

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

HUGH J. DAVIS, JR.,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 19-746
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

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

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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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Appellant,)	
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v.)	Vet. App. No. 19-746
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ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

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

Pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and U.S. Vet. App. Rule 39, Appellant, Hugh J. Davis applies for an award of reasonable attorneys’ fees and expenses in the amount of **\$ 11,253.98.**

PROCEDURAL HISTORY

On October 12, 2018, the Board of Veterans’ Appeals (Board) issued a decision that denied Appellant’s claim for entitlement to service connection for sleep apnea.¹ Appellant filed a timely notice of appeal with this Court on February 4, 2019.

On April 5, 2019, the Secretary served on Appellant’s counsel the 1,297-page Record Before the Agency (RBA). On April 25, 2019, the Court issued an Order to

¹ That part of the decision in which the Board granted entitlement to service connection for erectile and voiding dysfunction was not before the Court, as the findings were favorable to Appellant. See *Medrano v. Nicholson*, 21 Vet. App. 165, 170 (2007).

file Appellant's brief within sixty days. On May 10, 2019, the Court issued an Order scheduling a June 6, 2019, Rule 33 Staff Conference. The Rule 33 Conference was subsequently rescheduled for June 24, 2019.

Pursuant to the Court's Order, Appellant's counsel prepared an 8-page Rule 33 Summary of the Issues addressing the legal errors committed by the Board in the decision on appeal, which he served on counsel for the Secretary and Central Legal Staff (CLS) counsel on June 10, 2019. On June 24, 2019, the Rule 33 Staff Conference was held as scheduled, but the parties failed to arrive at a joint resolution.

On September 9, 2019 Appellant filed his 17-page initial brief (hereinafter, App. Br.) with the Court. In his brief, Appellant argued that the Board erred by failing to ensure that the Department of Veterans Affairs (VA) satisfied its duty to assist. See 38 U.S.C. § 5103A(a); App. Br. at 7–12. Specifically, Appellant argued that the December 2015 VA Medical Examination, upon which the Board relied, was inadequate because the examiner failed to consider Appellant's lay statements regarding continuity of symptomatology of sleep apnea. See *Ardison v. Brown*, 6 Vet. App. 405 (1994); *Nieves-Rodriguez v. Peake*, 22 Vet. App. 295 (2008); App. Br. at 10–11. Further, Appellant argued that the December 2015 VA examiner's reliance on "studies" for the proposition that the symptoms described by the appellant showed "poor specificity . . . in diagnosing OSA," and finding that Appellant's reported symptoms did not *cause* his sleep apnea, failed to answer whether the emergence of those symptoms served as evidence that Appellant

suffered from sleep apnea well prior to the date of his diagnosis. App. Br. at 9–10; R. at 442 (440–45). Moreover, Appellant argued that VA failed to determine whether relevant private treatment records, that he identified during the period on appeal, remained outstanding. App. Br. at 12.

Appellant also argued that the Board failed to provide adequate reasons or bases for its denial of his sleep apnea claim because it neglected to explain why it relied on the flawed December 2015 VA Medical Opinion. See 38 U.S.C. § 7104(d); App. Br. at 13–17. Specifically, Appellant argued that the Board applied a standard of proof akin to the clinical standard of medical certainty when it relied upon the December 2015 VA Medical Opinion for the proposition that because the symptoms suffered by the appellant generally showed “poor specificity” in diagnosing sleep apnea or ascertaining causation for sleep apnea, the appellant’s reported symptoms were not relevant to determining that date his sleep apnea emerged. App. Br. at 14–15. Moreover, Appellant argued that the Board failed to address lay evidence of continued symptomatology, including when it rejected lay statements of record as “lay opinions,” and impermissibly relied on the gap in time between the appellant’s service and his diagnosis of sleep apnea without discussing the impact of lay evidence indicating that he suffered from continuous symptoms following his service. App. Br. at 16–17.

On December 19, 2019, the Secretary filed his responsive brief (hereinafter, Sec. Br.) urging the Court to affirm the relevant part of the Board decision on appeal. In his brief, the Secretary argued that the Board did not err in its finding that the VA

had satisfied its duty to assist. See Sec. Br. at 6–11. The Secretary contended that the December 2015 VA examiner provided clear conclusions supported by reasoned medical explanations, and therefore asserted that the examination was adequate, and argued that Appellant attempted to render his own medical opinion and opine on the “medical literature in order to second-guess the examiner’s professional judgment.”. See Sec. Br. at 6–9. Moreover, the Secretary argued that VA was not required to determine whether additional relevant medical evidence remained outstanding. App. Br. at 12. The Secretary also argued that the Board’s statement of reasons or bases was adequate because the Board was permitted to rely on the December 2015 VA Medical Opinion, and because the Board “considered all of the lay statements provided by Appellant, his spouse, and Mr. Barnes and determined that these statements were not probative as to the issue of whether Appellant suffered from sleep apnea due to service as none of them had the medical expertise to make such a determination.” See Sec. Br. at 14–18.

On February 18, 2020, Appellant filed his 10-page Reply Brief (hereinafter, App. Rep. Br.) with the Court. Responding to the Secretary’s argument, Appellant explained that the December 2015 VA Medical Examination was deficient because it failed to address a vital question: whether Appellant’s symptoms indicated that he had suffered from sleep apnea since his service or as a result of his service. See *Jones v. Shinseki*, 23 Vet. App. 382 (2010); App. Rep. Br. at 2–7. Specifically, Appellant argued that if his symptoms of snoring, pauses in his breathing and gasping for air during his sleep were the result of his diagnosed obstructive sleep

apnea, then the question before the examiner was whether those current symptoms differ or have a separate etiology from the symptoms he experienced during and after his service. App. Rep. Br. at 4–5. Appellant also noted if his symptoms were deemed irrelevant to determining the etiology of his sleep apnea, then, the examiner relied solely on the fact that he was not diagnosed with sleep apnea via sleep study “until fifteen years after [his] separation from service.” App. Rep. Br. at 5. And, addressing the Secretary’s argument that VA was not required to seek additional treatment records, Appellant argued that notations contained in private treatment records obtained by VA, combined with statements made by Appellant, provided constructive notice of other outstanding, and potentially relevant, private medical evidence that VA was required to seek. App. Rep. Br. at 6–7.

Appellant also further detailed that the Board failed to provide adequate reasons or bases for its denial of the sleep apnea claim when it accepted the December 2015 VA Medical Examination as adequate. See App. Rep. Br. at 7–10. And Appellant averred that the Secretary’s argument that the Board was correct in finding that the lay statements of record had no evidentiary value, because the proponents were not qualified to render medical opinions, was a post-hoc rationalization for the Board’s failure to address whether the lay evidence at issue indicated that Appellant continued to suffer from symptoms of sleep apnea following his service. App. Rep. Br. at 8–9.

On February 27, 2020, the Secretary filed the Record of Proceedings with the

Court. On April 29, 2020, the Court issued its Memorandum Decision (hereinafter, Mem. Dec.). In the decision, the Court held that the Board erred in relying on the December 2015 VA Medical Examination to deny the claim. See Mem. Dec. at 4–6. Specifically, the Court found that the December 2015 VA medical opinion was inadequate because the VA examiner failed “to address [lay] statements as to the continuity of these signs and symptoms from service to the present.” Mem. Dec. at 4–5. According to the Court, it was “apparent from the examiner's rationale that he did not consider the lay statements as to the veteran's continued symptoms following service and that his opinion was instead focused solely on the reports of signs or symptoms of sleep apnea during service.” Mem. Dec. at 5. Accordingly, the Court found that the Board erred in relying on the December 2015 VA Medical Opinion, and held that remand was required for a new medical examination and readjudication. Mem. Dec. at 6–7.

The Court entered Judgment on May 21, 2020. Mandate entered under Rule 41(b) of the Court’s Rules of Practice and Procedure, effective July 20, 2020.

ARGUMENT

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

Under 28 U.S.C. § 2412(d), a court shall award to a prevailing party fees and other expenses incurred by that party in any civil action, including proceedings for

judicial review of agency action. To obtain “prevailing party” status, a party need only obtain success “on any significant issue in litigation which achieve[d] some of the benefit ... sought in bringing the suit.” *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993) (quoting *Texas State Teachers Assn. v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791-92 (1989)).

In this case, Appellant is a prevailing party entitled to an award of fees and costs because the Court vacated the Board’s October 12, 2018 decision based on administrative error and remanded the matter for readjudication consistent with its decision. See *Zuberi v. Nicholson*, 19 Vet. App. 541 (2006); *Sumner v. Principi*, 15 Vet. App. 256 (2001) (en banc). The Court-ordered relief creates the “material alteration of the legal relationship of the parties’ necessary to permit an award of attorney’s fees.” *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep’t of Health and Human Res.*, 532 U.S. 598, 604 (2001) (quoting *Garland Indep. Sch. Dist.*, 489 U.S. at 792).

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

addition, Appellant submitted a Declaration of Financial Hardship, which was accepted for filing by the Court on February 4, 2019. See *Owens v. Brown*, 10 Vet. App. 65, 67 (1997).

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

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

In this case, the Secretary's administrative and litigation positions were not substantially justified. As described in the "Procedural History," *supra*, the Court set aside and remanded the relevant part of the Board's October 12, 2018 decision because the Board erred by failing to ensure that the VA satisfied its duty to assist. See Mem. Dec. at 4–7. This error and others committed by the Board, had no reasonable basis in fact or in law.

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

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

An itemized statement of the services rendered and the reasonable fees and

expenses for which Appellant seeks compensation is attached to this application as Exhibit A. Included in Exhibit A is a certification that lead counsel has “(1) reviewed the combined billing statement and is satisfied that it accurately reflects the work performed by all counsel and (2) considered and eliminated all time that is excessive or redundant.” *Baldrige v. Nicholson*, 19 Vet. App. 227, 240 (2005). In the exercise of billing judgment, Appellant has eliminated **3.22** hours of attorney time from this itemized statement and this fee petition.

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

² A rate in excess of \$125 per hour for the attorneys for Appellant in this case is justified based on the increase in the cost of living since the EAJA was amended in March 1996. See 28 U.S.C. § 2412(d)(2)(A)(ii). The \$125 attorney fee rate, adjusted for inflation for the Washington Metropolitan Area, was \$209.52 in September 2019, the month the initial brief was filed. See Bureau of Labor Statistics Data, CPI-U (Exhibit B). This rate was calculated by using the CPI-U for the Washington-Arlington-Alexandria, DC-VA-MD-WV area adjusted for inflation between March 1996 and September 2019. See Exhibit B; *Mannino v. West*, 12 Vet. App. 242 (1999). The market rates for Appellant’s attorneys exceeded the requested rates per hour during the relevant time period. See *Covington v. District of Columbia*, 839 F. Supp. 894, 904–05 (D.D.C. 1993), *aff’d*, 58 F.3d 1101 (D.C. Cir. 1995). The prevailing market rate for the work done by paralegals and law clerks was at least \$166.00 from June 1, 2018 to May 31, 2019, and at least \$173.00 from June 1, 2019, to the present. See USAO Attorney’s Fees Matrix, 2015-2020 (Exhibit C) (“The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff’d in part, rev’d in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore . . . area.”); see also *Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996); *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008).

<u>Name</u>	<u>Rate</u>	<u>Hours</u>	<u>Fee Amount</u>
Barton F. Stichman (1974 law graduate)	\$ 209.52	1.4	\$ 293.33
Stacy A. Tromble (2007 law graduate)	\$ 209.52	1.8	\$ 377.14
Byron M. Moore (2013 law graduate)	\$ 209.52	41.5	\$ 8,695.08
Angela Nedd (paralegal)	\$ 166.00	0.4	\$ 66.40
Janee LeFrere (paralegal)	\$ 173.00	1.0	\$ 173.00
Brianna LeFrere (paralegal)	\$ 173.00	1.5	\$ 259.50
Bryan Medema (law clerk)	\$ 166.00	3.0	\$ 498.00
Lindsay Greene (law clerk)	\$ 173.00	1.0	\$ 173.00
Jack McCaffrey (law clerk)	\$ 173.00	3.7	\$ 640.10
Emily Jenkins (law clerk)	\$ 173.00	0.3	\$ 51.90

SUBTOTAL: \$ 11,227.45

The reasonable expenses for which Appellant seeks compensation are:

<u>Nature of Expense</u>	<u>Expense Amount</u>
Federal Express and USPS Charges	\$ 21.53
Duplication Charges	\$ 15.00

SUBTOTAL: \$ 26.53

TOTAL: \$ 11,253.98

WHEREFORE, Appellant respectfully requests that the Court award attorneys' fees and expenses in the total amount of **\$ 11,253.98.**

Respectfully submitted,

FOR APPELLANT:

Date: August 10, 2020

/s/ Byron M. Moore
Byron M. Moore
Barton F. Stichman
National Veterans Legal
Services Program
1600 K Street, NW, Suite 500
Washington, DC 20006-2833
(202) 621-5721

Counsel for Appellant

EXHIBIT A

**NVLSP Staff Hours for Hugh J. Davis, Jr.
Vet. App. No. 19-746**

Date: 12/13/2018 0.7 Staff: Byron M. Moore
Review and analyze Board of Veterans' Appeals (BVA) decision and identify issues to raise on appeal; draft memorandum regarding issues to raise on appeal.

Date: 12/28/2018 0.1 Staff: Byron M. Moore
Draft correspondence to client regarding BVA decision and issues to raise on appeal.

Date: 1/2/2019 0.3 Staff: Angela Nedd
Finalize correspondence to client regarding BVA decision and issues to raise on appeal, and enclosures.

Date: 1/15/2019 0.1 Staff: Byron M. Moore
Teleconference with client regarding BVA decision and issues to raise on appeal..

Date: 1/17/2019 0.1 Staff: Byron M. Moore
Draft Notice of Appeal and Notices of Appearance.

Date: 1/31/2019 0.1 Staff: Angela Nedd
Review correspondence from client regarding case initiation.

Date: 2/1/2019 0.0 Staff: Angela Nedd
Prepare internal file **[0.1 eliminated in the exercise of billing judgment]**.

Date: 2/1/2019 0.2 Staff: Byron M. Moore
Finalize Notice of Appeal and Notices of Appearance.

Date: 2/4/2019 0.1 Staff: Byron M. Moore

Finalize retainer agreement and Declaration of Financial Hardship.

Date: 2/7/2019 0.1 Staff: Byron M. Moore
Draft detailed correspondence to client regarding next steps in appeal, including projected timeline of appeal.

Date: 4/12/2019 0.0 Staff: Byron M. Moore
Update internal file **[0.1 eliminated in the exercise of billing judgment]**.

Date: 4/21/2019 3.0 Staff: Bryan Medema
Reviewed and analyze 1,297-page Record Before the Agency (RBA) to ensure legibility and completeness.

Date: 5/23/2019 0.0 Staff: Byron M. Moore
Draft email to VA General Counsel and Court Central Legal Staff (CLS) regarding motion to reschedule Rule 33 Staff Conference; draft motion to reschedule Rule 33 Staff Conference **[0.3 eliminated in the exercise of billing judgment]**.

Date: 6/9/2019 4.0 Staff: Byron M. Moore
Begin review and analysis of 1,297-page RBA and take detailed notes for preparation of Rule 33 Summary of the Issues (3.0); Draft outline of Rule 33 Summary of the Issues arguments and begin drafting Rule 33 Summary of the Issues (1.0).

Date: 6/10/2019 1.8 Staff: Byron M. Moore
Finalize 8-page Rule 33 Summary of the Issues; draft style edits to add persuasive value to legal argument (1.5); draft email to VA General Counsel and CLS regarding Rule 33 Staff Conference and Summary of Issues, with attachment (0.1); draft and finalize Rule 33 Certificate of Service (0.2).

Date: 6/10/2019 0.8 Staff: Stacy A. Tromble
Review Rule 33 Summary of the Issues and draft final argument for B. Moore.

Date: 6/10/2019 0.3 Staff: Emily Jenkins
Review and analyze relevant evidence to prepare attachment to Rule 33 Summary of the Issues, for B. Moore.

Date: 6/24/2019 0.6 Staff: Byron M. Moore
Prepare for Rule 33 Staff Conference, including review of Rule 33 Summary of the Issues and relevant evidence (0.2); participate in Rule 33 Staff Conference (0.2); conference with C. Hill regarding outcome of Rule 33 Staff Conference and evaluate Secretary's position (0.1); draft correspondence to client regarding case status and outcome of Rule 33 Staff Conference (0.1).

Date: 7/2/2019 0.2 Staff: Byron M. Moore
Finalize correspondence to client regarding case status.

Date: 7/11/2019 0.0 Staff: Byron M. Moore
Draft motion for extension of time within which to file initial brief **[0.2 eliminated in the exercise of billing judgment]**.

Date: 9/2/2019 12.2 Staff: Byron M. Moore
Review tabbed RBA for outstanding issues for preparation of initial brief (3.0); draft Statement of the Issues (0.1); draft Statement of the Case (0.1); draft Statement of Facts (3.0); draft argument regarding inadequate reasons and bases (2.3); draft argument regarding VA medical opinions at issue and duty to assist failures (2.4); review initial brief and draft inserts to argument (1.3).

Date: 9/6/2019 0.0 Staff: John Niles
Legal advice to lead attorney. **[0.1 eliminated in the exercise of billing judgment]**

Date: 9/8/2019 1.4 Staff: Barton F. Stichman
Draft additional argument insert for B. Moore and legal advice to him regarding final inserts to be added by him.

Date: 9/9/2019 1.0 Staff: Janee LeFrere
Update information for inserts to footnotes for B. Moore (0.5); Prepare Table of Authorities (0.5).

Date: 9/9/2019 5.0 Staff: Byron M. Moore
Draft final inserts to argument, per B. Stichman (2.0); update legal authority to bolster legal argument (1.0); ; Draft style edits to add persuasive value to legal argument and finalize 17-page initial brief. (2.0)

Date: 11/7/2019 0.1 Staff: Byron M. Moore
Email exchange with VA counsel regarding position on motion for extension to file responsive brief.

Date: 12/19/2019 0.0 Staff: Byron M. Moore
Email exchange with VA counsel regarding position on motion for extension to file reply brief **[0.1 eliminated in the exercise of billing judgment]**.

Date: 12/24/2019 0.0 Staff: Byron M. Moore
Draft motion for extension of time to file reply brief **[0.2 eliminated in the exercise of billing judgment]**.

Date: 2/14/2020 4.0 Staff: Byron M. Moore
Review 19-page responsive brief and outline Secretary's argument for preparation of reply brief argument outline (2.0); review caselaw cited by Secretary in order to prepare reply brief argument outline (0.5); draft reply brief argument outline (1.0).

Date: 2/15/2020 7.0 Staff: Byron M. Moore
Draft argument regarding inadequate medical opinions and duty to assist failures (2.5); draft argument regarding reasons and bases errors (2.4); draft inserts to add persuasive value and clarity to legal argument (2.1).

Date: 2/18/2020 1.0 Staff: Lindsay Greene
Update RBA and legal citations (0.5); draft Table of Authorities. (0.5)

Date: 2/18/2020 2.9 Staff: Byron M. Moore
Draft final insert to legal argument (0.5); draft style edits to add persuasive value to legal argument; finalize 10-page reply brief (2.4).

Date: 2/18/2020 1.0 Staff: Stacy A. Tromble
Review responsive brief and reply brief **[0.6 eliminated in the exercise of billing judgment]**; add insert to reply brief for B. Moore; legal advice to B. Moore regarding final insert to be added by him. (1.0)

Date: 3/9/2020 1.0 Staff: Brianna LeFrere
Review and analyze Record of Proceedings to ensure legibility and completeness.

Date: 4/29/2020 0.2 Staff: Byron M. Moore
Review and analyze Memorandum Decision in order to provide update to client.

Date: 5/6/2020 0.2 Staff: Byron M. Moore
Teleconference with client regarding Memorandum Decision.

Date: 7/23/2020 0.8 Staff: Jack McCaffrey
Draft application for reasonable attorneys' fees and expenses under the Equal Access to Justice Act (EAJA), including recitation of relevant procedural history.

Date: 7/24/2020 2.9 Staff: Jack McCaffrey
Continue to draft application for reasonable attorneys' fees and expenses under EAJA, including recitation of relevant procedural history (1.9); prepare list of itemized hours to be attached as exhibit to EAJA application (1.0).

Date: 7/27/2020 0.0 Staff: L. Michael Marquet
Add inserts to itemized list. **[0.7 eliminated in the exercise of billing judgment]**

Date: 8/5/2020 1.9 Staff: Byron M. Moore

Add insertion to application for reasonable attorneys' fees and expenses under the EAJA, and elimination of hours in the interest of billing judgment (1.6);
Draft correspondence to client regarding close of case and recommendations regarding Memorandum Decision (0.3).

Date: 8/7/2020 0.0 Staff: Christine Cote Hill

Review and add inserts to application. Review itemized list and eliminate more hours than recommended in billing judgment and legal advice to B. Moore regarding same. **[0.8 eliminated in the exercise of billing judgment]**

Date: 8/9/2020 0.5 Staff: Brianna LeFrere

Finalize application for B. Moore, to include adding detail to application and itemized list.

CERTIFICATION

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

Date: August 10, 2020

/s/ Byron M. Moore
Byron M. Moore

EXHIBIT B



Databases, Tables & Calculators by Subject

Change Output Options:

From:

1996 ▼

To:

2020 ▼

GO

☐ include graphs ☐ include annual averages

[More Formatting Options](#) ➡

Data extracted on: June 10, 2020 (3:34:48 PM)

CPI for All Urban Consumers (CPI-U)

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

Download: [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996	156.8		158.4		159.0		160.1		160.8		161.2		159.6	158.3	160.8
1997	161.6		161.9		162.1		162.9		163.6		161.8		162.4	162.0	162.8
1998	162.5		163.5		163.6		164.9		165.2		164.5				
1999	165.4		165.9		167.0		168.3		169.8		169.1				
2000	169.8		173.2		172.5		174.8		175.0		175.3				
2001	175.9		177.2		178.0		179.2		180.9		179.5				
2002	180.0		181.9		183.6		184.2		185.8		185.4				
2003	186.3		188.8		188.7		190.2		190.8		190.4				
2004	190.7		192.8		194.1		195.4		196.5		197.2				
2005	198.2		200.4		201.8		202.8		205.6		204.3				
2006	205.6		206.4		209.1		211.4		211.2		210.1				
2007	211.101		214.455		216.097		217.198		218.457		218.331				
2008	220.587		222.554		224.525		228.918		228.871		223.569				
2009	221.830		222.630		223.583		226.084		227.181		226.533				
2010	227.440		228.480		228.628		228.432		230.612		230.531				
2011	232.770		235.182		237.348		238.191		238.725		238.175				
2012	238.994		242.235		242.446		241.744		244.720		243.199				
2013	243.473		245.477		245.499		246.178		247.838		247.264				
2014	247.679		249.591		250.443		250.326		250.634		249.972				
2015	247.127		249.985		251.825		250.992		252.376		251.327		250.664	249.828	251.500
2016	250.807		252.718		254.850		254.305		253.513		253.989		253.422	253.049	253.795
2017	254.495		255.435		255.502		255.518		257.816		257.872		256.221	255.332	257.110
2018	260.219		260.026		261.770		262.016		263.056		261.120		261.445	260.903	261.987
2019	262.304		264.257		265.967		265.170		265.500		265.026		264.777	264.252	265.301
2020	266.433		265.385		265.733										

U.S. BUREAU OF LABOR STATISTICS Postal Square Building 2 Massachusetts Avenue NE Washington, DC 20212-0001

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EXHIBIT C

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-