

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

|                   |   |                 |
|-------------------|---|-----------------|
| EMIL G. HAGEMAN   | ) |                 |
| Appellant,        | ) |                 |
|                   | ) |                 |
| v.                | ) | CAVC No. 19-664 |
|                   | ) | EAJA            |
|                   | ) |                 |
| ROBERT L. WILKIE, | ) |                 |
| SECRETARY OF      | ) |                 |
| VETERANS AFFAIRS, | ) |                 |
| Appellee          | ) |                 |

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

Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), and the Court's Rule 39, Appellant, through counsel, seeks a total fee in the amount of **\$11,616.07**.

The basis for the application is as follows:

**Grounds for an Award**

This Court has identified four elements as being necessary to warrant an award by the Court of attorneys' fees and expenses to an eligible party pursuant to the EAJA. These are: (1) a showing that the appellant is a prevailing party; (2) a showing that the appellant is eligible for an award; (3) an allegation that the government's position is not substantially justified; and (4) an itemized statement

of the fees sought. *Owens v. Brown*, 10 Vet. App. 65, 66 (1997) (quoting *Bazalo*, 9 Vet. App. at 308). See also 28 U.S.C. §§ 2412(d)(1)(A),(B).

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

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

A. *The Appellant Is a Prevailing Party*

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

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

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

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

Most recently, this Court in *Blue v. Wilkie*, 30 Vet.App. 61 (2018), laid out the following three-part test relating to when an appellant is considered a prevailing party under the EAJA:

An appellant who secures a remand to an administrative agency is a prevailing party under the EAJA if (1) the remand was necessitated by or predicated upon administrative error, (2) the remanding court did not retain jurisdiction, and (3) the language in the remand order clearly called for further agency proceedings, which leaves the possibility of attaining a favorable merits determination.

*Id.* at 67, *citing Dover v. McDonald*, 818 F.3d 1316 (Fed. Cir. 2016).

The Court set aside and remanded the Board's December 4, 2018 decision denying service connection for Appellant's right ankle injury residuals based upon the Board's failure to ensure substantial compliance with its December 2017 remand order and based upon the Board's failure to provide an adequate statement of reasons or bases. See pages 1-5 of the Memorandum Decision. It has been sixty days since Entry of Judgment issued on June 2, 2020. Based upon the foregoing, and because the three-part test promulgated in *Blue* is satisfied, Appellant is a prevailing party.

*B. Appellant Is Eligible For An EAJA Award*

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

*C. The Position of the Secretary Was Not Substantially Justified*

In *White v. Nicholson*, 412 F.3d 1314 (Fed. Cir. 2004) the Federal Circuit applied the totality of the circumstances test and noted that "EAJA requires that the record must supply the evidence of the Government's substantial justification." 412

F.3d at 1316. The Secretary's position during proceedings before the Agency and in Court was not reasonable, either in law or in fact, and accordingly the Secretary's position was not substantially justified at either the administrative or litigation stage in this case. There thus is nothing substantially justified in the Board's failure to ensure substantial compliance with its December 2017 remand order or in its failure to provide an adequate statement of reasons or bases. Moreover, there is no evidence that special circumstances exist in Appellant's case that would make an award of reasonable fees and expenses unjust. 28 U.S.C. § 2412(d)(1)(A).

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

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

Eight attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Stephen Capracotta, Danielle M. Gorini, Nicholas Phinney,

Kevin Medeiros, Luke Wilder, Dana Weiner, Samuel Agostini, and Zachary Stolz.<sup>1</sup>

Attorney Stephen Capracotta graduated from University of Connecticut Law

School in 2016 and the *Laffey* Matrix establishes that 365.00 is the prevailing

market rate for an attorney with his experience.<sup>2</sup> Danielle Gorini graduated from

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<sup>1</sup>“There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer.” *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1301 (11th Cir. 1988); *see also Baldridge v. Nicholson*, 19 Vet.App. 227, 237-38 (2005)(“the fees sought must be ‘based on the distinct contribution of each individual counsel.’”). “The use in involved litigation of a team of attorneys who divide up the work is common today for both plaintiff and defense work.” *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). “Careful preparation often requires collaboration and rehearsal[.]” *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. *See Baldridge*, 19 Vet.App. at 237 (“An application for fees under EAJA where multiple attorneys are involved must also explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.”).

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

Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$510.00 is the prevailing market rate for an attorney with her experience.

Nicholas Phinney graduated from Roger Williams University Law School in 2007 and the *Laffey* Matrix establishes that \$510.00 is the prevailing market rate for an attorney with his experience. Kevin Medeiros graduated from Suffolk University Law School in 2015 and the *Laffey* Matrix establishes that \$365.00 is the prevailing market rate for an attorney with his experience. Luke Wilder graduated from Boston University Law School in 2018 and the *Laffey* Matrix establishes that \$353.00 is the prevailing market rate for an attorney with his experience. Dana Weiner graduated from Roger Williams University Law School in 2015 and the *Laffey* Matrix establishes that \$365.00 is the prevailing market rate for an attorney with her experience. Zachary Stolz graduated from the University of Kansas School of Law in 2005 and the *Laffey* Matrix establishes that \$510.00 is the prevailing market rate for an attorney with his experience.

Samuel Agostini is a 2018 graduate of Boston College Law School, and at the time some of his work was performed, he was admitted to practice as a non-attorney practitioner. Mr. Agostini has entered his appearance in multiple cases

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Laffey Matrix as an indicator of prevailing market rate and holding that once a prevailing market rate is established, the government has the burden of producing evidence to show that the rate is erroneous.) *See* Exhibit B (*Laffey* Matrix).

before the Court of Appeals for Veterans Claims. The Court has found that “[I]n formulating an EAJA award to a non-attorney practitioner, once a prevailing market rate is determined for the non-attorney practitioner based on a certain skill level, reputation, and geographic area, that prevailing market rate can be adjusted over time by application of the appropriate percentage increase of the change in the appropriate consumer price index.” See *Apodackis v. Nicholson*, 19 Vet. App. 91 (2005). Therefore, based on Mr. Agostini’s court experience, Appellant seeks attorney’s fees at the rate of \$173.00 per hour for representation services before the Court for his time before he was admitted to practice law as an attorney on November 18, 2019. After that admittance date, his billing rate as an attorney is \$319.00 per hour.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys’ fees at the rate of \$207.74 per hour for Mr. Capracotta, Ms. Gorini, Mr. Phinney, Mr. Medeiros, Mr. Wilder, Ms. Weiner, Mr. Agostini after his November 18, 2019 admittance date, and Mr. Stolz for representation services before the Court.<sup>3</sup> This rate per hour, multiplied by the

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<sup>3</sup>This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. See *Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to September 2019 the chosen mid-point date for the litigation in this case,



number of hours billed for these eight attorneys (55.50) results in a total attorney's fee amount of \$11,529.57.

In addition, Appellant seeks attorney's fees at the rate of \$173.00 per hour for representation services before the Court for Mr. Agostini's time as a non attorney practitioner. This rate per hour, multiplied by the number of hours billed (0.50) results in a total attorney's fee amount of \$86.50.

Based upon all of the foregoing, the total fee and expense amount sought is **\$11,616.07.**

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

Respectfully submitted,  
Emil G. Hageman  
By His Attorneys,  
CHISHOLM CHISHOLM & KILPATRICK  
/s/Zachary M. Stolz  
321 S Main St #200  
Providence, Rhode Island 02903  
(401) 331-6300  
Fax: (401) 421-3185

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using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

# Exhibit A

Time from 10/1/2018 to 8/3/2020

**Case No. 265605**

**Client: Hageman, Mr. Emil G.**

|            |         |   | <u><b>Hours</b></u> |
|------------|---------|---|---------------------|
| 12/13/2018 | STEPHEN | Reviewed Board decision and conducted legal research. Recommended case for appeal to CAVC and suggested legal arguments.  | 0.60                |
| 1/30/2019  | NICK    | Reviewed file & appeal documents. Filed Notice of Appeal, Notice of Appearance for Z. Stolz as lead counsel, DFH & Fee Agreement with the Court. Received, reviewed, & saved Court confirmation email to the file. Updated case file. | 0.10                |
| 1/31/2019  | NICK    | Reviewed docket and confirmed Court's proper docketing of appeal documents; updated client file   | 0.10                |
| 3/24/2019  | LWILDER | Drafted and filed notice of appearance as atty; updated client file   | 0.10                |
| 3/28/2019  | LWILDER | Received and reviewed notice of appearance for OGC; updated client file   | 0.10                |
| 4/1/2019   | LWILDER | Received and reviewed notice of transmittal of RBA; updated client file   | 0.10                |
| 4/8/2019   | NICK    | Reviewed RBA to determine need for dispute  | 0.60                |
| 4/22/2019  | LWILDER | Drafted and submitted RBA status letter to be sent to client; updated client file   | 0.10                |
| 4/25/2019  | LWILDER | Received and reviewed order to file brief; calculated brief due date; updated client file   | 0.10                |
| 4/26/2019  | LWILDER | Reviewed pp 1-1711 of RBA to identify evidence relevant to possible dispute; updated client file  | 1.90                |
| 5/13/2019  | LWILDER | Reviewed pp 1712-5438 of RBA to identify evidence relevant to possible dispute; updated client file   | 3.00                |
| 5/14/2019  | LWILDER | Reviewed pp 5439-6705 of RBA to identify evidence relevant to possible dispute; updated client file   | 1.20                |
| 5/15/2019  | LWILDER | Reviewed Board decision to identify legal errors; reviewed casemap to identify pertinent evidence; conducted additional research based on screening notes; drafted PBC memo outline; updated client file                              | 1.30                |
| 5/16/2019  | DWEINER | Reviewed PBC memo outline with BVA decision; suggested edits for litigation strategy purposes. Updated file.  | 0.30                |
| 6/11/2019  | LWILDER | Called client regarding additional legal argument; discussed legal arguments; documented call in client file  | 0.20                |
| 6/12/2019  | LWILDER | Reviewed PBC memo outline; conducted additional research on pertinent language; drafted PBC memo; reviewed PBC memo, revised and incorporated edits; updated client file  | 2.40                |
| 6/13/2019  | DWEINER | Reviewed PBC memo draft with record and outline; suggested edits for accuracy and clarity. Updated file.  | 0.40                |
| 6/14/2019  | LWILDER | Drafted and sent correspondence to OGC and CLS containing redacted RBA and memo; drafted and filed rule 33 certificate of service; updated client file  | 0.10                |
| 6/14/2019  | LWILDER | Incorporated edits into PBC memo based on suggestions; reviewed for style and substance; extracted and redacted relevant portions of RBA; updated client file   | 0.80                |
| 6/14/2019  | LWILDER | Drafted and submitted cover letter for PBC memo to be sent with memo to client; updated client file   | 0.10                |
| 6/28/2019  | LWILDER | Reviewed PBC memo in preparation for PBC; participated in PBC; summarized PBC in client file  | 0.40                |
| 7/9/2019   | ZACH    | Participated in discussion of litigation and briefing strategy.   | 0.10                |
| 7/15/2019  | LWILDER | Called client regarding status of claims and PBC; documented call in client file  | 0.20                |
| 7/26/2019  | LWILDER | Drafted and sent correspondence to OGC regarding update to client's case; updated client file   | 0.10                |
| 8/23/2019  | LWILDER | Reviewed client file; conducted additional research on pertinent caselaw; began drafting opening brief; updated client file   | 1.70                |
| 9/5/2019   | LWILDER | Conducted additional research; completed initial draft of opening brief; reviewed for style and substance; updated client file  | 3.00                |
| 9/9/2019   | DWEINER | Reviewed opening brief draft with record and strategy notes for accuracy, clarity, and thoroughness. Discussion with co-counsel re: prejudice. Updated file.  | 1.10                |

# Exhibit A

Time from 10/1/2018 to 8/3/2020

**Case No. 265605**

**Client: Hageman, Mr. Emil G.**

|            |          |  | <u>Hours</u> |
|------------|----------|--|--------------|
| 9/9/2019   | LWILDER  | Reviewed and incorporated edits into opening brief; began editing arguments based on suggestions; updated client   | 0.70         |
| 9/10/2019  | LWILDER  | Made additional edits to opening brief based on comments and suggestions; reviewed additions for style and substance   | 0.90         |
| 9/11/2019  | DWEINER  | Reviewed revised brief draft for accuracy, clarity, and thoroughness; discussion with LW re: revisions; updated file.  | 0.80         |
| 9/11/2019  | LWILDER  | Made additional edits to argument section of opening brief   | 0.70         |
| 9/12/2019  | LWILDER  | Performed final proofread to and made final edits to opening brief; filed brief  | 1.40         |
| 10/8/2019  | SAGOSTIN | Prepared and e-filed notice of appearance, reviewed docket for procedural status, received and reviewed confirmation e-mail for accuracy, and updated file.                  | 0.20         |
| 10/10/2019 | KEVIN    | Prepared and e-filed notice of appearance, reviewed confirmation e-mail for accuracy, and updated file.  | 0.10         |
| 11/12/2019 | SAGOSTIN | Received and reviewed an email from the Court notifying that Appellee filed a motion to extend time to file the Secretary's brief for accuracy. Updated file.                | 0.10         |
| 11/12/2019 | SAGOSTIN | Received and reviewed an email from the Court granting the Secretary's motion to extend the time to file his brief for accuracy. Updated file.                               | 0.10         |
| 11/12/2019 | SAGOSTIN | Received, reviewed, and responded to an email from OGC requesting our position on a 45 day extension for the Secretary's opening brief. Updated file.                        | 0.10         |
| 12/11/2019 | SAGOSTIN | Prepared and e-filed attorney notice of appearance following admission to the CAVC as an attorney, received and reviewed confirmation e-mail for accuracy, and updated file. | 0.10         |
| 12/23/2019 | SAGOSTIN | Received and reviewed the Court's email that the Secretary's brief was filed for accuracy. Updated file.   | 0.10         |
| 12/23/2019 | SAGOSTIN | Reviewed OGC's brief and response to the first argument in the opening brief. Outlined OGC's responses to our arguments in that section. Updated file.                       | 0.50         |
| 12/26/2019 | SAGOSTIN | Reviewed OGC's brief and response to the second argument in the opening brief. Outlined OGC's responses to our arguments in that section. Updated file.                      | 0.70         |
| 1/6/2020   | SAGOSTIN | Prepared for the case strategy meeting. Reviewed the pleadings. Researched Wood v. Derwinski and the memorandum decision in Paul Wait in preparation for the meeting.        | 0.70         |
| 1/6/2020   | SAGOSTIN | Met with Barb Cook, Jenna Zellmer, and Kevin Medeiros to discuss case strategy. Summarized the meeting in a memo to file.  | 0.60         |
| 1/9/2020   | SAGOSTIN | Began outlining the reply brief section responding to the Secretary's argument that the Veteran did not adequately show impairment in earning capacity.                      | 0.50         |
| 1/22/2020  | SAGOSTIN | Reviewed record pages 1 to 175 for reply brief purposes. Updated file.   | 0.60         |
| 1/23/2020  | SAGOSTIN | Reviewed record pages 176 to 500 for reply brief purposes, focusing on evidence of impairment in earning capacity to respond to the Secretary's arguments. Updated file.     | 0.30         |
| 1/29/2020  | SAGOSTIN | Reviewed record pages 2001 to 2226 for reply brief purposes, focusing on evidence of impairment in earning capacity to respond to the Secretary's arguments. Updated file.   | 0.70         |
| 1/29/2020  | SAGOSTIN | Reviewed record pages 501 to 2000 for reply brief purposes, focusing on evidence of impairment in earning capacity to respond to the Secretary's arguments. Updated file.    | 1.70         |
| 1/30/2020  | SAGOSTIN | Reviewed record pages 3001 to 3792 for reply brief purposes, focusing on evidence of impairment in earning capacity to respond to the Secretary's arguments. Updated file.   | 1.60         |
| 1/30/2020  | SAGOSTIN | Reviewed record pages 2227 to 3000 for reply brief purposes, focusing on evidence of impairment in earning capacity to respond to the Secretary's arguments. Updated file.   | 1.20         |
| 1/31/2020  | SAGOSTIN | Reviewed record pages 5706 to 6705 for reply brief purposes, focusing on evidence of impairment in earning capacity to respond to the Secretary's arguments. Updated file.   | 1.00         |
| 1/31/2020  | SAGOSTIN | Reviewed record pages 4706 to 5705 for reply brief purposes, focusing on evidence of impairment in earning capacity to respond to the Secretary's arguments. Updated file.   | 1.00         |
| 1/31/2020  | SAGOSTIN | Reviewed record pages 3793 to 4705 for reply brief purposes, focusing on evidence of impairment in earning capacity to respond to the Secretary's arguments. Updated file.   | 1.30         |

# Exhibit A

Time from 10/1/2018 to 8/3/2020

**Case No. 265605**

**Client: Hageman, Mr. Emil G.**

|           |          |  |  | <u>Hours</u> |
|-----------|----------|--|--|--------------|
| 2/3/2020  | SAGOSTIN | Continued outlining the reply brief section responding to the Secretary's argument that the Veteran did not adequately show impairment in earning capacity.  |  | 0.90         |
| 2/4/2020  | SAGOSTIN | Began drafting the reply brief, focusing on the first argument responding to the Secretary's assertion that the Veteran's ankle condition did not impair his earnings.   |  | 1.80         |
| 2/5/2020  | SAGOSTIN | Continued to draft the reply brief, focusing on the second argument responding to the Secretary's assertions regarding the duty to assist.   |  | 2.00         |
| 2/6/2020  | SAGOSTIN | Finished drafting the first draft of the reply brief, focusing on responding to the Secretary's assertions regarding the Veteran's communications to the VA examiner.  |  | 1.80         |
| 2/11/2020 | KEVIN    | Substantive review of SA's first draft reply brief for accuracy of legal arguments, organization, and flow; made necessary edits and revisions; memo to file re: edits/suggestions.  |  | 1.80         |
| 2/11/2020 | SAGOSTIN | Began revising the reply brief, incorporating edits from Kevin Medeiros. Focused on the response to the Secretary's Saunders argument.   |  | 0.60         |
| 2/12/2020 | SAGOSTIN | Continued revising the reply brief, incorporating edits from Kevin Medeiros. Focused on responding to the Secretary's arguments regarding the Board's compliance with its DTA.   |  | 1.00         |
| 2/12/2020 | SAGOSTIN | Made additional revisions to the draft of the reply brief. Updated file.   |  | 0.30         |
| 2/19/2020 | SAGOSTIN | Reviewed the record to verify when Mr. Hageman stopped working re: possible addition to reply brief  |  | 0.30         |
| 2/19/2020 | SAGOSTIN | Discussed the Ray v. Wilkie counterargument in the reply brief with Christian McTarnaghan.   |  | 0.10         |
| 2/20/2020 | SAGOSTIN | Finalized the reply brief, incorporating final revisions. E-filed the brief. Received and reviewed the Court's confirmation email for accuracy. Updated file.  |  | 1.50         |
| 2/20/2020 | SAGOSTIN | Reviewed the reply brief for accuracy of all legal and RBA citations. Made all necessary revisions.  |  | 0.50         |
| 3/5/2020  | SAGOSTIN | Reviewed the filed record of proceedings for accuracy. Prepared and e-filed the response to the ROP. Updated file.   |  | 0.40         |
| 3/6/2020  | SAGOSTIN | Received and reviewed the Court's order assigning the case to Judge Falvey.  |  | 0.10         |
| 5/11/2020 | SAGOSTIN | Reviewed the memorandum decision against the opening brief and reply brief. Summarized the decision in a memo to file. Updated file.   |  | 1.00         |
| 5/15/2020 | ZACH     | Reviewed Court decision, pleadings, and notes in case. Prepared letter to client concerning Court's decision. Ensured case file was updated with necessary letters, pleadings, and correspondence so that client could be properly informed of case progress, disposition, and next steps. |  | 0.70         |
| 5/20/2020 | SAGOSTIN | Left a message for Mr. Hageman asking him to call me back about his appeal. Updated file.  |  | 0.10         |
| 5/22/2020 | SAGOSTIN | Left a message for Mr. Hageman asking him to call me back for an update in his case. Updated file.   |  | 0.10         |
| 5/27/2020 | SAGOSTIN | Left a message for Mr. Hageman asking him to call me back for an update in his case regarding the memorandum decision. Updated file.   |  | 0.10         |
| 5/27/2020 | SAGOSTIN | Spoke with Mr. Hageman and updated him on the memorandum decision. Summarized the conversation in a memo to file. Updated file.  |  | 0.50         |
| 5/28/2020 | SAGOSTIN | Prepared the updated decision letter to Mr. Hageman with his new address. Updated file.  |  | 0.20         |
| 6/2/2020  | SAGOSTIN | Received and reviewed for accuracy the Court's order entering judgment. Updated file.  |  | 0.10         |
| 6/11/2020 | ZACH     | Prepared letter to client concerning entry of Court's judgment.  |  | 0.30         |
| 7/27/2020 | SAGOSTIN | Discussed mandate entering soon with Mr. Hageman. Summarized the conversation in a memo to file. Updated file.   |  | 0.20         |
| 8/3/2020  | DANIELLE | Prepared and e filed Notice of Appearance. Received, reviewed, and saved Court confirmation email. Checked docket sheet to ensure proper filing. Updated case file.  |  | 0.20         |
| 8/3/2020  | DANIELLE | Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.  |  | 1.20         |

# Exhibit A

Time from 10/1/2018 to 8/3/2020

Case No. 265605

Client: Hageman, Mr. Emil G.

|          |      |   | <u>Hours</u> |
|----------|------|---|--------------|
| 8/3/2020 | ZACH | Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy. | 0.30         |

## Timekeeper Summary

| <u>Staff</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|--------------|--------------|-------------|---------------|
| DANIELLE     | 1.4          | \$ 207.74   | \$ 290.84     |
| DWEINER      | 2.6          | \$ 207.74   | \$ 540.12     |
| KEVIN        | 1.9          | \$ 207.74   | \$ 394.71     |
| LWILDER      | 20.6         | \$ 207.74   | \$ 4,279.44   |
| NICK         | 0.8          | \$ 207.74   | \$ 166.19     |
| SAGOSTIN     | 26.2         | \$ 207.74   | \$ 5,442.79   |
| STEPHEN      | 0.6          | \$ 207.74   | \$ 124.64     |
| ZACH         | 1.4          | \$ 207.74   | \$ 290.84     |
| SAGOSTIN     | 0.5          | \$173.00    | \$86.50       |
|              |              | Total:      | \$11,616.07   |

## USAO ATTORNEY'S FEES MATRIX — 2015-2020

*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 | 2019-20 |
|-------------------------|---------|---------|---------|---------|---------|
| 31+ years               | 568     | 581     | 602     | 613     | 637     |
| 21-30 years             | 530     | 543     | 563     | 572     | 595     |
| 16-20 years             | 504     | 516     | 536     | 544     | 566     |
| 11-15 years             | 455     | 465     | 483     | 491     | 510     |
| 8-10 years              | 386     | 395     | 410     | 417     | 433     |
| 6-7 years               | 332     | 339     | 352     | 358     | 372     |
| 4-5 years               | 325     | 332     | 346     | 351     | 365     |
| 2-3 years               | 315     | 322     | 334     | 340     | 353     |
| Less than 2 years       | 284     | 291     | 302     | 307     | 319     |
| Paralegals & Law Clerks | 154     | 157     | 164     | 166     | 173     |

### *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. The USAO rates for years prior to and including 2014-15 remains the same as previously published on the USAO's public website.
5. 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.
6. 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).
7. The attorney's fees matrices issued by the United States Attorney's Office are intended to facilitate the settlement of attorney's fees claims in actions in which the United States may be liable to pay attorney's fees to the prevailing party and the United States Attorney's Office is handling the matter. The United States Attorney's Office is presently working with other parties to develop a revised rate schedule, based upon current, realized rates paid to attorneys handling complex federal litigation in the District of Columbia federal courts. This effort is motivated in part by the D.C. Circuit's urging that "both the plaintiff and defense sides of the bar" should "work together and think creatively about how to produce a reliable assessment of fees charged for complex federal litigation in the District." *D.L. v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019). This new matrix should address the issues identified by the majority in *D.L.*, but it is expected that it will be some time before a new matrix can be prepared. In the interim, for matters in which a prevailing party agrees to payment pursuant to the matrices issued by the United States Attorney's Office, the United States Attorney's Office will not demand that a prevailing party offer the additional evidence that the law otherwise requires. See *Eley*, 793 F.3d at 104 (quoting *Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995)) (requiring "evidence that [the] 'requested rates are in line with those prevailing in the community for similar services'").