

IN THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

SANDRA HUPP,)	
)	
Appellant)	
)	No. 03-1668
v.)	
)	
ERIC K. SHINSEKI)	
)	
Secretary of Veterans Affairs,)	
Appellee)	

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

Pursuant to the Equal Access to Justice Act (“EAJA”), Sandra Hupp (“Appellant”), moves this court for an award of reasonable attorney fees and expenses in the amount of \$ 38,774.94 for litigating the merits of this appeal, and drafting this petition.

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

In order to be eligible for an award of attorney’s fees under EAJA 28 U.S.C. § 2412(d), the party must (1) 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.

Appellant is a prevailing party because the Court of Veterans Appeals vacated and remanded the Board of Veterans Appeals decision based upon

administrative error, namely that inadequate reasons or bases were provided. See *Sumner v. Principi*, 15 Vet. App. 256, 261-264 (2001).

Appellant had a net worth under \$2,000,000.00 on the date this action was commenced. (See Exhibit A). Moreover, Appellant was not a business entity. Therefore, Appellant is eligible to receive this award. See 28 U.S.C. § 2412(d)(2)(B)(i), (ii).

The government's position precipitating this litigation was not "substantially justified" because BVA provided inadequate reasons or bases for its findings and conclusions. See *Pierce v. Underwood*, 108 S. Ct. 2541, 2549-50 (1988); *Beta Systems v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989).

A. No Special Circumstances Make an Award Unjust on this Appeal

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

II. THE COURT SHOULD AWARD APPELLANT REASONABLE ATTORNEY FEES AND EXPENSES OF \$ 38,774.94.

The fees and expenses requested are reasonable and should be awarded. 28 U.S.C. §§ 2412(d)(1)(A), (d)(2)(A). Five attorneys and a paralegal expended time litigating the merits of this case. That time was limited to action necessary to litigate this matter (See Exhibit A). In the exercise of sound billing judgment, no payment is requested for time spent on administrative matters such as copying, filing or research into matters unrelated to the disposition of the case.

The statutory \$125.00 hourly fee should be increased in light of the increase in the cost of living as demonstrated by the Consumer Price Index.¹ See *Pierce v. Underwood*, 108 S. Ct. 2541, 2553 (1988), *Elcyszyn v. Brown*, 7 Vet. App. 170, 179-181 (1994); 28 U.S.C. § 2412(d)(2)(A)(ii).

Appellant chooses March 2008, the date the appellant's principle brief was filed at the United States Court of Appeals for the Federal Circuit for calculating the CPI increase. *Elcyszyn* at 181; see also *Camphor v. Brown*, 8 Vet.App. 272, 277 (1995) (providing that when two motions for summary reversal were filed that it was appropriate to use the date of the second motion for the midpoint.)

Based upon all of the foregoing, Appellant requests fees and expenses as follows: \$34,795.79 based upon 208.23 hours of work at the rate of \$167.10 per hour; \$2,178.18 based upon 12.4 hours of work at the rate of \$175.66 per hour¹;

¹ For attorneys in the Richmond and Charlottesville, VA offices, the CPI for Size B/C cities in the South region was used. The rate was calculated by first determining the increase in the CPI between March 1996 and November 1996 (1.7%). That increase was added to the statutory \$125 rate providing a rate of \$127.13 as of November 1996. To determine the current rate, the \$127.13 rate was increased by the change in the CPI between November 1996 and March 2008 (31.442%), yielding a rate of \$ 167.10. The CPI for attorneys in the Washington, DC office is based upon the Washington-Baltimore region's increase between March 1996, and March 2008. The rate was calculated by first determining the increase in the CPI between March 1996 and November 1996 (1.77%). That increase was added to the statutory \$125 rate providing a rate of \$127.21 as of November 1996. To determine the current rate, the \$127.21 rate was increased by the change in the CPI between November 1996 and March 2008 (38.09%), yielding a rate of \$ 175.66.

and expenses in the amount of \$1,800.97 for a total of \$ 38,774.94. (See Exhibit A).

Respectfully Submitted,
Sandra Hupp

By Counsel

/s/ Daniel G. Krasnegor

DANIEL G. KRASNEGOR
1412 Sachem Place
Suite 100
Charlottesville, VA 22901
434-817-2188
434-817-2199 Fax
dkrasnegor@goodmanallen.com

EXHIBIT A
DECLARATION OF APPELLANT'S COUNSEL, DANIEL G. KRASNEGOR

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

1. I am an attorney licensed to practice in Washington, DC, and Georgia, and am admitted to practice before the United States Court of Appeals for Veterans Claims
2. I have represented the appellant pro bono 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 web site I ascertained the Consumer Price Index increases between March 1996, when the EAJA was amended and the relevant dates.
4. **Certificate of Net Worth:** At no time during the course of his appeal to the Court of Appeals for Veterans Claims, did the appellant have a net worth of, or in excess of, \$2,000,000.
5. The following is a statement of the exact service rendered and expenses incurred in my representation of the Appellant in this appeal:

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

/s/ Daniel G. Krasnegor

9/30/09

Daniel G. Krasnegor

Date

GOODMAN, ALLEN & FILETTI, PLLC

1412 SACHEM PLACE, STE 100
 CHARLOTTESVILLE, VA 22901
 Tax ID: 54-1850188

Invoice submitted to:
Sandra K. Hupp

September 29, 2009

In Reference To: **Our File No. CVA.0746**

Invoice #82353

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
10/15/2003	DGK Review and analyze BVA decision and determine that there are ethical bases to appeal	1.40 175.66/hr	245.92
	DGK Telephone call with appellant to establish attorney/client relationship and discuss merits of the appeal	0.10 175.66/hr	17.57
	DGK Draft letter to client discussing proposed strategy on appeal	0.80 175.66/hr	140.53
10/17/2003	DGK Telephone call from client to discuss the merits of her appeal	0.20 175.66/hr	35.13
10/28/2003	DGK Review correspondence from client	0.20 175.66/hr	35.13
	DGK Draft and file Notice of appearance	0.20 175.66/hr	35.13
11/5/2003	SW Initial file review to identify issues and information in support of arguments	1.90 167.10/hr	NO CHARGE
	SW Emails to try to determine location of DOR	0.10 167.10/hr	NO CHARGE
11/20/2003	SW TC to VA counsel, to try to determine location of DOR	0.10 167.10/hr	16.71
11/21/2003	SW TC w/ DGK to discuss procedural aspects of appeal	0.10 167.10/hr	16.71

Sandra K. Hupp

Page 2

		<u>Hrs/Rate</u>	<u>Amount</u>
11/21/2003	SW TC to co-counsel, to determine location of DOR	0.10 167.10/hr	NO CHARGE
11/25/2003	SW Draft notice of appearance	0.20 167.10/hr	33.42
12/1/2003	SW Followup TC to co-counsel re DOR not received	0.10 167.10/hr	16.71
12/5/2003	SW Review DOR, making notes on index to enable review of claims file for preparation of CDR	2.20 167.10/hr	367.62
12/9/2003	SW Review claims file in DC, comparing documents in claims file to notes on DOR index	5.30 167.10/hr	885.63
12/10/2003	SW compare DOR to documents copied from claims file to avoid duplication; draft CDR	1.20 167.10/hr	200.52
	SW Draft status update letter to client, re representation and current status of case	0.20 167.10/hr	33.42
1/16/2004	SW Emails to/from VA counsel re location of TOR	0.10 167.10/hr	16.71
1/20/2004	SW phone calls to VA counsel, co-counsel to track down TOR	0.30 167.10/hr	50.13
2/17/2004	SW Review of litigation file, BVA decision, to prepare to write brief	0.50 167.10/hr	83.55
3/1/2004	SW Review and analyze all documents in TOR,, to prepare to write brief	1.90 167.10/hr	317.49
3/8/2004	SW TC to VA counsel re extension of time to file brief	0.10 167.10/hr	NO CHARGE
	SW Draft and file extension of time to file brief	0.20 167.10/hr	NO CHARGE
3/26/2004	SW Analyze issues, determine which issues are feasible to include in brief	0.90 167.10/hr	150.39
3/29/2004	SW Draft outline of arguments for VA counsel for possible JMR consideration	0.30 167.10/hr	50.13
	SW Research VCAA case law in preparation to write brief	2.40 167.10/hr	401.04
4/12/2004	SW Review file to determine necessary bases for JMR; email VA counsel re proposed basis for JMR	0.50 167.10/hr	83.55

Sandra K. Hupp

Page 3

		<u>Hrs/Rate</u>	<u>Amount</u>
4/15/2004	SW Receive and review stay motion; fax signature page to VA counsel	0.20 167.10/hr	33.42
4/21/2004	SW Research reasons/bases requirement to address favorable evidence in preparation for writing brief (cut 0.8 hours)	0.20 167.10/hr	33.42
	SW Emails to/from VA counsel re possible JMR	0.10 167.10/hr	16.71
4/27/2004	SW Receive, review and note filed stay motion	0.10 167.10/hr	16.71
4/30/2004	SW Receive, review and note CAVC grant of stay motion	0.10 167.10/hr	16.71
5/7/2004	SW Outline points to argue in brief	0.70 167.10/hr	116.97
5/13/2004	SW Research case law on duty to assist, Thurber issue (cut 2.0 hours)	0.40 167.10/hr	66.84
5/14/2004	SW Draft sections A and B of brief	2.90 167.10/hr	484.59
	SW Draft sections C and D of brief	2.40 167.10/hr	401.04
5/16/2004	SW Second draft of brief	0.80 167.10/hr	133.68
5/18/2004	SW Consult w/ DGK re brief	0.10 167.10/hr	NO CHARGE
	SW Additional research and final revisions to brief	1.00 167.10/hr	167.10
	DGK Peer review of draft brief	1.10 175.66/hr	193.23
5/28/2004	SW Draft status update letter to client	0.20 167.10/hr	33.42
7/6/2004	DGK Discuss strategy for oral argument with SWW	0.20 175.66/hr	35.13
7/10/2004	DGK Review all pleadings filed in appeal (0.8); conduct moot court with SWW (0.7)	1.50 175.66/hr	263.49
7/16/2004	SW Review file, BVA decision, opening brief, to prepare to draft reply brief	0.50 167.10/hr	83.55

Sandra K. Hupp

Page 4

			<u>Hrs/Rate</u>	<u>Amount</u>
7/16/2004	SW	Review and analyze Secretary's brief, to prepare to draft reply brief	1.50 167.10/hr	250.65
	SW	Outline points of contention and arguments to be made in reply brief	1.00 167.10/hr	167.10
7/19/2004	SW	Research cases cited in Secretary's brief	0.50 167.10/hr	83.55
	SW	Draft reasons and bases section of reply brief	1.50 167.10/hr	250.65
7/20/2004	SW	Draft VCAA section of reply brief	1.50 167.10/hr	250.65
	SW	Draft duty to assist section of reply brief	1.30 167.10/hr	217.23
	SW	Draft Thurber section of reply brief	0.70 167.10/hr	116.97
	SW	Second draft of entire brief, for clarity, flow and style and to incorporate comments from supervisory review	2.00 167.10/hr	334.20
	DGK	Peer review of draft reply brief	0.90 175.66/hr	158.09
7/23/2004	SW	Draft status update letter to client re reply brief	0.20 167.10/hr	33.42
	SW	Final revisions to reply brief	0.50 167.10/hr	83.55
8/2/2004	SW	Review Secretary's brief, reply brief, in response to Secretary's complaint about sentence in reply brief	0.50 167.10/hr	83.55
8/11/2004	SW	TC w/ VA counsel re her planned motion to strike sentence in reply brief	0.10 167.10/hr	16.71
8/16/2004	SW	Receive, review and analyze Secretary's motion to strike	0.30 167.10/hr	50.13
	SW	Review briefs and outline argument for response to Secretary's motion to strike	1.20 167.10/hr	200.52
	SW	1st draft of response to Secretary's motion to strike	1.50 167.10/hr	250.65
8/17/2004	SW	2nd draft of response to Secretary's motion to strike	1.30 167.10/hr	217.23

Sandra K. Hupp

Page 5

		<u>Hrs/Rate</u>	<u>Amount</u>
1/11/2005	SW Status update letter to client	0.20 167.10/hr	33.42
1/24/2005	SW VMs from client re status of case	0.10 167.10/hr	16.71
1/25/2005	SW Return call to client re status of case	0.10 167.10/hr	16.71
2/8/2005	SW Draft letter to client explaining status of case	0.20 167.10/hr	33.42
4/20/2005	SW Review file and analyze VCAA arguments in case, to determine whether to file motion for supplemental briefing in light of Mayfield	0.30 167.10/hr	50.13
5/9/2005	SW Status update letter to client re Mayfield decision, possible impact on case	0.20 167.10/hr	33.42
6/9/2005	SW Review pleadings, VCAA notice documents to prepare to write supplemental brief	1.70 167.10/hr	284.07
	SW Analyze VCAA notice documents in light of Mayfield; outline points to make in supplemental brief	2.10 167.10/hr	350.91
	SW Draft section 1 of supplemental brief	2.50 167.10/hr	417.75
6/10/2005	SW Complete drafting section 1 of supplemental brief	0.60 167.10/hr	100.26
	SW Draft second and third sections of supplemental brief	1.10 167.10/hr	183.81
	SW Second draft of entire supplemental brief	0.90 167.10/hr	150.39
	SW Status update to client re supplemental brief filed, likely timeframe for next developments	0.20 167.10/hr	33.42
7/6/2005	SW Receive, review and note Secretary's motion to file late pleading	0.10 167.10/hr	16.71
	SW Receive and review Secretary's memorandum of law re Mayfield	0.30 167.10/hr	50.13
7/8/2005	SW Status update letter to client, re Secretary's memorandum filed, likely timeframe for next developments	0.20 167.10/hr	33.42
10/5/2005	SW Status update letter to client	0.10 167.10/hr	16.71

Sandra K. Hupp

Page 6

		<u>Hrs/Rate</u>	<u>Amount</u>
1/5/2006	SW Status update letter to client	0.20 167.10/hr	33.42
3/15/2006	SW Discussion w/ CAVC clerk's office re oral argument to be scheduled	0.10 167.10/hr	16.71
3/26/2006	SW Email to CAVC to follow up on oral argument scheduling	0.10 167.10/hr	16.71
4/4/2006	SW Status update letter to client re oral argument to be scheduled	0.20 167.10/hr	33.42
4/14/2006	SW Receive, review and note CAVC order re assignment to panel	0.10 167.10/hr	16.71
4/19/2006	SW TC w/ CAVC clerk's office re oral argument scheduling	0.10 167.10/hr	16.71
6/9/2006	SW TC w/ CAVC clerk's office re oral argument final schedule	0.10 167.10/hr	16.71
6/13/2006	SW Receive, review and calendar CAVC order re oral argument	0.10 167.10/hr	16.71
6/17/2006	SW Review BVA decision, file, briefs to begin preparation for oral argument	2.80 167.10/hr	467.88
	SW Outline points in Secretary's brief to prepare for oral argument	1.60 167.10/hr	267.36
6/19/2006	SW Analyze VCAA arguments in supplemental briefs in light of later case law	2.60 167.10/hr	434.46
7/5/2006	SW Outline basic points on each issue, to prepare for oral arguments	2.50 167.10/hr	417.75
	SW Review, analyze and outline all documents in TOR pp. 1-358, to prepare for oral argument	2.90 167.10/hr	484.59
	SW Review, analyze and outline all documents in TOR pp. 360-528, to prepare for oral argument	2.20 167.10/hr	367.62
7/8/2006	SW Review relevant case law on reasons/bases and considering favorable medical evidence, to prepare for oral argument	1.80 167.10/hr	300.78
	SW Review relevant case law on Thurber issue, to prepare for oral argument	2.10 167.10/hr	350.91
	SW Research and review VCAA legislative history to prepare for oral argument	2.30 167.10/hr	384.33

Sandra K. Hupp

Page 7

			<u>Hrs/Rate</u>	<u>Amount</u>
7/8/2006	SW	Detailed analysis of points to be made and Secretary's likely position on VCAA argument	1.60 167.10/hr	267.36
	SW	Detailed analysis of points to be made and Secretary's likely position on reasons and bases argument	1.30 167.10/hr	217.23
	SW	Detailed analysis of points to be made and Secretary's likely position on Thurber argument	1.50 167.10/hr	250.65
	SW	Draft presentation of Thurber issue for oral argument	1.60 167.10/hr	267.36
	SW	Draft presentation of reasons and bases issue for oral argument	2.50 167.10/hr	417.75
7/9/2006	SW	Continue drafting presentation of reasons and bases issue for oral argument	1.80 167.10/hr	300.78
	SW	Draft presentation of VCAA issue for oral argument	2.80 167.10/hr	467.88
	SW	Draft presentation of duty to assist issue for oral argument	1.30 167.10/hr	217.23
	SW	Overall review of prepared presentation and practice for oral argument	2.90 167.10/hr	484.59
	SW	Draft summary of facts and procedural history for quick reference in oral argument	1.10 167.10/hr	183.81
7/10/2006	SW	Consult w/ DGK re argument (moot court)	0.50 167.10/hr	83.55
	SW	Research accrued benefits issue	1.60 167.10/hr	267.36
	SW	Analysis of points to be made on accrued benefits issue	1.20 167.10/hr	200.52
	SW	Draft oral argument presentation on accrued benefits issue	2.80 167.10/hr	467.88
	SW	Review and revise all arguments	2.60 167.10/hr	434.46
	SW	Review key documents and cases	2.40 167.10/hr	401.04
	SW	Practice argument	1.40 167.10/hr	233.94

Sandra K. Hupp

Page 8

			<u>Hrs/Rate</u>	<u>Amount</u>
7/11/2006	SW	Review all notes, outline, key documents in advance of oral argument	2.50 167.10/hr	417.75
	SW	Travel back to Richmond	2.20 167.10/hr	367.62
	SW	Attend Oral Argument	2.00 167.10/hr	334.20
7/14/2006	SW	Status update letter to client re oral argument held, likely timeframe for next developments	0.20 167.10/hr	33.42
10/17/2006	SW	Status update letter to client	0.20 167.10/hr	33.42
3/21/2007	SW	Status update letter to client	0.20 167.10/hr	33.42
6/18/2007	SW	Status update letter to client	0.20 167.10/hr	33.42
7/19/2007	SW	Receive, review and analyze CAVC decision in case	0.60 167.10/hr	100.26
	SW	Letter to client, enclosing and explaining decision	0.20 167.10/hr	33.42
	SW	Analyze accrued benefits portion of decision, to determine whether to file motion for reconsideration	0.90 167.10/hr	150.39
	SW	Review and analyze statute, cases (esp. Coker) involving decision on issues not fully explained by counsel	1.10 167.10/hr	183.81
7/26/2007	SW	Extended TC w/ client re implications of decisions, next steps possible	0.40 167.10/hr	66.84
	SW	Research case law on abandonment of claims (Cromer, Ford, Deglemich, Bucklinger) for motin for reconsideration	1.50 167.10/hr	250.65
7/27/2007	SW	Review case law, statute, regulations on accrued benefits to clarify differences between accrued benefits and DIC, in preparation for motion for reconsideration	1.40 167.10/hr	233.94
	SW	Draft first section of motion for reconsideration	2.70 167.10/hr	451.17
	SW	Draft second section of motion for reconsideration	2.50 167.10/hr	417.75

Sandra K. Hupp

Page 9

		<u>Hrs/Rate</u>	<u>Amount</u>
7/27/2007	SW Second draft of motion for reconsideration, revising for clarity and cohesiveness of arguments	1.10 167.10/hr	183.81
7/30/2007	SW Final revisions to motion for reconsideration to prepare for filing	0.20 167.10/hr	33.42
8/1/2007	SW Draft status letter to client, explaining possible responses to motion for reconsideration, likely timeframe, and possible actions after motion is decided	0.30 167.10/hr	50.13
10/12/2007	SW Receive and review CAVC denial of reconsideration	0.10 167.10/hr	16.71
11/13/2007	SW Receive and review CAVC entry of judgment	0.10 167.10/hr	16.71
1/8/2008	SW Analyze CAVC opinion to determine feasibility of and basis for CAFC appeal; Telephone call to client to discuss; file CAFC appeal	1.33 167.10/hr	222.80
1/18/2008	SW Receive and review CAVC order re mandate; call to CAVC to question this, since Fed. Circuit appeal was filed	0.10 167.10/hr	16.71
1/22/2008	SW Receive and review papers from CAVC re FEd. Circuit appeal	0.10 167.10/hr	16.71
1/24/2008	SW Emails from/to VA counsel; email CAVC briefs to VA counsel	0.10 167.10/hr	16.71
2/1/2008	SW preparing notice of appearance, certificate of interest, for CAFC	0.20 167.10/hr	33.42
2/13/2008	SW Draft CAFC docketing statement	0.30 167.10/hr	50.13
2/25/2008	SW Receive and review DOJ entry of appearance, docketing statement	0.10 167.10/hr	16.71
3/17/2008	SW Review and analyze briefs from CAVC, CAVC opinion, litigation file, to prepare to write Fed. Circuit brief	2.50 167.10/hr	417.75
3/18/2008	SW Outline points to cover in Fed. Circuit brief	1.10 167.10/hr	183.81
	SW Research case law from CAVC and CAFC re abandonment/waiver of claims	2.80 167.10/hr	467.88
	SW Draft Statement of Facts for CAFC brief	1.50 167.10/hr	250.65

Sandra K. Hupp

Page 10

			<u>Hrs/Rate</u>	<u>Amount</u>
3/19/2008	SW	Review statutes and Fed. Circuit case law on jurisdiction and analyze jurisdictional issue in this case in light of same	2.20 167.10/hr	367.62
	SW	Draft section I of brief	1.10 167.10/hr	183.81
	SW	Draft section II of brief	0.90 167.10/hr	150.39
3/20/2008	SW	Draft section III of brief	2.10 167.10/hr	350.91
	SW	Draft section IV of brief	2.30 167.10/hr	384.33
	SW	Draft procedural sections of brief	1.40 167.10/hr	233.94
3/21/2008	SW	Review, revise and edit entire brief, for style, clarity and flow, and to reflect comments of peer edit	2.20 167.10/hr	367.62
	SW	Prepare proposed joint appendix, to send to government's attorney with brief	0.80 167.10/hr	133.68
	SW	Letter to client, re CAFC brief filed, likely timeframe for next developments	0.20 167.10/hr	33.42
	DEB	Peer review of draft Fed. Cir. brief, annotate with suggestions.	1.20 167.10/hr	200.52
4/28/2008	SW	Telephone call w/ DOJ attorney re gov't need for enlargement of time to file brief	0.10 167.10/hr	16.71
5/1/2008	SW	Receive and review DOJ request for enlargement of time to file brief	0.10 167.10/hr	16.71
5/5/2008	SW	Receive and review CAFC order granting enlargement of time for Secretary's brief; update letter to client re same and likely timeframe for next developments	0.30 167.10/hr	50.13
5/12/2008	SW	Telephone call w/ DOJ attorney re gov't need for additional extension to file brief	0.10 167.10/hr	16.71
5/14/2008	SW	Receive and review CAFC order for additional enlargement of time for Secretary's brief	0.10 167.10/hr	16.71
	SW	Draft status update letter to client re additional enlargement of time, likely timeframe for next developments	0.20 167.10/hr	33.42
5/21/2008	SW	Telephone call w/ DOJ attorney, about likely motion to remand case	0.10 167.10/hr	16.71

Sandra K. Hupp

Page 11

		<u>Hrs/Rate</u>	<u>Amount</u>
5/27/2008	SW Telephone call w/ DoJ attorney re current status of case, gov't need for more time to respond	0.10 167.10/hr	16.71
5/30/2008	SW Receive and review DoJ motion for additional extension of time to file brief	0.10 167.10/hr	16.71
6/2/2008	SW Receive and review CAFC order granting DoJ motion for additional extension of time to file brief	0.10 167.10/hr	16.71
6/16/2008	SW Telephone call w/ DOJ attorney re motion to remand; review proposed remand and respond	0.40 167.10/hr	66.84
6/18/2008	SW Receive and review government's motion to remand	0.20 167.10/hr	33.42
12/1/2008	SW Receive and review CAFC decision on motion to remand; calendar due date for Secretary's brief	0.10 167.10/hr	16.71
	SW Status update letter to client, re CAFC action on motion, likely timeframe for next developments	0.20 167.10/hr	33.42
12/12/2008	SW VM from, email to, DOJ attorney re his need for 2 week enlargement of time to file brief	0.10 167.10/hr	16.71
12/19/2008	SW Receive and review government's motion for enlargement of time to file brief	0.10 167.10/hr	16.71
1/5/2009	SW Receive, review and calendar CAFC grant of extension for government to file brief	0.10 167.10/hr	16.71
1/9/2009	SW Receipt and initial review of government brief	0.30 167.10/hr	50.13
1/12/2009	SW Status update letter to client re government brief received and likely timeframe for next developments	0.20 167.10/hr	33.42
1/16/2009	SW Review litigation file, opening brief, to prepare to draft reply brief	0.60 167.10/hr	100.26
	SW Analyze and evaluate arguments made in Secretary's Brief	2.10 167.10/hr	350.91
	SW Analyze and outline points to make in reply brief	1.30 167.10/hr	217.23
	SW Research and analyze Fed. Cir. case law on what constitutes "fact finding" esp. Durr, Bailey, Jaquay	1.80 167.10/hr	300.78
1/18/2009	SW Research and analyze case law on definition of a claim, especially Maggitt and Roebuck	1.40 167.10/hr	233.94

Sandra K. Hupp

Page 12

		<u>Hrs/Rate</u>	<u>Amount</u>
1/18/2009	SW Draft first argument in reply brief	2.50 167.10/hr	417.75
1/19/2009	SW Draft second argument in reply brief	2.60 167.10/hr	434.46
	SW Draft summary of argument, conclusion	0.60 167.10/hr	100.26
	SW Revise and edit entire brief, for clarity, flow and style, and to reflect comments from peer review	0.80 167.10/hr	133.68
	SW Prepare Joint Appendix	0.70 167.10/hr	116.97
	SW Draft motion for leave to include briefs in JA	0.40 167.10/hr	66.84
	SW Status update letter to client, re reply brief filed and likely timeframe for next developments	0.20 167.10/hr	33.42
	DEB Peer review of briefing - quick review of initial and VA briefs, review draft reply for logic, flow, etc. Make suggestions for improvement.	1.00 167.10/hr	167.10
1/21/2009	SW transmit Joint Appendix to CAFC	0.20 167.10/hr	NO CHARGE
1/29/2009	SW Draft letter to CAFC re availability for oral argument	0.10 167.10/hr	16.71
2/4/2009	SW Telephone call w/ govt attorney re reply brief not received; email same	0.10 167.10/hr	16.71
3/3/2009	SW Receive and review CAFC grant of motion to include briefs; notice revising official caption	0.10 167.10/hr	16.71
3/13/2009	SW Telephone call w/ clerk's office at Fed. Circuit, re scheduling oral argument	0.10 167.10/hr	16.71
3/17/2009	SW Receive and review CAVC order granting extension	0.10 167.10/hr	16.71
3/25/2009	SW Receive, review, calendar and respond to CAFC Oral Argument Order	0.20 167.10/hr	33.42
4/19/2009	SW TC w/ CAVC clerk's office re scheduling oral argument	0.10 167.10/hr	16.71
4/23/2009	SW Arrange for moot court to prepare for oral argument, put together necessary documents for participants	0.20 167.10/hr	33.42

Sandra K. Hupp

Page 13

			<u>Hrs/Rate</u>	<u>Amount</u>
4/25/2009	SW	Review and analyze all briefs, DOJ motion to remand	2.70 167.10/hr	451.17
	SW	Analyze and identify points of contention to be covered in oral argument	1.40 167.10/hr	233.94
	SW	Outline oral argument	1.10 167.10/hr	183.81
4/28/2009	SW	Review all cases cited in briefs to prepare for oral argument	1.20 167.10/hr	200.52
	SW	Additional research on question of whether waiver/abandonment is question of law or fact	1.30 167.10/hr	217.23
	SW	First draft of oral argument presentation	2.60 167.10/hr	434.46
4/29/2009	SW	Additional research and analysis of case law on jurisdiction, esp. Willsey and Morgan	2.20 167.10/hr	367.62
	SW	add discussion of Willsey/Morgan to oral argument presentation	1.40 167.10/hr	233.94
	SW	moot court for preparation for oral argument	0.50 167.10/hr	83.55
	TMW	Review briefs in preparation for moot court; participate in moot court; ascertain that further preparation would impede work on other cases.	0.50 175.66/hr	87.83
4/29/2009	DJL	In preparation of moot court, read CAVC Hupp's decision and Fed. Cir. pleadings, and took notes to ask during moot court and researched Lexis for prejudicial error type discussion relative to jurisdictional issues (2). Participated in moot court (.5).	2.50 175.66/hr	439.15
4/29/2009	DEB	REview briefing, participate in moot court argument to prepare SVW for oral argument.	1.00 167.10/hr	167.10
5/2/2009	SW	Prepare summary of facts for use in oral argument	0.90 167.10/hr	150.39
	SW	Prepare summary of cases/statutes for use in oral argument	1.50 167.10/hr	250.65

Sandra K. Hupp

Page 14

			<u>Hrs/Rate</u>	<u>Amount</u>
5/2/2009	SW	Revise oral argument presentation to reflect comments from moot court	0.60 167.10/hr	100.26
	SW	Practice oral argument presentation	0.80 167.10/hr	133.68
	SW	Brainstorm potential questions from bench; prepare and practice responses.	2.60 167.10/hr	434.46
5/3/2009	SW	Review all briefs, CAVC and CAFC, in preparation for oral argument	0.90 167.10/hr	150.39
	SW	Review all material in Joint Appendix, in preparation for oral argument	1.10 167.10/hr	183.81
	SW	Practice oral argument presentation and responses to anticipated questions	1.60 167.10/hr	267.36
	SW	travel to DC for oral argument	2.30 167.10/hr	384.33
5/4/2009	SW	review all notes, final review of briefs, JA; practice oral argument presentation	2.30 167.10/hr	384.33
	SW	At Court for oral argument	1.50 167.10/hr	250.65
	SW	travel from DC to Richmond following oral argument	2.30 167.10/hr	384.33
5/19/2009	SW	Review and analyze CAFC decision; draft letter to client re same	0.80 167.10/hr	133.68
5/26/2009	SW	Receive, review, and note CAFC notice of entry of judgment	0.10 167.10/hr	16.71
7/11/2009	SW	At CAVC, oral argument	2.00 167.10/hr	334.20
7/13/2009	SW	Receive and review CAFC entry of mandate	0.10 167.10/hr	16.71
7/14/2009	SW	Status update letter to client re CAFC mandate, likely timeframe for next developments	0.20 167.10/hr	33.42
7/23/2009	MRG	Telephone call with BVA to confirm veteran's address	0.10 125.00/hr	NO CHARGE
9/2/2009	SW	Review and note docket entry that case was remanded	0.10 167.10/hr	16.71

Sandra K. Hupp

Page 15

		<u>Hrs/Rate</u>	<u>Amount</u>
9/15/2009	SW Draft letter to client to explain Court decisions and procedural aspects of appeal.	0.90 167.10/hr	150.39
9/28/2009	DGK Read and edit billing statement for EAJA: make sure that all time worked was billed and that all descriptions are complete and accurate. Exercise billing judgment by billing at no charge, or deleting, time that is arguably duplicative, administrative or unproductive.	1.20 175.66/hr	210.79
	DGK Research for (including research regarding appropriate midpoint to use given the Federal Circuit appeal) and preparation of EAJA application	1.60 175.66/hr	281.06
	For professional services rendered	223.43	\$36,973.97

Additional Charges :

		<u>Qty/Price</u>	
12/11/2003	Sandra Wischow - Travel to DC for claims file review at VA	1 35.70	35.70
5/18/2004	Overnight Delivery by outside service - Federal Express #629058581351 sent to Norman Herring	1 11.24	11.24
7/23/2004	Overnight Delivery by outside service - Federal Express #629058584133 sent to Norman Herring	1 11.40	11.40
8/5/2004	Overnight Delivery by outside service - Federal Express #629058584660 sent to Norman Herring	1 10.80	10.80
7/10/2006	Sandra Wishow - travel do DC for oral argument - Transportation	1 109.85	109.85
	Sandra Wishow - travel do DC for oral argument - Lodging	1 353.81	353.81
	Sandra Wishow - travel do DC for oral argument - Meals	1 56.25	56.25
7/18/2006	Photocopies (in-house	793 0.19	150.67
	Long Distance Charges	1 4.32	4.32
	Facsimiles	9 1.00	9.00

Sandra K. Hupp

Page 16

	<u>Qty/Price</u>	<u>Amount</u>
3/18/2008 Research (Pacer) Fed Circuit	1 0.64	0.64
3/21/2008 Bizport expense to copy/bind brief	1 180.37	180.37
4/21/2008 Send briefs to court	1 25.29	25.29
5/13/2008 Pacer online research from October 2008 - December 2008.	1 0.64	0.64
7/7/2008 Research (Pacer) Fed Circuit	1 0.08	0.08
Research (Pacer) Fed Circuit	1 0.08	0.08
7/25/2008 Research (Pacer) Fed Circuit	1 0.08	0.08
Research (Pacer) Fed Circuit	1 0.08	0.08
8/28/2008 Pacer research.	1 0.32	0.32
1/19/2009 Bizport copying of the Appellant's Reply Brief at the Federal Circuit. Invoice #1090667.	1 81.75	81.75
Bizport copying of the Joint Appendix at the Federal Circuit. Invoice #1090668.	1 232.29	232.29
1/20/2009 Ship Federal Circuit Reply Brief to United States Court of Appeals for the Federal Circuit by UPS.	1 4.91	4.91
1/21/2009 Ship Joint Appendix to United States Court of Appeals for the Federal Circuit by UPS.	1 7.28	7.28
4/29/2009 Moot Court teleconference to prepare for oral argument.	1 5.90	5.90
5/8/2009 LexisNexis online research for the month of April 2009.	1 18.15	18.15

Sandra K. Hupp

Page 17

	<u>Qty/Price</u>	<u>Amount</u>
5/8/2009 LexisNexis online research for the month of April 2009.	1 4.46	4.46
5/15/2009 Expenses for trip to D.C. for CAFC oral argument.	1 474.21	474.21
8/31/2009 Photocopies (in-house)	57 0.20	11.40
Total costs		<u>\$1,800.97</u>
Total amount of this bill		<u>\$38,774.94</u>
Balance due		<u>\$38,774.94</u>

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
DANIEL G KRASNEGOR	9.40	175.66	\$1,651.20
DAVID E BOELZNER	3.20	167.10	\$534.72
DAVID J. LOWENSTEIN	2.50	175.66	\$439.15
SANDRA W WISCHOW	205.03	167.10	\$34,261.07
TODD M WESCHE	0.50	175.66	\$87.83

Please reference our invoice number on your check and remit payment within 30 days to Goodman, Allen & Filetti at 1412 Sachem Place, Suite 100, Charlottesville, VA 22901. Mastercard and VISA payments may be made by calling 804-346-0600. Thank you.