

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

<b>RONALD L. BURTON,</b>	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 16-2037
	)	
<b>ROBERT L. WILKIE,</b>	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

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

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Appellant,	)	
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v.	)	Vet. App. No. 16-2037
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Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

**APPELLANT’S APPLICATION FOR AWARD OF REASONABLE 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), and U.S. Vet. App. Rule 39, Appellant, Ronald L. Burton, applies for an award of reasonable attorneys’ fees and expenses in the amount of **\$ 16,238.99**.

**PROCEDURAL HISTORY**

On February 22, 2016, the Board of Veterans’ Appeals (“Board”) issued a decision that denied a disability rating in excess of 10 percent for tinea pedis. Record Before the Agency (“R.”) at 1-16. Appellant filed a timely Notice of Appeal with this Court on June 10, 2016.<sup>1</sup>

On August 10, 2016, the Secretary served on Appellant’s counsel the 2,605-page Record Before the Agency. On August 30, 2016, the Court issued a

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<sup>1</sup> That part of the Court’s decision that reopened and granted a claim for entitlement to service connection for obstructive sleep apnea was not before the Court. *Medrano v. Nicholson*, 21 Vet. App. 165, 170 (2007).

Notice to file Appellant's brief within sixty days. On September 2, 2016, the Court issued an Order scheduling a Rule 33 Staffing Conference for October 6, 2016.

Pursuant to the Court's Order, Appellant's counsel prepared a detailed Rule 33 Summary of the Issues addressing the legal errors committed by the Board in the decision on appeal, which she served on counsel for the Secretary and Central Legal Staff ("CLS") counsel on September 21, 2016. On October 6, 2016, the Rule 33 Staffing Conference was held as scheduled, but the parties failed to arrive at a joint resolution.

On October 19, 2016, the parties filed a joint motion to stay the case pending a decision by the Federal Circuit in the appeal of *Johnson v. McDonald*, 27 Vet. App. 497 (2016). The Court granted the motion on October 25, 2016. Following the Federal Circuit's decision in *Johnson v. Shulkin*, 862 F.3d 1351 (Fed. Cir. 2017), the Court lifted the stay on July 18, 2017. On August 7, 2017, Appellant filed, and the Court granted, a motion for a 45-day extension of time to file the initial brief.

On September 21, 2017, Appellant filed his 16-page initial brief ("App. Br.") with the Court. In his brief, Appellant argued that the Board erred in failing to provide an adequate statement of reasons or bases for its decision to deny Appellant an increased rating for tinea pedis. See 38 U.S.C. § 7104(d)(1). App. Br. at 6-13. Specifically, Appellant argued that he used a topical corticosteroid daily and the Board erred in failing to address the "factual circumstances" of the case in order to determine whether that medication could have systemic effects

entitling Appellant to a rating in excess of 10 percent for tinea pedis. App. Br. at 9-11; *Johnson*, 862 F.3d 1351. Appellant also argued that the Board erred in failing to address the other medications Appellant employs to treat his tinea pedis, and whether those medications are like or similar to a corticosteroid or immunosuppressive therapy and whether those medications could have systemic effects. App. Br. at 11-13; *Warren v. McDonald*, 28 Vet. App. 194, 198-99 (2016). Alternatively, Appellant argued that the Board erred in failing to fulfill its duty to assist by relying on the inadequate March 2010 and December 2011 VA examination reports as neither examiner provided an opinion regarding whether Appellant's tinea pedis medications were like or similar to a corticosteroid and/or whether his medications could have systemic effects. App. Br. at 13-16; 38 U.S.C. § 5103A; *Warren*, 28 Vet. App. at 198-99; *Johnson*, 862 F.3d at 1355.

On November 15, 2017, Appellee filed a motion for a 45-day extension of time to file Appellee's brief, which the Court granted. On January 4, 2018, the Secretary filed his responsive brief ("Sec. Br.") with the Court. In his brief, the Secretary argued that the Court should affirm the Board's decision denying Appellant's claim for entitlement to a rating in excess of 10% for tinea pedis. Sec. Br. at 3-11. The Secretary argued that because the evidence of record showed that Appellant's topical medications for tinea pedis are not "systemic" and do not pertain to or affect a large portion of the body as a whole, the Board's finding that Appellant's use of topical medications was not systemic therapy for purposes of DC 7806 is a permissible view of the evidence. Sec. Br. at 8;

*Johnson*, 862 F.3d at 1355. The Secretary also argued that even if Appellant's use of Benadryl, an antihistamine, could be considered a systemic therapy akin to corticosteroids or other immunosuppressive drugs, Appellant's use of this medication would not warrant a rating in excess of 10 percent under DC 7806 because he used this medication for less than six weeks. Sec. Br. at 8. Finally, the Secretary argued that the March 2010 and December 2011 VA medical opinions were adequate and the Board did not err in relying on them. Sec. Br. at 10-11.

On January 17, 2018, Appellant filed, and the Court granted, a motion for a 45-day extension of time to file Appellant's reply brief. On March 5, 2018, Appellant filed his reply brief ("App. Rep. Br.") with the Court. In his brief, Appellant argued that the Secretary's argument that medication must be applied on a "large enough scale" to affect the body as a whole in order for it to be "systemic" mischaracterized the Federal Circuit's holding in *Johnson*. App. Rep. Br. at 3-4; *Johnson*, 862 F.3d at 1355. Instead, Appellant argued that *Johnson* requires that an adjudicator address the "factual circumstances of each case" to determine if the treatment could have systemic effects, which the Board did not do in this case. *Id.* Regarding Appellant's use of Benadryl, Appellant argued that the Secretary's argument was an improper *post hoc* rationalization of the Board's decision, especially considering the Board's finding that "the Veteran has had constant or near constant treatment of this service-connected disability with tropical [sic] creams and the use of antihistamines." App. Rep. Br. at 5; R. at 12

(1-16). Finally, Appellant argued that the Secretary erred in relying on the March 2010 and December 2011 VA medical opinions to argue that Warren does not apply, because neither examiner addressed the nature of Appellant's medications and both opinions were inadequate. App. Rep. Br. at 6-11.

On March 13, 2018, the Secretary filed the Record of Proceedings with the Court. On March 29, 2018, the case was assigned to Judge Allen. On April 27, 2018, the Court submitted the matter for a panel decision. On May 3, 2018, Appellant filed a motion for leave to file a motion for oral argument and a motion for oral argument, which the Court granted. On July 11, 2018, the case was argued before Judges Schoelen, Greenberg, and Allen. Notably, at oral argument, the Secretary conceded that in *Johnson* the Federal Circuit provided application of medication on a large scale as an *example* of systemic therapy, but that there are other factors that could cause a topical treatment to be considered a systemic therapy. See Oral Argument (O.A.) at 33:02-34:01 (oral argument held July 11, 2018), [http://www.uscourts.cavc.gov/oral\\_arguments\\_audio.php](http://www.uscourts.cavc.gov/oral_arguments_audio.php)

On September 28, 2018, the Court issued its precedential decision. *Burton v. Wilkie*, 30 Vet. App. 286 (2018). In the decision, the Court set aside and remanded the relevant part of the Board's February 22, 2016 decision for the Board to provide an adequate statement of reasons or bases for its decision, to include an analysis of the nature of Appellant's medications. *Id.* Notably, the Court held that the Federal Circuit did not mean to restrict the "factual circumstances" under which a topical therapy can be deemed a systemic therapy

to the one illustration it mentioned, regarding scale of treatment. *Id.* at 290. Thus, the Court held that the Board must determine whether a topical treatment operates by affecting the body as a whole in treating the veteran's skin condition, which the Board failed to do in this case. *Id.* at 292. The Court also agreed with Appellant that the Board erred in relying on the VA medical opinions of record as they did not define "systemic." *Id.* at 293. Finally, the Court held that remand is warranted because the Board erred in failing to address whether Benadryl was "like" corticosteroids or other immunosuppressive drugs. *Id.* at 294.

The Court entered Judgment on October 22, 2018. The Court entered Mandate under Rule 41(b) of the Court's Rules of Practice and Procedure on December 26, 2018.

## **ARGUMENT**

### **I. APPELLANT IS A PREVAILING PARTY AND ELIGIBLE TO RECEIVE AN AWARD.**

Under 28 U.S.C. § 2412(d), a court shall award to a prevailing party fees and other expenses incurred by that party in any civil action, including proceedings for judicial review of agency action. 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) (quoting *Texas State Teachers Assn. v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791-92 (1989)).

In this case, Appellant is a prevailing party entitled to an award of fees and costs because the Court vacated and remanded the relevant part of the Board's February 22, 2016 decision that denied Appellant a disability rating greater than 10 percent for his tinea pedis. See *Zuberi v. Nicholson*, 19 Vet. App. 541 (2006); *Sumner v. Principi*, 15 Vet. App. 256 (2001) (en banc). The Court-ordered relief creates the "material alteration of the legal relationship of the parties' necessary to permit an award of attorney's fees." *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health and Human Res.*, 532 U.S. 598, 604 (2001) (quoting *Garland Indep. Sch. Dist.*, 489 U.S. at 792).

Appellant is a party eligible to receive an award of reasonable fees and expenses because his net worth did not exceed \$2 million (two million dollars) at the time this civil action was filed. As an officer of the Court, the undersigned counsel hereby states that Appellant's net worth did not exceed \$2 million (two million dollars) at the time this civil action was filed, nor did he own any unincorporated business, partnership, corporation, association, unit of local government, or organization, of which the net worth exceeded \$7 million (seven million dollars) and which had more than 500 employees. See *Bazalo v. Brown*, 9 Vet. App. 304, 309, 311 (1996). In addition, Appellant submitted a Declaration of Financial Hardship, which was accepted for filing by the Court on June 10, 2016. See *Owens v. Brown*, 10 Vet. App. 65, 67 (1997).



**II. 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 Comm'n*, 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 and litigation positions were not substantially justified. As described in the "Procedural History," *supra*, the Court set aside and remanded the relevant part of the Board's February 22, 2016 decision because the Board erred by failing to adequately address whether Appellant was prescribed systemic therapy or treatment that is "like corticosteroids or other immunosuppressive drugs." This error, and others committed by the Board, had no reasonable basis in fact or in law.

In addition, the litigation position of the Secretary, defending the Board's decision in spite of the aforementioned errors, had no basis in fact or law.

**III. ITEMIZED STATEMENT OF SERVICES RENDERED AND AMOUNTS OF REASONABLE FEES AND EXPENSES**

An itemized statement of the services rendered and the reasonable fees and expenses for which Appellant seeks compensation is attached to this

application as Exhibit A. Included in Exhibit A is a certification that lead counsel has “(1) reviewed the combined billing statement and is satisfied that it accurately reflects the work performed by all counsel and (2) considered and eliminated all time that is excessive or redundant.” *Baldrige and Demel v. Nicholson*, 19 Vet. App. 227, 240 (2005). In the exercise of billing judgment, Appellant has eliminated **51.2** hours of attorney time and **10.2** hours of paralegal and law clerk time from this itemized statement and this fee petition.

Appellant seeks attorneys’ fees at the following rates for representation in the Court of Appeals for Veterans Claims:<sup>2</sup>

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<sup>2</sup> A rate in excess of \$125 per hour for the attorneys for Appellant in this case is justified based on the increase in the cost of living since the EAJA was amended in March 1996. See 28 U.S.C. § 2412(d)(2)(A)(ii). The \$125 attorney fee rate, adjusted for inflation for the Washington Metropolitan Area, was \$203.91 in September 2017, the month Appellant filed the initial brief. See Bureau of Labor Statistics Data, CPI-U (Exhibit B). This rate was calculated by using the CPI-U for the Washington-Baltimore-D.C.-MD-VA area for inflation between March 1996 and November 1996, and by using the CPI-U for the Washington-Baltimore-D.C.-MD-VA area for inflation between November 1996 and September 2017. See Exhibit B; *Mannino v. West*, 12 Vet. App. 242 (1999). See Exhibit B; *Mannino v. West*, 12 Vet. App. 242 (1999). The market rates for Appellant’s attorneys exceeded the requested rate per hour during the relevant time period. (Exhibit C)(Laffey Matrix); see *Covington v. District of Columbia*, 839 F. Supp. 894, 904-05 (D.D.C. 1993), *aff’d*, 58 F.3d 1101 (D.C. Cir. 1995). The prevailing market rate for the work done by paralegals and law clerks was at least \$154.00 from June 1, 2015 to May 31, 2016; \$157.00 from June 1, 2016 until May 31, 2017; at least \$164.00 from June 1, 2017, to May 31, 2018; and at least \$166.00 from June 1, 2018, to the present. See USAO Attorney’s Fees Matrix, 2015-2019 (Exhibit D) (“The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed 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), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore . . . area.”); see also

<u>Name</u>	<u>Rate</u>	<u>Hours</u>	<u>Fee Amount</u>
Amy F. Odom (2006 law graduate)	\$ 203.91	4.5	\$ 917.59
Caitlin M. Milo (2013 law graduate)	\$ 203.91	47.2	\$ 9,624.55
Jill C. Davenport (2014 law graduate)	\$ 203.91	22.9	\$ 4,669.54
Raymond J. Kim (2014 law graduate)	\$ 203.91	0.3	\$ 61.17
L. Michael Marquet (2017 law graduate)	\$ 203.91	2.7	\$ 550.56
Angela Nedd (paralegal)	\$ 154.00 \$ 157.00 \$ 164.00	0.3 1.3 0.4	\$ 46.20 \$ 204.10 \$ 65.60
Dorrie Popovski (paralegal)	\$ 154.00	0.2	\$ 30.80

**SUBTOTAL: \$ 16,170.11**

The reasonable expenses for which Appellant seeks compensation are:

<u>Nature of Expense</u>	<u>Expense Amount</u>
Federal Express and USPS Charges	\$ 33.88
Duplication Charges	\$ 35.00

**SUBTOTAL: \$ 68.88**

**TOTAL: \$ 16,238.99**

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*Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996); *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008).

WHEREFORE, Appellant respectfully requests that the Court award attorneys' fees and expenses in the total amount of **\$ 16,238.99**.

Respectfully submitted,

FOR APPELLANT:

Date: January 17, 2019

/s/ Caitlin M. Milo  
Caitlin M. Milo  
Barton F. Stichman  
National Veterans Legal  
Services Program  
1600 K Street, NW, Suite 500  
Washington, DC 20006-2833  
(202) 621-5726

Counsel for Appellant

**EXHIBIT A**

**NVLSP Staff Hours for Ronald L. Burton  
Vet. App. No. 16-2037**

Date: 4/12/2016 0.2 Staff: Raymond J. Kim  
Review Board of Veterans' Appeals ("BVA" or "Board") decision and identify issues to raise on appeal (0.1). Review and add detail regarding next steps to letter to client regarding Board decision and issues to raise on appeal (0.1).

Date: 4/12/2016 0.2 Staff: Dorrie Popovski  
Draft detailed letter to client regarding BVA decision and issues to raise on appeal and submit to attorney to finalize.

Date: 5/19/2016 0.1 Staff: Raymond J. Kim  
E-mail exchange with client regarding BVA decision and issues to raise on appeal and questions regarding same.

Date: 5/20/2016 0.3 Staff: Angela Nedd  
Draft letter to client regarding case initiation, with documents for client to execute and return, and submit to attorney for review.

Date: 5/23/2016 0.0 Staff: Raymond J. Kim  
Review and finalize letter to client regarding case initiation, with documents for client to execute and return **[0.1 eliminated in the exercise of billing judgment]**.

Date: 5/23/2016 0.0 Staff: Angela Nedd  
Edit and prepare mailing of letter to client regarding case initiation, with documents for client to execute and return; and update internal file **[0.1 eliminated in the exercise of billing judgment]**.

Date: 6/10/2016 0.7 Staff: Angela Nedd  
Review correspondence from client regarding appeal (0.3). Draft Notice of Appeal and Draft Notices of Appearance and submit to attorney for review (0.3).

Draft e-mail to Clerk of the Court, regarding case initiation, with attachments (0.1).

Date: 6/10/2016 0.0 Staff: Caitlin M. Milo  
Review and finalize Notice of Appeal and Notices of Appearance and draft e-mail to A. Nedd regarding the same **[0.1 eliminated in the exercise of billing judgment]**.

Date: 6/13/2016 0.1 Staff: Caitlin M. Milo  
E-mail exchange with B. Stichman and P. Berkshire regarding issues on appeal and legal advice regarding the same and evaluate same.

Date: 6/14/2016 0.2 Staff: Caitlin M. Milo  
Teleconference with client regarding the status of his case and his questions regarding the same.

Date: 6/21/2016 0.2 Staff: Angela Nedd  
Review correspondence from client regarding appeal. Draft e-mail to VA Office of General Counsel (“OGC”) regarding VA consent to release of information, with attachment.

Date: 6/29/2016 0.2 Staff: Angela Nedd  
Draft detailed letter to client regarding status of appeal, including projected timeline of appeal.

Date: 6/29/2016 0.0 Staff: Caitlin M. Milo  
Review and add detail to letter to client regarding status of the appeal, including informing client that a Notice of Appeal and Notices of Appearance have been filed with the Court, with enclosures **[0.2 eliminated in the exercise of billing judgment]**.

Date: 6/30/2016 0.0 Staff: Angela Nedd  
Finalize and prepare mailing of letter to client regarding case status **[0.2 eliminated in the exercise of billing judgment]**.

Date: 8/24/2016 2.1 Staff: Caitlin M. Milo

Outline Board Decision to prepare to review the Record Before the Agency for legibility and completeness ("RBA") (0.5). Review and analyze RBA pages 1-682 for legibility and completeness, and tab same to prepare to draft Rule 33 summary of issues (1.6).

Date: 8/25/2016 2.6 Staff: Caitlin M. Milo

Review and analyze RBA pages 682-1,509 for legibility and completeness, and tab same to prepare to draft Rule 33 summary of issues.

Date: 8/26/2016 0.7 Staff: Caitlin M. Milo

Review and analyze RBA pages 1,509-1,811 for legibility and completeness, and tab same to prepare to draft Rule 33 summary of issues.

Date: 8/29/2016 3.2 Staff: Caitlin M. Milo

Review and analyze RBA pages 1,811-2,605 (end) for legibility and completeness, and tab same to prepare to draft Rule 33 summary of issues (2.2); Begin drafting Rule 33 summary of the issues and review relevant law for inclusion in summary (1.0).

Date: 9/19/2016 0.6 Staff: Caitlin M. Milo

Review RBA for additional evidence to include in the Rule 33 summary of the issues (0.6); draft e-mail to A. Odom regarding Rule 33 summary of issues, with attachment **[0.2 eliminated in the exercise of billing judgment]**.

Date: 9/21/2016 0.0 Staff: Amy F. Odom

Review Rule 33 summary of issues, prepare inserts for same, and provide legal advice to C. Milo regarding same **[0.2 eliminated in the exercise of billing judgment]**.

Date: 9/21/2016 0.6 Staff: Caitlin M. Milo

Finalize Rule 33 summary of issues (0.2); review and analyze relevant records in order to prepare attachment to the Rule 33 summary of issues (0.2); draft e-mail to VA counsel and Central Legal Staff regarding Rule 33 summary of issues, with attachment (0.1); draft and finalize Certificate of Service (0.1), draft e-mail to A. Nedd regarding sending a letter to client regarding Rule 33



summary of the issues, with attachment, and review and finalize the letter to client **[0.1 eliminated in the exercise of billing judgment]**.

Date: 9/21/2016 0.2 Staff: Angela Nedd  
Draft letter to client regarding Rule 33 summary of issues and provide to attorney to finalize.

Date: 9/22/2016 0.0 Staff: Angela Nedd  
Prepare mailing of letter regarding Rule 33 summary of issues to client **[0.3 eliminated in the exercise of billing judgment]**.

Date: 9/27/2016 0.1 Staff: Caitlin M. Milo  
E-mail exchange with client regarding the Rule 33 summary of issues, Conference, and settlement authority.

Date: 10/6/2016 0.5 Staff: Caitlin M. Milo  
Leave detailed message for client regarding the upcoming Rule 33 Conference (0.1); Prepare for and participate in Rule 33 Conference (0.4); Draft e-mail to A. Odom regarding the Rule 33 Conference and VA counsel's position **[0.2 eliminated in the exercise of billing judgment]**. Leave voicemail for client regarding outcome of the Rule 33 conference **[0.1 eliminated in the exercise of billing judgment]**.

Date: 10/10/2016 0.5 Staff: Caitlin M. Milo  
Evaluate *Johnson v. McDonald*, 27 Vet. App. 497 (2016) and draft e-mail to VA counsel regarding motion for stay of proceedings pending the Federal Circuit's decision (0.3). Teleconference with client regarding the Rule 33 Conference and the motion for stay of proceedings pending *Johnson* (0.2).

Date: 10/18/2016 0.5 Staff: Caitlin M. Milo  
Draft joint motion for a stay of proceedings pending *Johnson* (0.2). E-mail exchange with VA counsel regarding motion for stay of proceedings and VA counsel's position regarding the same (0.1). Teleconference with the client regarding the status of the case (0.2).

Date: 10/19/2016 0.0 Staff: Caitlin M. Milo  
Review, edit and finalize joint motion for a stay of proceedings pending *Johnson*, 27 Vet. App. 497 **[0.2 eliminated in the exercise of billing judgment]**.

Date: 12/21/2016 0.0 Staff: Caitlin M. Milo  
Leave voicemail for client regarding status of the appeal **[0.1 eliminated in the exercise of billing judgment]**.

Date: 1/2/2017 0.1 Staff: Caitlin M. Milo  
E-mail exchange with client regarding status of the appeal.

Date: 7/18/2017 0.0 Staff: Caitlin M. Milo  
Review Court's July 18, 2017 Order lifting the stay of proceedings pending the Federal Circuit's decision in *Johnson*; update internal files regarding the same **[0.2 eliminated in the exercise of billing judgment]**.

Date: 8/2/2017 0.5 Staff: Caitlin M. Milo  
Prepare for and participate in teleconference with A. Odom regarding the Federal Circuit's decision in *Johnson v. Shulkin*, 862 F.3d 1351, 1354-56 (Fed. Cir. 2017) and the next steps in the appeal, and evaluate same (0.5) **[Additional 0.7 eliminated in the exercise of billing judgment]**.

Date: 8/7/2017 0.0 Staff: Caitlin M. Milo  
Draft e-mail to VA counsel regarding motion for extension of time to respond to Court's Order; draft and finalize motion for extension of time to respond to Court's Order **[Entire 0.3 eliminated in the exercise of billing judgment]**.

Date: 9/11/2017 0.8 Staff: Caitlin M. Milo  
Teleconference with client regarding issues on and status of appeal (0.2).  
Begin drafting outline for initial brief (0.6)

Date: 9/11/2017 0.0 Staff: Amy F. Odom  
Teleconference with and provide legal advice to C. Milo regarding issues to raise in brief **[0.5 eliminated in the exercise of billing judgment]**.

Date: 9/12/2017 3.2 Staff: Caitlin M. Milo  
Teleconference with the Court regarding the status of the appeal **[0.1 eliminated in the exercise of billing judgment]**. Draft statement of the facts section of brief (2.5). Begin draft of argument section, including draft of legal authority (0.7).

Date: 9/13/2017 2.0 Staff: Caitlin M. Milo  
Continue draft of introduction to argument and legal authority portion of the brief (1.0); Draft section II of the argument section of the brief (1.0).

Date: 9/14/2017 7.0 Staff: Caitlin M. Milo  
Add inserts to statement of facts to tailor to argument (1.0); draft summary of the argument (0.5); continue drafting section II of the argument section of the brief (1.5); Draft section I, subsections A and B, of the initial brief (2.5); Review, edit, and finalize brief draft (1.5); draft e-mail to A. Odom regarding the brief draft, with attachment **[0.1 eliminated in the exercise of billing judgment]**.

Date: 9/21/2017 0.2 Staff: Caitlin M. Milo  
E-mail exchange with A. Odom regarding the brief and her finalizing same **[0.1 eliminated in the exercise of billing judgment]**; teleconference with client regarding the initial brief and his questions regarding the same (0.2).

Date: 9/21/2017 1.6 Staff: Amy F. Odom  
Prepare paragraph insert to argument for C. Milo and finalize legal argument (0.5); add legal citation, update citations and prepare table of authorities for brief; finalize 16-page brief for C. Milo (1.1); prepare table of contents and finalize the brief **[0.3 eliminated in the exercise of billing judgment]**.

Date: 9/25/2017 0.0 Staff: Caitlin M. Milo  
Leave voicemail for client regarding his brief **[0.1 eliminated in the exercise of billing judgment]**.

Date: 9/26/2017 0.1 Staff: Angela Nedd  
Draft letter to client regarding initial brief and provide to attorney to finalize (0.1); Prepare mailing of letter to client **[0.2 eliminated in the exercise of billing judgment]**.

Date: 9/27/2017 0.0 Staff: Caitlin M. Milo  
Leave voicemail for client regarding his brief **[0.1 eliminated in the exercise of billing judgment]**.

Date: 1/3/2018 0.0 Staff: Amy F. Odom  
E-mail exchange with C. Milo regarding VA counsel's proposed bases for remand **[0.1 eliminated in the exercise of billing judgment]**.

Date: 1/3/2018 0.5 Staff: Caitlin M. Milo  
Review VA counsel's proposed bases for remand (0.3). E-mail exchange with VA counsel regarding the same (0.1). E-mail exchange with A. Odom regarding the same and evaluate same (0.1).

Date: 1/4/2018 0.1 Staff: Caitlin M. Milo  
Teleconference with client regarding VA's counsel's proposed bases for remand and e-mail exchange with VA counsel regarding the same.

Date: 1/9/2018 0.1 Staff: Caitlin M. Milo  
Teleconference with client regarding VA's proposed bases for remand, reply brief, and client's questions regarding the same.

Date: 1/10/2018 0.3 Staff: Angela Nedd  
Draft letter to client regarding Secretary's responsive brief and provide to attorney to finalize.

Date: 1/10/2018 0.0 Staff: Caitlin M. Milo  
Review and edit letter to client regarding Secretary's responsive brief, with attachment **[0.2 eliminated in the exercise of billing judgment]**.

Date: 1/17/2018 0.0 Staff: Caitlin M. Milo  
E-mail exchange with VA counsel regarding motion for extension of time to file reply brief; draft and finalize motion for extension of time to file reply brief **[Entire 0.3 eliminated in the exercise of billing judgment]**

Date: 1/17/2018 0.0 Staff: Amy F. Odom  
Review Secretary's brief and provide legal advice to C. Milo regarding issues to raise in reply brief **[0.2 eliminated in the exercise of billing judgment]**.

Date: 2/15/2018 1.1 Staff: Caitlin M. Milo  
Draft reply brief outline (1.1); draft e-mail to S. Tromble regarding the same **[0.1 eliminated in the exercise of billing judgment]**.

Date: 2/21/2018 0.0 Staff: Stacy A. Tromble  
Review briefing in case and C. Milo's outline for reply **[0.9 eliminated in the exercise of billing judgment]**; Teleconference with C. Milo regarding briefing strategy **[0.5 eliminated in the exercise of billing judgment]**.

Date: 2/21/2018 0.2 Staff: Caitlin M. Milo  
Prepare for and participate in teleconference with S. Tromble regarding issues to raise in reply brief, and finalize outline. (0.2)**[Additional 0.5 eliminated in the exercise of billing judgment]**

Date: 2/28/2018 5.7 Staff: Caitlin M. Milo  
Begin draft of reply brief, draft section II, introduction, and conclusion (1.7); draft section I of reply brief, finish draft (2.2); Review, add inserts to reply brief argument (1.8); draft e-mail to S. Tromble regarding the same **[0.1 eliminated in the exercise of billing judgment]**.

Date: 3/4/2018 0.3 Staff: Caitlin M. Milo  
Add insert to argument.

Date: 3/5/2018 3.2 Staff: Caitlin M. Milo  
Finalize inserts to reply brief argument (2.0) **[Additional 0.8 eliminated in the exercise of billing judgment]**; teleconference with client regarding contents of reply brief (0.2); teleconference with S. Tromble regarding reply brief **[0.2 eliminated in the exercise of billing judgment]**; review, edit, and finalize brief, to include style edits to add persuasive value and clarity to legal argument (0.7)**[Additional 0.5 eliminated in the exercise of billing judgment]**; update RBA and legal citations and draft table of authorities (0.3).

Date: 3/19/2018 0.5 Staff: Caitlin M. Milo  
Review and analyze Record of Proceedings for completeness.

Date: 4/30/2018 0.3 Staff: Caitlin M. Milo  
Draft motion for oral argument; Draft e-mail to A. Odom regarding the same (0.3) **[Additional 0.2 eliminated in the exercise of billing judgment]**.

Date: 5/2/2018 0.0 Staff: Amy F. Odom  
Review motions and provide legal advice to C. Milo regarding same **[0.3 eliminated in the exercise of billing judgment]**.

Date: 5/2/2018 0.0 Staff: Caitlin M. Milo  
Edit motion for oral argument based on legal advice from A. Odom **[0.2 eliminated in the exercise of billing judgment]**.

Date: 5/3/2018 0.3 Staff: Caitlin M. Milo  
Leave detailed voicemail for client regarding status of the case, including information regarding the oral argument and panel decision (0.1); finalize motion for oral argument (0.2).

Date: 5/3/2018 0.0 Staff: Barton F. Stichman  
Review reply brief to prepare to assist with preparations for oral argument **[0.3 eliminated in the exercise of billing judgment]**.

Date: 5/7/2018 0.2 Staff: Caitlin M. Milo  
Leave voicemail for client regarding status of the case **[0.1 eliminated in the exercise of billing judgment]**; Teleconference with client regarding the status of the case and his questions regarding the same (0.2).

Date: 5/14/2018 0.2 Staff: Caitlin M. Milo  
Teleconference with client regarding the Court's Order scheduling the oral argument and his questions regarding the same.

Date: 6/14/2018 4.3 Staff: Jill C. Davenport

Review and outline tabbed RBA and parties' briefs in preparation for oral argument (1.0)[**Additional 1.0 eliminated in the exercise of billing judgment**]; Review *Johnson v. Shulkin*, *Warren v. McDonald*, the oral argument record in *Johnson*, the M21-1, and proposed amended regulations for skin disabilities in preparation for oral argument (1.8); Draft outline of oral argument (1.5).

Date: 6/14/2018 0.0 Staff: Richard V. Spataro  
Conference with J. Davenport and research regarding status of regulations. [**0.1 eliminated in the exercise of billing judgment**]

Date: 6/18/2018 1.9 Staff: Jill C. Davenport  
Teleconference with C. Milo regarding arguments to raise at oral argument, and evaluate same (0.8). Continue drafting outline of arguments for oral argument (1.1).

Date: 6/18/2018 0.0 Staff: Caitlin M. Milo  
Prepare for and participate in meeting with J. Davenport regarding arguments to raise at oral argument [**1.5 eliminated in the exercise of billing judgment**]; conduct follow-up research to assist J. Davenport in drafting outline of arguments for oral argument [**0.4 eliminated in the exercise of billing judgment**].

Date: 6/28/2018 0.0 Staff: Jill C. Davenport  
Email exchange with A. Odom regarding oral argument outline [**0.1 eliminated in the exercise of billing judgment**].

Date: 6/29/2018 0.0 Staff: Caitlin M. Milo  
E-mail exchange with J. Davenport and A. Odom regarding moot arguments to prepare for oral argument [**0.1 eliminated in the exercise of billing judgment**].

Date: 7/3/2018 0.0 Staff: Amy F. Odom  
Review parties' briefs and conference with and provide legal advice to J. Davenport regarding issues to raise during oral argument [**1.9 eliminated in the exercise of billing judgment**].

Date: 7/3/2018 2.8 Staff: Jill C. Davenport  
Teleconference with C. Milo regarding oral argument outline **[0.2 eliminated in the exercise of billing judgment]**; Review and continue drafting oral argument outline (1.0); Conference with and legal advice from A. Odom, C. Milo, and S. Tromble regarding oral argument, and evaluate same(1.8); Prepare binders for oral argument **[0.4 eliminated in the exercise of billing judgment]**.

Date: 7/3/2018 0.0 Staff: Caitlin M. Milo  
Prepare for oral argument, review materials, teleconference meeting with A. Odom and J. Davenport regarding the same **[3.3 eliminated in the exercise of billing judgment]**.

Date: 7/3/2018 0.0 Staff: Stacy A. Tromble  
Prepare for and participate in initial meeting regarding oral argument **[0.6 eliminated in the exercise of billing judgment]**.

Date: 7/3/2018 0.0 Staff: L. Michael Marquet  
Conference with J. Davenport in preparation for oral argument **[0.2 eliminated in the exercise of billing judgment]**.

Date: 7/3/2018 0.0 Staff: Sarah Lee  
Conference with J. Davenport to assist in preparation for oral argument **[0.2 eliminated in the exercise of billing judgment]**.

Date: 7/5/2018 0.0 Staff: Caitlin M. Milo  
Review RBA for record evidence to add persuasive value to the oral argument. **[0.2 eliminated in the exercise of billing judgment]**

Date: 7/5/2018 1.9 Staff: Jill C. Davenport  
Review oral argument in *Gray v. McDonald* in preparation for oral argument **[1.0 eliminated in the exercise of billing judgment]**; Prepare introductory statement and continue preparing outline of argument, and practice oral argument (1.6); Review RBA regarding medication usage and symptoms for preparation for oral argument (0.3).



Date: 7/5/2018 1.0 Staff: L. Michael Marquet

Review RBA for record evidence regarding client's medications to add persuasive value to the oral argument, per J. Davenport (1.0) **[Additional 2.0 eliminated in the exercise of billing judgment]**. Draft e-mail to J. Davenport regarding the same **[0.2 eliminated in the exercise of billing judgment]**.

Date: 7/5/2018 0.0 Staff: Sarah Lee

Review RBA for record evidence regarding client's medications to add persuasive value to the oral argument and draft chart with corresponding information, including the name of the medication, what it was used to treat, when and for how long it was taken **[6.4 eliminated in the exercise of billing judgment]** .

Date: 7/6/2018 2.5 Staff: Jill C. Davenport

Prepare for and participate in moot oral argument (1.7); Review VA clinician's guide, update introduction and conclusion for oral argument, and update oral argument outline (0.8).

Date: 7/6/2018 1.4 Staff: Amy F. Odom

Prepare for and participate in first moot argument and provide legal advice to J. Davenport regarding argument (1.4)**[Additional 0.5 eliminated in the exercise of billing judgment]**.

Date: 7/6/2018 0.0 Staff: Sarah Lee

Review, edit, and finalize medication chart, including reviewing the RBA for page number accuracy **[2.8 eliminated in the exercise of billing judgment]**.

Date: 7/6/2018 0.0 Staff: Caitlin M. Milo

Prepare for and participate in moot oral argument with J. Davenport, A. Odom, and S. Tromble **[1.6 eliminated in the exercise of billing judgment]**.

Date: 7/6/2018 0.0 Staff: Stacy A. Tromble

Prepare for and participate in moot oral argument with J. Davenport, A. Odom, and C. Milo **[1.4 eliminated in the exercise of billing judgment]**.

Date: 7/9/2018 1.1 Staff: Jill C. Davenport

E-mail exchange with Clerk's office regarding oral argument (0.1). Rehearse oral argument (1.0). Review RBA regarding side effects of medications in preparation for oral argument **[0.7 eliminated in the exercise of billing judgment]**.

Date: 7/10/2018 1.0 Staff: Amy F. Odom

Prepare for and participate in second moot argument and provide legal advice to J. Davenport regarding same (1.0)**[Additional 0.2 eliminated in the exercise of billing judgment]**; prepare inserts to final outline of oral argument **[0.2 eliminated in the exercise of billing judgment]**.

Date: 7/10/2018 0.0 Staff: Caitlin M. Milo

Review Court's rules for oral argument and prepare for oral argument **[1.2 eliminated in the exercise of billing judgment]**. Prepare for and participate in meeting with J. Davenport, S. Tromble, and A. Odom for moot argument, evaluate same **[1.6 eliminated in the exercise of billing judgment]**; Analyze relevant records for oral argument folder **[0.5 eliminated in the exercise of billing judgment]**.

Date: 7/10/2018 3.5 Staff: Jill C. Davenport

Conference with C. Milo regarding oral argument strategy **[0.8 eliminated in the exercise of billing judgment]**; Participate in second moot with S. Tromble, A. Odom, and C. Milo (1.0); Update oral argument outline (0.2); Review record, additional relevant case law, briefs, and VA clinician's guide in preparation for oral argument (1.0).

Date: 7/10/2018 0.0 Staff: Stacy A. Tromble

Prepare for and participate in meeting with J. Davenport, C. Milo, and A. Odom for moot argument **[0.4 eliminated in the exercise of billing judgment]**.

Date: 7/11/2018 0.5 Staff: Amy F. Odom

Participate in final moot argument (0.5); travel to/from CAVC and attend oral argument **[2.1 eliminated in the exercise of billing judgment]**.

Date: 7/11/2018 4.0 Staff: Jill C. Davenport

Final review of RBA, briefs, and relevant case law, and conference with C. Milo regarding oral argument strategy **[1.8 eliminated in the exercise of billing judgment]**; Prepare for and participate in final moot (0.6); Travel to Court and visit library (0.7); Conference with G. Block and prepare for oral argument (0.8); Participate in oral argument (1.0); Travel from Court (0.4); Oral argument de-briefing (0.5).

Date: 7/11/2018 3.3 Staff: Caitlin M. Milo

Conference with J. Davenport, continue to prepare for oral argument **[1.5 eliminated in the exercise of billing judgment]**; print and prepare documents for oral argument binder and tab binder **[0.5 eliminated in the exercise of billing judgment]**. Meet with J. Davenport, A. Odom, and S. Tromble regarding final oral argument moot **[0.6 eliminated in the exercise of billing judgment]**. Teleconference with client regarding oral argument and his questions regarding the same (0.3); Travel to Court and visit library for oral argument (0.7); Participate in meeting with Greg Block and prepare for oral argument in courtroom (0.8) Participate in oral argument (1.0); travel back to office (0.4); Oral argument debrief with J. Davenport, A. Odom, and S. Tromble **[0.5 eliminated in the exercise of billing judgment]**; teleconference with client regarding oral argument (0.1).

Date: 7/11/2018 0.0 Staff: Richard V. Spataro

Conference with J. Davenport regarding preparation for oral argument **[0.2 eliminated in the exercise of billing judgment]**.

Date: 7/11/2018 0.0 Staff: Stacy A. Tromble

Prepare for and participate in meeting with J. Davenport, C. Milo, and A. Odom regarding argument **[0.3 eliminated in the exercise of billing judgment]**.

Date: 7/16/2018 0.0 Staff: Caitlin M. Milo

Review final rule regarding skin ratings regulations to determine next steps on appeal **[0.2 eliminated in the exercise of billing judgment]**.

Date: 7/16/2018 0.1 Staff: Jill C. Davenport

Review final rule regarding skin ratings regulations and analyze for potential need to submit supplemental authorities to the Court.

Date: 7/16/2018 0.0 Staff: Amy F. Odom

Review and analyze Federal Register regarding final rule and provide legal advice to J. Davenport and C. Milo **[0.4 eliminated in the exercise of billing judgment]**.

Date: 7/24/2018 0.3 Staff: Jill C. Davenport

Teleconference with VA counsel regarding VA's motion for leave (0.1); Conference with S. Tromble, A. Odom, and C. Milo regarding VA's motion for leave **[0.5 eliminated in the exercise of billing judgment]**; E-mail exchange with VA counsel regarding client's position on motion (0.1); Review VA's motion for leave in order to provide update to client (0.1).

Date: 7/24/2018 0.0 Staff: Caitlin M. Milo

Review VA counsel's supplemental authority letter and motion for leave. E-mail exchange with J. Davenport and A. Odom regarding VA counsel's request for a position on the motion for leave **[Entire 0.2 eliminated in the exercise of billing judgment]**

Date: 7/24/2018 0.0 Staff: Amy F. Odom

Conferences with and provide legal advice to S. Tromble, J. Davenport, and C. Milo regarding position to Secretary's motion for leave to clarify position at oral argument **[0.8 eliminated in the exercise of billing judgment]**.

Date: 7/25/2018 0.0 Staff: Amy F. Odom

Conference with and provide legal advice to S. Tromble regarding response to Secretary's motion **[0.5 eliminated in the exercise of billing judgment]**.

Date: 7/25/2018 0.0 Staff: Caitlin M. Milo

Review e-mails and teleconference with J. Davenport to prepare for meeting regarding VA counsel's motion for leave for clarification **[0.2 eliminated in the exercise of billing judgment]**.

Date: 7/30/2018 0.3 Staff: Jill C. Davenport

Conference with S. Tromble, A. Odom, and C. Milo regarding response to Secretary's motion and evaluate same.

Date: 7/30/2018 0.0 Staff: Caitlin M. Milo  
Teleconference with A. Odom, J. Davenport, and S. Tromble regarding the VA's Motion for Leave for Clarification **[0.2 eliminated in the exercise of billing judgment]**.

Date: 7/30/2018 0.0 Staff: Amy F. Odom  
Conference with and legal advice to S. Tromble, J. Davenport, C. Milo regarding response to Secretary's motion **[0.4 eliminated in the exercise of billing judgment]**.

Date: 7/30/2018 0.0 Staff: Stacy A. Tromble  
Prepare for and participate in teleconference with A. Odom, J. Davenport, and C. Milo regarding response to Secretary's motion **[0.5 eliminated in the exercise of billing judgment]**

Date: 7/31/2018 0.0 Staff: Jill C. Davenport  
Draft motion in response to Secretary's motion for leave. **[0.7 eliminated in the exercise of billing judgment]**

Date: 8/1/2018 0.0 Staff: Caitlin M. Milo  
Review and add inserts to J. Davenport's motion in response to Secretary's motion for leave **[0.2 eliminated in the exercise of billing judgment]**.

Date: 8/1/2018 0.0 Staff: Jill C. Davenport  
Review and incorporate C. Milo's inserts to response to Secretary's motion for leave. **[0.1 eliminated in the exercise of billing judgment]**

Date: 8/1/2018 0.0 Staff: Stacy A. Tromble  
Draft inserts to response to Secretary's motion for leave and discussion the same with A. Odom **[0.9 eliminated in the exercise of billing judgment]**.

Date: 8/6/2018 0.0 Staff: Amy F. Odom  
Review motion in response to Secretary's motion for leave and prepare inserts for same **[0.2 eliminated in the exercise of billing judgment]**.

Date: 8/7/2018 0.0 Staff: Jill C. Davenport  
Add inserts to response to Secretary's motion, and finalize same. **[0.2 eliminated in the exercise of billing judgment]**

Date: 8/8/2018 0.0 Staff: Jill C. Davenport  
Review Court's Order regarding Secretary's motion for leave, and Appellant's response in order to determine next steps in the appeal. **[0.1 eliminated in the exercise of billing judgment]**

Date: 8/13/2018 0.2 Staff: Jill C. Davenport  
Review and analyze Secretary's clarification in order to determine next steps in the appeal.

Date: 8/13/2018 0.0 Staff: Amy F. Odom  
Review Secretary's clarification and provide legal advice to S. Tromble and J. Davenport regarding same **[0.2 eliminated in the exercise of billing judgment]**.

Date: 8/15/2018 0.0 Staff: Amy F. Odom  
Teleconference with and provide additional legal advice to S. Tromble regarding Secretary's clarification **[0.2 eliminated in the exercise of billing judgment]**.

Date: 8/16/2018 0.0 Staff: Stacy A. Tromble  
Prepare for and participate in conference with J. Davenport regarding Secretary's motion and clarification regarding federal register **[0.3 eliminated in the exercise of billing judgment]**.

Date: 8/16/2018 0.0 Staff: Jill C. Davenport  
Review and analyze Secretary's clarification and conference with S. Tromble regarding next steps in the appeal **[0.4 eliminated in the exercise of billing judgment]**.

Date: 9/11/2018 0.0 Staff: Caitlin M. Milo  
Teleconference with client regarding status of his case. **[0.1 eliminated in the exercise of billing judgment]**

Date: 9/12/2018 0.2 Staff: Caitlin M. Milo  
Teleconference with client regarding status of the case and his questions regarding the same and next steps (0.2).

Date: 9/13/2018 0.0 Staff: L. Michael Marquet  
Draft Notice of Withdrawal for J. Davenport **[0.1 eliminated in the exercise of billing judgment]**

Date: 9/17/2018 0.0 Staff: Caitlin M. Milo  
Review and finalize Notice of Withdrawal for J. Davenport and Notice of Appearance as lead counsel **[0.2 eliminated in the exercise of billing judgment]**.

Date: 10/2/2018 0.9 Staff: Caitlin M. Milo  
Detailed review of Opinion in order to provide legal advice to client (0.7); teleconference with client regarding Opinion and his questions regarding the same (0.2).

Date: 1/7/2019 1.7 Staff: L. Michael Marquet  
Draft application for reasonable attorneys' fees and expenses under the Equal Access to Justice Act ("EAJA"), including recitation of relevant procedural history (0.8); Prepare list of itemized hours to be attached as exhibit to EAJA application (0.9).

Date: 1/8/2019 2.8 Staff: Caitlin Milo  
Review and edit list of itemized hours to be attached as exhibit to EAJA application and eliminate hours in the interest of billing judgment (2.8)

Date: 1/10/2019 1.0 Staff: Caitlin Milo  
Review, edit, and add insertions to application for reasonable attorneys' fees and expenses under the EAJA (1.0) **[Additional 2.0 eliminated in the exercise of billing judgment]**.

Date: 1/16/2019 0.0 Staff: Christine Cote Hill  
Review and add inserts to application. Review itemized list and eliminate more

hours than recommended in billing judgment and legal advice to C. Milo regarding same **[0.9 eliminated in the exercise of billing judgment]**.

Date: 1/16/2019 0.8 Staff: Caitlin Milo

Draft detailed letter to client regarding close of case and recommendations regarding JMR (0.8). Finalize application, to include adding detail to application and itemized list **[1.2 eliminated in the exercise of billing judgment]**.

### **CERTIFICATION**

As lead counsel in this appeal, I have reviewed the combined billing statement above and I am satisfied that it accurately reflects the work performed by all counsel and others entitled to be included above and I have considered and eliminated all time that I believe could be considered excessive or redundant.

Date: January 17, 2019

/s/ Caitlin M. Milo  
Caitlin M. Milo



**Exhibit B**

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### CPI-All Urban Consumers (Current Series)

**Series Id:** CUURS35ASA0, CUUSS35ASA0  
 Not Seasonally Adjusted  
**Series Title:** All items in Washington-Arlington-Alexandria, DC-VA-MD-WV, all urban consumers, not seasonally adjusted  
**Area:** Washington-Arlington-Alexandria, DC-VA-MD-WV  
**Item:** All items  
**Base Period:** 1982-84=100

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Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996	156.8		158.4		159.0		160.1		160.8		161.2		159.6	158.3	160.8
1997	161.6		161.9		162.1		162.9		163.6		161.8		162.4	162.0	162.8
1998	162.5		163.5		163.6		164.9		165.2		164.5				
1999	165.4		165.9		167.0		168.3		169.8		169.1				
2000	169.8		173.2		172.5		174.8		175.0		175.3				
2001	175.9		177.2		178.0		179.2		180.9		179.5				
2002	180.0		181.9		183.6		184.2		185.8		185.4				
2003	186.3		188.8		188.7		190.2		190.8		190.4				
2004	190.7		192.8		194.1		195.4		196.5		197.2				
2005	198.2		200.4		201.8		202.8		205.6		204.3				
2006	205.6		206.4		209.1		211.4		211.2		210.1				
2007	211.101		214.455		216.097		217.198		218.457		218.331				
2008	220.587		222.554		224.525		228.918		228.871		223.569				
2009	221.830		222.630		223.583		226.084		227.181		226.533				
2010	227.440		228.480		228.628		228.432		230.612		230.531				
2011	232.770		235.182		237.348		238.191		238.725		238.175				
2012	238.994		242.235		242.446		241.744		244.720		243.199				
2013	243.473		245.477		245.499		246.178		247.838		247.264				
2014	247.679		249.591		250.443		250.326		250.634		249.972				
2015	247.127		249.985		251.825		250.992		252.376		251.327		250.664	249.828	251.500
2016	250.807		252.718		254.850		254.305		253.513		253.989		253.422	253.049	253.795
2017	254.495		255.435		255.502		255.518		257.816		257.872		256.221	255.332	257.110
2018	260.219		260.026		261.770		262.016		263.056		261.120			260.903	

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**Exhibit C**

**LAFFEY MATRIX -- 2003-2014**  
**(2009-10 rates were unchanged from 2008-09 rates)**

Experience	Years (Rate for June 1 - May 31, based on prior year's CPI-U)										
	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14
20+ years	380	390	405	425	440	465	465	475	495	505	510
11-19 years	335	345	360	375	390	410	410	420	435	445	450
8-10 years	270	280	290	305	315	330	330	335	350	355	360
4-7 years	220	225	235	245	255	270	270	275	285	290	295
1-3 years	180	185	195	205	215	225	225	230	240	245	250
Paralegals & Law Clerks	105	110	115	120	125	130	130	135	140	145	145

*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 in 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 by the District Court 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 column headed "Experience" refers to the years following the attorney's graduation from law school. The various "brackets" 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). *See Laffey*, 572 F. Supp. at 371.
3. The hourly rates approved by the District Court 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). Lower federal courts in the District of Columbia have used this updated *Laffey* Matrix when determining whether fee awards under fee-shifting statutes are reasonable. *See, e.g., Blackman v. District of Columbia*, 59 F. Supp. 2d 37, 43 (D.D.C. 1999); *Jefferson v. Milvets System Technology, Inc.*, 986 F. Supp. 6, 11 (D.D.C. 1997); *Ralph Hoar & Associates v. Nat'l Highway Transportation Safety Admin.*, 985 F. Supp. 1, 9-10 n.3 (D.D.C. 1997); *Martini v. Fed. Nat'l Mtg Ass'n*, 977 F. Supp. 482, 485 n.2 (D.D.C. 1997); *Park v. Howard University*, 881 F. Supp. 653, 654 (D.D.C. 1995).

**Exhibit D**

**USAO ATTORNEY'S FEES MATRIX — 2015-2019***Revised Methodology starting with 2015-2016 Year*

Years (Hourly Rate for June 1 – May 31, based on change in PPI-OL since January 2011)

Experience	2015-16	2016-17	2017-18	2018-19
31+ years	568	581	602	613
21-30 years	530	543	563	572
16-20 years	504	516	536	544
11-15 years	455	465	483	491
8-10 years	386	395	410	417
6-7 years	332	339	352	358
4-5 years	325	332	346	351
2-3 years	315	322	334	340
Less than 2 years	284	291	302	307
Paralegals & Law Clerks	154	157	164	166

*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 (USAO) to evaluate requests for attorney's fees in civil cases in District of Columbia courts. The matrix is intended for use 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 has not been adopted by the Department of Justice generally for use outside the District of Columbia, or by other Department of Justice components, or in other kinds of cases. The matrix does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. A "reasonable fee" is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. *See, e.g., Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Consistent with that definition, the hourly rates in the above matrix were calculated from average hourly rates reported in 2011 survey data for the D.C. metropolitan area, which rates were adjusted for inflation with the Producer Price Index-Office of Lawyers (PPI-OL) index. The survey data comes from ALM Legal Intelligence's 2010 & 2011 Survey of Law Firm Economics. The PPI-OL index is available at <http://www.bls.gov/ppi>. On that page, under "PPI Databases," and "Industry Data (Producer Price Index - PPI)," select either "one screen" or "multi-screen" and in the resulting window use "industry code" 541110 for "Offices of Lawyers" and "product code" 541110541110 for "Offices of Lawyers." The average hourly rates from the 2011 survey data are multiplied by the PPI-OL index for May in the year of the update, divided by 176.6, which is the PPI-OL index for January 2011, the month of the survey data, and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
3. The PPI-OL index has been adopted as the inflator for hourly rates because it better reflects the mix of legal services that law firms collectively offer, as opposed to the legal services that typical consumers use, which is what the CPI-

Legal Services index measures. Although it is a national index, and not a local one, *cf. Eley v. District of Columbia*, 793 F.3d 97, 102 (D.C. Cir. 2015) (noting criticism of national inflation index), the PPI-OL index has historically been generous relative to other possibly applicable inflation indexes, and so its use should minimize disputes about whether the inflator is sufficient.

4. The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed 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), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore (DC-MD-VA-WV) area. Because the USAO rates for the years 2014-15 and earlier have been generally accepted as reasonable by courts in the District of Columbia, *see* note 9 below, the USAO rates for those years will remain the same as previously published on the USAO's public website. That is, the USAO rates for years prior to and including 2014-15 remain based on the prior methodology, *i.e.*, the original *Laffey* Matrix updated by the CPI-U for the Washington-Baltimore area. *See Citizens for Responsibility & Ethics in Washington v. Dep't of Justice*, 142 F. Supp. 3d 1 (D.D.C. 2015) and Declaration of Dr. Laura A. Malowane filed therein on Sept. 22, 2015 (Civ. Action No. 12-1491, ECF No. 46-1) (confirming that the USAO rates for 2014-15 computed using prior methodology are reasonable).
5. Although the USAO will not issue recalculated *Laffey* Matrices for past years using the new methodology, it will not oppose the use of that methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods prior to June 2015, provided that methodology is used consistently to calculate the entire fee amount. Similarly, although the USAO will no longer issue an updated *Laffey* Matrix computed using the prior methodology, it will not oppose the use of the prior methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods after May 2015, provided that methodology is used consistently to calculate the entire fee amount.
6. The various "brackets" in the column headed "Experience" refer to the attorney's years of experience practicing law. Normally, an attorney's experience will be calculated starting from the attorney's graduation from law school. Thus, the "Less than 2 years" bracket is generally applicable to attorneys in their first and second years after graduation from law school, and the "2-3 years" bracket generally becomes applicable on the second anniversary of the attorney's graduation (*i.e.*, at the beginning of the third year following law school). *See Laffey*, 572 F. Supp. at 371. An adjustment may be necessary, however, if the attorney's admission to the bar was significantly delayed or the attorney did not otherwise follow a typical career progression. *See, e.g., EPIC v. Dep't of Homeland Sec.*, 999 F. Supp. 2d 61, 70-71 (D.D.C. 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). The various experience levels were selected by relying on the levels in the ALM Legal Intelligence 2011 survey data. Although finer gradations in experience level might yield different estimates of market rates, it is important to have statistically sufficient sample sizes for each experience level. The experience categories in the current USAO Matrix are based on statistically significant sample sizes for each experience level.
7. ALM Legal Intelligence's 2011 survey data does not include rates for paralegals and law clerks. Unless and until reliable survey data about actual paralegal/law clerk rates in the D.C. metropolitan area become available, the USAO will compute the hourly rate for Paralegals & Law Clerks using the most recent historical rate from the USAO's former *Laffey* Matrix (*i.e.*, \$150 for 2014-15) updated with the PPI-OL index. The formula is \$150 multiplied by the PPI-OL index for May in the year of the update, divided by 194.3 (the PPI-OL index for May 2014), and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
8. The USAO anticipates periodically revising the above matrix if more recent reliable survey data becomes available, especially data specific to the D.C. market, and in the interim years updating the most recent survey data with the PPI-OL index, or a comparable index for the District of Columbia if such a locality-specific index becomes available.
9. 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 USAO 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 USAO's *Laffey* Matrix, rather than the so-called "*Salazar* Matrix" (also known as the "LSI Matrix" or the "Enhanced *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., *Joaquin v. Friendship Pub. Charter Sch.*, 188 F. Supp. 3d 1 (D.D.C. 2016); *Prunty v. Vivendi*, 195 F. Supp. 3d 107 (D.D.C. 2016); *CREW v. U.S. Dep't of Justice*, 142 F. Supp. 3d 1 (D.D.C. 2015); *McAllister v. District of Columbia*, 21 F. Supp. 3d 94 (D.D.C. 2014); *Embassy of Fed. Republic of Nigeria v. Ugwuonye*, 297 F.R.D. 4, 15 (D.D.C. 2013); *Berke v. Bureau of Prisons*, 942 F. Supp. 2d 71, 77 (D.D.C. 2013); *Fisher v. Friendship Pub. Charter Sch.*, 880 F. Supp. 2d 149, 154-55 (D.D.C. 2012); *Sykes v. District of Columbia*, 870 F. Supp. 2d 86, 93-96 (D.D.C. 2012); *Heller v. District of Columbia*, 832 F. Supp. 2d 32, 40-49 (D.D.C. 2011); *Hayes v. D.C. Public Schools*, 815 F. Supp. 2d 134, 142-43 (D.D.C. 2011); *Queen Anne's Conservation Ass'n v. Dep't of State*, 800 F. Supp. 2d 195, 200-01 (D.D.C. 2011); *Woodland v. Viacom, Inc.*, 255 F.R.D. 278, 279-80 (D.D.C. 2008); *American Lands Alliance v. Norton*, 525 F. Supp. 2d 135, 148-50 (D.D.C. 2007). But see, e.g., *Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 13-15 (D.D.C. 2000). Since initial publication of the instant USAO Matrix in 2015, numerous courts similarly have employed the USAO Matrix rather than the *Salazar* Matrix for fees incurred since 2015. E.g., *Electronic Privacy Information Center v. United States Drug Enforcement Agency*, 266 F. Supp. 3d 162, 171 (D.D.C. 2017) ("After examining the case law and the supporting evidence offered by both parties, the Court is persuaded that the updated USAO matrix, which covers billing rates from 2015 to 2017, is the most suitable choice here.") (requiring recalculation of fees that applicant had computed according to *Salazar* Matrix); *Clemente v. FBI*, No. 08-1252 (BJR) (D.D.C. Mar. 24, 2017), 2017 WL 3669617, at \*5 (applying USAO Matrix, as it is "based on much more current data than the *Salazar* Matrix"); *Gatore v. United States Dep't of Homeland Security*, 286 F. Supp. 3d 25, 37 (D.D.C. 2017) (although plaintiff had submitted a "'great deal of evidence regarding [the] prevailing market rates for complex federal litigation' to demonstrate that its requested [*Salazar*] rates are entitled to a presumption of reasonableness, . . . the Court nonetheless concludes that the defendant has rebutted that presumption and shown that the current USAO Matrix is the more accurate matrix for estimating the prevailing rates for complex federal litigation in this District"); *DL v. District of Columbia*, 267 F. Supp. 3d 55, 70 (D.D.C. 2017) ("the USAO Matrix ha[s] more indicia of reliability and more accurately represents prevailing market rates" than the *Salazar* Matrix). The USAO contends that the *Salazar* Matrix is fundamentally flawed, does not use the *Salazar* Matrix to determine whether fee awards under fee-shifting statutes are reasonable, and will not consent to pay hourly rates calculated with the methodology on which that matrix is based. The United States recently submitted an appellate brief that further explains the reliability of the USAO Matrix vis-à-vis the *Salazar* matrix. See Br. for the United States as *Amicus Curiae* Supporting Appellees, *DL v. District of Columbia*, No. 18-7004 (D.C. Cir. filed July 20, 2018).