

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D20005  
C/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - June 3, 2008

PETER B. SKELOS, J.P.  
HOWARD MILLER  
EDWARD D. CARNI  
CHERYL E. CHAMBERS, JJ.

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2007-01339

DECISION & ORDER

Jeanne M. Marzullo, appellant, v General  
Motors Corporation, et al., respondents.

(Index No. 1993/01)

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Sadis & Goldberg, LLP, New York, N.Y. (Francis Bigelow and Douglas R. Hirsch of counsel), for appellant.

The Rose Law Firm, PLLC, Albany, N.Y. (Michael E. Catania of counsel), for respondents.

In an action, inter alia, to recover damages pursuant to General Business Law § 198-a, the plaintiff appeals from an order of the Supreme Court, Dutchess County (Pagones, J.), dated January 8, 2007, which granted her motion for an award of an attorney's fee only to the extent of awarding her an attorney's fee in the sum of \$7,920.

ORDERED that the order is modified, on the facts, by increasing the award of an attorney's fee from the sum of \$7,920 to the sum of \$11,500; as so modified, the order is affirmed, with costs to the plaintiff.

The plaintiff prevailed on her cause of action to recover damages pursuant to General Business Law § 198-a, the so-called "Lemon Law." After twice being denied an award of an attorney's fee, and upon the denials twice being reversed by this Court (*see Marzullo v General Motors Corp.*, 34 AD3d 540; *Marzullo v General Motors Corp.*, 6 AD3d 506), upon remittitur for the second time, the plaintiff was awarded an attorney's fee in the sum of \$7,920. Under all of the circumstances of this case, the plaintiff should have been awarded an attorney's fee of \$11,500.

In the absence of any statutory basis for prejudgment interest, the Supreme Court

August 5, 2008

Page 1.

MARZULLO v GENERAL MOTORS CORPORATION

properly denied the plaintiff's request for such an award (*see Matter of Bello v Roswell Park Cancer Inst.*, 5 NY3d 170, 173; *Matter of Oly Bus Corp. v Contract Dispute Resolution Bd. of City of N.Y.*, 46 AD3d 469; *Matter of Dawson [General Motors Corp. Chevrolet Div.]*, 158 AD2d 756, 758).

SKELOS, J.P., MILLER, CARNI and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court