UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

RAUL V. CARDENAS,	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 19-1788
	)	
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)

Pursuant to U.S. Vet. App. Electronic Rule 7, this PDF file is paginated:

Table of Contents 1

Appellant's Application for Award of Reasonable Attorneys' Fees and Expenses Pursuant to 28 U.S.C. § 2412(d) 2

Exhibit A 12

Exhibit B 20

Exhibit C 23

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

RAUL V. CARDENAS,	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 19-1788
	)	
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, Raul V. Cardenas applies for an award of reasonable attorneys' fees and expenses in the amount of **$ 10,303.66.**

PROCEDURAL HISTORY

On November 20, 2018 the Board of Veterans' Appeals (Board) issued a decision that denied Appellant's claim for entitlement to service connection for hepatitis C. Appellant filed a timely notice of appeal with this Court on March 18, 2019.

On May 16, 2019, the Secretary served on Appellant's counsel the 1,423-page Record Before the Agency (RBA). On June 5, 2019, the Court issued an Order to file Appellant's brief within sixty days. On June 14, 2019, the Court issued an Order scheduling a July 12, 2019 Rule 33 Staff Conference. The Rule 33 Conference was subsequently rescheduled for August 13, 2019.

Pursuant to the Court's Order, Appellant's counsel prepared 5-page Rule 33 Summary of the Issues addressing the legal errors committed by the Board in the decision on appeal, which she served on counsel for the Secretary and Central Legal Staff (CLS) counsel on July 30, 2019. On August 13, 2019, the Rule 33 Staff Conference was held as scheduled, but the parties failed to arrive at a joint resolution.

On October 28, 2020, 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 address the favorable military record evidence of exposure to hepatitis C in service or provide an adequate rationale for disregarding it. *See* 38 U.S.C. § 7104(d)(1); *Thompson v. Gober*, 14 Vet. App. 187, 188 (2000); App. Br. at 5. Specifically, Appellant argued that the Board failed to address the favorably military record evidence because Appellant met the *Shedden* elements, as the Board conceded he has a current diagnosis of hepatitis C, and evidence of record shows that Appellant was exposed to hepatitis C aboard the *USS Constellation*. *See Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004); App. Br. at 6–7. Additionally, Appellant argued that the Board failed to rectify its inconsistent finding that the service records fail to establish that hepatitis is related to service, with the favorable evidence of in-service exposure to hepatitis. *See Thompson v. Gober*, 14 Vet. App. 187 (2000); App. Br. at 8–9.

Appellant also argued that the Board erred by relying on the August 2017 VA examiner's opinion because the examiner improperly made factual findings and

based the opinion on an inaccurate factual finding that Appellant was not exposed to hepatitis C in service, and the Board did not address this in its decision. Moreover, Appellant argued that the Board erred by relying on the August 2017 VA examiner's opinion, which was inadequate because it relied on an inaccurate factual premise that Appellant was not exposed to hepatitis C in service. *See Reonal v. Brown*, 5 Vet. App. 458, 461 (1993). *See* App. Br. at 12–16. Appellant explained that the VA medical examiner improperly drew factual conclusions from assumptions about Appellant's military service record and occupational specialty, which she demonstrated neither the posture nor competence to make. *See Stefl v. Nicholson*, 21 Vet. App. 120, 123 (2007); *Nieves-Rodriguez v. Peake*, 22 Vet. App. 295 (2008); App. Br. at 13–15. Moreover, Appellant argued that these erroneous non-medical interpretations of the facts were not only outside of the examiner's scope of expertise, but were based on an inadequate and unsupported rationale. *Gabrielson v. Brown*, 7 Vet. App. 36 (1994); App. Br. at 15. Moreover, Appellant argued, the Board failed to address the deficiencies in the August 2017 VA examiner's opinion, and thus failed to ensure that the VA satisfied its duty to assist, and failed to provide an adequate statement of reasons or bases for its decision. *See* 38 U.S.C. §§ 5103A, 7104(d)(1); App Br. at 15–16.

On February 13, 2020, the Secretary filed his responsive brief (hereinafter, Sec. Br.) urging the Court to affirm the decision on appeal. In his brief, the Secretary argued that the August 2017 VA medical opinion was adequate because the examiner was able to determine whether Appellant was exposed to hepatitis C based

on evidence such as his MOS, while Appellant's own lay statements were not credible. *See* Sec. Br. at 7–13. Additionally, the Secretary argued that the Board's statement of reasons or bases was adequate because the Board, and the medical examiner, properly reviewed the record and weighed the probative nature of the evidence in their respective analyses. *See* Sec. Br. at 13–17.

On April 13, 2020, Appellant filed his 14-page Reply Brief (hereinafter, App. Rep. Br.) with the Court. Appellant explained that the Secretary failed to rebut Appellant's contention that there is no support or rationale to validate the August 2017 VA examiner's inferences (or competence to make those non-medical inferences). *See* App. Rep. Br. at 2–4. Moreover, Appellant further detailed that the Board failed to address probative evidence of record, and failed to provide reasons and bases for its finding and conclusions regarding the probative weight of the respective evidence when it parroted the conclusions of the VA examiner. *See* 38 U.S.C. § 7104(d)(1); *Gabrielson* at 40; App. Rep. Br. at 4–8. In addition, Appellant explained that the Secretary failed to establish that the Board relied on the August 2017 VA examiner's analysis of the favorable service record and that any such reliance was proper where the VA examiner improperly made factual findings and based the opinion on an inaccurate factual finding. *See* App. Rep. Br. at 10. Appellant explained that, in his response, the Secretary failed to cite any evidence that the Board considered and weighed, or made a decision on, the nature and relevance of the favorable 1981 service record or the VA examiner's analysis of such. *See Thompson*, 14 Vet. App. 187; App. Rep. Br. at 11.

On April 14, 2020, the Secretary filed the Record of Proceedings with the Court. On May 14, 2020, the Court issued its Memorandum Decision (hereinafter, Mem. Dec.). In its decision, the Court held that the Board erred by failing to adequately address evidence of record regarding Appellant's hepatitis exposure in service, and failed to explain its reliance on the August 2017 VA examination in light of its deficiencies, and set aside and remanded the November 2018 BVA decision for readjudication. *See* Mem. Dec. at 1.

The Court entered Judgment on June 8, 2020. The Court entered Mandate under Rule 41(b) of the Court's Rules of Practice and Procedure, effective August 7, 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 to have obtained success "on any significant issue in litigation which achieve[d] some of the benefit … sought in bringing the suit." *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993) (quoting *Texas State Teachers Assn. v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791-92 (1989)).

In this case, Appellant is a prevailing party entitled to an award of fees and costs because the Court vacated the Board's November 20, 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 March 18, 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. American Battle Monument Comm'n, 814 F.2d 1564, 1566-67 (Fed. Cir. 1987); *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994). The U.S. Supreme Court has held that for the position of the government to be substantially justified, it must have a "reasonable basis both in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); *accord Beta Sys. v. United States,* 866 F.2d 1404, 1406 (Fed. Cir. 1989).

In this case, the Secretary's administrative and litigation position were not substantially justified. As described in the "Procedural History," *supra*, the Court vacated the Board's November 20, 2018, decision because the Board erred by failing to provide an adequate statement of reasons or bases in two respects. *See* 38 U.S.C. § 7104(d)(1); Mem. Dec. at 1. These errors, and the 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 errors, had no basis in fact or law.

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

An itemized statement of the services rendered and the reasonable fees and expenses for which Appellant seeks compensation is attached to this application as Exhibit A. Included in Exhibit A is a certification that lead counsel has "(1) reviewed the combined billing statement and is satisfied that it accurately reflects the work performed by all counsel and (2) considered and eliminated all time that is excessive or redundant." *Baldridge and Demel v. Nicholson*, 19 Vet. App. 227, 240 (2005). In the exercise of billing judgment, Appellant has eliminated **1.0** hours of attorney time

and **2.0** hours of paralegal and law clerk time from this itemized statement and this fee petition.

Appellant seeks attorneys' fees at the following rates for representation in the Court of Appeals for Veterans Claims:[1]

Name	**Rate**	**Hours**	**Fee Amount**
Barton F. Stichman (1974 law graduate)	$ 209.33	0.5	$ 104.67

[1] A rate in excess of $125.00 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 $125.00 attorney fee rate, adjusted for inflation for the Washington Metropolitan Area, was $ 209.33 in October 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 October 2019. *See* Exhibit B; *Mannino v. West*, 12 Vet. App. 242 (1999); *see also Apodackis v. Nicholson*, 19 Vet. App. 91, 95 (2005). Related to the work of Caitlin Milo, the $125.00 attorney fee rate, adjusted for inflation for the Philadelphia, Pennsylvania area, was $ 199.04 in October 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 Philadelphia-Camden-Wilmington, PA-NJ-DE-MD area adjusted for inflation between March 1996 and October 2019. 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).

Christine Cote Hill (1996 law graduate)	$ 209.33	1.1	$ 230.26
Stacy A. Tromble (2007 law graduate)	$ 209.33	2.5	$ 523.33
Caitlin M. Milo (2013 law graduate)	$ 199.04	37.4	$ 7,444.10
Angela Nedd (paralegal)	$ 166.00 $ 173.00	0.2 0.4	$ 33.20 $ 69.20
Janee LeFrere (paralegal)	$ 173.00	1.3	$ 224.90
Sunny Chowdhury (paralegal)	$ 173.00	1.0	$ 173.00
Emily Jenkins (law clerk)	$ 166.00	2.5	$ 415.00
Tommy Sommer (law clerk)	$ 173.00	5.5	$ 951.50
Brianna LeFrere (law clerk)	$ 173.00	0.5	$ 86.50
			SUBTOTAL: $ 10,255.66

The reasonable expenses for which Appellant seeks compensation are:

Nature of Expense	**Expense Amount**
Federal Express and USPS Charges	$ 31.00
Duplication Charges	$ 17.00

SUBTOTAL: $ 48.00

TOTAL: $ 10,303.66

WHEREFORE, Appellant respectfully requests that the Court award attorneys' fees and expenses in the total amount of **$ 10,303.66.**

Respectfully submitted,

FOR APPELLANT:

Date: August 26, 2020

/s/ Christine Cote Hill
Christine Cote Hill
Barton F. Stichman
National Veterans Legal
Services Program
1600 K Street, NW, Suite 500
Washington, DC 20006-2833
(202) 621-5674

Counsel for Appellant

EXHIBIT A

NVLSP Staff Hours for Raul V. Cardenas
Vet. App. No. 19-1788

Date: 2/4/2019 1.0 Staff: Caitlin M. Milo
Review and analyze Board of Veterans' Appeals (BVA) decision and identify issues to raise on appeal.

Date: 2/15/2019 0.4 Staff: Stacy A. Tromble
Review memorandum regarding issues to raise on appeal and outline additional issue to raise on appeal.

Date: 2/18/2019 0.2 Staff: Caitlin M. Milo
Finalize correspondence to client regarding BVA decision and issues to raise on appeal.

Date: 2/25/2019 0.5 Staff: Caitlin M. Milo
Teleconference and email exchange with client regarding BVA decision and issues to raise on appeal and questions regarding same (0.3); finalize correspondence to client regarding case initiation, with attachments (0.2).

Date: 2/26/2019 0.1 Staff: Angela Nedd
Draft notice of appeal.

Date: 3/4/2019 0.1 Staff: Caitlin M. Milo
Teleconference with client regarding case status and case initiation, and question regarding same.

Date: 3/12/2019 0.1 Staff: Caitlin M. Milo
Finalize Notice of Appearance.

Date: 5/20/2019 0.1 Staff: Angela Nedd
Review correspondence from VA regarding Record Before the Agency (RBA).

Date: 5/24/2019 1.9 Staff: Emily Jenkins
Review and analyze 1,423-page RBA to ensure legibility and completeness, through

page 1,000.

Date: 5/30/2019 0.6 Staff: Emily Jenkins
Review and analyze 1,423-page RBA to ensure legibility and completeness, through end.

Date: 6/4/2019 0.5 Staff: Caitlin M. Milo
Review documents identified as illegible or incomplete to determine whether motion to respond to RBA (dispute) is necessary; evaluate that no dispute is necessary.

Date: 6/6/2019 0.1 Staff: Caitlin M. Milo
Draft email to client regarding case status.

Date: 6/17/2019 0.1 Staff: Caitlin M. Milo
Teleconference with client regarding case status and question regarding next steps.

Date: 6/26/2019 0.0 Staff: Caitlin M. Milo
Draft email to VA counsel and CLS regarding motion to reschedule Rule 33 Staff Conference. **[0.1 eliminated in the exercise of billing judgment]**

Date: 7/8/2019 0.0 Staff: Caitlin M. Milo
Email exchange with VA counsel regarding Rule 33 Staff Conference (0.1); draft and finalize motion to reschedule the Rule 33 Staff Conference (0.1). **[Entire 0.2 eliminated in the exercise of billing judgment]**

Date: 7/30/2019 3.4 Staff: Caitlin M. Milo
Draft Rule 33 Summary of the Issues (2.3); review, add inserts, and finalize 5-page Rule 33 Summary of the Issues (0.6); review and analyze relevant evidence to prepare attachment to Rule 33 Summary of the Issues (0.2); draft email to VA counsel and CLS regarding Rule 33 Summary of the Issues, with attachment (0.1); draft and finalize Rule 33 Certificate of Service (0.2).

Date: 7/31/2019 0.1 Staff: Angela Nedd
Draft correspondence to client regarding Rule 33 Summary of the Issues and settlement authority, with enclosure.

Date: 8/1/2019 0.2 Staff: Angela Nedd
Finalize correspondence to client regarding Rule 33 Summary of the Issues and settlement authority, with enclosure.

Date: 8/5/2019 0.2 Staff: Caitlin M. Milo
Teleconference with client regarding Rule 33 Summary of the Issues and Staff Conference, settlement authority.

Date: 8/13/2019 0.7 Staff: Caitlin M. Milo
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 (0.4); teleconference with client regarding next steps on appeal (0.1).

Date: 8/28/2019 0.0 Staff: Caitlin M. Milo
Draft email to E. Mee regarding next steps in appeal. **[0.1 eliminated in the exercise of billing judgment]**

Date: 9/11/2019 0.0 Staff: Caitlin M. Milo
Email exchange with VA counsel regarding motion for extension of time to file initial brief (0.1); draft and finalize motion for extension of time to file initial brief (0.1). **[Entire 0.2 eliminated in the exercise of billing judgment]**

Date: 10/7/2019 0.8 Staff: Caitlin M. Milo
Draft outline of initial brief argument.

Date: 10/14/2019 7.3 Staff: Caitlin M. Milo
Review and analyze tabbed RBA for outstanding issues for preparation of initial brief (3.0); draft statement of the issues, summary of the argument, conclusion, and argument section of initial brief (3.0); continue drafting argument (1.3).

Date: 10/21/2019 3.0 Staff: Caitlin M. Milo
Review and add inserts to initial brief argument.

Date: 10/27/2019 0.5 Staff: Barton F. Stichman
Draft insert to argument, for C. Milo.

Date: 10/27/2019 0.3 Staff: Caitlin M. Milo
Draft insert to statement of facts to tailor to argument.

Date: 10/28/2019 0.8 Staff: Janee LeFrere
Add legal authority to argument, for C. Milo (0.3); finalize Table of Authorities (0.5).

Date: 10/28/2019 1.0 Staff: Caitlin M. Milo
Email exchange with client regarding case status and initial brief for review (0.2); teleconference with client regarding initial brief, authority to file same (0.2); draft style edits to add persuasive value to legal argument and finalize 17-page initial brief (0.6).

Date: 10/30/2019 0.2 Staff: Caitlin M. Milo
Draft email to client regarding final initial brief and status of appeal.

Date: 11/12/2019 0.2 Staff: Caitlin M. Milo
Teleconference with client regarding briefing and status of appeal, questions regarding next steps in appeal.

Date: 1/7/2020 0.2 Staff: Caitlin M. Milo
Email exchange with client regarding status of the appeal.

Date: 1/27/2020 0.2 Staff: Caitlin M. Milo
Teleconference with client regarding status of appeal.

Date: 2/26/2020 0.0 Staff: Caitlin M. Milo
Draft email to VA counsel regarding position on motion for extension of time to file reply brief (0.1); draft and finalize motion for extension of time to file the reply brief (0.2). **[Entire 0.3 eliminated in the exercise of billing judgment]**

Date: 3/2/2020 0.3 Staff: Caitlin M. Milo
Email exchange with client regarding status of appeal and his questions regarding same (0.1); teleconference with client regarding case status (0.2).

Date: 3/31/2020 2.9 Staff: Caitlin M. Milo
Review 19-page responsive brief and outline Secretary's argument for preparation of

reply brief argument outline (1.0); draft outline of reply brief argument (1.0); draft reply brief (0.9).

Date: 4/1/2020 6.6 Staff: Caitlin M. Milo
Draft preliminary statement and argument introduction section of reply brief (0.6); draft Section I of the argument section of reply brief (3.0); draft Section II of the argument section of reply brief (2.9); draft conclusion section of reply brief (0.1).

Date: 4/6/2020 3.7 Staff: Caitlin M. Milo
Add inserts to reply brief, section I (1.7); Add inserts to reply brief, section II (1.9); draft email to client regarding reply brief, with attachment (0.1).

Date: 4/13/2020 1.7 Staff: Caitlin M. Milo
Leave voicemail and draft email to client regarding case status and reply brief (0.2); teleconference with and draft follow-up email to client regarding reply brief, authority to file (0.2); review relevant law including cases cited by Secretary for inclusion in reply, update legal authority (1.1).

Date: 4/13/2020 2.1 Staff: Stacy A. Tromble
Draft final argument for C. Milo, add final inserts to argument and finalize 14-page reply brief for C. Milo.

Date: 4/13/2020 0.5 Staff: Janee LeFrere
Finalize Table of Authorities.

Date: 4/14/2020 0.0 Staff: Caitlin M. Milo
Review and analyze Record of Proceedings (ROP) to ensure legibility and completeness. **[0.1 eliminated in the exercise of billing judgment]**

Date: 4/17/2020 0.8 Staff: Sunny Chowdhury
Review and analyze ROP to ensure legibility and completeness.

Date: 4/20/2020 0.2 Staff: Sunny Chowdhury
Finalize review and analysis of ROP to ensure legibility and completeness; flag issue.

Date: 4/26/2020 0.2 Staff: Caitlin M. Milo
Review issue with ROP. Evaluate that no dispute of ROP necessary.

Date: 5/14/2020 0.8 Staff: Caitlin M. Milo
Review and evaluate Memorandum Decision in order to provide update to client (0.6); telephone client and draft email to client regarding Memorandum Decision, with attachment (0.2).

Date: 5/18/2020 0.4 Staff: Caitlin M. Milo
Teleconference with client regarding Memorandum Decision and questions regarding next steps in appeal.

Date: 6/4/2020 0.6 Staff: Caitlin M. Milo
Draft detailed correspondence to client regarding close of case and recommendations regarding Memorandum Decision.

Date: 6/30/2020 0.1 Staff: Caitlin M. Milo
Teleconference with client regarding case status and recommendations regarding Memorandum Decision, question regarding same.

Date: 7/9/2020 0.1 Staff: Christine Cote Hill
Email exchange with client regarding status of appeal and next steps in appeal.

Date: 7/9/2020 0.1 Staff: Angela Nedd
Draft and finalize Notice of Appearance for C. Hill.

Date: 8/11/2020 5.5 Staff: Tommy Sommer
Draft application for reasonable attorneys' fees and expenses under the Equal Access to Justice Act (EAJA), including recitation of relevant procedural history (1.5); prepare list of itemized hours to be attached as exhibit to EAJA application (4.0)**[Additional 1.0 eliminated in the exercise of billing judgment]**.

Date: 8/13/2020 1.0 Staff: Christine Cote Hill
Add insertion to application for reasonable attorneys' fees and expenses under the EAJA, and elimination of hours in the interest of billing judgment.

Date: 8/26/2020 0.5 Staff: Brianna LeFrere
Finalize application for C. Hill, to include adding detail to application and itemized list.
[1.0 eliminated in the exercise of billing judgment]

CERTIFICATION

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

Date: August 26, 2020

/s/ Christine Cote Hill
Christine Cote Hill

EXHIBIT B

U.S. BUREAU OF LABOR STATISTICS

Databases, Tables & Calculators by Subject

Change Output Options: From: 1996 ▼ To: 2020 ▼ GO
include graphs include annual averages More Formatting Options

Data extracted on: August 12, 2020 (11:19:37 AM)

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		267.287							265.954	

U.S. BUREAU OF LABOR STATISTICS

Databases, Tables & Calculators by Subject

Change Output Options: From: 1996 ▼ To: 2020 ▼ GO
include graphs include annual averages More Formatting Options

Data extracted on: July 16, 2020 (2:42:25 PM)

CPI for All Urban Consumers (CPI-U)

Series Id: CUURS12BSA0,CUUSS12BSA0
Not Seasonally Adjusted
Series Title: All items in Philadelphia-Camden-Wilmington, PA-NJ-DE-MD, all urban consumers, not seasonally adjusted
Area: Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
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	160.3	161.2	162.0	162.1	161.8	162.3	162.8	163.6	164.5	164.9	164.3	164.3	162.8	161.6	164.1
1997	165.1	165.8	166.1	166.0	166.0	166.1	166.4	166.8	168.6	167.7	166.4	166.4	166.5	165.9	167.1
1998		167.0		167.1		168.0		168.6		170.3		169.0	168.2	167.2	169.2
1999		168.6		171.1		172.1		173.1		174.4		172.9	171.9	170.3	173.4
2000		174.8		175.8		176.6		177.5		177.9		177.5	176.5	175.4	177.6
2001		179.0		181.2		182.5		182.8		182.9		179.9	181.3	180.5	182.1
2002		182.0		183.1		186.3		188.3		185.8		185.3	184.9	183.3	186.5
2003		186.6		187.2		189.7		191.1		190.3		189.0	188.8	187.5	190.2
2004		191.4		194.8		198.0		199.1		200.2		197.8	196.5	194.0	199.0
2005		200.1		203.3		204.8		206.6		207.5		204.9	204.2	202.1	206.3
2006		209.0		211.6		213.9		216.4		211.6		211.6	212.1	210.7	213.4
2007		213.152		215.270		217.255		218.692		218.929		219.025	216.743	214.753	218.734
2008		220.935		223.622		228.408		228.337		225.113		218.186	224.131	223.536	224.725
2009		220.262		221.686		223.810		226.039		224.787		224.800	223.288	221.450	225.126
2010		226.529		227.432		228.074		228.500		228.543		228.017	227.715	227.072	228.358
2011		230.878		233.143		234.463		236.196		235.440		234.312	233.809	232.290	235.328
2012		235.857		237.782		237.405		239.557		240.537		238.492	238.097	236.756	239.437
2013		240.137		240.345		240.990		242.128		241.141		241.383	240.900	240.282	241.518
2014		242.584		243.694		245.247		245.303		244.948		242.912	244.050	243.519	244.582
2015		242.424		243.717		245.675		244.519		243.697		242.356	243.858	243.609	244.107
2016		243.132		245.300		245.980		245.386		246.952		246.591	245.290	244.286	246.295
2017		248.345		248.411		247.713		248.919		248.956		248.617	248.423	247.946	248.901
2018		249.567		251.850		252.386		253.085		253.040		251.148	251.563	250.713	252.413
2019		253.218		256.528		257.709		258.877		257.966		257.194	256.621	255.020	258.221
2020		259.694		256.353		257.983								258.042	

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-