, because she was concerned  
21 about what happened with Ms. Bantom. Mr. Caprario laughed at his  
22 desk and didn't ask for any details. This made her upset  
23 because, as she described it, Caprario just blew her off.

24 Very shortly thereafter, Bantom resigned. And Ms. Ford  
25 received a phone call from Robert Muffoletto, one of the sons of

1 Sam Muffoletto, who she had worked with in Maryland, who told  
2 her, Watch your back. At that point the handwriting was on the  
3 wall. She got a job at a temporary agency and then she left.

4 She was not aware of any sexual harassment policy at  
5 the company for the simple fact that there wasn't one.

6 The damages calculated for her by Dr. McCarthy were  
7 \$21,966 for back pay, which includes interest. I find that  
8 that's the proper amount of damages for her. In addition, her  
9 testimony amply would support a \$50,000 punitive award as well as  
10 a \$50,000 compensatory damages award. However, because only one,  
11 a cap of \$50,000 is applied, the total amount for the combined  
12 punitive and compensatories is \$50,000.

13 Ms. Bantom testified. She is the only claimant for  
14 whom no back pay award is sought for the simple fact that she had  
15 a job that paid as much or better before she left. She was there  
16 a very short time. She got there in August of 2000 as a  
17 secretary. She was divorced.

18 Muffoletto approached her and asked her to meet with  
19 him, asked her personal details about her life. She described it  
20 as hitting on her. And each time Mr. Muffoletto would come to  
21 the Dover, Delaware office where she worked, the same type of  
22 behavior would continue.

23 He told her that she told him that he did not want to  
24 have any, she did not want to have any relationship with him,  
25 rejected his advances. He would touch her, put his hand on her

1 arm, her back. He would try to pull her down if she was sitting  
2 next to him and tried to get up, would touch her whenever he  
3 could. She said that made her feel like a piece of meat because  
4 they had no other business relationship and no other  
5 relationship.

6 She did not like the fact that he touched her that way  
7 because as a 14-year-old girl she had been molested, and his  
8 conduct reopened the memories of that abuse that she had  
9 suffered.

10 When she heard that Sam Muffoletto was coming to the  
11 Dover office, she would become sick to her stomach. She actually  
12 called out sick. January of 2001 she resigned. She'd been there  
13 six months. She couldn't stand it. At one point she had been  
14 trapped in a conference room by Mr. Muffoletto and he would not  
15 let her out. She was upset. She went to Ms. Ford. And I had  
16 previously related my factual findings about what happened when  
17 she went to Ms. Ford and what Ms. Ford did with Mr. Caprario,  
18 which produced no appropriate response.

19 She, too, was not aware of any sexual harassment policy  
20 because it didn't exist at the time.

21 There is no back pay award because she had a job before  
22 she left. But certainly, the \$50,000 punitive award would be  
23 justified as to Mr. Muffoletto's active malicious action towards  
24 her and Mr. Caprario's indifference to the situation involving  
25 her when it was reported to him by Ford.

1 She's also entitled to \$50,000 in pain and suffering,  
2 compensatory damages. But because of the \$50,000 total cap, the  
3 combined amount of each is only \$50,000.

4 Ms. Lynne Geers, G-E-E-R-S, testified she started  
5 working in the Dover office in July of 1998. She was the  
6 Director of Client Services. She had more than five years  
7 experience in that.

8 She had \$3,000 a month in base pay, plus commissions,  
9 and she had commissions from a number of different sources. And  
10 she, too, although of all the claimants she was the one who  
11 appeared to be emotionally the most resilient, she would need all  
12 that resilience to withstand Mr. Muffoletto's attentions, which  
13 included him asking her if she was dating, telling her that he  
14 was good at oral sex, and making comments about her breasts.

15 She complained to Caprario and explained exactly what  
16 he had done. Caprario said, Don't worry about it, that's just  
17 Sam, and as she described, blew her off. She was insulted by  
18 that, as she had a right to be. And Muffoletto, of course, kept  
19 it up, even when he was rebuffed. Ultimately, he demoted her to  
20 a sales representative job. She had to make hundreds of cold  
21 calls a day, rather than having the benefit of his support in her  
22 sales job. Her pay, as you might imagine, took a nose dive.

23 And the comparator for her was Mr. Sowers, whose  
24 deposition was offered into evidence and received. Mr. Sowers'  
25 deposition is significant because he testified -- and Stephen, I

1 will give this to you in just a minute as well -- he testified  
2 that in his deposition at Page 19 and 20, gave examples of how  
3 Mr. Muffoletto had assisted him in getting a client, which was  
4 described as ARINC, A-R-I-N-C, which stood for Aeronautical Radio  
5 Incorporated.

6 ARINC became a client, Page 21. In addition, Mr.  
7 Muffoletto helped him get the Shelba, S-H-E-L-B-A, Johnson  
8 Trucking Company, Page 23, the Landstar Trucking Company, Page  
9 25, a company by the name of MGM Trucking Company, Page 28, and a  
10 company called Rowan Barker, Page 28.

11 Now, the consequence of being in Mr. Muffoletto's favor  
12 was such that Mr. Sowers testified at Page 80 that in 2001 he  
13 earned \$69,878.35. The next year, 2000 -- that's Page 81, or,  
14 excuse me, Page 80. At Page 82 he testified that in 2002 he  
15 earned \$106,500.19, significantly more than the income that was  
16 earned by Ms. Geers, who had a similar position with him.

17 When Mr. Muffoletto continued to make advances towards  
18 her and she continued to rebuff him, her accounts were taken and  
19 given to Robert Muffoletto, Mr. Muffoletto's son, who had no  
20 experience with clients. He continued to proposition her. And  
21 when she would not acquiesce, he became angry and sarcastic  
22 towards her.

23 She said he gave her no help. She described the  
24 situation where she went to the newspaper trade show. He had  
25 agreed to accompany her. She made reservations. She went up to

1 Upstate New York for it. When she got to the hotel, he wasn't  
2 there. She called. He said that he couldn't get a room to come  
3 up there but would come up there if he could share a room with  
4 her. She said no. He didn't come. So she basically was present  
5 at a marketing event with the newspaper trade show, where she had  
6 no one to assist her in making contacts, which he had promised to  
7 do.

8 This had a dramatic impact on her compensation. And  
9 she testified that she had no, she felt from the behavior  
10 humiliated, harassed, and was upset about the loss of income.

11 She left and testified she was unaware of any sexual  
12 harassment policy in the company, for the simple fact that during  
13 the time that she was there, there was not even a putative policy  
14 in place.

15 Her back pay, including interest damages, were  
16 calculated by Dr. McCarthy as \$17,734. That's the amount I find  
17 is appropriate. The conduct that she endured would also warrant  
18 \$50,000 punitive, more than amply made by the actual malice of  
19 Sam Muffoletto and the indifference towards important rights of  
20 the company through its CEO, Mr. Caprario.

21 So she would be entitled to a \$50,000 compensatory  
22 award as well as \$50,000 for punitive. They're capped at 50 so  
23 that's the amount that she's awarded or that I recommend that she  
24 be awarded.

25 Next, we have Melanie Sandy, whose married name now is

1 Goldsberry, G-O-L-D-S-B-E-R-R-Y. She testified by remote video  
2 hook-up. She came to work for Worthington, Moore & Jacobs in  
3 March of 2000. She lasted a year. She was in the Maryland  
4 office. At the time she was single, though she was engaged. She  
5 already had a son who was two years old. Muffoletto was her  
6 boss, and she was the secretary for him and for his son, Robert.

7 She endured similar harassment to the type described by  
8 the other claimants. He would come up to her, Mr. Muffoletto,  
9 and say that when they went on business trips that they would  
10 have connecting rooms so that they could, quote, "play all  
11 night", close quote.

12 During a Dover business trip that she had to endure  
13 with Mr. Muffoletto, he asked the clerk if the rooms could be  
14 adjoining and said that he was going to get her drunk so they  
15 could play all night. She said, quite reasonably, that she was  
16 embarrassed and uncomfortable by this.

17 The next morning she came to his room, he called, he  
18 asked her to bring him coffee, and she did. There he was in his  
19 boxer shorts, and tried to grab her. And she left tearfully,  
20 called her husband. She said, with remarkable understatement,  
21 that she did not feel comfortable around him, and told him that.

22 One time he backed her into a corner and asked her to  
23 kiss him. He tried to run his hands up her body. He made  
24 inappropriate comments to her about sex and said that he could  
25 provide her with financial benefits. She rejected his advances.

1 At one point he said to her that, he had initiated a conversation  
2 regarding oral sex and told her that "young girls gave head  
3 good." That was a quote she gave.

4 He asked her if she wanted him. She felt humiliated  
5 and cheap, like dirt, she said.

6 Robert Muffoletto, his son, was equally coarse and  
7 crude towards her. And she was visibly upset when she testified  
8 to this.

9 I will not, just simply because Robert Muffoletto's  
10 conduct, while equally reprehensible with his father's, is not at  
11 issue here so I won't inflict on Chief Judge Legg the  
12 characterization of some of the crudities that Robert Muffoletto  
13 directed towards her.

14 She complained to Caprario during the first year and  
15 said that Mr. Muffoletto's comments made her uncomfortable. And  
16 thereafter, Mr. Muffoletto came to her and said that if she ever  
17 complained again, she'd be fired. So, obviously, Caprario must  
18 have told Muffoletto.

19 Caprario told her that he would speak to Sam and then  
20 laughed and sniggered, found it amusing.

21 She became pregnant while she was there and told them  
22 she was pregnant. Mr. Muffoletto continued his harassment. He  
23 said that now that she was pregnant, she could have sex with him  
24 and everything would be safe. Robert Muffoletto told her that  
25 her husband would think that the baby was a Muffoletto baby.

1 She was nervous and self-conscious. She purposely  
2 dressed in as unattractive a fashion as she could. She was  
3 stressed out. She was unable to gain weight that she needed to  
4 gain during the pregnancy.

5 She ultimately confronted Sam Muffoletto, said that his  
6 comments made her uncomfortable. She asked him to stop. And he  
7 said, Is that it, and then she was dismissed. A few weeks later  
8 she was, in fact, dismissed. She was fired in March of 2001.

9 She wasn't aware of any sexual harassment policy  
10 because none existed.

11 She testified in detail with respect to her attempts to  
12 mitigate. Exhibit Eight, which was accepted into evidence, as a  
13 10 page list of the types of companies she tried to contact.  
14 Over 90, or over 100. Excuse me. Ultimately, she opened up a  
15 day care but it didn't make a profit. She still said she has  
16 nightmares. She testified as to her faith and that her faith  
17 teaches her to forgive. And she faults herself for the fact that  
18 she is not able to forgive Mr. Caprario and Mr. Muffoletto.

19 I find that the \$75,042 in back pay, including  
20 interest, that was found by Dr. McCarthy, is the appropriate  
21 amount. She would be entitled to much more than \$50,000 for  
22 punitives from Mr. Muffoletto's malicious conduct and Mr.  
23 Caprario's indifference, and the company's indifference through  
24 his position with the company towards her, and more than \$50,000  
25 in compensatory damages. Regrettably, however, the cap is

1 \$50,000 and so that's the only amount that can be given as a  
2 collective award.

3 Laura Thomas testified that she was at Worthington,  
4 Moore & Jacobs from April, 2002, until May of 2003. Her current  
5 salary was between 75 and \$80,000. She had 15 years of selling  
6 collection services and risk management. She moved to Maryland  
7 with her daughter.

8 She had an encounter with Muffoletto where he offered  
9 her a position during a dinner meeting, and when she accepted he  
10 directed the conversation to their personal lives, asked if she  
11 was married. He asked to come to her condominium to go over the  
12 details of the employment contract, and she let him to do so.  
13 There they had wine, discussed the contract, and she signed the  
14 contract, at which point Mr. Muffoletto, Mr. Sam Muffoletto said,  
15 Enough about business, what about us? She said that she rebuffed  
16 him and said that she didn't want to have a personal relationship  
17 with him, she wanted a business relationship, with which they  
18 could both make a lot of money.

19 During the course of her involvement with him, the year  
20 that she was there, he asked her to go with him on trips and  
21 treated her as if she were his property. At one point he offered  
22 his BMW to her, cash, said he would be a sugar daddy to her, and  
23 said that sex would not have to be all of their relationship but  
24 it certainly would have to be part of it.

25 At some point she was approached by a female employee,

1 Patricia Diden, D-I-D-E-N, who, through her conduct and her  
2 behavior, seemed to be sympathetic. So Ms. Thomas went to lunch  
3 with her and explained what had been going on with Mr.  
4 Muffoletto, and was told by Ms. Diden that she, too, had had some  
5 sort of interaction with Muffoletto. The next day Muffoletto  
6 confronted her. He was angry. He said that Diden lied about  
7 having had a relationship with Mr. Muffoletto, threatened her  
8 with firing, and demanded that she write him a note that she was  
9 not planning on suing the company, which she did.

10 She testified that she feared him, and she feared that  
11 he would deprive her of the means of supporting her child. The  
12 conduct continued. And he continued to ask if she would go away  
13 with him, commented about her, what she wore and how she looked,  
14 and that made her feel like dirt.

15 She testified that she was worried and anxious about  
16 her job, she couldn't sleep, she was fearful about finances.

17 After she continued to rebuff Mr. Muffoletto, she was  
18 prevented from attending various client visits. There was a  
19 company by the name of Infinity that she said she was not  
20 permitted to go, and Viotech. V-I-O-T-E-C-H is my phonetic  
21 spelling of what I heard her say. He refused to let her go along  
22 on those business trips.

23 Her performance was affected by this. She said that  
24 her self-esteem was diminished and things got worse. Her  
25 testimony was that she believed that she would have continued to

1 earn commissions had the harassment not occurred. She had a  
2 several month period of good commissions, as referred to by Dr.  
3 McCarthy, and thereafter significantly not.

4 Now, of all the claimants, her performance was most  
5 disputed by the Worthington folks. And there's a significant  
6 record that was admitted in Exhibits 1 through 12 of the exhibits  
7 authored by Ms. Thomas, where primarily because of letters by Mr.  
8 Muffoletto, Mark Muffoletto, back to Ms. Thomas' attorney, Ms.  
9 Weiss, and Mr. Caprario testified in a less than firing fashion  
10 regard her performance. However, the description of her behavior  
11 and her performance and what she would have earned that she  
12 testified to is unrebutted here today. Moreover, the credibility  
13 of Mr. Caprario's comments in light of everything else I heard  
14 makes him less than an accurate describer of facts.

15 So I am inclined to give little weight to the  
16 deposition testimony that the folks at Worthington, Moore felt  
17 that Ms. Thomas was not a good performer. Rather, the paper  
18 trail suggests that when she complained, that they started making  
19 book on her. And as evidence of the rather remarkable  
20 chronology, when there was a letter written by Ms. Weiss, Ms.  
21 Thomas' attorney, on February 27, 2003, going into very specific  
22 detail regarding Mr. Muffoletto's harassment of Ms. Thomas, the  
23 incident with Ms. Diden, it was responded to with indignation,  
24 contempt by Mr. Mark Muffoletto, son of Sam Muffoletto, who  
25 purported to be their attorney.

1           In the letter which was gratuitously pugnacious, Mr.  
2 Muffoletto made personal attacks of Ms. Thomas, and in the next  
3 to last paragraph on the second page, actually threatened in a  
4 way that would be comical for its maladroitness and legally  
5 insufficient conclusions were it not part of a larger chronology  
6 of harassment. But in any event, he threatened action against  
7 Ms. Weiss for having had a Federal Express package not marked  
8 "personal and confidential" addressed to Mr. Caprario.

9           Mr. Muffoletto, on March 13th, wrote another letter to  
10 Ms. Weiss and placed her on notice that he was going to file a  
11 tortious interference with the economic interest. A tortious,  
12 rather than tortious. Perhaps with acumen that he described in  
13 his letters he's aware of a cause of action unknown to the Court.  
14 But nonetheless, he threatened that.

15           Then on March 31st, 2003, coincidentally, I'm sure --  
16 actually, it wasn't a coincidence -- Ms. Thomas is placed on, her  
17 salary is reduced. She's told that she must produce better. And  
18 then shortly thereof, May 16th, she writes a letter saying,  
19 essentially a constructive discharge letter in which she says she  
20 wanted to leave the company after she had sufficient time to find  
21 work, July 11th. And Mr. Caprario wrote become back, Don't  
22 bother, leave now, and fired her. I'm characterizing his  
23 language.

24           So while there is some contradictory evidence before me  
25 as to whether Ms. Thomas' performance would be sufficient to

1 justify the conclusions reached by Dr. McCarthy that she would  
2 have continued to earn the commissions, in balance I find that  
3 those allegations, considering the lack of credibility of  
4 Caprario himself, considering the total record before me that  
5 they have little credibility, the chronology of what happened  
6 with her, quote-unquote, "poor job performance", after her lawyer  
7 wrote a letter, and given the vituperative response from the  
8 company to attack her, Ms. Weiss, that Dr. McCarthy's conclusions  
9 are sound and that the damages sought for back pay with interest  
10 of \$114,737 are appropriate. She, too, would be entitled to  
11 \$50,000 of punitive damages for the malicious actions by Mr.  
12 Muffoletto and, certainly, indifference is really too mild a  
13 phrase to refer to Mark Muffoletto's letters in terms of  
14 responding back on behalf of the company. It wasn't indifferent.  
15 It was itself perhaps malicious. But certainly, the company was,  
16 at a minimum, indifferent to her rights. So \$50,000.

17 In her testimony, the factual basis is sufficient to  
18 support a \$50,000 compensatory award as well. But, of course,  
19 the cap is \$50,000.

20 The final witness was Ms. Nancy Guzman. She had been  
21 hired as an administrative manager in the Maryland and Dover  
22 offices. Her duties changed after she complained of sexual  
23 harassment by Mr. Muffoletto. She described a series of by now  
24 familiar behavior by Mr. Sam Muffoletto.

25 Mr. Muffoletto had diabetes and as a result of that had

1 lost some toes in one of more of his feet. He would pretend to  
2 trip and to fall into her. So she learned, when he was around  
3 and was walking towards her, to keep her elbows out so if he did  
4 that, she could deflect him.

5 He made personal comments, would come into her office.  
6 She wasn't sales and she wasn't one of his subordinates but for  
7 the fact he was President. But he would come into her office and  
8 made comments towards her. At one point he pinned her against  
9 the wall in the Ellicott City office.

10 At one point she was trying to get come down the  
11 stairs. He put his hand on the stairs so she couldn't go up and  
12 down. As she tried to move past him, he sort of pinned her  
13 there. She looked up and saw Robert Muffoletto watching. And  
14 ultimately let her go.

15 Mr. Sam Muffoletto would make, as described by Ms.  
16 Guzman, yummy noises when she walked by. She complained to Vice  
17 President of Sales, Mr. N-O-B-I-L-I-O, Nobilio, I guess, and to a  
18 Mr. O'Connor. She also spoke to Mr. Sowers, who said that he  
19 would speak with Mark Muffoletto. Excuse me. Sowers said that  
20 he did speak with Mark Muffoletto, who was the lawyer who  
21 laughed.

22 She testified that at some point Ms. Phelan, who had  
23 been counsel for Worthington, Moore, but whose appearance was  
24 stricken in this case sometime earlier this year, conducted some  
25 sort of investigation regarding the claim of Laura Thomas.

1 Notably, Laura Thomas, of course, there was no lawyer brought in  
2 for any of the investigations of the earlier claims. And of  
3 course that's evidence of a lack of, of an indifference to the  
4 claims of the claimants.

5 But nonetheless, Ms. Phelan asked Ms. Guzman whether  
6 she had seen harassment and she said that she had. Ms. Guzman  
7 testified that Ms. Phelan said that had not happened. At some  
8 point Ms. Guzman sought to speak with the EEOC investigator and  
9 Ms. Phelan said she had to be present because Ms. Guzman was an  
10 officer of the company. And shortly after this, she was fired.

11 She testified that Mr. Caprario, who she knew from  
12 college, had a bad temper and used foul language. She was being  
13 considered for a management position in the Delaware office. And  
14 Mr. Muffoletto had suggested that they, that he should be able to  
15 stay with her when he came up there for that.

16 She testified that after she made her complaints, she  
17 rebuffed Mr. Muffoletto, that her duties changed. She was  
18 assigned clerical work. And she began to have e-mails that she  
19 thought were evidence of the fact that the company was keeping  
20 book on her.

21 After she left, she tried to get a job. At least two  
22 companies she thought she had promising leads. Recovar,  
23 R-E-C-O-V-A-R, Company, and the law firm of Hogan and Hartson.  
24 But when they checked with her employment references, which  
25 included Worthington, Moore & Jacobs, she was not given the jobs.

1           She suffered from anxiety. She went to a doctor. She  
2           couldn't breathe. And she had to pay for the doctor on her own  
3           because she didn't have medical insurance. She felt an emotional  
4           wreck. She had been subject to degrading behavior. She felt  
5           worthless, humiliated and began to question her own esteem, her  
6           own self-esteem. And she was physically upset when she testified  
7           to that.

8           The company opposed her unemployment claim. Mr.  
9           Caprario came to the hearing for the apparent purpose of adding  
10          insult to injury, and used foul language towards her. That's  
11          sufficiently, benignly referring to the comment -- what's the  
12          page reference for that, please?

13           MR. LEBAU: 353 and 354.

14           THE COURT: Could I have that back, Steven,  
15          temporarily, that exhibit book?

16           The actual testimony from Mr. Caprario's deposition  
17          contains the following, beginning at Page 352:

18           "Q: Okay. Do you recall at the end of the  
19          unemployment hearing for Nancy Guzman, that you made a comment to  
20          her and her, her male friend who was with her at the unemployment  
21          hearing?

22           A: I made a comment to Nancy or her male friend?"

23           This is Caprario testifying.

24           "Q: Yeah.

25           A: No.

1 Q: A threatening comment?

2 A: A threatening comment, no.

3 Q: You don't recall asking, making a comment like, "I

4 wonder who has the bigger dick, Nancy or Jeff?"

5 A: I didn't make that to Nancy or her friend.

6 Q: "Did you make that comment?

7 A: Yes.

8 Q: And who did you make that comment to?

9 A: Mark Muffoletto.

10 Q: Okay. And why did you make that comment to Mark

11 Muffoletto?

12 A: I don't know.

13 Q: You didn't whisper that comment, is that correct?

14 A: Did I whisper it?

15 Q: Did you whisper that comment?

16 A: I don't know if I whispered.

17 Q: You said it out loud, fairly loud, correct?

18 A: I don't -- I don't know.

19 Q: Okay. Well, prior to today, did you ever ask --

20 tell me that you wondered who had the bigger dick, Nancy or Jeff?

21 A: Did I tell you that?

22 Q: Yeah. Did you?

23 A: No.

24 Q: Okay.

25 A: So you're saying, is that your way of saying you

1 heard it?

2 Q: I'm saying somebody told me you said it and I think  
3 you confirmed that you did make that comment, correct?

4 A: Okay.

5 Q: And do you think it was an appropriate comment to  
6 make?

7 A: Probably not."

8 With respect to Ms. Guzman, the damages calculated by  
9 Dr. McCarthy for her were back pay with interest of \$23,591.  
10 That's awarded or recommended that be awarded. Clearly, there's  
11 actual malicious conduct by Sam Muffoletto, and more than  
12 indifferent conduct by the company through Mr. Caprario. So she  
13 would be entitled to \$50,000 for punitive and also 50,000 for  
14 compensatory, but they are capped together at \$50,000.

15 As I said before, upon the entry of a final judgment,  
16 to the extent that it needs to be actually affirmatively  
17 recommended, I recommend that post-judgment interest be awarded.  
18 And based upon the rather remarkable evidence before me of Mr.  
19 Caprario's behavior, that is more than an ample factual basis to  
20 support the non-monetary relief that the EEOC has requested. And  
21 I will include in my report a recommendation that Chief Judge  
22 Legg sign the draft order that was prepared.

23 What I intend to do now, of course, is once Ms. Zajac  
24 has been able to give me a copy of the transcript, I will then  
25 prepare and issue a brief written order that incorporates it by

1 reference, recites the damages that I have explained today, and  
2 then will forward that on to Chief Judge Legg, with a  
3 recommendation that he, after the appropriate period of time in  
4 which to object to any findings of fact or conclusions of law,  
5 award that amount of damages that I have said and enter a final  
6 judgment.

7 After that, counsel will contact me with regard to any  
8 further proceedings with respect to attorney's fees.

9 Michael, we need to make sure that when the report and  
10 recommendation is served, it's not done just simply  
11 electronically, although that alone would be sufficient because  
12 the obligation of pro se litigants to have that contact. We'll  
13 send it by regular mail as well.

14 All right. Thanks to Ms. Zajac and to Mr. Davis for  
15 their help. Counsel, anything further we need to address at this  
16 time? Thank you.

17 (Conclusion of Proceedings at 12:05 p.m.)  
18  
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23  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

_____	)	
UNITED STATES	)	
EQUAL EMPLOYMENT	)	
OPPORTUNITY	)	
COMMISSION, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 04-CV-3127-BEL
	)	
	)	
WORTHINGTON, MOORE, &	)	
JACOBS, INC.,	)	
	)	
Defendant.	)	
_____	)	

**ORDER**

The Court entered Default Judgment in the above-captioned case on April 29, 2009. On June 18 and 19, 2009, the Hon. Paul W. Grimm, the Chief United States Magistrate Judge for the U.S. District of Maryland, conducted an evidentiary hearing with regard to the relief sought by the U.S. Equal Employment Opportunity Commission (“the EEOC”) and Plaintiff-Intervenors Laura Thomas and Nancy Guzman. This Order addresses the non-monetary relief sought by the EEOC.

Under section 706(g)(1) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(g)(1)(“Title VII”), the Court has the authority to enjoin the Defendant from further violations of the statute. The default judgment entered in this case constitutes a finding that Defendant violated Title VII with regard to seven former employees by subjecting them to sexual harassment and retaliatory adverse employment actions. Based

on this judgment and the evidence adduced at the remedies hearing, the Court permanently will enjoin Defendant from any further sexual harassment, and from further retaliation against employees who complain of discrimination.

Further, as part of this injunction, Defendant is required to take the following affirmative steps to ensure its compliance with Title VII:

- Within 30 days of receipt of this Order from the EEOC's counsel of record, Defendant will modify the "Resolution Procedure" of its "Policy Prohibiting Discrimination and Harassment," Attachment A hereto, by removing the designations of David Caprario and Sam Muffoletto as company officials to whom complaints of discrimination must be made. In place of these individuals, Defendant will designate an outside human-resources consultant or employment attorney as the company's representative to whom complaints of harassment, discrimination, or retaliation should be made. The modified policy will clearly state the representative's name, affiliation, address, and phone number. Testimony received at the hearing has revealed that Defendant's previous counsel of record should not serve in this capacity. Defendant will further modify its policy by stating that employees can file a complaint of discrimination with the EEOC's Baltimore Field Office (City Crescent Building, 10 South Howard Street, 3<sup>rd</sup> Floor, Baltimore, Maryland, 21201; 800/669-4000).

Within the 30-day time- frame noted above, Defendant will submit the modified policy to the EEOC's counsel of record. The EEOC will file a letter with a Court notifying it of the EEOC's receipt of the modified policy and stating any concerns related to the modifications. Upon receiving notice that the EEOC is satisfied with the modifications, the Court will issue an order requiring the Defendant to post the modified

policy at all offices where it conducts business, and to distribute the policy to all employees and officers of the company. The EEOC will serve this Order upon Defendant's CEO, and Defendant will undertake the required posting and distribution within five days of receipt of the Order.

- Within 30 days of receipt of this Order from the EEOC, Defendant will post copies of the notice, attached hereto as Attachment B, throughout Defendant's offices, in all locations where notices and announcements customarily are posted. Within ten business days of the posting, Defendant will provide the EEOC's counsel of record with certification that the posting has occurred.

IT IS SO ORDERED this \_\_\_ day of July, 2009

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Benson Everett Legg  
U.S. District Court Judge

# Worthington, Moore & Jacobs

4872 Montgomery Road • Ellicott City • Maryland 21043 • Phone: (410)750-1722 • Fax: (410)750-1740

To: WMJ Personnel  
From: Sam Muffoletto and Dave Caprario  
Subject: Worthington, Moore & Jacobs' Corporate Policies  
Date: May 2, 2001

## MEMORANDUM

The following are additional WMJ Policies to be followed at all times an employee is acting as a WMJ representative, on company property, or attending a company function.

## POLICY PROHIBITING DISCRIMINATION AND HARASSMENT

### POLICY STATEMENT

**Equal Employment Opportunity:** Worthington, Moore & Jacobs is an equal employment opportunity employer. All employment-related decisions are based upon employees' and applicants' demonstrated accomplishments and abilities. No employment decision may be based upon any discriminatory factor prohibited by law (for example, race, color, creed, religion, national origin, ethnicity, sex, age, marital status, physical or mental handicap that does not preclude job performance, or citizenship status) or stereotypes associated with these factors. Consistent with this philosophy and policy, acts of discrimination based on any of these characteristics will not be allowed, tolerated, or condoned by Worthington, Moore & Jacobs.

**Harassment:** Worthington, Moore & Jacobs is committed to providing a work environment that is free from sexual harassment and free from harassment based upon sex, race, color, religion, national origin, age, disability or any other ground prohibited by law. Such harassment, whether committed by employees, management personnel, vendors, clients, customers or other non-employees, will not be tolerated. This policy governs conduct in the workplace and at all other work-related events, such as business trips and company-related functions.

### DEFINITIONS

**Harassment:** Any communication or conduct that denigrates, ridicules or is abusive to or about an individual because of one of the factors set forth above, when:

- A. Such conduct or communication has the purpose or effect of interfering with an employee's work performance; or



- B. Such conduct creates an intimidating, hostile or otherwise offensive work environment.

**Sexual harassment** is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, physical, nonverbal or visual communication or conduct of a sexual nature when:

- A. Submission to that conduct or communication is made either explicitly or implicitly a term or condition of employment;
- B. Submission to or rejection of that conduct or communication is used as a basis for employment decisions affecting the employee;
- C. Such conduct or communication has the purpose or effect of interfering with an employee's work performance; or
- D. Such conduct creates an intimidating, hostile or otherwise offensive work environment.

**Examples of conduct that may be harassment:**

**Verbal:** Comments, slurs, jokes, remarks, commentaries or epithets that demean, ridicule or offend on one of the bases identified above.

**Nonverbal:** Leering, looking someone up and down, making sexual gestures.

**Visual:** Displaying offensive or sexually oriented objects, pictures, cartoons, posters or electronic programs.

**Physical:** Unwanted touching, impeding or blocking movement, any physical interference with normal work or movement, interference with equipment, tools or possessions, assault or attempted assault, or sexual assault.

**RESOLUTION PROCEDURE**

It is important that any issues of discrimination or harassment be identified and resolved promptly. Employees who feel they have experienced or have witnessed discrimination or harassment in violation of this policy should discuss the offensive conduct **immediately** to one of the following persons: Sam Muffoletto or Dave Caprario. We cannot sufficiently stress the necessity of having this discussion immediately. It becomes more difficult to determine exactly what happened and to remedy a situation if an employee waits before raising the issue.

Once a situation has been reported, an investigation will be conducted. The type of investigation undertaken will depend upon the nature of the complaint, but will usually involve interviews of the person(s) making the report, the person(s) accused of the conduct, and any necessary witnesses.

Confidentiality will be maintained to the degree consistent with completing a full investigation of the reported conduct.

Appropriate corrective or disciplinary action will occur if the investigation reveals that discrimination or harassment has occurred. In addition, the Company may take corrective or disciplinary action in situations where the investigation does not reveal illegal discrimination or harassment, but does reveal that the employee has engaged in conduct which is disruptive or inconsistent with the Company's policies, goals or operations.

All employees are protected from retaliation as a result of reporting discrimination or harassment or participating in an investigation of a complaint of discrimination or harassment. If an employee feels that he/she is being retaliated against because of a report or because of participation in the investigation, he/she should report this immediately to one of the persons named above. Also, if an employee feels that discrimination or harassment is recurring or is continuing after discipline has been imposed or that retaliation is occurring because of the report or the discipline imposed, he/she should report this immediately to one of the persons named above.

#### **POTENTIAL PENALTIES**

Depending on the circumstances of each case and the seriousness of the offense, corrective or disciplinary action up to and including dismissal will be taken if it is found that discrimination or harassment occurred.

Worthington, Moore & Jacobs may also elect to impose discipline upon persons who engage in conduct that is abusive, offensive or disruptive, even if that conduct does not constitute harassment on one of the bases forbidden by law.

Disciplinary action up to and including dismissal will be taken against those who retaliate or threaten to retaliate against any person who files a complaint or assists in the investigation of a complaint.

Disciplinary action may also be taken against supervisors or managers who know of discrimination or harassment occurring and who fail to take prompt and appropriate action.

#### **ACTIONS EMPLOYEES CAN TAKE TO IMPROVE THE WORKING ENVIRONMENT**

Some harassment issues arise out of thoughtlessness or miscommunication, rather than intentional conduct, and thus can be avoided by developing a greater awareness regarding potentially offensive conduct and common communication errors:

- Treat your fellow workers with respect. Before acting, consider how you would feel about your best friend, your spouse, your child or your parent being treated in the same fashion.
  
- Be aware that others may have different perceptions than you regarding what behavior is appropriate, particularly with respect to such areas as touching, "personal space," and discussion of personal topics (for example, family, dating, relationships, race, religion, sex, weight and physical characteristics).
  
- Be aware that others may interpret your conduct differently than you intend it, particularly if they don't know you well. For example, a co-worker may interpret a kind or considerate statement or act as evidence that you are genuinely attracted to him/her.
  
- If you feel the actions of a co-worker are offensive or inappropriate, tell him/her so — take him or her aside, and explain what you find inappropriate and why. In many cases, you may find that the co-worker didn't realize you were offended or may have engaged in the conduct because he/she misinterpreted your actions.

**NOTICE TO ALL WORTHINGTON, MOORE & JACOBS EMPLOYEES**

This Notice is being posted pursuant to an order of the United States District Court for the District of Maryland following an entry of equitable relief in *EEOC et. al v. Worthington Moore & Jacobs, Inc.*, No. BEL-04-03127, on June \_\_\_\_\_, 2009. Pursuant to the Court's Order, Worthington, Moore & Jacobs was:

- (1) ordered to pay monetary relief to the victims of harassment and retaliation;
- (2) enjoined from further discrimination against female employees, and from further retaliation against employees who complain of discrimination; and
- (4) ordered to take affirmative steps to comply with Title VII of the Civil Rights Act of 1964, as amended, including the modification of its harassment policy.

EEOC enforces the federal laws against discrimination in employment on the basis of sex, race, color, religion, national origin, age or disability. If you believe you have been discriminated against, you may contact 1-800-669-4000/ TTY (410) 962-6065. General information may also be obtained on the Internet at [www.eeoc.gov](http://www.eeoc.gov).

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge Benson E. Legg  
United States District Court Judge

***THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE***

