

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NATHAN YANCY)	
Appellant,)	
)	
v.)	CAVC No. 14-3390
)	EAJA
)	
ROBERT A. MCDONALD,)	
SECRETARY OF)	
VETERANS AFFAIRS,)	
Appellee)	

APPELLANT'S APPLICATION FOR AN
AWARD OF ATTORNEYS FEES AND EXPENSES
PURSUANT TO 28 U.S.C. § 2412(d)

Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d) (1994), and the Court's Rule 39, Appellant, through counsel, seeks a total fee in the amount of **\$25,245.76**.

The basis for the application is as follows:

Grounds for an Award

This Court has identified four elements as being necessary to warrant an award by the Court of attorneys fees and expenses to an eligible party pursuant to the EAJA. These are: (1) a showing that the appellant is a prevailing party; (2) a showing that the appellant is eligible for an award; (3) an allegation that the government's position is not substantially justified; and (4) an itemized statement of the fees sought. *Owens v. Brown*, 10 Vet. App. 65, 66 (1997) (*quoting Bazalo*, 9 Vet. App. at 308). *See also* 28 U.S.C. §§ 2412(d)(1)(A),(B).

As will be demonstrated below, Appellant satisfies each of the above-enumerated requirements for EAJA.

1. THE APPELLANT SATISFIES EACH OF THE REQUIREMENTS FOR AN AWARD OF ATTORNEY'S FEES AND EXPENSES

A. *The Appellant Is a Prevailing Party*

In *Buckhannon Bd. and Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598, 121 S.Ct 1835 (2001) (hereafter "Buckhannon"), the Supreme Court explained that in order to be a prevailing party the applicant must receive "at least some relief on the merits" and the relief must materially alter the legal relationship of the parties. 532 U.S. at 603-605. The Federal Circuit adopted the *Buckhannon* test in *Brickwood Contractors, Inc. v. United States*, 288 F.3d 1371 (Fed. Cir. 2002) and applied it to an EAJA applicant. The Federal Circuit explained in *Rice Services, LTD. v. United States*, that "in order to demonstrate that it is a prevailing party, an EAJA applicant must show that it obtained an enforceable judgment on the merits or a court ordered consent decree that materially altered the legal relationship between the parties, or the equivalent of either of those." 405 F.3d 1017, 1025 (Fed. Cir. 2005).

In *Zuberi v. Nicholson*, 19 Vet. App. 541 (2006), this Court explained that the Federal Circuit case of *Akers v. Nicholson*, 409 F.3d 1356 (Fed. Cir. 2005) "did not change the focus for determining prevailing party status from a standard that looks to the basis for the remand to one that looks to the outcome of the remand. *Akers* simply did not involve a remand that was predicated on an administrative error." 19 Vet. App. at 547. (internal quotations omitted). The Court held in *Zuberi* that *Motorola* provided the proper test for prevailing party. *Id.* Next in *Kelly v. Nicholson*, 463 F.3d 1349 (Fed. Cir. 2006), the Federal Circuit

held that:

To be considered a prevailing party entitled to fees under EAJA, one must secure some relief on the merits. Securing a remand to an agency can constitute the requisite success on the merits. [W]here the plaintiff secures a remand requiring further agency proceedings because of alleged error by the agency, the plaintiff qualifies as a prevailing party ... without regard to the outcome of the agency proceedings where there has been no retention of jurisdiction by the court.

Id. at 1353 (internal citations and quotations omitted).

The Appellant in the instant matter is a prevailing party. After oral argument, the Court decided to vacate and remand that portion of the Board's August 21, 2014 decision denying entitlement to a disability rating greater than 30 percent for bilateral pes planus, to compensable disability ratings for hallux valgus of the left and right great toes and to referral for extraschedular consideration based upon the Board's failure to provide an adequate statement of reasons or bases. See pages 1-15 of the Precedential Decision. The mandate was issued on May 23, 2016. Based upon the foregoing, Mr. Yancy is a prevailing party.

B. Appellant Is Eligible For An EAJA Award

Appellant also satisfies the EAJA requirement that his net worth at the time his appeal was filed did not exceed \$2,000,000. 28 U.S.C. § 2412(d)(2)(B). Mr. Yancy had a net worth under \$2,000,000 on the date this action was commenced. See Paragraph 3 of the fee agreement filed with the Court. Therefore, Mr. Yancy is a person eligible to receive an award under the EAJA.

C. The Position of the Secretary Was Not Substantially Justified

In *White v. Nicholson*, 412 F.3d 1314 (Fed. Cir. 2004) the Federal Circuit

applied the totality of the circumstances test and noted that "EAJA requires that the record must supply the evidence of the Government's substantial justification." 412 F.3d at 1316. The Secretary's position during proceedings before the Agency and in Court was not reasonable, either in law or in fact, and accordingly the Secretary's position was not substantially justified at either the administrative or litigation stage in this case. There thus is nothing substantially justified in the Board's failure to provide an adequate statement of reasons or bases. Moreover, there is no evidence that special circumstances exist in Appellant's case that would make an award of reasonable fees and expenses unjust. 28 U.S.C. § 2412(d)(1)(A).

2. ITEMIZED STATEMENT OF SERVICES RENDERED AND AMOUNTS OF REASONABLE FEES AND EXPENSES

Appellant has claimed a reasonable amount of attorneys fees, predicated upon "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Ussery v. Brown*, 10 Vet. App. 51, 53 (1997) (*quoting Elczyn, 7 Vet. App. at 176-177*).

Five attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Jenna Zellmer, Danielle M. Gorini, Barbara Cook, Nicholas Phinney, and Zachary Stolz.¹ Attorney Jenna Zellmer graduated from Boston

¹"There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer." *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1301 (11th Cir. 1988); *see also Baldrige v. Nicholson*, 19 Vet.App. 227, 237-38

University Law School in 2013 and the *Laffey* Matrix establishes that \$255.00 is the prevailing market rate for an attorney with her experience.² Danielle Gorini graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$370.00 is the prevailing market rate for an attorney with her experience. Barbara Cook graduated from University of Michigan Law School in 1977 and the *Laffey* Matrix establishes that \$520.00 is the prevailing market rate for an attorney with her experience. Nicholas Phinney graduated from Roger Williams University Law School in 2007 and the *Laffey* Matrix establishes

(2005)(“the fees sought must be ‘based on the distinct contribution of each individual counsel.”). “The use in involved litigation of a team of attorneys who divide up the work is common today for both plaintiff and defense work.” *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). “Careful preparation often requires collaboration and rehearsal[.]” *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. *See Baldrige*, 19 Vet.App. at 237 (“An application for fees under EAJA where multiple attorneys are involved must also explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.”).

²The U.S. Attorney’s Office maintains a matrix, known as the Laffey Matrix, of prevailing market rates for attorneys by years of practice, taking into account annual price increases, pursuant to *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff’d in part by* 746 F.2d.4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021, 105 S. Ct. 3488 (1985). This Court has approved the use of the Laffey Matrix for determining the prevailing market rate for EAJA fees. *See, e.g., Wilson v. Principi*, 16 Vet. App. 509, 213 (2002) (finding the Laffey Matrix a “reliable indicator of fees...particularly as to cases involving fees to be paid by government entities or determined under fee-shifting statutes”), *vacated on other grounds by* 391 F.3d 1203 (Fed. Cir. 2004); *see also Sandoval*, 9 Vet. App. at 181 (using the Laffey Matrix as an indicator of prevailing market rate and holding that once a prevailing market rate is established, the government has the burden of producing evidence to show that the rate is erroneous.) *See* Exhibit B (Laffey Matrix).

that \$300.00 is the prevailing market rate for an attorney with his experience.

Zachary Stolz graduated from the University of Kansas School of Law in 2005 and the *Laffey Matrix* establishes that \$370.00 is the prevailing market rate for an attorney with his experience.

In addition, one non-attorney practitioner, Landon Overby, worked on this case. Mr. Overby's credentials are set forth in detail in the Court's decision in *McDonald v. Nicholson*, 21 Vet. App. 257 (2007). He entered his appearance and started working on the case shortly after the appeal was filed in this case.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys fees at the rate of \$193.06 per hour for Ms. Zellmer, Ms. Gorini, Mr. Phinney, and Mr. Stolz for representation services before the Court.³ This rate per hour, multiplied by the number of hours billed for these four attorneys (102.70) results in a total attorney's fee amount of \$19,827.26.

Appellant seeks attorney's fees at the rate of \$187.41 per hour for Ms. Cook's representation services before the Court.⁴ This rate per hour, multiplied by

³This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date fo the EAJA rate), to March 2015 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181.

⁴This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Cincinnati. *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date fo the EAJA rate), to March 2015 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181.

the number of hours billed for Ms. Cook (22.00) results in a total attorney's fee amount of \$4,123.01.

In addition, Appellant seeks attorneys fees at the rate of \$162.83 per hour for representation services before the Court for Mr. Overby's time.⁵ This rate per hour, multiplied by the number of hours billed (0.60) results in a total attorney's fee amount of \$97.70.

In addition, Mr. Yancy seeks reimbursement for the following expenses:

Airfare for oral argument to and from OH - BC:	\$494.00
Airfare for oral argument to and from RI - JZ:	\$136.20
Filing Fee:	\$50.00
Hotel in DC for oral argument - BC:	\$222.13
Hotel in DC for oral argument - JZ:	\$222.13
Travel in DC for oral argument - BC:	\$31.14
Travel in DC for oral argument - JZ:	\$42.08

⁵The hourly billing rate at which fees are claimed for those hours expended is based on the rate of \$120.00 per hour plus the cost-of-living allowance ("COLA"), which is adjusted according to the formula described in *Apodackis v. Nicholson*, 19 Vet. App. 91, 95-96 (2005). *McDonald v. Nicholson*, 21 Vet. App. 257, 262-63 (2007); see *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994) ("[T]he Court will permit-and encourage-the selection of a single mid-point date, such as the date upon which an appellant's principal brief...is filed with the Court, as the base for calculating a cost of living increase."). This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. The mid-point date in this litigation is March 2015, the period of time during which the opening brief was filed with the Court.

Based upon the foregoing, the total fee sought is **\$25,245.76**. In the exercise of billing judgment, Appellant omitted 6.9 hours or approximately \$1,770.00 for time spent in preparation for moot court as well as expenses in the amount of \$443.44 for travel to DC for Attorney Zachary Stolz, who participated in the oral argument.

I, Robert V. Chisholm, am the lead counsel in this case. I certify that I have reviewed the combined billing statement and am satisfied that it accurately reflects the work performed by all representatives. I have considered and eliminated all time that I believe, based upon my twenty years of practicing before this Court, is either excessive or redundant.

Respectfully submitted,

Nathan Yancy
By His Attorneys,
CHISHOLM CHISHOLM & KILPATRICK
/s/Robert V. Chisholm
One Turks Head Place, Ste. 1100
Providence, Rhode Island 02903
(401) 331-6300
Fax: (401) 421-3185

Exhibit A

		<u>Hours</u>	
8/27/2014	LEO	Reviewed BVA decision. Researched law. Recommended case for appeal.	0.60
10/21/2014	JZ	Drafted and filed notice of appearance. Reviewed case file notes and procedural status. Updated file.	0.20
10/27/2014	JZ	Received, reviewed, saved BVA decision transmittal and copy of same, updated client file	0.10
11/26/2014	JZ	Received, reviewed, saved Aee notice of appearance, updated client file	0.10
12/1/2014	JZ	Received and reviewed RBA notice, updated client file and calendar	0.10
12/4/2014	JZ	Received and reviewed notice that RBA was received and added to the file, updated client file and calendar	0.10
12/17/2014	JZ	Reviewed BVA decision, casemapped and reviewed RBA pp 1-1181. Reviewed for completeness; drafted and sent client status letter.	2.00
12/24/2014	JZ	Received and reviewed brief order, updated client file and calendar	0.10
1/22/2015	JZ	Received, reviewed and saved CLS order, updated client file and calendar	0.10
1/23/2015	JZ	Began drafting pbc memo	1.00
1/26/2015	JZ	Reviewed and edited PBC memo draft	0.20
1/26/2015	NP	Review of PBC memo for JEZ. Edits to same	0.10
1/26/2015	NP	Drafted & filed appearance; updated file.	0.10

Exhibit A

		<u>Hours</u>
1/26/2015 JZ	Proofread PBC memo, sent to OGC and CLS. Drafted and filed cert of service.	0.20
2/18/2015 JZ	Reviewed RBA and PBC memo in preparation for PBC, participated in PBC, note to file on outcome, updated client file and calendar	0.60
2/18/2015 JZ	Called client to discuss PBC - left message. Note to file.	0.10
2/18/2015 JZ	Spoke to veteran re: status	0.10
3/17/2015 JZ	Reviewed PBC memo, case file notes, BVA decision, began drafting opening brief - issues presented and statement of the case	1.80
3/18/2015 JZ	Finished draft open brief - argument parts I and II and conclusion.	3.00
3/18/2015 JZ	Edits to opening brief	0.20
3/18/2015 NP	Review of opening brief for JEZ. Edited same.	0.70
3/19/2015 JZ	Additional edits to opening brief. Filed brief	1.60
5/7/2015 JZ	Received, reviewed, and responded to OGC email re: extension of time to file Sec brief. Updated client file and calendar.	0.10
5/7/2015 JZ	Received and reviewed CAVC email re: OGC motion to extend time to file brief, updated client file and calendar.	0.10
5/7/2015 JZ	Received, reviewed, and saved CAVC email re: clerk's stamp grant of motion to extend time to file Aee brief. Updated calendar.	0.10

Exhibit A

		<u>Hours</u>
6/24/2015 JZ	Spoke to client re: status of case and timing.	0.10
7/1/2015 JZ	Received, reviewed, and saved notice with Aee brief. Updated client file and calendar.	0.10
7/8/2015 JZ	Spoke to client re: Secretary's brief, reply brief and timing of next steps.	0.20
7/13/2015 JZ	Reviewed opening brief and Aee brief and outlined reply argument. Conducted additional research and began drafting reply.	3.00
7/13/2015 JZ	Finished draft reply brief.	1.00
7/14/2015 JZ	Edited reply brief	0.30
7/14/2015 NP	Review of reply brief for JEZ. Edited same.	0.60
7/15/2015 JZ	Made additional edits and filed reply brief. Updated client file.	1.00
7/30/2015 JZ	Received and saved notice with ROP. Reviewed ROP against record citations. Emailed OGC re: missing record cites.	0.30
8/3/2015 JZ	Received and reviewed CAVC emails re: motion for leave to file Amended ROP. Saved emails and docs to file. Reviewed Amended ROP. Drafted and filed ROP response.	0.30
8/5/2015 JZ	Received and reviewed judge assignment. Updated client file and calendar.	0.10
8/25/2015 JZ	Received, reviewed, saved Aee notice of appearance. Updated client file.	0.10

Exhibit A

		<u>Hours</u>
9/18/2015 JZ	Received and reviewed CAVC email re: case submitted for panel decision. Updated client file and calendar.	0.10
9/21/2015 JZ	Emailed OGC re: position on motion for oral argument.	0.10
9/21/2015 JZ	Drafted and filed motion for oral argument.	0.50
10/20/2015 BJC	Review briefs, BVA decision, and Court order re: supplemental memo of law in preparation of drafting same.	0.30
10/20/2015 JZ	Received, reviewed, saved Court order for supplemental memo of law. Updated client file and calendar	0.10
10/25/2015 JZ	Re reviewed Court order for supplemental memorandum of law. Conducted legal research. Began drafting outline in preparation for response	3.00
10/26/2015 JZ	Conducted additional research, finished outline for supplemental memo of law.	1.50
10/27/2015 BJC	Review first part of JZ's supplemental memo of law. Commented on same and edited same.	1.50
10/27/2015 JZ	Edited argument for first question in supplemental memo of law.	2.00
10/27/2015 JZ	Began drafting reponse to court order - first question.	2.00
10/28/2015 JZ	Called client to discuss order for panel and supplemental memoranda of law - left message. Note to file.	0.10

Exhibit A

		<u>Hours</u>	
10/28/2015	JZ	Spoke to client re: panel order.	0.10
10/29/2015	JZ	Conducted additional research re: interpretation of injury and diseases. Made additional edits to draft response to question 1 of court order.	3.00
10/29/2015	JZ	Conducted further research re: all three questions of Court order. Drafted responses to questions 2 and 3 based on outline.	3.00
10/29/2015	BJC	Prepare and file notice of appearance; update file.	0.10
10/29/2015	JZ	Edited draft response to questions 1 and 2 of court order. Began editing response to question 3.	2.00
10/30/2015	JZ	Finished draft response to question 3.	2.70
10/30/2015	BJC	Reviewed draft response to questions 2 and 3. Edited same.	1.20
11/1/2015	BJC	Additional edits to first argument including research on overuse and trauma	0.70
11/1/2015	BJC	Additional edits to second argument in memo	2.00
11/2/2015	BJC	Additional edits to third argument in memo.	1.00
11/2/2015	JZ	Reviewed BJC edits to draft response. Discussed same with BJC. Edited draft response.	2.70
11/3/2015	BJC	Discuss argument strategy with JZ in light of filing supplemental memo of law.	0.30
11/3/2015	JZ	Discussed draft response with BJC. Conducted additional legal and medical research re: foot injuries and diagnoses	2.00

Exhibit A

		<u>Hours</u>
11/3/2015 BJC	Make additional major edits to second argument in memo - reorganize, add analysis and examples about impact	3.00
11/3/2015 JZ	Reviewed most recent BJC edits to draft response. Discussed argument with BJC over phone. Conducted additional research and made additional edits to draft response.	1.50
11/4/2015 JZ	Conducted additional research per BJC edits to memo.	3.00
11/4/2015 BJC	Made additional, final edits to memo.	1.40
11/6/2015 JZ	Received, reviewed, saved CAVC email re: court order granting motion for oral argument and scheduling same. Updated client file and calendar.	0.10
11/9/2015 JZ	Conducted additional research - DC 5284 re: memo.	0.40
11/10/2015 JZ	Made additional edits to draft supplemental memo, added research from current board decisions.	0.40
11/10/2015 BJC	Review JZ's addition of BVA decisions to memo. Edited same and revised draft memo.	0.60
11/16/2015 ZMS	Reviewed response to Court order. Met with JZ and BC to discuss response strategy.	1.50
11/16/2015 JZ	Reviewed latest draft of memo and made edits. Discussed argument strategy for memo with BJC, RVC, and ZMS	1.00
11/17/2015 JZ	Reviewed RBA for additional facts re: severity. Edited draft memo based on findings.	1.50

Exhibit A

		<u>Hours</u>	
11/17/2015	BJC	Added evidence and facts to combined effects argument.	0.30
11/17/2015	JZ	Reviewed memo, discussed edits and additions from BJC, added additional facts. Sent final version to ZMS.	2.00
11/18/2015	ZMS	Reviewed and edited draft of supplemental pleading; discussed with JZ and BC	0.50
11/18/2015	JZ	Saved Board decisions cited in memo and drafted Appendix for memo	0.50
11/19/2015	JZ	Prepared memo for filing, and filed same.	0.30
11/19/2015	JZ	Reviewed and took notes on Aee response to Court order.	0.20
12/1/2015	JZ	Discussed motion to consolidate cases. Emailed OGC to get Secretary's position on consolidation. Drafted motion	0.60
12/2/2015	BJC	Review JZ's draft motion for consolidation, edit same.	0.30
12/2/2015	JZ	Edited motion to consolidate	0.50
12/21/2015	JZ	Researched case law. Prepared for Oral Argument.	1.30
12/29/2015	JZ	Continued preparation for oral argument - reviewed supplemental pleading, caselaw, and regulations. Outlined oral argument points in preparation for moot court.	2.00
12/30/2015	JZ	Preparation for Oral Argument moot court-researched case law. Finished outline for first question and began outline for second question.	3.00

Exhibit A

		<u>Hours</u>
12/30/2015 JZ	Continued oral argument moot court prep - researched case law, finished outline for second question	1.30
12/31/2015 BJC	Prep for moot court	0.30
12/31/2015 JZ	Final prep for moot court.	1.70
12/31/2015 JZ	Participated in moot court	1.80
12/31/2015 ZMS	Prepared for and participated in moot court, including legal research and review of all pleadings.	2.50
12/31/2015 BJC	Participated in moot court.	0.90
1/3/2016 JZ	Reviewed RBA and began drafting outline/cheat sheets for oral argument.	0.40
1/4/2016 JZ	Drafted Solze letter.	0.20
1/4/2016 BJC	Reviewed Solze letter drafted by JZ for proofreading purposes.	0.10
1/4/2016 JZ	Finalized and filed Rule 30b letter. Continued oral argument prep	1.50
1/4/2016 JZ	Researched and outlined deference and potential responses in preparation for oral argument.	1.00
1/5/2016 JZ	Prepared for and participated in second moot.	2.80
1/5/2016 BJC	Participated in second moot	1.10
1/5/2016 ZMS	Prepared for and participate in second moot court.	2.50
1/5/2016 JZ	Mapped out outline for extraschedular referral. Discussed deference with BJC and ZMS.	2.50

Exhibit A

		<u>Hours</u>
1/5/2016 BJC	Discuss deference with Jenna in preparation for oral argument.	0.10
1/6/2016 JZ	Reviewed ROP. Updated and reorganized outlines re: relevant facts	1.70
1/6/2016 JZ	Discussed case with ZMS and RVC. Refined roadmap for 3.321 analysis. Refined arguments distinguishing Prokarym, Copeland and Yancy. Updated oral argument outline.	3.00
1/8/2016 JZ	Discussed argument with BJC and ZMS. Reviewed notes and made one-page outline with main points for oral argument.	1.60
1/9/2016 JZ	Oral argument prep - discussed potential questions and answers with BC.	0.80
1/9/2016 BJC	Oral argument prep - discuss potential questions and answers with JZ	0.80
1/9/2016 JZ	Continued work on oral argument prep.	0.80
1/10/2016 JZ	Reviewed questions and answers, practiced opening statement and answers to potential questions.	1.00
1/11/2016 JZ	Additional oral argument prep	2.00
1/11/2016 JZ	Flight from Boston to DC for oral argument	2.00
1/11/2016 BJC	Travel form Ohio to DC for oral argument	4.00
1/12/2016 JZ	Morning preparation for oral argument	1.50
1/12/2016 JZ	Traveled to Court from hotel, participated in oral argument.	2.00

Exhibit A

		<u>Hours</u>
1/12/2016 BJC	Traveled to Court from hotel; participated in oral argument.	2.00
2/26/2016 JZ	Reviewed decision. Compared to arguments made in pleadings and at oral argument. Updated client file.	0.50
3/3/2016 ZMS	Reviewed Court decision and notes on case. Prepared letter to client concerning Court's decision.	0.80
3/21/2016 JZ	Reviewed judgment entered. Updated client file	0.10
3/21/2016 ZMS	Prepared letter to client concerning entry of Court's judgment.	0.30
5/23/2016 JZ	Received and reviewed mandate. Updated client file.	0.10
5/24/2016 DMG	Prepared and e-filed Notice of Appearance. Received, reviewed, and saved Court confirmation email to the file. Checked Court docket sheet to ensure Notice of Appearance was properly filed and docketed. Updated file.	0.20
5/24/2016 DMG	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Petition for proofreading and billing accuracy review.	0.70
5/24/2016 ZMS	Reviewed EAJA Petition for proofreading purposes and to ensure billing accuracy	0.30
	_____	<u>Amount</u>
	125.30	\$24,048.08

Exhibit A

Expenses

	<u>Amount</u>
Airfare for oral argument - BC	494.00
Airfare for oral argument - JZ	136.20
Filing Fee	50.00
Hotel in DC - BC	222.13
Hotel in DC - JZ	222.13
Travel in DC for Oral Arg - BC	31.14
Travel in DC for Oral Arg - JZ	42.08
Total Expenses	<u>\$1,197.68</u>
	<u>125.30</u> <u>\$25,245.76</u>

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Barbara J. Cook	22.00	187.41	\$4,123.01
Danielle M. Gorini	0.90	193.06	\$173.75
Jenna Zellmer	91.90	193.06	\$17,742.31
Landon E. Overby	0.60	162.83	\$97.70
Nicholas Phinney	1.50	193.06	\$289.60
Zachary M. Stolz	8.40	193.06	\$1,621.71

EXHIBIT B

LAFFEY MATRIX – 2014-2015

Years (Rate for June 1 – May 31, based on prior year's CPI-U)

Experience	14-15
20+ years	520
11-19 years	460
8-10 years	370
4-7 years	300
1-3 years	255
Paralegals & Law Clerks	150

Explanatory Notes:

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia. The matrix is intended to be used in cases in which a "fee-shifting" statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. This matrix is based on the hourly rates allowed in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is commonly referred to by attorneys and federal judges in the District of Columbia as the "Laffey Matrix" or the "United States Attorney's Office Matrix." The various "brackets" in the column headed "Experience" refer to the years following the attorney's graduation from law school, and are intended to correspond to "junior associates" (1-3 years after law school graduation), "senior associates" (4-7 years), "experienced federal court litigators" (8-10 and 11-19 years), and "very experienced federal court litigators" (20 years or more). Thus, the "1-3 years" bracket is generally applicable to attorneys in their first, second, and third years after graduation from law school, and the "4-7 years" bracket generally becomes applicable on the third anniversary of the attorney's graduation (*i.e.*, at the beginning of the fourth year following law school). *See Laffey*, 572 F. Supp. at 371; *but cf. EPIC v. Dep't of Homeland Sec.*, No. 11-2261, ___ F. Supp. 2d ___, 2013 WL 6047561, *6 -*7 (D.D.C. Nov. 15, 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp.2d 56, 60-61 (D.D.C. 2013) (same).
3. The hourly rates approved in *Laffey* were for work done principally in 1981-82. The matrix begins with those rates. *See Laffey*, 572 F. Supp. at 371 (attorney rates) & 386 n.74 (paralegal and law clerk rate). The rates for subsequent yearly periods were determined by adding the change in the cost of living for the Washington, D.C. area to the applicable rate for the prior year, and then rounding to the nearest multiple of \$5 (up if within \$3 of the next multiple of \$5). The result is subject to adjustment if appropriate to ensure that the relationship between the highest rate and the lower rates remains reasonably constant. Changes in the cost of living are measured by the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.
4. Use of an updated Laffey Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the United States Attorney's Office as evidence of

prevailing market rates for litigation counsel in the Washington, D.C. area. See *Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n.14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996). Most lower federal courts in the District of Columbia have relied on the United States Attorney's Office Matrix, rather than the so-called "Updated Laffey Matrix," as the "benchmark for reasonable fees" in this jurisdiction. *Miller v. Holzmann*, 575 F. Supp. 2d 2, 18 n.29 (D.D.C. 2008) (quoting *Pleasants v. Ridge*, 424 F. Supp. 2d 67, 71 n.2 (D.D.C. 2006)); see, e.g., *Berke v. Bureau of Prisons*, 942 F. Supp. 2d 71, 77 (D.D.C. 2013); *Heller v. District of Columbia*, 832 F. Supp. 2d 32, 40-49 (D.D.C. 2011); *American Lands Alliance v. Norton*, 525 F. Supp. 2d 135, 150 (D.D.C. 2007). But see *Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 14-15 (D.D.C. 2000). The United States Attorney's Office does not use the "Updated Laffey Matrix" to determine whether fee awards under fee shifting statutes are reasonable.