

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

LINDA GERKEN, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CASE NO. 06AC-CC00123-03
)	
)	
GARY SHERMAN, et al.,)	
)	
Defendants.)	

JUDGMENT WITH CLAIMS PROCESS

On September 18, 2017, pursuant to proper notice, the parties appeared by counsel for a hearing in the above matter. Arguments were heard and the Court now enters its judgment with Claims process in the above cause.

This Judgment restates and incorporates findings and conclusion from the Court’s ruling on December 1, 2016, and adds additional findings and orders related to the claims process. The Court this date adopts as part of its Judgment the Claims Process Order and forms, and those are attached hereto and are incorporated as part of this Court’s Judgment.

On July 26, 2016, this cause was called for hearing upon remand from the Court of Appeals, Western District in *Gerken v. Sherman*, 484 S.W.3d 95 (Mo. App. W.D. 2015) (also referred to as *Gerken IV*). Witnesses were sworn. Evidence heard. Arguments heard.

Being advised in the premises, the Court hereby finds and orders:

A. The Court of Appeals has now resolved all issues in the case. That Court has given specific instructions to this Court on how to calculate the final Judgment, and directed it to use Exhibit 1. The Court stated:

We direct the circuit court to use these calculations. Applicable interest and attorney fees shall

then be calculated on the amount of actual damages. *Id.* That Exhibit showed underpayment and interest of \$19,672,492, as of June 30, 2012. Exhibit 2 presented to the Court is a chart prepared by Plaintiffs' expert, Dr. Michael Alderson, and it computes the interest on the underpayment since June of 2012. That additional interest is \$4,139,525. Defendants stipulated that this additional interest calculation is correct. Therefore, the total Judgment as of the hearing July 26, 2016 is \$23,812,017.

This Court adds pre judgment interest to this amount through September 27, 2017, so the present principal and pre judgment interest amounts to a total judgment of \$26,312,279, which includes an award of attorneys' fees of 25% of the amount of the Judgment, which fee is reasonable in light of the work and expertise brought to this case by Plaintiffs' Counsel. As of September 27, 2017, this 25% attorneys' fees is \$6,578,070. Said attorneys' fees shall be paid to Class Counsel: Attorneys John Greider and Deborah S. Greider, LLC, Clayton, MO, and attorneys John Ammann, Barbara Gilchrist, and Amy Sanders of the Legal Clinic, Saint Louis University School of Law, St. Louis, MO. The Judgment, including the portion for attorney fees, will have added to it statutory interest at 9% from and after September 27, 2017, until paid.

B. Defendants, have presented this Court with new charts with erroneous new calculations of damages. These charts present a variety of theories. They attempt to allow credit for an increase in 1994 that was higher than the amount mandated by the statutory formula. The charts also attempt to apply credit for amounts paid in years FY2011 and beyond to underpayments for years FY2010 and prior. The Court finds the Defendants have waived any right to use these new charts, as they have never been presented to the Court before now. Defendants should not be allowed to, for the first time, ask that there be new calculations for 1994, 1995 or any other year.

C. Exhibit 1, which is attached hereto, which the Court of Appeals adopted as the

proper calculation of back benefits and interest, through June 30, 2012, includes two footnotes

that help explain the Court' decision. Footnote 1 to Exhibit 1 states in full:

The pension rate in FY2000 should be calculated by applying the statutory formula for all years from FY1993 through FY2000 because that is the only way to calculate the rate that should be paid in FY2000.

Next, Footnote 2 to Exhibit 1 states in full:

The Increase to the pension rate should be added to the greater of a) the amount required by the statutory formula, or b) the rate actually paid. This means in FY1994 the base rate is \$368, as that is what was actually paid, and the increase in FY1995 should be added to \$368.

The method and directions dictated in the footnotes are reflected in the calculations in Exhibit 1 adopted by the Court of Appeals. They also negate the Department's erroneous argument that it should be given credit for paying more than the statutorily required rate in 1994.

D. The Court also rejects Defendants' attempt to take credit for amounts paid in years FY2011 and beyond and apply them to underpayments for years FY2010 and prior years. If a person who received the pension in FY 2002 did not get her full pension, then went off the pension in FY 2003, no amount paid to other pensioners in FY 2011 could ever be viewed as eliminating the underpayment to the person who was only on the pension in FY 2002.

Defendants try to rely on language in the Court of Appeals decision that references amounts actually paid to pensioners. However, that reference can only be to benefits paid in any given year and not cumulatively over a 22 year period. The Court's direction can only mean that the Defendants must look at what they should have paid in any given year, and subtract what they actually paid, **in that year**, and no other. That is exactly what Exhibit 1 does, the Exhibit adopted by the Court of Appeals.

E. Therefore, the total Judgment to be entered by this Court is \$26,312,279 as of September 27, 2017, and said amount includes judgment for attorneys' fees in the amount of

\$6,578,070, plus statutory interest on the entire judgment, including attorneys' fees, of 9% from and after September 27, 2017, until paid.

F. The Court adopts and incorporates by reference the attached Claims Process Order and forms as part of its Judgment.

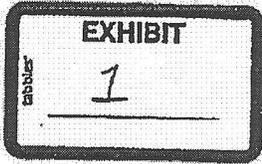
G. Costs taxed to Defendants.

It is so ordered.

Judgment entered.

Date: September 27, 2017

Honorable Patricia Joyce



Fiscal Year	Actual total revenue received	Prior Year Revenue Growth	75% of Growth	Average Annual Number Eligible	Column D Divided by prior year	Monthly Increase 1/12th of Quotient	Actual Paid	Req'd Monthly Payment (under)	Total Annual		Actual total revenue received
									Underpymt	Underpayment	
1990	\$ 11,874,034										
1991	\$ 12,686,593										\$ 12,686,593
1992	\$ 12,909,932										\$ 12,909,932
1993	\$ 13,320,526										\$ 13,320,526
1994	\$ 13,619,286										\$ 13,619,286
1995	\$ 14,048,294										\$ 14,048,294
1996	\$ 14,648,984										\$ 14,648,984
1997	\$ 15,606,429										\$ 15,606,429
1998	\$ 16,804,559										\$ 16,804,559
1999	\$ 17,445,288										\$ 17,445,288
2000	\$ 18,473,727										\$ 18,473,727
2001	\$ 19,448,160										\$ 19,448,160
2001*											
2002	\$ 21,016,957										\$ 21,016,957
2003	\$ 21,559,896										\$ 21,559,896
2004	\$ 22,878,108										\$ 22,878,108
2005	\$ 23,268,779										\$ 23,268,779
2006	\$ 25,185,870										\$ 25,185,870
2007	\$ 26,455,273										\$ 26,455,273
2008	\$ 28,023,570										\$ 28,023,570
2009	\$ 30,009,450										\$ 30,009,450
2010	\$ 29,586,466										\$ 29,586,466
2011	\$ 29,817,032										\$ 29,817,032
2012											
Totals											

* Adjusted for partial year (Feb 16 to June 30 = 35.586% of total)
 ** Assumes Interest through Fiscal 2012 (June 30, 2012)

Underpayment = \$ 11,478,681
 Interest on underpayment = \$ 8,187,241
 Total underpay + interest = \$ 19,665,922

1) The pension rate in FY2000 should be calculated by applying the statutory formula for all years from FY1993 through FY2000 because that is the only way to calculate the rate that should be paid in FY2000.

2) The increase to the pension rate should be added to the greater of a) the amount required by the statutory formula, or b) the rate actually paid. This means in FY1994 the base rate is \$368, as that is what was actually paid, and the increase in FY1995 should be added to \$368.

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