

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

ROBERT W. MOODY,

Appellant,

v.

№ 16-1707

ROBERT L. WILKIE,
Secretary of Veterans Affairs,

Appellee.

**APPLICATION FOR AN AWARD OF ATTORNEY FEES AND EXPENSES
UNDER 28 U.S.C. § 2412(d)**

Pursuant to the Equal Access to Justice Act (“EAJA”), as codified at 28 U.S.C. § 2412(d), the appellant petitions this Court for an award of reasonable attorney fees and expenses in the amount of \$13,175.63 for litigating the merits of this appeal and drafting this application.

I. THE APPELLANT MEETS THE STATUTORY REQUIREMENTS FOR AN AWARD OF ATTORNEY’S FEES AND EXPENSES

In order for a party to be eligible for an award of attorney’s fees and expenses, (1) the party must be a “prevailing party and [be] eligible to receive an award under this subsection”; (2) the position of the United States must not have been “substantially justified”; and (3) there must be no special circumstances which would make an award unjust. *See* 28 U.S.C. § 2412(d).

A. Prevailing Party

Appellant is a prevailing party because this Court, in a panel decision, vacated in full the January 19, 2016 decision of the Board of Veterans’ Appeals here on appeal based upon findings of administrative error. *See Buckhannon Board and Care Home v. West Virginia Dep’t of Health and Human Services*, 532 U.S. 598 (2001); *see*

also Per Curium Opinion, *Moody v. Wilkie*, No. 16-1707, slip op. at 15 (Nov. 8, 2018).

B. Substantial Justification

The government's position precipitating this litigation was not "substantially justified." Particularly, the government's administrative position, as taken by the Board and the Secretary on appeal, had no reasonable basis in either law or fact. *See Calma v. West*, 12 Vet.App. 66, 69 (1998). This was evidenced by the Court's finding of administrative error in the form of the Board's failure to ensure compliance with VA's duty to assist and its vacating of the Board's decision regarding entitlement to a total disability rating based on individual unemployability as inextricably intertwined with the other remanded claims. *See Per Curium Opinion, Moody v. Wilkie*, No. 16-1707 (Nov. 8, 2018).

C. Special Circumstances

There is no reason or special circumstance to deny this application. *See Martin v. Heckler*, 772 F.2d 1145, 1150 (11th Cir. 1985); *Taylor v. United States*, 815 F.2d 249, 253 (3d Cir. 1987).

D. Net Worth

Appellant is an individual whose net worth did not exceed \$2,000,000.00 on the date this action was filed. *See Exhibit E*. Therefore, Appellant is eligible to receive this award. *See 28 U.S.C. § 2412(d)(2)(B)(i)-(ii)*.

II. BILLING JUDGMENT AND ATTORNEY RATE CALCULATION

The fees and expenses requested are reasonable and should be awarded. *See* 28 U.S.C. § 2412(d)(1)(A), (d)(2)(A). The attorney¹ expended time litigating the merits of this case. That time was limited to actions necessary to litigate this matter. *See* Exhibit A. In the exercise of sound billing judgment, no payment is requested for time spent on purely administrative or clerical matters such as copying, filing, or research into matters unrelated to the disposition of the case. Time spent for any work related to unsuccessful claims is omitted.²

Attorney Todd M. Wesche graduated from Suffolk University Law School in 2002 and was admitted to practice law in 2003. *See* Exhibit B. The Laffey Matrix³ establishes

¹ Mr. Kenneth Carpenter, co-counsel in this appeal, opted to not submit any time or expenses for consideration in this application.

² For the sake of clarity, during the period from the start of the representation through December 31, 2017, Mr. Wesche was employed by the Law Offices of LaVan and Neidenberg, P.A. On January 1, 2018, Mr. Wesche was employed solely by Vetus Legal LLC. The fee agreement with Appellant shows that Mr. Wesche, and not the prior firm, is his lead representative throughout this matter. *See* Fee Agreement, *Moody v. Wilkie*, No. 16-1707 (filed Mar. 31, 2016).

³ The U.S. Attorney's Office maintains a matrix, known as the Laffey Matrix, of prevailing market rates for attorneys by years of practice, considering annual price increases, pursuant to *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part by* 746 F.2d.4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021, 105 S. Ct. 3488 (1985). This Court has approved the use of the Laffey Matrix for determining the prevailing market rate for EAJA fees. *See, e.g., Wilson v. Principi*, 16 Vet.App. 509, 213 (2002) (finding the Laffey Matrix a "reliable indicator of fees...particularly as to cases involving fees to be paid by government entities or determined under fee-shifting statutes"), *vacated on other grounds by* 391 F.3d 1203 (Fed. Cir. 2004); *see also Sandoval v. Brown*, 9 Vet.App. 177, 181 (1996) (using the Laffey Matrix as an indicator of prevailing market rate and holding that once a prevailing market rate is established, the government has the burden of producing evidence to show that the rate is erroneous).

that the prevailing market rate for an attorney with his experience throughout the course of this litigation was between \$465.00 and 544.00 per hour. *See* Exhibit C. It also establishes the appropriate rate for a Paralegal for 2016-17 is \$157.00. *See* Exhibit C.

During the proceedings here, on July 31, 2018, Appellant's undersigned counsel relocated from the Miami-Fort Lauderdale-West Palm Beach, Florida (MFLWPB) area to the West area for purposes of calculating the Consumer Price Index for All Urban Consumers (CPI-U) and therefore the adjustment to the base EAJA hourly rate.

For purposes of calculating the rate for work performed in the MFLWPB area, Appellant chooses December 2016. For purposes of calculating the rate for work performed in the West area, Appellant chooses November 2018. December 2016 is the closest to the date of filing of the Joint Motion for Remand for which a CPI-U is reported, and November 2018 is the closet date to which most of the work was performed after counsel relocated to the West area, both approximating when the most work was performed in the relevant market, for calculating the increase. *See Elczyn v. Brown*, 7 Vet.App. 170, 181 (1994); *see also Speigner v. Wilkie*, __ Vet.App. __, No. 16-2811, slip op. at 4 (Feb. 28, 2019) (requiring the CPI-U be calculated based on the area where the work was performed).

For work in the MFLWPB area, the statutory \$125.00 hourly fee should be increased by \$83.03 due to the increase in the cost of living as demonstrated by the CPI-U, for an hourly rate of \$208.03. This rate is calculated by comparing the CPI-U in March 1996 (152.4) with the CPI-U for December 2016 (253.629) for the MFLWPB

area, where the work was performed, and then adjusting the \$125.00 statutory rate in accordance with the change in the CPI-U between these dates.

For work in the West area, the statutory \$125.00 hourly fee should be increased by \$87.32 due to the increase in the cost of living as demonstrated by the CPI-U, for an hourly rate of \$212.32. This rate is calculated by comparing the CPI-U in March 1996 (156.4) with the CPI-U for November 2018 (265.658) for the West area, where the work was performed, and then adjusting the \$125.00 statutory rate in accordance with the change in the CPI-U between these dates. *See Pierce*, 108 S.Ct. at 2553; *Elczyn*, 7 Vet.App. at 179-181; *see also* 28 U.S.C. § 2412(d)(2)(A)(ii).

III. FEES AND EXPENSES AWARD

Based upon the foregoing, Appellant requests the award of fees and expenses as follows. For work performed in the MFLWPB area, \$9,819.00 based upon 51.8 hours of attorney work at the hourly rate of \$208.03 (and discounted by 4.6 hours for a total of \$956.95 in an exercise of billing judgment). He also requests \$796.30 for 5.0 hours of paralegal work at the hourly rate of \$157.00 for the 2016-2017 period.⁴

For work performed in the West area, \$2,569.04 based upon 14.8 hours of attorney work at the hourly rate of \$212.32 (and discounted by 2.7 hours for a total of \$573.26 in an exercise of billing judgment).

⁴ Due to limitations in the timekeeping software, time billed for paralegal work is indicated by the timekeeper initials for Attorney Wesche. Such work is indicated by a different billing rate and a unique code within the time entry. This work was performed by a paralegal rather than Mr. Wesche.

Appellant also requests an award of costs and expenses totaling \$18.29. *See*
Exhibit A.

Respectfully submitted,

ROBERT W. MOODY

Dated: April 1, 2019

By: /s/Todd M. Wesche
Todd M. Wesche, Esq.
VETUS LEGAL LLC
P.O. Box 520845
Salt Lake City, UT 84152
P: (617) 848-2999

COUNSEL FOR THE APPELLANT

EXHIBIT A

Invoice for Professional Services and Expenses



P.O. Box 520845
Salt Lake City, UT 84152
Phone: (617) 848-2999
Fax: (888) 811-5522
Email: todd@vetuslegal.com
<https://www.vetuslegal.com>

INVOICE

Invoice # 38
Date: 04/01/2019

00003-Moody-16-1707

Services

Date	Notes	Attorney	Quantity	Discount	Total
05/18/2016	MFLWPB Area - Billable: Draft and submit notice of appeal to CAVC.	TW	0.10	-	\$20.80
05/18/2016	MFLWPB Area - Billable: Review CAVC notice of docketing.	TW	0.10	-	\$20.80
05/18/2016	MFLWPB Area - Billable: Generate representation paperwork, post, and mail.	TW	0.20	-	\$41.61
05/31/2016	MFLWPB Area - Billable: Draft entry of appearance; file entry, DFH, and fee agreement. Emailed Consent to Release to VAGC.	TW	0.20	-	\$41.61
06/01/2016	MFLWPB Area - Billable: Draft status letter to client	TW	0.20	-	\$41.61
06/08/2016	MFLWPB Area - Billable: Review VAGC service of BVA decision.	TW	0.10	-	\$20.80
06/16/2016	MFLWPB Area - Billable: Receive and review VAGC entry of appearance.	TW	0.10	-	\$20.80
07/18/2016	MFLWPB Area - Billable: Review VAGC service of RBA notice.	TW	0.10	-	\$20.80
08/08/2016	z-Paralegal - Billable: Review RBA to ensure compliance with Rule 10. PARALEGAL.	TW	0.40	-	\$62.80

08/09/2016	MFLWPB Area - Billable: Receive and review notice to file brief; update calendar. Draft status letter to client.	TW	0.20	-	\$41.61
08/16/2016	MFLWPB Area - Billable: Receive and review R33 scheduling notice.	TW	0.10	-	\$20.80
08/27/2016	MFLWPB Area - Billable: Re-OCR RBA because significant parts of it were not searchable as it was received from VA.	TW	0.10	-	\$20.80
08/28/2016	MFLWPB Area - Billable: Start drafting R33 memorandum, customizing template for this case.	TW	0.20	-	\$41.61
08/28/2016	MFLWPB Area - Billable: Start drafting R33 memorandum, focusing on analysis for TDIU.	TW	3.00	-	\$624.09
08/29/2016	MFLWPB Area - Billable: Review record for error regarding other claims, focusing on psych claim and duty to assist. Draft analysis.	TW	2.50	-	\$520.08
08/29/2016	MFLWPB Area - Billable: Continue drafting R33 memorandum, focusing on analysis for back and bilateral leg conditions.	TW	0.40	-	\$83.21
08/30/2016	MFLWPB Area - Billable: Review and revise R33 memorandum for clarity of arguments.	TW	0.30	-	\$62.41
08/31/2016	MFLWPB Area - Billable: Extract documents from RBA for inclusion with service of R33 memo, and redact. Serve R33 memo by email on VAGC and CLS. Efile certificate of service.	TW	0.50	-	\$104.02
08/31/2016	MFLWPB Area - Billable: Draft status letter to client	TW	0.10	-	\$20.80
09/14/2016	MFLWPB Area - Billable: Review R33 memorandum in preparation for R33 conference.	TW	0.20	-	\$41.61
09/14/2016	MFLWPB Area - Billable: Participate in R33 conference	TW	0.40	-	\$83.21
09/14/2016	MFLWPB Area - Billable: Draft status letter to client	TW	0.10	-	\$20.80
09/14/2016	z-Paralegal - Billable: Mail and import client letter. PARALEGAL; NO CHARGE	TW	0.10	100.0% (-\$15.70)	\$0.00
10/10/2016	MFLWPB Area - Billable: Draft and efile motion for extension of time to file brief. NO CHARGE.	TW	0.20	100.0% (-\$41.61)	\$0.00
10/11/2016	MFLWPB Area - Billable: Review CAVC grant of motion.	TW	0.10	-	\$20.80
11/03/2016	MFLWPB Area - Billable: Convert R33 memorandum into brief format; refamiliarize with arguments. Begin editing substantively arguments	TW	0.90	-	\$187.23
11/03/2016	MFLWPB Area - Billable: Begin editing substantively arguments	TW	0.40	-	\$83.21

11/08/2016	MFLWPB Area - Billable: Continue drafting substantive arguments	TW	1.20	-	\$249.64
11/16/2016	MFLWPB Area - Billable: Review Gazelle and distinguish its holdings. Review M21 and other VA issuances and guidances to see if VA ever published an interpretation of 4.16 to require combinations of disabilities for the one 60 and one 40 percent requirements; found none.	TW	2.00	-	\$416.06
11/16/2016	MFLWPB Area - Billable: Incorporate findings into draft brief.	TW	0.60	-	\$124.82
11/16/2016	MFLWPB Area - Billable: Search BVA website for decisions that apply 4.16 to ignore 4.25.	TW	2.30	-	\$478.47
11/17/2016	MFLWPB Area - Billable: Continue drafting brief, focusing on argument that 4.16 and 4.25 serve different purposes and 4.25 does not apply to 4.16(a); research history of 4.25 and 4.16.	TW	1.50	-	\$312.05
11/17/2016	MFLWPB Area - Billable: Review and update facts section; add prejudice analysis to TDIU arguments; review procedural history subsequent to the BVA decision to determine whether VA issued an SSOC or RD on remanded 4.16(b) issue; found an SSOC.	TW	1.00	-	\$208.03
11/17/2016	MFLWPB Area - Billable: Review email response from VAGC, indicating that she could not agree to a stay, and draft response to the email, including citations. Consider ramifications to proceeding with the briefing and pushing for a decision by the Board simultaneously. NO CHARGE	TW	0.40	100.0% (-\$83.21)	\$0.00
11/17/2016	MFLWPB Area - Billable: Draft email to VAGC for position on motion to stay pending a new BVA decision on 4.16(b). NO CHARGE	TW	0.10	100.0% (-\$20.80)	\$0.00
11/18/2016	MFLWPB Area - Billable: Send follow-up email to VAGC; receive response formalizing her opposition to a stay motion. NO CHARGE	TW	0.10	100.0% (-\$20.80)	\$0.00
11/18/2016	MFLWPB Area - Billable: Research and draft legal authorities section of TDIU analysis, focusing on regulatory interpretation. Draft new argument regarding VA's purported interpretation of 4.16 as it exists in the M21-1.	TW	2.40	-	\$499.27
11/18/2016	MFLWPB Area - Billable: Continue drafting brief, focusing on reorganizing the TDIU arguments to align more closely with the regulatory interpretation framework. Also redrafting arguments to consolidate different approaches to the same argument into a unified, consistent argument.	TW	1.60	-	\$332.85

11/20/2016	MFLWPB Area - Billable: Continue drafting brief, continuing to reorganize arguments and add supporting authorities.	TW	1.50	-	\$312.05
11/20/2016	MFLWPB Area - Billable: Continue drafting brief, continuing to reorganize arguments and add supporting authorities. Add authorities and analysis regarding absurd results. Research and add analysis for how the court should resolve how to "consider as one disability" multiple disabilities if VA is not to combine them.	TW	1.90	-	\$395.26
11/20/2016	MFLWPB Area - Billable: Continue drafting brief, focusing on duty to assist arguments.	TW	1.30	-	\$270.44
11/21/2016	MFLWPB Area - Billable: Review entire TDIU argument from start to finish, making editorial adjustments after reorganizing and clarifying the arguments (1.8). Incorporate edits (0.6).	TW	2.40	-	\$499.27
11/21/2016	MFLWPB Area - Billable: Identify potential issue with the argument regarding § 4.26 bilateral factor referenced in 4.16(a)(1). Distinguish and decide not to argue in the brief, but may arise Sec'y brief.	TW	0.50	-	\$104.02
11/21/2016	MFLWPB Area - Billable: Review Waters again and ascertain a new basis of error, that of the Board's failure to provide the R&B regarding the weight assigned, given that Waters affirmed the ability to assign weight regarding the "indicates" element of McLendon. The Board failed to give R&B regarding that. Caluza. Draft argument and incorporate into brief.	TW	1.50	-	\$312.05
11/22/2016	MFLWPB Area - Billable: Review briefs filed at Fed.Cir. in Gazelle for ideas of how to improve 4.25 analysis; incorporate those ideas and additional thoughts from Ken Carpenter's review of draft brief.	TW	1.10	-	\$228.83
11/22/2016	MFLWPB Area - Billable: Review the duty to assist arguments, revising and clarifying; additional research and incorporation new arguments regarding 4.125 and R&B.	TW	1.30	-	\$270.44
11/22/2016	MFLWPB Area - Billable: Revise 32 pages of brief as drafted and reduce to 30 page limit set by CAVC rules.	TW	1.60	-	\$332.85
11/22/2016	z-Paralegal - Billable: Initial review of brief to identify issues requiring Todd's guidance prior to TOA creation, etc. PARALEGAL	TW	0.20	-	\$31.40
11/23/2016	z-Paralegal - Billable: Finish manually marking all citations. Create TOA. PARALEGAL	TW	1.60	-	\$251.20
11/23/2016	z-Paralegal - Billable: Highlight the 4 types of authorities present throughout entire brief, begin marking each in document for TOA creation. PARALEGAL	TW	1.10	-	\$172.70
11/27/2016	MFLWPB Area - Billable: Review brief and make substantive and editorial changes as warranted.	TW	1.20	-	\$249.64

11/28/2016	MFLWPB Area - Billable: Verify citations in Table of Authorities and Table of Contents	TW	0.40	-	\$83.21
11/28/2016	MFLWPB Area - Billable: Recreate entire TOA and TOC due to strange formatting issues in Microsoft Word document that resulted in odd text appearing in the TOA and TOC. NO CHARGE	TW	2.30	100.0% (-\$478.47)	\$0.00
11/28/2016	MFLWPB Area - Billable: Final read of brief before filing, make minor adjustments.	TW	0.70	-	\$145.62
11/28/2016	MFLWPB Area - Billable: Doublecheck TOA and TOC after recreating it. NO CHARGE	TW	0.50	100.0% (-\$104.02)	\$0.00
11/28/2016	MFLWPB Area - Billable: Add page numbers to Appendix; convert brief to PDF and attach appendix. Efile brief.	TW	0.30	-	\$62.41
11/28/2016	MFLWPB Area - Billable: Draft status letter to client	TW	0.10	-	\$20.80
11/28/2016	z-Paralegal - Billable: Review format of all citations. Review and edit formatting of brief overall as needed including headings, editing TOC, and insert doc titles for RBA citations. PARALEGAL	TW	0.60	-	\$94.20
11/28/2016	z-Paralegal - Billable: Final read through for any errors. PARALEGAL	TW	0.80	-	\$125.60
11/29/2016	MFLWPB Area - Billable: Receive and review CAVC receipt of brief; contact clerk; revise brief; efile corrected brief. NO CHARGE.	TW	0.30	100.0% (-\$62.41)	\$0.00
01/23/2017	MFLWPB Area - Billable: Review VAGC service of motion for ext of time to file brief.	TW	0.10	-	\$20.80
01/23/2017	MFLWPB Area - Billable: Review CAVC grant of VAGC motion for ext of time.	TW	0.10	-	\$20.80
01/29/2017	MFLWPB Area - Billable: Receive and respond to VAGC request for position on motion for ext to file a brief. Review VAGC motion and CAVC grant of same.	TW	0.10	-	\$20.80
03/13/2017	MFLWPB Area - Billable: Receive service of VAGC brief. NO CHARGE	TW	0.10	100.0% (-\$20.80)	\$0.00
03/13/2017	z-Paralegal - Billable: Draft status letter to Mr. Moody enclosing a copy of the VAGC brief, post, and mail. PARALEGAL	TW	0.20	-	\$31.40
03/14/2017	MFLWPB Area - Billable: Email to VAGC for position on motion for ext of time; review response. NO CHARGE.	TW	0.20	100.0% (-\$41.61)	\$0.00
03/22/2017	MFLWPB Area - Billable: Draft and efile motion for ext of time to file reply brief. Review CAVC grant of same. NO CHARGE.	TW	0.20	100.0% (-\$41.61)	\$0.00

03/30/2017	MFLWPB Area - Billable: Discussion with Ken Carpenter about drafting/filing reply brief. NO CHARGE	TW	0.20	100.0% (-\$41.61)	\$0.00
04/10/2017	MFLWPB Area - Billable: Call with client to discuss adding Ken Carpenter to case as co-counsel; he consented.	TW	0.40	-	\$83.21
04/11/2017	MFLWPB Area - Billable: Draft consent documents for client signature for Ken Carpenter to join case as co-counsel; draft cover letter.	TW	0.80	-	\$166.42
04/13/2017	MFLWPB Area - Billable: Email co-counsel documents to client for signature	TW	0.10	-	\$20.80
04/14/2017	MFLWPB Area - Billable: Receive co-counsel documents from client and forward to Ken Carpenter.	TW	0.10	-	\$20.80
04/24/2017	MFLWPB Area - Billable: Receive and review Ken Carpenter entry of appearance.	TW	0.10	-	\$20.80
04/28/2017	MFLWPB Area - Billable: Receive and review Carpenter's draft of the reply brief; re-review principal and VAGC briefs; assess reply against arguments made; make substantive and editorial suggestions; research precedent and nonprecedent regarding § 4.125 for rebuttal arguments and draft substantive arguments; also research Gary case and draft substantive arguments.	TW	2.50	-	\$520.08
05/02/2017	MFLWPB Area - Billable: Review draft edits; email draft to Ken Carpenter.	TW	0.40	-	\$83.21
05/04/2017	MFLWPB Area - Billable: Receive service of reply brief and draft status letter to client.	TW	0.20	-	\$41.61
05/10/2017	MFLWPB Area - Billable: Receive and review co-counsel service of motion for oral argument.	TW	0.10	-	\$20.80
05/15/2017	MFLWPB Area - Billable: Receive service of VAGC ROP notice.	TW	0.10	-	\$20.80
05/23/2017	MFLWPB Area - Billable: Receive and review VAGC entry of appearance.	TW	0.10	-	\$20.80
05/23/2017	MFLWPB Area - Billable: Review VAGC service of response to motion for oral argument.	TW	0.10	-	\$20.80
05/30/2017	MFLWPB Area - Billable: Review ROP for completeness. No ROP dispute.	TW	0.20	-	\$41.61
06/06/2017	MFLWPB Area - Billable: Receive and review CAVC judge assignment (J. Greene)	TW	0.10	-	\$20.80
08/11/2017	MFLWPB Area - Billable: Receive and review CAVC sua sponte order staying case pending Gazelle, CAFC No. 16-1932. Draft status letter to client	TW	0.20	-	\$41.61

09/20/2017	MFLWPB Area - Billable: Receive and review CAVC order assigning CJ Davis instead of J Greene; receive and review 2nd order changing to J. Toth.	TW	0.10	-	\$20.80
09/22/2017	MFLWPB Area - Billable: Review service of appellant's motion for leave to file a memorandum of law in response to 8/11/17 order.	TW	0.10	-	\$20.80
09/22/2017	MFLWPB Area - Billable: Review VAGC service of motion for leave to file a memorandum of law in response to 8/11/17 order.	TW	0.10	-	\$20.80
10/04/2017	MFLWPB Area - Billable: Receive and review CAVC grant of VAGC motion for leave to file memorandum out of time.	TW	0.10	-	\$20.80
10/10/2017	MFLWPB Area - Billable: Receive and review CAVC order sending case for panel disposition.	TW	0.10	-	\$20.80
12/15/2017	MFLWPB Area - Billable: Send change of address notification to client	TW	0.10	-	\$20.80
02/06/2018	MFLWPB Area - Billable: Extract pleadings and orders from Court docket in compliance with efilng rules.	TW	0.40	-	\$83.21
04/02/2018	MFLWPB Area - Billable: Draft status letter to client regarding the appeal pending nearly a year since reply brief, post, and mail.	TW	0.30	-	\$62.41
05/03/2018	MFLWPB Area - Billable: Call to RM to discuss current status of case and to determine whether his TDIU claim was ever granted by the RO or Board, on any basis, as that may implicate Solze.	TW	0.10	-	\$20.80
05/07/2018	MFLWPB Area - Billable: Call to RM to f/u regarding receipt of a grant of TDIU; left VM.	TW	0.10	-	\$20.80
05/08/2018	MFLWPB Area - Billable: Email to client's counsel before the Agency to determine whether RM has been granted TDIU, possibly mootng the appeal (Solze).	TW	0.10	-	\$20.80
05/10/2018	MFLWPB Area - Billable: Review email from rep before the Agency indicating no known grants of TDIU. Also noted that RM is flagged as missing, which is consistent with my difficulty contacting him. Conduct a quick missing client search in an attempt to determine whether RM may be deceased; no hits. Email to RM to reestablish contact.	TW	0.50	-	\$104.02
05/10/2018	MFLWPB Area - Billable: Receive call back from RM with a new phone number. Called and discussed case status with him. Also verified that he has not received any new decisions on TDIU since the Board's decision on appeal, so no Solze issue exists. He also noted that people have been stealing his mail, so he did not receive a recent letter. Verified his mailing address.	TW	0.30	-	\$62.41

08/12/2018	West Area - Billable: Draft change of address letter to client; post and mail.	TW	0.10	-	\$21.23
10/24/2018	West Area - Billable: Consider reasons for 1+ year delay in issuing a decision since the case was sent to panel. Review of principal brief quickly to refresh on arguments. Identify likely delay based on Procopio and Brown v. Gardner (even though a stay order has not issued). Add notes for future consideration after Procopio comes out for possible supplemental briefing .	TW	0.30	-	\$63.70
11/08/2018	West Area - Billable: Receive and review CAVC opinion. Draft status letter to RM.	TW	0.90	-	\$191.09
11/09/2018	West Area - Billable: Email with co-counsel regarding possible Fed Cir appeal.	TW	0.20	-	\$42.46
11/09/2018	West Area - Billable: Call RM regarding CAVC decision; unable to leave VM; sent email to RM.	TW	0.10	-	\$21.23
11/13/2018	West Area - Billable: Call to RM to discuss CAVC opinion and possible appeal. Confirmed no TDIU award yet. RM will call back after reviewing CAVC decision to discuss next step strategies. Email to co-counsel.	TW	0.20	-	\$42.46
11/24/2018	West Area - Billable: Consider additional bases for reconsideration in addition to those offered by Ken's C. draft motion. Send lengthy email to Ken C. explaining these bases. NO CHARGE	TW	2.20	100.0% (-\$467.10)	\$0.00
11/26/2018	West Area - Billable: Call to RM to discuss reconsideration or appeal options; left VM. NO CHARGE	TW	0.10	100.0% (-\$21.23)	\$0.00
11/26/2018	West Area - Billable: Call from RM to discuss next steps; call was dropped; waiting for return call.	TW	0.10	-	\$21.23
11/26/2018	West Area - Billable: Continue prior call. RM authorized filing of a motion for reconsideration. Email to co-counsel advising of decision.	TW	0.20	-	\$42.46
11/26/2018	West Area - Billable: Incorporate edits into draft motion for reconsideration and send to Ken Carpenter. NO CHARGE	TW	0.40	100.0% (-\$84.93)	\$0.00
11/26/2018	West Area - Billable: Draft status letter to RM memorializing instruction to file recon motion.	TW	0.30	-	\$63.70
11/27/2018	West Area - Billable: Review CAVC errata.	TW	0.10	-	\$21.23
11/29/2018	West Area - Billable: Draft status letter to client re motion for reconsideration, post, and mail.	TW	0.20	-	\$42.46
01/09/2019	West Area - Billable: Review CAVC denial of motion for reconsideration and entry of judgment; draft and send status letter to client.	TW	0.30	-	\$63.70

01/25/2019	West Area - Billable: Review and respond to email from co-counsel regarding possible additional appeal.	TW	0.10	-	\$21.23
01/25/2019	West Area - Billable: Call to RM to discuss further appeal to the Federal Circuit; will call back as he was busy.	TW	0.10	-	\$21.23
01/28/2019	West Area - Billable: Call to RM to discuss likelihood of success on an appeal to the FC. RM instructed no appeal. Draft letter to RM to confirm decision to not appeal, post and mail.	TW	0.50	-	\$106.16
02/03/2019	West Area - Billable: Scan and archive paper copies of documents as permitted by Massachusetts rules.	TW	0.40	-	\$84.93
02/04/2019	West Area - Billable: Continue scanning and archiving paper copies of the file.	TW	0.30	-	\$63.70
02/27/2019	West Area - Billable: Consolidate EAJA statement from prior employer into current timekeeping system. Determine EAJA litigation midpoint and calculate adjustment to CPI-U for Miami and West areas. Send email to prior employer for breakdown of Lexis research costs associated with this litigation.	TW	1.10	-	\$233.55
02/27/2019	West Area - Billable: Email to Carpenter for any time or expenses he wishes to include on the EAJA application; replied he has none to include.	TW	0.10	-	\$21.23
03/12/2019	West Area - Billable: Review CAVC entry of mandate. Update calendaring in accordance with Court rules to ensure proper deadline for EAJA application. Draft status letter to client, post, and mail.	TW	0.30	-	\$63.70
03/20/2019	West Area - Billable: Research case law for selecting the EAJA the midpoint, in light of counsel's move from MFLWBP to West areas.	TW	1.00	-	\$212.32
03/20/2019	West Area - Billable: Begin adding billable rate for MFLWPB Area to each time entry, as required by time keeping system.	TW	0.50	-	\$106.16
03/23/2019	West Area - Billable: Review billing entries to determine month where most work was done for West area for purposes of determining the CPI-U adjustment, since the litigation midpoint was in 2016. Review invoice and exercise billing judgment.	TW	0.70	-	\$148.62
03/25/2019	West Area - Billable: Calculate CPI-U for November 2018 for midpoint for West Area work; update all billing entries as required by timekeeping software. Update invoice with exercise of billing judgment.	TW	0.70	-	\$148.62
03/26/2019	West Area - Billable: Begin drafting EAJA application, to include updating and changing it in accordance to the different CPI-U Areas in light of Speigner. Call to RM to obtain certificate of net worth for January 2016 (date of appeal being filed). Prepare cover letter and certificate, post, and mail.	TW	1.20	-	\$254.78

03/27/2019	West Area - Billable: Call with RM to confirm receipt of DFH; he will mail it back tomorrow.	TW	0.10	-	\$21.23
03/30/2019	West Area - Billable: Receive and review signed certificate of net worth.	TW	0.10	-	\$21.23
03/31/2019	West Area - Billable: Update individual billing entries for paralegal time, as required by timekeeping system. Add language regarding paralegal time and rate into application.	TW	0.50	-	\$106.16
04/01/2019	West Area - Billable: Compare docket to invoice to ensure completeness of invoice; compare invoice to expenses to ensure all expenses were recorded.	TW	0.70	-	\$148.62
04/01/2019	West Area - Billable: Incorporate billing judgment discounts into invoice. Finalize EAJA application and efile; draft status letter to client, post, and mail.	TW	0.70	-	\$148.62
Quantity Subtotal					71.6
Line Item Discount Subtotal					-\$1,545.91
Services Subtotal					\$13,157.34

Expenses

Date	Notes	Quantity	Rate	Discount	Total
05/18/2016	Postage	1.00	\$0.47	-	\$0.47
06/01/2016	Postage	1.00	\$0.47	-	\$0.47
08/09/2016	Postage	1.00	\$0.47	-	\$0.47
08/31/2016	Postage	1.00	\$0.47	-	\$0.47
09/14/2016	Postage	1.00	\$0.47	-	\$0.47
11/29/2016	Postage	1.00	\$2.41	-	\$2.41
03/14/2017	Postage	1.00	\$2.45	-	\$2.45
04/13/2017	Postage	1.00	\$0.49	-	\$0.49
05/04/2017	Postage	1.00	\$2.45	-	\$2.45
08/11/2017	Postage	1.00	\$0.49	-	\$0.49
12/15/2017	Postage	1.00	\$0.49	-	\$0.49
04/02/2018	Postage	1.00	\$0.47	-	\$0.47
08/12/2018	Postage	1.00	\$0.47	-	\$0.47
11/08/2018	Postage	1.00	\$1.42	-	\$1.42

11/26/2018	Postage	1.00	\$0.47	-	\$0.47
11/29/2018	Postage	1.00	\$1.21	-	\$1.21
01/09/2019	Postage	1.00	\$0.47	-	\$0.47
01/28/2019	Postage	1.00	\$0.50	-	\$0.50
03/12/2019	Postage	1.00	\$0.50	-	\$0.50
03/26/2019	Postage	1.00	\$51.05	-\$50.05	\$1.00
04/01/2019	Postage	1.00	\$0.65	-	\$0.65
Line Item Discount Subtotal					-\$50.05
Expenses Subtotal					\$18.29

Time Keeper	Quantity	Rate	Discount	Total
Todd Wesche	14.8	\$212.32	-\$573.26	\$2,569.04
Todd Wesche	51.8	\$208.03	-\$956.95	\$9,819.00
Todd Wesche	5.0	\$157.00	-\$15.70	\$769.30
Quantity Total				71.6
Subtotal				\$13,175.63
Total				\$13,175.63

Please make all amounts payable to: Vetus Legal LLC IOLTA Account.

All discounts are in an exercise of billing judgment.

EXHIBIT B

DECLARATION OF APPELLANT'S COUNSEL

In support of Appellant's application for attorney's fees and expenses under 28 U.S.C. § 2412(d), I hereby declare as follows:

1. I am an attorney licensed to practice in Massachusetts and the District of Columbia, and I am admitted to practice before the U.S. Court of Appeals for Veterans Claims.
2. I have represented the appellant without charge.
3. I visited the web site maintained by the United States Department of Labor Bureau of Labor Statistics Office of Consumer Pricing Indexing. From that website, I ascertained the increases in the Consumer Price Index for All Urban Consumers between March 1996, when the EAJA was amended, and the relevant dates thereafter for the relevant market. On July 31, 2018, I relocated my firm from the Miami-Fort Lauderdale-West Palm Beach, Florida area to the West area for purposes of calculating the Consumer Price Index for All Urban Consumers (CPI-U).
4. At the commencement of the appeal Appellant, a natural person, certified that Appellant had a net worth of \$2,000,000.00 or less.
5. Attached is a statement of the exact services rendered and expenses incurred in my representation of Appellant in this appeal.
6. I have reviewed the attached billing statement and am satisfied that it accurately reflects the work performed by all counsel.
7. I have considered and eliminated all time that is excessive, redundant, or not related to any successful claims on appeal.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: April 1, 2019

By: /s/Todd M. Wesche
Todd M. Wesche, Esq.
VETUS LEGAL LLC
P.O. Box 520845
Salt Lake City, UT 84152
P: (617) 848-2999

EXHIBIT C

USAO Attorney's Fee Matrix
(*Laffey* Matrix)

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. Holzmman*, 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).

EXHIBIT D

**Consumer Price Index for All Urban Consumers
for the
Miami-Fort Lauderdale, Florida Area
and
West Area**

EXHIBIT E

Certificate of Net Worth

CERTIFICATION OF NET WORTH

I, Robert W. Moody, hereby certify that, on May 18, 2016 (the date of filing of my appeal to the U.S. Court of Appeals for Veterans Claims in #16-1707), my net worth was less than or equal to \$2,000,000.00 (two million dollars).

Signed under the pains and penalties of perjury.


x _____

Robert W. Moody

5819 Henson Rd

Gainesville GA 30506-2916

3-27-19

Date