
United States Court of Appeals for Veterans Claims

Vet. App. No. 16-2339

JAMES M. LEWIS,

Appellant,

v.

ROBERT WILKIE,

Acting Secretary of Veteran's Affairs,

Appellee.

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

Darryl J. Adams
ADAMS PATENT LAW
1614 Palisades Pointe Ln.
Austin, Texas 78738
darryl@adamspatentlaw.net
Tel.: (512) 296-3198

Jennifer Librach Nall
Ryan C. Clark
BAKER BOTTS L.L.P.
98 San Jacinto Boulevard, Suite 1500
Austin, Texas 78701-4078
jennifer.nall@bakerbotts.com
ryan.clark@bakerbotts.com
Tel.: (512) 322-2500
Fax.: (512) 322-2501

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INTRODUCTION

Pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d), and U.S. Vet. App. R. 39, Appellant, Mr. James Lewis, applies for an award of reasonable attorneys’ fees and expenses in the amount of \$60,398.96.

PROCEDURAL HISTORY

On May 24, 2016, the Board of Veterans’ Appeals (“Board” or “BVA”) issued a decision that, *inter alia*, denied Mr. Lewis’s timely request for reissuance of payments that were made to a fiduciary from January 2005 to May 2006. The total value of these requested payments was \$41,777.00. The VA did not dispute that its regulations require providing notice to a veteran of a decision to appoint a fiduciary (*see* 38 C.F.R. § 3.103) and did not dispute that it failed to provide notice to Appellant. *See* Suppl. Br. 8-11; VA Resp. Br. 8-11; Suppl. Reply Brief at 1. Moreover, the Board failed to address Mr. Lewis’s reasonably-raised challenges to appointment of the fiduciaries. Appellant filed a timely Notice of Appeal to the U.S. Court of Appeals for Veterans Claims (“Court”) on June 30, 2016. Throughout the proceedings, Mr. Lewis requested that the payments be reissued.

Specifically, on November 25, 2016, Appellant argued in his Informal Brief that “Appellant is entitled to recover those benefits issued to the [fiduciaries].” Appellant’s Informal Br. at 7. Again, on March 21, 2017, Appellant argued in his Informal Reply Brief that the Board’s decision regarding payments “is clearly erroneous, and the decision [should be] vacated and benefits reissued.” Appellant’s Informal Reply Br. at 3.

On February 28, 2018, counsel for Mr. Lewis served Appellant's Supplemental Brief, which asserted that Appellant "is entitled to repayment of his benefits and requests that the Court reverse the Board's determination that the [payments at issue were proper] and direct the Board to award him the benefits improperly paid." Appellant's Supp. Br. at 18. Likewise, on April 19, 2018, counsel for Mr. Lewis served Appellant's Supplemental Reply Brief that requested "the Court reverse the Board's decision that the payments were properly made and direct the Board to award him the benefits improperly paid." Appellant's Supp. Reply Br. at 5-6.

On August 20, 2018, Appellant and Appellee filed a Joint Motion to Terminate based on a Stipulated Agreement ("Joint Motion") that included, *inter alia*, the following provisions:

1. Appellee agrees to issue payment to Appellant in the amount of \$41,777.00.
- ...
5. Upon Appellant's submission of a jurisdictionally valid application to the Court for attorney fees and expenses under the provisions of the Equal Access to Justice Act, 28 U.S.C. § 2412(d), Appellee will not contest that Appellant is a prevailing party and that Appellee's position was not substantially justified. Appellee reserves the right to contest the reasonableness of the amount of any fees and expenses requested upon review of Appellant's application.

Joint Motion at 4-5. The Court granted the Joint Motion on August 21, 2018. Order at 1. The Court issued its Judgment, which was the mandate of the Court pursuant to U.S. Vet. App. R. 41(b), on September 12, 2018. Judgment at 1.

LEGAL STANDARD

For the Court to consider and award EAJA fees, the appellant must submit an EAJA application within the 30-day filing period that meets each of these jurisdictional requirements set forth in 28 U.S.C. § 2412(d)(1)(B):

- (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).

ARGUMENT

The Court has jurisdiction to award reasonable attorney fees and expenses pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d)(2)(F). Specifically, this EAJA application should be granted because it is filed within the 30-day filing period and meets each of the jurisdictional requirements. The mandate of the Court was the Judgment entered and effective on September 12, 2018. Judgment at 1; *see also* U.S. Vet. App. R. 41(b). Consequently, this EAJA application is within the 30-day filing period because it is filed before October 12, 2018. The jurisdictional requirements are also each met as described below.

I. APPELLANT IS A PREVAILING PARTY.

To obtain “prevailing party” status, a party need only to have obtained success “on any significant issue in litigation which achieve[d] some of the benefit . . . sought in bringing the suit.” *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993). As discussed in the

Procedural History, Appellant requested that his payments (totaling \$41,777.00) be reissued throughout the proceedings. *See, e.g.*, Appellant’s Informal Br. at 7; Appellant’s Informal Reply Br. at 3; Appellant’s Supp. Br. at 18; Appellant’s Supp. Reply Br. at 5-6.

Appellant achieved success and was reissued all \$41,777.00 of his requested benefits. Joint Motion at 4. Further, the Secretary concedes that the appellant is a prevailing party. *Id.* at 5. Yet further, Appellant is a prevailing party entitled to an award of fees and costs because the Court granted the Joint Motion to Terminate and Stipulated Agreement which awarded reissuance of VA benefits to the Appellant. Order at 1; *see also Evington v. Principi*, 18 Vet. App. 331, 334, supplemented, 19 Vet. App. 60 (2004) (holding that, where a termination order was based on a joint motion to terminate in accordance with a settlement agreement, “appellant is a prevailing party for EAJA purposes by virtue of the award of VA benefits to the appellant”) (citation omitted).

Therefore, Appellant is a prevailing party.

II. APPELLANT IS ELIGIBLE TO RECEIVE AN AWARD

The Court has held that “one way to show eligibility is by stating in the application that the appellant’s net worth at the time the appeal was filed did not exceed \$2 million.” *Owens v. Brown*, 10 Vet. App. 65, 66 (1997) (citation omitted). Appellant certified his net worth did not exceed \$2 million at the time the Notice of Appeal was filed, as evidenced by his signature (dated July 11, 2017) on the Veterans Consortium Pro Bono Program Agreement to Engage an Attorney Form A. Ex. A at 1 (“I certify that my net worth at the time of the filing of the appeal in this case, was less than two million dollars (\$2,000,000)”);

id. at 3 (answering that the veteran was not employed within the last year). This satisfies the jurisdictional requirement of financial eligibility. 28 U.S.C. § 2412(d)(2)(B)(i).

Therefore, Appellant has met the financial eligibility requirement.

III. THE POSITION OF THE SECRETARY OF VETERANS AFFAIRS WAS NOT SUBSTANTIALLY JUSTIFIED.

The Secretary can defeat Appellant's application for fees and costs only by demonstrating that the government's position was substantially justified. *See Brewer v. American Battle Monument Commission*, 814 F.2d 1564, 1566-67 (Fed. Cir. 1987); *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994). The U.S. Supreme Court has held that for the position of the government to be substantially justified, it must have a "reasonable basis both in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); *accord*, *Beta Sys. v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989).

In this case, the Secretary's administrative position was not substantially justified. As described more fully in the "Procedural History," *supra*, the VA did not properly appoint fiduciaries and did not properly issue Appellant's benefits. The VA did not dispute that its regulations require providing notice to a veteran of a decision to appoint a fiduciary (*see* 38 C.F.R. § 3.103) and did not dispute that it failed to provide notice to Appellant. *See* Suppl. Br. 8-11; VA Resp. Br. 8-11; Suppl. Reply Brief at 1. These errors, and the other errors made by the Board, had no reasonable basis in fact or in law.

Further, this Court has held that once an Appellant has "*allege[d]* that the government's position is not substantially justified," then "the burden shifts to the Secretary to prove substantial justification." *Similes v. West*, 11 Vet. App. 115, 118-119

(1998). In this case, the Secretary has agreed that it “will not contest that Appellant is a prevailing party and that Appellee’s position was not substantially justified.” Order at 5. Therefore, the Court “has no basis for inquiring as to whether the Secretary’s position was substantially justified.” *Id.* at 119.

Therefore, the government’s position was not substantially justified.

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

A statement from counsel for Appellant is attached as Exhibit B. Exhibit B itemizes the time expended and services rendered for which recovery is sought and the rates at which fees were computed. In this case, Darryl J. Adams served as Lead Counsel. Mr. Adams was an attorney with Baker Botts L.L.P. from the beginning of this case until February 28, 2018. As of March 1, 2018 to the present, Mr. Adams has been an attorney with Adams Patent Law. Thus, for purposes of this fee request, Mr. Adams’s time is separated between his time with Baker Botts and his time with Adams Patent Law.

In sum, Appellant seeks to recover total fees of \$60,398.96, with \$8,207.46 directed to Adams Patent Law and \$52,191.50 directed to Baker Botts L.L.P. Specifically, Appellant seeks to recover fees for 117.7 hours of time for Darryl J. Adams, at a rate of \$197.77 per hour. Appellant also seeks to recover fees for 73.2 hours of time for Jennifer L. Nall, and 114.50 hours of time for Ryan C. Clark, both also at a rate of \$197.77 per hour. Appellant does not seek to recover 27.6 hours of Paralegal time for work performed by Sonja Guenter, Celia Guglielmi, and Phillip Pope. Furthermore,

counsel for Appellant has reviewed the time recorded to this matter and has reduced or completely written off several time entries that were deemed to be excessive or redundant.

CONCLUSION

In exercising billing judgment, Appellant eliminated 72.7 hours of attorney time and 27.6 hours of paralegal time from the itemized statement and this fee petition. The total amount claimed is \$60,398.96.

WHEREFORE, based on the foregoing, Appellant respectfully requests that the U.S. Court of Appeals for Veterans Claims award attorney's fees in the amount of \$60,398.96.

Dated: October 8, 2018

Respectfully submitted,

FOR THE APPELLANT

/s/ Jennifer L. Nall

Jennifer Librach Nall
Ryan C. Clark
BAKER BOTTS L.L.P.
98 San Jacinto Boulevard, Suite 1500
Austin, Texas 78701-4078
Tel.: (512) 322-2500
Fax.: (512) 322-2501
jennifer.nall@bakerbotts.com
ryan.clark@bakerbotts.com

Darryl J. Adams
ADAMS PATENT LAW
1614 Palisades Pointe Ln.
Austin, Texas 78738
Tel.: (512) 296-3198
darryl@adamspatentlaw.net

EXHIBIT A

The first part of the paper discusses the importance of the research and the objectives of the study. It then moves on to a literature review, which provides a background on the topic and identifies the gaps in the existing research. The methodology section describes the research design, data collection, and analysis. The results section presents the findings of the study, and the conclusion summarizes the main points and offers suggestions for future research.

The research was conducted in a systematic and rigorous manner, following the principles of good research practice. The data was collected from a representative sample of the population, and the analysis was carried out using appropriate statistical methods. The results of the study are presented in a clear and concise manner, and the conclusions are based on the evidence gathered.

The study has several strengths, including a large sample size, a well-defined research design, and the use of appropriate statistical methods. However, there are also some limitations, such as the potential for bias in the sample and the fact that the study is a cross-sectional design, which means that it cannot establish causality.

Overall, the study provides valuable insights into the topic and contributes to the existing knowledge in the field. The findings have important implications for practice and policy, and the study has the potential to inform future research in this area.

[REDACTED]

EXHIBIT B

**UNITED STATES COURT OF APPEALS FOR
VETERANS CLAIMS**

United States Court of Appeals for Veterans Claims

Vet. App. No. 16-2339

JAMES M. LEWIS,

Appellant,

v.

ROBERT WILKIE,

Acting Secretary of Veteran's Affairs,

Appellee.

DECLARATION OF DARRYL J. ADAMS

I, Darryl J. Adams, make the following declaration in support of Appellant James Lewis's application for an award of attorneys' fees in connection with the above-captioned appeal.

1. My name is Darryl J. Adams, and I am an attorney practitioner for Adams Patent Law. I am the lead representative for Appellant in the proceedings before the U.S. Court of Appeals for Veterans Claims.

2. The following list itemizes certain services rendered and time expended in the representation of Appellant before the Court, leading to this Court's mandate and judgment (dated September 12, 2018). The entries listed below are only those for which Appellant is seeking recovery. Appellant is not requesting recovery of fees for services rendered by Sonja Guenter, Celia Guglielmi, and Phillip Pope, who collectively performed 27.6 hours of Paralegal work on this case. In addition, I have scrutinized the billing records in this case, and have not included any time that I have deemed to be redundant or excessive.

3. Pursuant to U.S. Vet.App. 39(f), a single, consolidated, chronological billing statement for the full fee award is included herein. Ex. B at 18-33. I certify that I have (1) reviewed the combined billing statements and am satisfied that it accurately reflects the work performed by all representatives and (2) considered and eliminated all time that is excessive or redundant.

Adams Patent Law Time: Darryl J. Adams			
Name	Date	Description	Time (hrs.)
Adams, DJ	5/3/2018	Review briefs and prepare outline for oral argument.	3.8
Adams, DJ	5/4/2018	Review record in preparation for oral argument and identify key documents.	5.1
Adams, DJ	5/17/2018	Review order from Court of Appeals for Veterans Appeals regarding postponement of oral argument.	0.2
Adams, DJ	7/3/2018	Review motion to reschedule oral argument.	0.2

Adams Patent Law Time: Darryl J. Adams			
Name	Date	Description	Time (hrs.)
Adams, DJ	8/9/2018	Review briefs and prepare list of research issues in preparation for oral argument.	3.4
Adams, DJ	8/10/2018	Review and analyze relevant case law, statute and regulations.	4.8
Adams, DJ	8/11/2018	Review and analyze record with emphasis on Mr. Lewis' notice of disagreement and appeal.	5.5
Adams, DJ	8/13/2018	Revise outline for oral argument and prepare list of potential rebuttal issues.	4.1
Adams, DJ	8/15/2018	Review key case law and prepare for mock oral argument	3.8
Adams, DJ	8/16/2018	Review court order regarding issues to discuss at oral argument, identify relevant documents; review remand proposal from government and discuss response.	1.8
Adams, DJ	8/17/2018	Prepare for and conduct mock oral argument, discuss open issues and finalize rebuttal points; confer with Mr. Lewis regarding remand proposal from government.	5.1
Adams, DJ	8/19/2018	Practice presentation for oral argument.	3.1
Adams, DJ	8/20/2018	Review offer of settlement from government and response thereto.	0.6
(Adams Patent Law) Total for Darryl J. Adams = 41.50 Hours			
Hourly Rate			\$197.77
(Adams Patent Law) Total Fee Request for Darryl J. Adams			\$8,207.46

Baker Botts L.L.P. Time: Darryl J. Adams			
Name	Date	Description	Time (hrs.)
Adams, DJ	9/11/2017	Review record for errors in determination that client was incompetent and assigning fiduciary.	4.2
Adams, DJ	9/14/2017	Prepare engagement letter and communicate with client regarding the same.	0 (reduced from 1.5)
Adams, DJ	9/20/2017	Review record and relevant case law; determine strategy for filing motion to submit new briefing.	3.5
Adams, DJ	9/25/2017	Review and revise motion for clarification to Court of Appeals.	0.8
Adams, DJ	10/3/2017	Meet and confer with VA counsel regarding motion for clarification.	0.5
Adams, DJ	10/17/2017	Analyze record to access whether VA followed regulations in naming fiduciary.	1.2
Adams, DJ	10/18/2017	Research record to identify deficiencies in the VA naming of beneficiary and related regulations.	0 (reduced from 4.2)
Adams, DJ	10/27/2017	Discuss basis for appeal and supporting documents in the record.	0 (reduced from 1)
Adams, DJ	11/1/2017	Research applicable statutes and regulations regarding VA appointment of beneficiary.	2.5
Adams, DJ	11/2/2017	Review opinion from Court of Appeals of Veterans Claims and determine next steps.	2.1
Adams, DJ	11/3/2017	Analyze statutes and regulations regarding appointment of fiduciary to determine whether VA complied.	0 (reduced from 2.1)
Adams, DJ	11/6/2017	Analyze statutes and regulations regarding appointment of fiduciary to determine whether VA complied.	1.9

Baker Botts L.L.P. Time: Darryl J. Adams			
Name	Date	Description	Time (hrs.)
Adams, DJ	11/7/2017	Research whether Mr. Lewis is a claimant or beneficiary under the VA regulations; research applicable standards and regulations for beneficiaries.	2.1
Adams, DJ	11/8/2017	Research whether state institutions are subdivision of the United States as termed is used in VA regulations; confer with VA attorney regarding regulations not followed by VA in appointing beneficiary.	3.2
Adams, DJ	11/10/2017	Analyze regulations regarding appointment of fiduciary and required notice.	0 (reduced from 1.2)
Adams, DJ	11/14/2017	Draft argument section of brief regarding VA's failure to follow regulations in appointing fiduciary.	2.4
Adams, DJ	11/15/2017	Draft argument section regarding deficiencies in appointment of fiduciary.	4.5
Adams, DJ	11/17/2017	Review and revise argument section regarding deficiencies in appointment of fiduciary.	2.5
Adams, DJ	11/20/2017	Review and revise argument section regarding deficiencies in appointment of fiduciary.	0 (reduced from 4.2))
Adams, DJ	11/27/2017	Draft argument section of appeal brief to address failure of VA to follow due process and other procedures.	0 (reduced from 7)
Adams, DJ	11/28/2017	Draft argument section of appeal brief to address failure of VA to follow due process and other procedures.	8.5
Adams, DJ	11/29/2017	Review and revise outline for brief and jurisdictional section.	4.2
Adams, DJ	12/6/2017	Revise appeal brief to address additional grounds for error.	0 (reduced from 4.2)

Baker Botts L.L.P. Time: Darryl J. Adams			
Name	Date	Description	Time (hrs.)
Adams, DJ	12/7/2017	Revise appeal brief to address apportionment for dependents; review changes to remainder of brief.	4.5
Adams, DJ	12/11/2017	Draft new section of brief to address equitable consideration for misuse of veterans funds.	2.1
Adams, DJ	12/12/2017	Review amendments to reply brief regarding questions answered and jurisdiction.	4.1
Adams, DJ	12/13/2017	Review and revise appeal brief with attention to improving continuity between different sections.	0 (reduced from 5.8)
Adams, DJ	12/14/2017	Review and revise appeal brief.	5.5
Adams, DJ	12/27/2017	Review supplemented joint appendix and effect of missing documents.	1.5
Adams, DJ	12/28/2017	Finalize requested relief and revise brief to incorporate into all sections.	4.1
Adams, DJ	1/25/2018	Revise argument section to incorporate argument regarding misuse of benefits and equitable powers.	4.2
Adams, DJ	1/26/2018	Review and revise appeal brief to make consistent with requests and demands.	4.1
Adams, DJ	1/29/2018	Review and revise argument section of appellate brief.	6.2
Adams, DJ	1/30/2018	Review and revise appeal brief.	0 (reduced from 4.5)
Adams, DJ	2/5/2018	Review and revise appeal brief.	0 (reduced from 4.2)
Adams, DJ	2/6/2018	Review and revise appeal brief	4.1

Baker Botts L.L.P. Time: Darryl J. Adams			
Name	Date	Description	Time (hrs.)
Adams, DJ	2/20/2018	Discuss appeal brief with VA mentor.	0 (reduced from 1)
(Baker Botts L.L.P.) Total for Darryl J. Adams = 76.2 Hours			
Hourly Rate			\$197.77
(Baker Botts L.L.P.) Total Fee Request for Darryl J. Adams			\$15,070.07

Baker Botts L.L.P. Time: Jennifer L. Nall			
Name	Date	Description	Time (hrs.)
Nall, JL	9/1/2017	Work on opening new matter.	0 (reduced from 1)
Nall, JL	9/5/2017	Discuss case with Darryl Adams.	0 (reduced from 0.4)
Nall, JL	9/6/2017	Draft email to mentor about next steps in case; discuss case with Darryl Adams.	0 (reduced from 0.4)
Nall, JL	9/7/2017	Call with client.	1
Nall, JL	9/11/2017	Review volume 1 of the RBA.	4.5
Nall, JL	9/12/2017	Review volume 2 of the RBA.	2
Nall, JL	9/13/2017	Finish review of volume 2 of the RBA; draft email to mentor.	0 (reduced from 2)
Nall, JL	9/14/2017	Discuss case with Darryl Adams; discuss case with Ryan Clark.	0 (reduced from 0.2)
Nall, JL	9/15/2017	Prepare for and participate in call with mentor regarding case.	0 (reduced from 1.2)
Nall, JL	9/20/2017	Discuss case with team; call court.	1

Baker Botts L.L.P. Time: Jennifer L. Nall			
Name	Date	Description	Time (hrs.)
Nall, JL	9/22/2017	Review and approve filings; receive call from Court clerk; discuss case with team.	1.2
Nall, JL	9/25/2017	Discuss case and motion.	0.8
Nall, JL	9/26/2018	Discuss case and motion; revise motion.	1.8
Nall, JL	9/28/2017	Review & revise motion.	0.6
Nall, JL	10/4/2017	Call with government counsel; finalize motion for filing.	1
Nall, JL	10/13/2017	Review Order and send instructions to Ryan Clark on next steps; discuss Order and next steps with Ryan Clark and Darryl Adams; review motion.	1.2
Nall, JL	10/16/2017	Prepare for and discuss case with team and then with mentor.	0 (reduced from 0.8)
Nall, JL	10/17/2017	Discussions regarding case status and plans; consider issues raised by mentor's email.	0 (reduced from 1)
Nall, JL	10/18/2017	Analyze and send email regarding case status and plans.	0.5
Nall, JL	10/27/2017	Discuss RBA with Darryl Adams.	1.5
Nall, JL	10/31/2017	Discuss next steps with team; exchange calls with Hugh O'Donnell (client's prior counsel); investigate criminal record.	0 (reduced from 1.5)
Nall, JL	11/1/2017	Exchange calls with Hugh O'Donnell (client's prior counsel).	0 (reduced from 0.2)
Nall, JL	11/2/2017	Research regarding jurisdiction.	4.5
Nall, JL	11/3/2017	Research regarding jurisdiction; draft jurisdiction section of supplemental brief; discussion with Darryl Adams regarding applicable of Section 3 versus 13 to the facts.	6.5

Baker Botts L.L.P. Time: Jennifer L. Nall			
Name	Date	Description	Time (hrs.)
Nall, JL	11/6/2017	Discuss case with team; review email from Secretary's counsel; discuss case with Ken Carpenter.	0 (reduced from 3)
Nall, JL	11/7/2017	Discuss case with team; review RBA for missing documents; draft and transmit response to email from Secretary's counsel.	2
Nall, JL	11/8/2017	Communications discussing case with team and mentor.	0 (reduced from 0.8)
Nall, JL	11/14/2017	Discuss notification to client and draft email instructing same; discuss next steps with Darryl Adams.	1.5
Nall, JL	11/27/2017	Discuss 13.71 strategy ideas with Ryan Clark.	0.3
Nall, JL	11/28/2017	Discuss strategy ideas with Ryan Clark and Darryl Adams.	0.8
Nall, JL	11/29/2017	Work on brief.	4.3
Nall, JL	11/30/2017	Work on brief.	3
Nall, JL	12/1/2017	Work on brief.	1
Nall, JL	12/4/2017	Discuss how to address Court's questions with team.	1
Nall, JL	12/6/2017	Revise brief.	1
Nall, JL	12/18/2017	Discuss case strategy with Darryl Adams.	0.2
Nall, JL	12/22/2017	Review new RBA and consider implications of missing documents.	1
Nall, JL	1/3/2018	Discussion with team regarding RBA deficiencies, call with Omar Yousef regarding RBA deficiencies, review draft email to Deborah Pride.	0.8
Nall, JL	1/23/2018	Discuss strategy on brief in light of amended RBA.	0.5

Baker Botts L.L.P. Time: Jennifer L. Nall			
Name	Date	Description	Time (hrs.)
Nall, JL	1/29/2018	Revise brief.	1.5
Nall, JL	1/30/2018	Revise argument section of brief.	1.1
Nall, JL	2/5/2018	Revise supplemental brief.	1.5
Nall, JL	2/6/2018	Revise facts section and review proposed changes to the other sections of the brief.	1.6
Nall, JL	2/20/2018	Participate in meeting with mentor regarding 3.665m.	0 (reduced from 0.4)
Nall, JL	2/26/2018	Review revised brief.	0.2
Nall, JL	2/28/2018	Finalize and file supplemental brief.	2.8
Nall, JL	4/2/2018	Discuss 13.71 citations in Board decision and prior briefing by the VA.	0.5
Nall, JL	4/3/2018	Discuss outline to reply.	0.5
Nall, JL	4/9/2018	Review reply.	0.2
Nall, JL	4/12/2018	Revise reply brief.	3.1
Nall, JL	4/16/2018	Revise reply brief.	1.2
Nall, JL	4/17/2018	Revise reply brief.	1.3
Nall, JL	4/19/2018	Finalize reply brief for filing today.	1.3
Nall, JL	5/7/2018	Discuss oral argument planning with team.	1
Nall, JL	8/16/2018	Discuss settlement offer from Secretary with mentor, Darryl Adams, and Ryan Clark; review CAVC order and prepare for oral argument; discuss same with Ryan Clark and Darryl Adams.	3.8
Nall, JL	8/17/2018	Oral argument practice; conversation with client regarding Secretary's offer to settle.	5.2

Baker Botts L.L.P. Time: Jennifer L. Nall			
Name	Date	Description	Time (hrs.)
Nall, JL	8/20/2018	Review and revise settlement agreement; discuss same with the client.	0.9
Total for Jennifer L. Nall = 73.20 Hours			
Hourly Rate			\$197.77
(Baker Botts L.L.P.) Total Fee Request for Jennifer L. Nall			\$14,476.76

Baker Botts L.L.P. Time: Ryan C. Clark			
Name	Date	Description	Time (hrs.)
Clark, RC	9/15/2017	Call with VA Consortium-assigned mentor regarding approach to case; analyze RBA; view VA Consortium training.	0 (reduced from 4.1)
Clark, RC	9/20/2017	Review VA Case Nos. 12-2234 and 12-3170 to identify potential procedures to request clarification of issues for panel resolution; prepare procedural history analysis of both cases; call Ann Stygles with Public Office.	3.6
Clark, RC	9/22/2017	Review notice of appearance documents.	0.7
Clark, RC	9/25/2017	Draft motion for clarification and request for leave to file supplemental briefing.	1.7
Clark, RC	9/27/2017	Review Local Rules; analyze brief for formatting requirements pursuant to Local Rules.	0.8
Clark, RC	9/28/2017	Draft response to Ms. Kretkowski regarding motion; revise motion.	0 (reduced from 1.6)
Clark, RC	10/4/2017	Review motion for clarification before filing; correspond with Mr. Lewis and provide copy of filed motion.	0.4

Baker Botts L.L.P. Time: Ryan C. Clark			
Name	Date	Description	Time (hrs.)
Clark, RC	10/13/2017	Review Order from Court; draft motion for supplemental briefing; discuss strategy for supplemental briefing.	2.3
Clark, RC	10/16/2017	Call with Veteran's Consortium mentor regarding case; finalize and file Appellant's Response to Court Order of October 13, 2017; discussion with Ms. Anne Stygles of Public Office regarding Rule 26(a)'s computation of time; case law research regarding Missouri remand.	0 (reduced from 2.6)
Clark, RC	10/19/2017	Call with Mr. Lewis regarding case status and preliminary approach for supplemental briefing.	1.4
Clark, RC	10/31/2017	Discuss next steps with Ms. Nall and Mr. Adams; discuss supplemental briefing; research 38 CFR 3.665(m) case law.	1.4
Clark, RC	11/6/2017	Review RBA for all evidence considered by VA or BVA; locate VA Form 21-592 which does not appear to be part of the RBA; discuss case and strategy with Ms. Nall and Mr. Adams.	5.7
Clark, RC	11/7/2017	Discuss potential stay suggested by VA with Ms. Nall and Mr. Adams; further review of RBA.	0.8
Clark, RC	11/21/2017	Research case law related to 38 CFR 13.71 and 38 CFR 13.100.	3.2
Clark, RC	11/27/2017	Research VA's website for any forms, guidance, manuals, or discussion of 38 CFR 13.71; research case law related to 38 CFR 13.71 and 38 CFR 13.100; analyze Gossett v. Czech case; in relation to the Gossett case, locate the amicus opening and reply briefs.	4.2
Clark, RC	11/28/2017	Analyze VA's response filed today related to stay; discuss strategy for supplemental briefing with Ms. Nall and Mr. Adams.	1.3

Baker Botts L.L.P. Time: Ryan C. Clark			
Name	Date	Description	Time (hrs.)
Clark, RC	11/29/2017	Research case law with respect to 3.665(m) and whether the instant facts present an opportunity to further argue application of this section and or an extension of this section is warranted; research whether the VA has authority to reissue benefits or equitably pay money.	5.4
Clark, RC	11/30/2017	Research VA guidelines with respect to fiduciaries; review VA Fiduciary Program Manual; research 38 USC 6107.	3.2
Clark, RC	12/1/2017	Strategic discussion with Mr. Adams regarding the potential use of 38 USC 6107; revise supplemental brief.	1.2
Clark, RC	12/4/2017	Discuss supplemental brief and potential use of 38 USC 6107 for re-issuance of benefits.	0.8
Clark, RC	12/14/2017	Revise supplemental briefing.	0.8
Clark, RC	12/22/2017	Review RBA to determine newly-produced pages were duplicates, except for one page; the RBA is still missing two Certificate of Legal Capacity documents that were requested.	1.6
Clark, RC	12/27/2017	Draft communication to pro bono mentor regarding potential next steps.	0 (reduced from 0.8)
Clark, RC	1/3/2018	Communicate with VA attorney, Mr. Yousaf, regarding deficiencies in updated RBA; draft and send email to VA regarding same.	0.4
Clark, RC	1/23/2018	Discuss next steps regarding supplemental brief.	0.4
Clark, RC	1/25/2018	Respond to VA regarding RBA dispute and update mentor regarding same.	0 (reduced from 0.3)
Clark, RC	1/31/2018	Revise supplemental brief and send to Ms. Kretkowski.	0 (reduced from 0.3)

Baker Botts L.L.P. Time: Ryan C. Clark			
Name	Date	Description	Time (hrs.)
Clark, RC	2/4/2018	Revise supplemental brief, including addition of statement of facts and revisions to overall structure to follow Court's 2 requested issues.	3.4
Clark, RC	2/6/2018	Revise supplemental brief.	3.6
Clark, RC	2/12/2018	Revise supplemental brief.	3.4
Clark, RC	2/20/2018	Prepare for and attend discussion with Ms. Kretkowski regarding whether to include argument on 38 CFR 6.665(m).	0 (reduced from 0.8)
Clark, RC	2/21/2018	Provide written analysis of Section 665(m) and communicate with client regarding supplemental brief.	1.2
Clark, RC	2/26/2018	Revise supplemental brief to incorporate comments from team and mentor; communicate with client and request approval for substantive changes.	2.6
Clark, RC	2/28/2018	Add table of authorities, including citations to record before the agency, to supplemental brief; review, incorporate edits, and finalize supplemental brief.	2.7
Clark, RC	3/23/2018	Analysis and discussion of VA response; request extension of time from VA of 21 days until April 19, 2017.	1.4
Clark, RC	3/26/2018	Analyze previous extensions of time in this case. Draft extension of time motion.	1.1
Clark, RC	3/27/2018	Revise and finalize motion for extension of time.	0.6
Clark, RC	4/2/2018	Analyze VA response brief of 3/23/18, VA response brief of 3/21/17, and Board Decision (RBA 2-10) with respect to Board's shifting positions on 13.71; document RBA recitations of 38 USC 13.71.	3.6

Baker Botts L.L.P. Time: Ryan C. Clark			
Name	Date	Description	Time (hrs.)
Clark, RC	4/3/2018	Research case law regarding timing and tolling with respect to fiduciary and other VA decisions; prepare for and attend strategic discussion regarding reply brief.	2.4
Clark, RC	4/6/2018	Case law research for reply brief, including research regarding 38 CFR 13.61, 13.71; revise reply brief and add citations.3.10	3.1
Clark, RC	4/11/2018	Gather documents and provide to lead counsel.	0.6
Clark, RC	4/12/2018	Revise and finalize reply brief. Send draft to CAVC mentor.	1.7
Clark, RC	4/13/2018	Revise Table of Authorities to include cites to RBA.	0.6
Clark, RC	4/17/2018	Finalize reply brief.	0.9
Clark, RC	4/18/2018	Edit reply brief and incorporate comments from lead counsel.	1.2
Clark, RC	4/19/2018	Include citations to the RBA in the Table of Authorities (they somehow got removed during the back and forth of drafting); final review.	0.6
Clark, RC	5/7/2018	Strategy meeting to discuss oral arguments; gather materials for oral argument, including the parties briefing and the updated record of proceedings, for printing.	1.8
Clark, RC	5/17/2018	Communicate with client regarding revocation, and potential rescheduling, of oral argument.	0.3
Clark, RC	6/28/2018	Communicate with VA counsel regarding potential request to reschedule oral arguments.	0.3

Baker Botts L.L.P. Time: Ryan C. Clark			
Name	Date	Description	Time (hrs.)
Clark, RC	7/2/2018	Communicate with VA's counsel regarding rescheduling of oral argument; analyze example motion for rescheduling oral argument; draft motion for rescheduling oral argument.	2.9
Clark, RC	7/3/2018	Analyze CAVC Oral Argument Guide and CAVC Rules of Practice and Procedure. Revise motion for rescheduling oral argument. Communicate with opposing counsel.	2.3
Clark, RC	7/6/2018	Finalize and approve motion for rescheduling oral argument for filing.	0.6
Clark, RC	7/10/2018	Communication with Mr. Lewis regarding oral argument rescheduling.	0.3
Clark, RC	8/14/2018	Case law research into the CAVC's jurisdiction to review Board decisions and Section 6107(b).	1.4
Clark, RC	8/15/2018	Further case law research into 38 USC 6107; analysis and drafting of rebuttal points with respect to Section 6107, including per se misuse by paying the wrong person, misuse by violation of 38 CFR 13.71, and misuse by failing to consider 38 CFR 13.70.	3.3
Clark, RC	8/16/2018	Analysis of Court Order regarding potential notice of fiduciary (N.B. it is not a notice of fiduciary but a notice of incompetency); analysis of supplemental brief, RBA 919, and RBA 948 referenced in Order. Discuss settlement; offer from VA and communicate with Mr. Lewis regarding settlement offer. In preparation for oral argument, locate 5 district court cases referencing Section 6107, although ultimately dismissing the 6107 claims for lack of subject matter jurisdiction.	3.9

Baker Botts L.L.P. Time: Ryan C. Clark			
Name	Date	Description	Time (hrs.)
Clark, RC	8/17/2018	Prepare for and attend mock oral argument session. Communicate with client and VA regarding counter-offer (joint motion to terminate with reissuance of all funds) to VA's initial offer (admit error and remand for misuse determination).	3.6
Clark, RC	8/20/2018	Communicate with VA regarding the joint motion to terminate and stipulated agreement; revise the stipulated agreement to include that the VA pays within 90 days (initially 30 but negotiated up to 90), that the VA will not dispute Mr. Lewis is a prevailing party, that the VA will not dispute its position was not substantially justified, and that a copy of the motion will go in Mr. Lewis's file. Communicate with Mr. Lewis and get approval for settlement based on these terms.	3.8
Clark, RC	8/21/2018	Analyze CAVC order and provide copy of granted motion and stipulated agreement to Mr. Lewis, including timeframe for CAVC to reissue benefits to Mr. Lewis. Draft case summary.	1.4
Clark, RC	8/28/2018	Review docket and gather dates for lead counsel.	0.4
Clark, RC	8/29/2018	Draft motion for Equal Access to Justice Act fees; research case law regarding financial eligibility evidence.	3.4
Clark, RC	9/4/2018	Revise motion for EAJA fees, including addition of time entries. Communicate with Veterans Consortium regarding evidence showing financial eligibility for EAJA motion.	3.4

Baker Botts L.L.P. Time: Ryan C. Clark			
Name	Date	Description	Time (hrs.)
Clark, RC	9/5/2018	Revise motion for Equal Access to Justice Act, including research regarding substantially justified jurisdictional requirement; research regarding consumer price index for reasonable fee request; preparation of fee calculations spreadsheet to determine reasonable fee request.	3.4
Total for Ryan C. Clark = 114.50 Hours			
Hourly Rate			\$197.77
(Baker Botts L.L.P.) Total Fee Request for Ryan C. Clark			\$22,644.67

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U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Nall, JL	9/1/2017	Work on opening new matter.	0 (reduced from 1)
Nall, JL	9/5/2017	Discuss case with Darryl Adams.	0 (reduced from 0.4)
Nall, JL	9/6/2017	Draft email to mentor about next steps in case; discuss case with Darryl Adams.	0 (reduced from 0.4)
Nall, JL	9/7/2017	Call with client.	1
Nall, JL	9/11/2017	Review volume 1 of the RBA.	4.5
Adams, DJ	9/11/2017	Review record for errors in determination that client was incompetent and assigning fiduciary.	4.2
Nall, JL	9/12/2017	Review volume 2 of the RBA.	2
Nall, JL	9/13/2017	Finish review of volume 2 of the RBA; draft email to mentor.	0 (reduced from 2)

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Nall, JL	9/14/2017	Discuss case with Darryl Adams; discuss case with Ryan Clark.	0 (reduced from 0.2)
Adams, DJ	9/14/2017	Prepare engagement letter and communicate with client regarding the same.	0 (reduced from 1.5)
Nall, JL	9/15/2017	Prepare for and participate in call with mentor regarding case.	0 (reduced from 1.2)
Clark, RC	9/15/2017	Call with VA Consortium-assigned mentor regarding approach to case; analyze RBA; view VA Consortium training.	0 (reduced from 4.1)
Adams, DJ	9/20/2017	Review record and relevant case law; determine strategy for filing motion to submit new briefing.	3.5
Clark, RC	9/20/2017	Review VA Case Nos. 12-2234 and 12-3170 to identify potential procedures to request clarification of issues for panel resolution; prepare procedural history analysis of both cases; call Ann Stygles with Public Office.	3.6
Nall, JL	9/20/2017	Discuss case with team; call court.	1
Nall, JL	9/22/2017	Review and approve filings; receive call from Court clerk; discuss case with team.	1.2
Clark, RC	9/22/2017	Review notice of appearance documents.	0.7
Clark, RC	9/25/2017	Draft motion for clarification and request for leave to file supplemental briefing.	1.7
Adams, DJ	9/25/2017	Review and revise motion for clarification to Court of Appeals.	0.8
Nall, JL	9/25/2017	Discuss case and motion.	0.8
Nall, JL	9/26/2017	Discuss case and motion; revise motion.	1.8

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Clark, RC	9/27/2017	Review Local Rules; analyze brief for formatting requirements pursuant to Local Rules.	0.8
Clark, RC	9/28/2017	Draft response to Ms. Kretkowski regarding motion; revise motion.	0 (reduced from 1.6)
Nall, JL	9/28/2017	Review & revise motion.	0.6
Adams, DJ	10/3/2017	Meet and confer with VA counsel regarding motion for clarification.	0.5
Nall, JL	10/4/2017	Call with government counsel; finalize motion for filing.	1
Clark, RC	10/4/2017	Review motion for clarification before filing; correspond with Mr. Lewis and provide copy of filed motion.	0.4
Clark, RC	10/13/2017	Review Order from Court; draft motion for supplemental briefing; discuss strategy for supplemental briefing.	2.3
Nall, JL	10/13/2017	Review Order and send instructions to Ryan Clark on next steps; discuss Order and next steps with Ryan Clark and Darryl Adams; review motion.	1.2
Nall, JL	10/16/2017	Prepare for and discuss case with team and then with mentor.	0 (reduced from 0.8)
Clark, RC	10/16/2017	Call with Veteran's Consortium mentor regarding case; finalize and file Appellant's Response to Court Order of October 13, 2017; discussion with Ms. Anne Stygles of Public Office regarding Rule 26(a)'s computation of time; case law research regarding Missouri remand.	0 (reduced from 2.6)

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Nall, JL	10/17/2017	Discussions regarding case status and plans; consider issues raised by mentor's email.	0 (reduced from 1)
Adams, DJ	10/17/2017	Analyze record to access whether VA followed regulations in naming fiduciary.	1.2
Adams, DJ	10/18/2017	Research record to identify deficiencies in the VA naming of beneficiary and related regulations.	0 (reduced from 4.2)
Nall, JL	10/18/2017	Analyze and send email regarding case status and plans.	0.5
Clark, RC	10/19/2017	Call with Mr. Lewis regarding case status and preliminary approach for supplemental briefing.	1.4
Nall, JL	10/27/2017	Discuss RBA with Darryl Adams.	1.5
Adams, DJ	10/27/2017	Discuss basis for appeal and supporting documents in the record.	0 (reduced from 1)
Nall, JL	10/31/2017	Discuss next steps with team; exchange calls with Hugh O'Donnell (client's prior counsel); investigate criminal record.	0 (reduced from 1.5)
Clark, RC	10/31/2017	Discuss next steps with Ms. Nall and Mr. Adams; discuss supplemental briefing; research 38 CFR 3.665(m) case law.	1.4
Nall, JL	11/1/2017	Exchange calls with Hugh O'Donnell (client's prior counsel).	0 (reduced from 0.2)
Adams, DJ	11/1/2017	Research applicable statutes and regulations regarding VA appointment of beneficiary.	2.5
Adams, DJ	11/2/2017	Review opinion from Court of Appeals of Veterans Claims and determine next steps.	2.1
Nall, JL	11/2/2017	Research regarding jurisdiction.	4.5

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Nall, JL	11/3/2017	Research regarding jurisdiction; draft jurisdiction section of supplemental brief; discussion with Darryl Adams regarding applicable of Section 3 versus 13 to the facts.	6.5
Adams, DJ	11/3/2017	Analyze statutes and regulations regarding appointment of fiduciary to determine whether VA complied.	0 (reduced from 2.1)
Adams, DJ	11/6/2017	Analyze statutes and regulations regarding appointment of fiduciary to determine whether VA complied.	1.9
Nall, JL	11/6/2017	Discuss case with team; review email from Secretary's counsel; discuss case with Ken Carpenter.	0 (reduced from 3)
Clark, RC	11/6/2017	Review RBA for all evidence considered by VA or BVA; locate VA Form 21-592 which does not appear to be part of the RBA; discuss case and strategy with Ms. Nall and Mr. Adams.	5.7
Clark, RC	11/7/2017	Discuss potential stay suggested by VA with Ms. Nall and Mr. Adams; further review of RBA.	0.8
Nall, JL	11/7/2017	Discuss case with team; review RBA for missing documents; draft and transmit response to email from Secretary's counsel.	2
Adams, DJ	11/7/2017	Research whether Mr. Lewis is a claimant or beneficiary under the VA regulations; research applicable standards and regulations for beneficiaries.	2.1
Adams, DJ	11/8/2017	Research whether state institutions are subdivision of the United States as termed is used in VA regulations; confer with VA attorney regarding regulations not followed by VA in appointing beneficiary.	3.2

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Nall, JL	11/8/2017	Communications discussing case with team and mentor.	0 (reduced from 0.8)
Adams, DJ	11/10/2017	Analyze regulations regarding appointment of fiduciary and required notice.	0 (reduced from 1.2)
Adams, DJ	11/14/2017	Draft argument section of brief regarding VA's failure to follow regulations in appointing fiduciary.	2.4
Nall, JL	11/14/2017	Discuss notification to client and draft email instructing same; discuss next steps with Darryl Adams.	1.5
Adams, DJ	11/15/2017	Draft argument section regarding deficiencies in appointment of fiduciary.	4.5
Adams, DJ	11/17/2017	Review and revise argument section regarding deficiencies in appointment of fiduciary.	2.5
Adams, DJ	11/20/2017	Review and revise argument section regarding deficiencies in appointment of fiduciary.	0 (reduced from 4.2))
Clark, RC	11/21/2017	Research case law related to 38 CFR 13.71 and 38 CFR 13.100.	3.2
Clark, RC	11/27/2017	Research VA's website for any forms, guidance, manuals, or discussion of 38 CFR 13.71; research case law related to 38 CFR 13.71 and 38 CFR 13.100; analyze Gossett v. Czech case; in relation to the Gossett case, locate the amicus opening and reply briefs.	4.2
Adams, DJ	11/27/2017	Draft argument section of appeal brief to address failure of VA to follow due process and other procedures.	0 (reduced from 7)
Nall, JL	11/27/2017	Discuss 13.71 strategy ideas with Ryan Clark.	0.3

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Nall, JL	11/28/2017	Discuss strategy ideas with Ryan Clark and Darryl Adams.	0.8
Adams, DJ	11/28/2017	Draft argument section of appeal brief to address failure of VA to follow due process and other procedures.	8.5
Clark, RC	11/28/2017	Analyze VA's response filed today related to stay; discuss strategy for supplemental briefing with Ms. Nall and Mr. Adams.	1.3
Clark, RC	11/29/2017	Research case law with respect to 3.665(m) and whether the instant facts present an opportunity to further argue application of this section and or an extension of this section is warranted; research whether the VA has authority to reissue benefits or equitably pay money.	5.4
Adams, DJ	11/29/2017	Review and revise outline for brief and jurisdictional section.	4.2
Nall, JL	11/29/2017	Work on brief.	4.3
Nall, JL	11/30/2017	Work on brief.	3
Clark, RC	11/30/2017	Research VA guidelines with respect to fiduciaries; review VA Fiduciary Program Manual; research 38 USC 6107.	3.2
Clark, RC	12/1/2017	Strategic discussion with Mr. Adams regarding the potential use of 38 USC 6107; revise supplemental brief.	1.2
Nall, JL	12/1/2017	Work on brief.	1
Nall, JL	12/4/2017	Discuss how to address Court's questions with team.	1
Clark, RC	12/4/2017	Discuss supplemental brief and potential use of 38 USC 6107 for re-issuance of benefits.	0.8

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Nall, JL	12/6/2017	Revise brief.	1
Adams, DJ	12/6/2017	Revise appeal brief to address additional grounds for error.	0 (reduced from 4.2)
Adams, DJ	12/7/2017	Revise appeal brief to address apportionment for dependents; review changes to remainder of brief.	4.5
Adams, DJ	12/11/2017	Draft new section of brief to address equitable consideration for misuse of veterans funds.	2.1
Adams, DJ	12/12/2017	Review amendments to reply brief regarding questions answered and jurisdiction.	4.1
Adams, DJ	12/13/2017	Review and revise appeal brief with attention to improving continuity between different sections.	0 (reduced from 5.8)
Adams, DJ	12/14/2017	Review and revise appeal brief.	5.5
Clark, RC	12/14/2017	Revise supplemental briefing.	0.8
Nall, JL	12/18/2017	Discuss case strategy with Darryl Adams.	0.2
Nall, JL	12/22/2017	Review new RBA and consider implications of missing documents.	1
Clark, RC	12/22/2017	Review RBA to determine newly-produced pages were duplicates, except for one page; the RBA is still missing two Certificate of Legal Capacity documents that were requested.	1.6
Clark, RC	12/27/2017	Draft communication to pro bono mentor regarding potential next steps.	0 (reduced from 0.8)
Adams, DJ	12/27/2017	Review supplemented joint appendix and effect of missing documents.	1.5
Adams, DJ	12/28/2017	Finalize requested relief and revise brief to incorporate into all sections.	4.1

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Nall, JL	1/3/2018	Discussion with team regarding RBA deficiencies, call with Omar Yousef regarding RBA deficiencies, review draft email to Deborah Pride.	0.8
Clark, RC	1/3/2018	Communicate with VA attorney, Mr. Yousaf, regarding deficiencies in updated RBA; draft and send email to VA regarding same.	0.4
Clark, RC	1/23/2018	Discuss next steps regarding supplemental brief.	0.4
Nall, JL	1/23/2018	Discuss strategy on brief in light of amended RBA.	0.5
Adams, DJ	1/25/2018	Revise argument section to incorporate argument regarding misuse of benefits and equitable powers.	4.2
Clark, RC	1/25/2018	Respond to VA regarding RBA dispute and update mentor regarding same.	0 (reduced from 0.3)
Adams, DJ	1/26/2018	Review and revise appeal brief to make consistent with requests and demands.	4.1
Adams, DJ	1/29/2018	Review and revise argument section of appellate brief.	6.2
Nall, JL	1/29/2018	Revise brief.	1.5
Nall, JL	1/30/2018	Revise argument section of brief.	1.1
Adams, DJ	1/30/2018	Review and revise appeal brief.	0 (reduced from 4.5)
Clark, RC	1/31/2018	Revise supplemental brief and send to Ms. Kretkowski.	0 (reduced from 0.3)
Clark, RC	2/4/2018	Revise supplemental brief, including addition of statement of facts and revisions to overall structure to follow Court's 2 requested issues.	3.4

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Adams, DJ	2/5/2018	Review and revise appeal brief.	0 (reduced from 4.2)
Nall, JL	2/5/2018	Revise supplemental brief.	1.5
Nall, JL	2/6/2018	Revise facts section and review proposed changes to the other sections of the brief.	1.6
Adams, DJ	2/6/2018	Review and revise appeal brief	4.1
Clark, RC	2/6/2018	Revise supplemental brief.	3.6
Clark, RC	2/12/2018	Revise supplemental brief.	3.4
Clark, RC	2/20/2018	Prepare for and attend discussion with Ms. Kretkowski regarding whether to include argument on 38 CFR 6.665(m).	0 (reduced from 0.8)
Adams, DJ	2/20/2018	Discuss appeal brief with VA mentor.	0 (reduced from 1)
Nall, JL	2/20/2018	Participate in meeting with mentor regarding 3.665m.	0 (reduced from 0.4)
Clark, RC	2/21/2018	Provide written analysis of Section 665(m) and communicate with client regarding supplemental brief.	1.2
Clark, RC	2/26/2018	Revise supplemental brief to incorporate comments from team and mentor; communicate with client and request approval for substantive changes.	2.6
Nall, JL	2/26/2018	Review revised brief.	0.2
Nall, JL	2/28/2018	Finalize and file supplemental brief.	2.8

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Clark, RC	2/28/2018	Add table of authorities, including citations to record before the agency, to supplemental brief; review, incorporate edits, and finalize supplemental brief.	2.7
Clark, RC	3/23/2018	Analysis and discussion of VA response; request extension of time from VA of 21 days until April 19, 2017.	1.4
Clark, RC	3/26/2018	Analyze previous extensions of time in this case. Draft extension of time motion.	1.1
Clark, RC	3/27/2018	Revise and finalize motion for extension of time.	0.6
Clark, RC	4/2/2018	Analyze VA response brief of 3/23/18, VA response brief of 3/21/17, and Board Decision (RBA 2-10) with respect to Board's shifting positions on 13.71; document RBA recitations of 38 USC 13.71.	3.6
Nall, JL	4/2/2018	Discuss 13.71 citations in Board decision and prior briefing by the VA.	0.5
Nall, JL	4/3/2018	Discuss outline to reply.	0.5
Clark, RC	4/3/2018	Research case law regarding timing and tolling with respect to fiduciary and other VA decisions; prepare for and attend strategic discussion regarding reply brief.	2.4
Clark, RC	4/6/2018	Case law research for reply brief, including research regarding 38 CFR 13.61, 13.71; revise reply brief and add citations.3.10	3.1
Nall, JL	4/9/2018	Review reply.	0.2
Clark, RC	4/11/2018	Gather documents and provide to lead counsel.	0.6

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Clark, RC	4/12/2018	Revise and finalize reply brief. Send draft to CAVC mentor.	1.7
Nall, JL	4/12/2018	Revise reply brief.	3.1
Clark, RC	4/13/2018	Revise Table of Authorities to include cites to RBA.	0.6
Nall, JL	4/16/2018	Revise reply brief.	1.2
Nall, JL	4/17/2018	Revise reply brief.	1.3
Clark, RC	4/17/2018	Finalize reply brief.	0.9
Clark, RC	4/18/2018	Edit reply brief and incorporate comments from lead counsel.	1.2
Clark, RC	4/19/2018	Include citations to the RBA in the Table of Authorities (they somehow got removed during the back and forth of drafting); final review.	0.6
Nall, JL	4/19/2018	Finalize reply brief for filing today.	1.3
Adams, DJ	5/3/2018	Review briefs and prepare outline for oral argument.	3.8
Adams, DJ	5/4/2018	Review record in preparation for oral argument and identify key documents.	5.1
Nall, JL	5/7/2018	Discuss oral argument planning with team.	1
Clark, RC	5/7/2018	Strategy meeting to discuss oral arguments; gather materials for oral argument, including the parties briefing and the updated record of proceedings, for printing.	1.8
Clark, RC	5/17/2018	Communicate with client regarding revocation, and potential rescheduling, of oral argument.	0.3

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Adams, DJ	5/17/2018	Review order from Court of Appeals for Veterans Appeals regarding postponement of oral argument.	0.2
Clark, RC	6/28/2018	Communicate with VA counsel regarding potential request to reschedule oral arguments.	0.3
Clark, RC	7/2/2018	Communicate with VA's counsel regarding rescheduling of oral argument; analyze example motion for rescheduling oral argument; draft motion for rescheduling oral argument.	2.9
Adams, DJ	7/3/2018	Review motion to reschedule oral argument.	0.2
Clark, RC	7/3/2018	Analyze CAVC Oral Argument Guide and CAVC Rules of Practice and Procedure. Revise motion for rescheduling oral argument. Communicate with opposing counsel.	2.3
Clark, RC	7/6/2018	Finalize and approve motion for rescheduling oral argument for filing.	0.6
Clark, RC	7/10/2018	Communication with Mr. Lewis regarding oral argument rescheduling.	0.3
Adams, DJ	8/9/2018	Review briefs and prepare list of research issues in preparation for oral argument.	3.4
Adams, DJ	8/10/2018	Review and analyze relevant case law, statute and regulations.	4.8
Adams, DJ	8/11/2018	Review and analyze record with emphasis on Mr. Lewis' notice of disagreement and appeal.	5.5
Adams, DJ	8/13/2018	Revise outline for oral argument and prepare list of potential rebuttal issues.	4.1
Clark, RC	8/14/2018	Case law research into the CAVC's jurisdiction to review Board decisions and Section 6107(b).	1.4

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Clark, RC	8/15/2018	Further case law research into 38 USC 6107; analysis and drafting of rebuttal points with respect to Section 6107, including per se misuse by paying the wrong person, misuse by violation of 38 CFR 13.71, and misuse by failing to consider 38 CFR 13.70.	3.3
Adams, DJ	8/15/2018	Review key case law and prepare for mock oral argument	3.8
Adams, DJ	8/16/2018	Review court order regarding issues to discuss at oral argument, identify relevant documents; review remand proposal from government and discuss response.	1.8
Nall, JL	8/16/2018	Discuss settlement offer from Secretary with mentor, Darryl Adams, and Ryan Clark; review CAVC order and prepare for oral argument; discuss same with Ryan Clark and Darryl Adams.	3.8
Clark, RC	8/16/2018	Analysis of Court Order regarding potential notice of fiduciary (N.B. it is not a notice of fiduciary but a notice of incompetency); analysis of supplemental brief, RBA 919, and RBA 948 referenced in Order. Discuss settlement; offer from VA and communicate with Mr. Lewis regarding settlement offer. In preparation for oral argument, locate 5 district court cases referencing Section 6107, although ultimately dismissing the 6107 claims for lack of subject matter jurisdiction.	3.9
Clark, RC	8/17/2018	Prepare for and attend mock oral argument session. Communicate with client and VA regarding counter-offer (joint motion to terminate with reissuance of all funds) to VA's initial offer (admit error and remand for misuse determination).	3.6

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Nall, JL	8/17/2018	Oral argument practice; conversation with client regarding Secretary's offer to settle.	5.2
Adams, DJ	8/17/2018	Prepare for and conduct mock oral argument, discuss open issues and finalize rebuttal points; confer with Mr. Lewis regarding remand proposal from government.	5.1
Adams, DJ	8/19/2018	Practice presentation for oral argument.	3.1
Adams, DJ	8/20/2018	Review offer of settlement from government and response thereto.	0.6
Nall, JL	8/20/2018	Review and revise settlement agreement; discuss same with the client.	0.9
Clark, RC	8/20/2018	Communicate with VA regarding the joint motion to terminate and stipulated agreement; revise the stipulated agreement to include that the VA pays within 90 days (initially 30 but negotiated up to 90), that the VA will not dispute Mr. Lewis is a prevailing party, that the VA will not dispute its position was not substantially justified, and that a copy of the motion will go in Mr. Lewis's file. Communicate with Mr. Lewis and get approval for settlement based on these terms.	3.8
Clark, RC	8/21/2018	Analyze CAVC order and provide copy of granted motion and stipulated agreement to Mr. Lewis, including timeframe for CAVC to reissue benefits to Mr. Lewis. Draft case summary.	1.4
Clark, RC	8/28/2018	Review docket and gather dates for lead counsel.	0.4
Clark, RC	8/29/2018	Draft motion for Equal Access to Justice Act fees; research case law regarding financial eligibility evidence.	3.4

U.S. Vet.App. Rule 39(f) Consolidated Billing Entries			
Name	Date	Description	Time (hrs.)
Clark, RC	9/4/2018	Revise motion for EAJA fees, including addition of time entries. Communicate with Veterans Consortium regarding evidence showing financial eligibility for EAJA motion.	3.4
Clark, RC	9/5/2018	Revise motion for Equal Access to Justice Act, including research regarding substantially justified jurisdictional requirement; research regarding consumer price index for reasonable fee request; preparation of fee calculations spreadsheet to determine reasonable fee request.	3.4
Total = 305.40 Hours			
Hourly Rate			\$197.77
Total Fee Request			\$60,398.96

4. Under the EAJA, the maximum rate for attorneys' fees is \$125.00 per hour, subject to a potential cost of living adjustment. The hourly rate for this case based on a cost of living adjustment was calculated using the Consumer Price Index for All Urban Consumers in the South region. *See Mannino v. West*, 12 Vet. App. 242 (1999). The CPI-U in March 1996, the year that the \$125.00 per hour rate was added to the EAJA, was \$152.40. *See id.* In February, the mid-point of this litigation based on the filing of Appellant's Supplemental Brief, the CPI-U for the South region was \$241.123.¹ *See Elcyzyn 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

¹ A true and correct copy of the data used for this EAJA application, obtained from <http://www.bls.gov/cpi/data.htm>, is attached as Exhibit C to the application.

appellant's principal brief, motion, or petition is filed with the Court, as the base for calculating a cost of living increase.”). This represents a 58.2% increase in the CPI-U, from March 1996 to February 2018. The \$125.00 rate should thus be increased by 58.2% to \$197.77 per hour. A rate of \$197.77 results in a reasonable fee of \$60,398.96.

5. In sum, Appellant seeks to recover total fees of \$60,398.96, with \$8,207.46 directed to Adams Patent Law and \$52,191.50 directed to Baker Botts L.L.P. Specifically, Appellant seeks to recover fees for 117.7 hours of time for Darryl J. Adams, at a rate of \$197.77 per hour. Appellant also seeks to recover fees for 73.2 hours of time for Jennifer L. Nall, and 114.50 hours of time for Ryan C. Clark, both also at a rate of \$197.77 per hour. Appellant also does not seek to recover 72.7 hours of attorney time, which is itemized above and that I have deemed to be redundant or excessive. Appellant also does not seek to recover 27.6 hours of Paralegal time for work performed by Sonja Guenter, Celia Guglielmi, and Phillip Pope.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Austin, Texas on October 8, 2018.

/s/ Darryl J. Adams
DARRYL J. ADAMS

EXHIBIT C

Databases, Tables & Calculators by Subject

SHARE ON:   


Change Output Options: From: 1996 ▾ To: 2018 ▾ **GO**

☐ include graphs ☐ include annual averages [More Formatting Options](#) ➔

Data extracted on: September 5, 2018 (1:48:40 PM)

CPI-All Urban Consumers (Current Series)

Series Id: CUUR0300SA0
Not Seasonally Adjusted
Series Title: All items in South urban, all urban consumers, not seasonally adjusted
Area: South
Item: All items
Base Period: 1982-84=100

Download:  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996	151.1	151.5	152.4	153.2	153.5	154.0	154.0	154.1	154.5	154.9	155.1	155.1	153.6	152.6	154.6
1997	155.7	156.1	156.5	156.7	156.6	157.0	157.0	157.1	157.5	157.8	157.8	157.3	156.9	156.4	157.4
1998	157.6	157.8	158.2	158.5	158.8	159.1	159.3	159.5	159.5	159.8	159.6	159.6	158.9	158.3	159.6
1999	159.9	160.0	160.6	161.5	161.6	161.7	162.2	162.6	163.2	163.6	163.5	163.6	162.0	160.9	163.1
2000	164.1	164.8	166.5	166.7	166.7	167.5	168.0	168.0	168.5	168.5	168.6	168.4	167.2	166.1	168.3
2001	169.3	170.2	170.6	171.4	171.7	172.2	171.6	171.5	172.2	171.7	171.0	170.3	171.1	170.9	171.4
2002	170.6	171.0	172.1	173.1	173.2	173.5	173.6	173.8	174.2	174.9	174.9	174.6	173.3	172.3	174.3
2003	175.1	176.4	177.5	177.4	176.8	177.2	177.3	177.9	178.3	178.1	177.5	177.5	177.3	176.7	177.8
2004	178.2	179.1	180.1	180.9	182.0	182.9	182.6	182.6	182.8	183.7	183.7	183.3	181.8	180.5	183.1
2005	183.6	184.7	185.9	187.3	187.3	187.8	188.5	189.4	192.0	192.5	190.7	190.1	188.3	186.1	190.5
2006	191.5	191.8	192.8	194.7	195.5	196.3	197.0	197.1	195.8	194.7	194.3	194.8	194.7	193.8	195.6
2007	195.021	195.950	197.904	199.618	200.804	201.675	201.571	201.041	201.697	202.155	203.437	203.457	200.361	198.495	202.226
2008	204.510	205.060	206.676	208.085	210.006	212.324	213.304	212.387	212.650	210.108	205.559	203.501	208.681	207.777	209.585
2009	204.288	205.343	206.001	206.657	207.265	209.343	208.819	209.000	208.912	209.292	209.738	209.476	207.845	206.483	209.206
2010	210.056	210.020	211.216	211.528	211.423	211.232	210.988	211.308	211.775	212.026	211.996	212.488	211.338	210.913	211.764
2011	213.589	214.735	217.214	218.820	219.820	219.318	219.682	220.471	220.371	219.969	219.961	219.469	218.618	217.249	219.987
2012	220.497	221.802	223.314	224.275	223.356	223.004	222.667	223.919	225.052	224.504	223.404	223.109	223.242	222.708	223.776
2013	223.933	225.874	226.628	226.202	226.289	227.148	227.548	227.837	227.876	227.420	226.811	227.082	226.721	226.012	227.429
2014	227.673	228.664	230.095	231.346	231.762	232.269	232.013	231.611	231.762	231.131	229.845	228.451	230.552	230.302	230.802
2015	226.855	227.944	229.337	229.957	230.886	232.026	231.719	231.260	230.913	230.860	230.422	229.581	230.147	229.501	230.793
2016	229.469	229.646	230.977	231.975	232.906	233.838	233.292	233.561	234.069	234.337	234.029	234.204	232.692	231.469	233.915
2017	235.492	236.052	236.154	236.728	236.774	237.346	236.942	237.892	239.649	239.067	238.861	238.512	237.456	236.424	238.487
2018	239.772	241.123	241.595	242.486	243.279	243.770	243.776							242.004	