UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

LEWIS R. PAGE, Appellant,	)	
v.	)	Vet. App. No. 19-0865
DENIS MCDONOUGH, Secretary of Veterans Affairs, Appellee.	)	

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

Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412(d), Appellant, Lewis R. Page, moves this Court for an award of reasonable attorney fees and expenses. Appellant seeks an award in the amount of $12,205.33 for litigating the merits of this appeal and drafting this petition. In support of this motion, Appellant submits that: (1) he is entitled to an award of attorney fees and expenses under EAJA, 28 U.S.C. § 2412(d); and, (2) an award of $12,205.33 is reasonable and appropriate.

PRELIMINARY STATEMENT

In 1980, Congress passed the EAJA in response to its concern that persons "may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights." Pub. L. No. 96-481, tit. II, §204(a), (c), 94 Stat. 2327, 2329 (1980); *Sullivan v. Hudson*, 109 S.Ct. 2248, 2253 (1989). As the Senate observed, in instances in which the cost of securing vindication exceeds the amount at stake, "it is more practical to endure an injustice than to contest it." S. Rep. No. 96-253, 96th Cong., 1st Sess. 5 (1979). The purpose of the EAJA's fee-shifting provisions is thus "to eliminate for the average person

the financial disincentive to challenge unreasonable government actions." *Commissioner, I.N.S. v. Jean,* 110 S.Ct. 2316, 2321 (1990).

It has since become clear that the EAJA applies to proceedings in this Court. In the Federal Courts Administration Act of 1992, Congress amended section 2412(d)(2)(F) to add the United States Court of Veterans Appeals (now Court of Appeals for Veterans Claims) to the definition of Courts authorized to make awards under the EAJA. Pub. L. No. 102-572, tit. V § 506(b), 106 Stat. 4506, 4513 (1993) (found at 28 U.S.C. § 2412 note); S. Rep. No. 342, 102d Cong., 2d Sess. 39 (1992), [hereinafter "S. Rep"]). *See Jones v. Principi,* 985 F.2d 582 (Fed. Cir. 1992) (vacating and remanding *Jones v. Derwinski,* in light of the Federal Courts Administration Act). In amending the EAJA to apply to appeals to this Court, Congress affirmed the Act's objective of eliminating financial deterrents to defend against unreasonable government action, observing that "[v]eterans are exactly the type of individuals the statute was intended to help." S. Rep. at 39.

It is also clear that the EAJA amendment applies in this case. The amendment applies, *inter alia*, "to any case pending before the United States Court of Veterans Appeals on the date of the enactment of this Act, to any appeal filed in that court on or after such date in the United States Court of Appeals for the Federal Circuit." Pub. L. No. 102-572, tit. V, §506(b), 106 Stat. 4506, 4513 (1992) (found at 28 U.S.C. §2412 note). The instant case was pending in the United States Court of Appeals for Veterans Claims after October 29, 1992, when the EAJA amendment became effective.

SUMMARY OF PROCEEDINGS

This case involves the Board's decision dated October 22, 2018, to the extent it denied entitlement to a disability rating in excess of 70% for post-traumatic stress disorder (PTSD) for the entire period on appeal.

In February 2022, the Court issued a memorandum decision that vacated and remanded the above-noted claim. Specifically, the Court determined that the Board failed to provide an adequate statement of reasons or bases where it neglected to address whether its heightened duty to assist was fulfilled without obtaining a contemporaneous VA medical examination.

ARGUMENT

I. APPELLANT IS ENTITLED TO AN AWARD OF ATTORNEY FEES AND EXPENSES UNDER EAJA, 28 U.S.C. § 2412(D).

There are four statutory requirements that a party must satisfy to be eligible for an award of attorney's fees under EAJA, 28 U.S.C. § 2412(d). They are: (1) the party must have been a "prevailing party;" (2) the party must be eligible to receive an award under this subsection;" (3) the position of the United States must not have been "substantially justified;" and (4) there must be no special circumstances which would make an award unjust. If these requirements are met, the Court "shall award" reasonable fees and expenses. *Gavette v. Office of Personnel Management*, 808 F.2d 1456, 1466 (Fed. Cir. 1986) (en banc). As shown below, Appellant meets these requirements.

A. Appellant is a Prevailing Party

Generally, to be a prevailing party, a party must receive "at least some relief on the merits" and the relief must materially alter the legal relationship of the parties. *Higher Taste v. City of Tacoma*, 717 F.3d 712 (Fed. Cir. 2013) citing *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Res.*, 532 U.S. 598 (2001). More specifically, a party prevails with respect to the EAJA if they "succeed on

any significant issue in the litigation which achieves some of the benefit the parties sought in bringing the suit." *Hensley v. Eckhart*, 461 U.S. 424, 433 (1983) (citations omitted); *see also Sullivan v. Hudson*, 109 S. Ct. 2248, 255 (1989); *Texas State Teachers Ass'n v. Garland Indep. School Dist.*, 109 S. Ct. 1486, 1491-92 (1989). In making this inquiry "substance should prevail over form." *Devine v. Sutermeister*, 733 F.2d 892 (Fed. Cir. 1984). In *Lematta v. Brown*, 8 Vet. App. 504 (1996), this Court held "[I]t is enough for the Court to make some 'substantive determination in [the] appeal, based upon the record, the parties' pleadings, and the Court's precedent, that is favorable to the appellant." *Id.* at 508 (quoting *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994)).

The Federal Circuit has issued several decisions relating to the attainment of prevailing party status under the EAJA. In *Vaughn v. Principi*, 336 F. 3d 1360 (Fed. Cir. 2003), the court held that a remand to an administrative agency, to consider the effects of legislation enacted while the case is on appeal does not constitute securing relief on the merits for prevailing party purposes. *Id.*, at 1366. There, the Court affirmed the CAVC's findings that prevailing party status did not attach based on, *inter alia*, the catalyst theory. *Id.*, citing *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Res.* 532 U.S. 598 (2001)(Rejecting the catalyst theory as a basis for fee awards and holding that enforceable judgments on the merits and court-ordered consent decrees create the "material alteration of the legal relationship of the parties). Notably, that case involved a remand for re-adjudication solely in light of the enactment of the VCAA – as opposed to based on VA error. *See Vaughn v. Principi*, 15 Vet. App. at 280; see also *Akers v. Sec'y of Veterans Affairs* 04-7132 (Fed. Cir. May 26, 2005) (affirming the CAVC determination that Appellant was not a prevailing party inasmuch as the Board decision on appeal was vacated and remanded as a result of a change in law subsequent to the Board's decision and did not involve a direct finding by the Court on the merits or an order to do anything as a result of an error found either by the Court or the parties.)

In *Former Employees of Motorola Ceramic Products v. United States*, 336 F. 3d 1360 (Fed. Cir. 2003), the Federal Circuit addressed the meaning of "prevailing party" and appeared to clarify its decision in *Vaughn*. There, the court made clear, *inter alia*, that "where a 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 1360; *see also Rice Services, Ltd., v. United States*, 405 F.3d 1017 (Fed. Cir. 2005) (Acknowledging *Motorola* for the principle that a remand order to an administrative agency from a court proceeding constitutes the securing of relief on the merits sufficient to attain prevailing party status); *Kelly v. Nicholson*, 463 F.3d 1349 (Fed. Cir. 2006).

Most recently, the Federal Circuit in *Dover v. McDonald*, 818 F.3d 1316 (Fed. Cir. 2016), set out a three-part test "to determine a prevailing party status under the EAJA on administrative agency remands." Under this three-part test, a party is a prevailing party if (1) the remand was granted based upon or triggered by administrative error, (2) the remanding court did not retain jurisdiction, and (3) the remand clearly orders further agency proceedings, which allows the party "the possibility of attaining a favorable merits determination." *Blue v. Wilkie*, 30 Vet. App. 61 (2018), *citing Dover v. McDonald*, 818 F.3d 1316 (Fed. Cir. 2016). Therefore, by applying the three-part test from *Dover*, the court here should find that Appellant is a prevailing party.

In this case, unlike the facts in either *Vaughn* or *Akers, supra*, the Court of Appeals for Veterans Claims issued a memorandum decision that vacated and remanded the Board's decision. Specifically, the Court determined that the Board failed to provide an adequate statement of reasons or bases where it neglected to address whether its heightened duty to assist was fulfilled without obtaining a contemporaneous VA medical examination.

B. Appellant is a Person Eligible to Receive an Award Under 28 U.S.C. § 2412(2).

In order to be eligible to file a petition for fees under 28 U.S.C. § 2412(d), a prevailing party must not be: (i) an individual whose net worth exceeded $2,000,000.00 at the time the litigation began, nor (ii) a business entity whose net worth exceeded $7,000,000.00 and which had more than 500 employees at the time the litigation began. 28 U.S.C. § 2412(d)(2)(B)(i), (ii).

Appellant had a net worth *under* $2,000,000.00 on the date this action was commenced. (*See* Exhibit A, Certification of Net Worth). Moreover, Appellant was not a business entity. Therefore, Appellant is a person eligible to receive an award under the EAJA.

C. The Position of the Government was not Substantially Justified.

In order to be considered "substantially justified" under the EAJA, the government must show that its position was "justified to a degree that could satisfy a reasonable person," i.e., has a reasonable basis in both law and fact. *Pierce v. Underwood*, 108 S. Ct. 2541, 2549-50 (1988); *Beta Systems v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989). The burden is on the Secretary to demonstrate that his position was substantially justified. *Brewer v. American Battle Monument Comm'n*, 814 F.2d 1964, 1569 (Fed. Cir. 1987); *Gavette*, 808 F.2d at 1465-66; *Essex Electro Eng'rs v. United States*, 757 F.2d 247, 252 (Fed. Cir. 1985).

To determine whether the government's position was substantially justified, the Court is "instructed to look at the entirety of the government's conduct and make a judgment call whether the government's overall position has a reasonable basis both in law and fact." *Chiu v. United States*, 948 F.2d 711, 715 (Fed. Cir. 1991). The "overall" position is that taken by the government "both prior to and during litigation." *Id*. Thus, to prevail on "substantial justification" in this case, the government must demonstrate

that the agency action leading to litigation, i.e. the denial of Appellant's claim, as well as its litigation position in this Court, were "overall reasonable."

This Court further explained substantial justification in *Moore v. Gober*, 10 Vet. App. 436 (1997). In *Moore*, the Court held that in order "[t]o determine whether the Secretary's position was 'reasonable' during the administrative proceedings, the Court looks to the relevant determinative circumstances, including the state of the law at the time of the BVA decision." *Id*. at 440 (citing *Bowyer v. Brown*, 7 Vet. App. 549, 552 (1995)).

In this case, the government's position leading up to, and throughout this litigation was not "substantially justified" where the Court issued a memorandum decision that vacated and remanded the above-noted claim. Specifically, the Court determined that the Board failed to provide an adequate statement of reasons or bases where it neglected to address whether its heightened duty to assist was fulfilled without obtaining a contemporaneous VA medical examination.

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

The Secretary does not meet the heavy burden of proving that "special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). *See Devine v. Sutermeister*, 733 F.2d 892, 895 (Fed. Cir. 1984); *Love v. Reilly*, 924 F.2d 1492, 1495 (9th Cir. 1991). Courts narrowly construe the "special circumstances" exception so as not to interfere with the Congressional purpose for passing the EAJA, i.e., to insure that litigants have access to the courts when suing the Government. *See Martin v. Heckler*, 772 F.2d 1145, 1150 (11th Cir. 1985); *Taylor v. United States*, 815 F.2d 249, 253 (3d Cir. 1987). "[T]hat few courts apparently have relied upon this exception to EAJA awards in denying fee applications is evidence that the circumstances of a case will infrequently justify a denial of an award." There is no reason or special circumstance to deny this Fee Petition.

II. THE COURT SHOULD AWARD APPELLANT REASONABLE FEES AND EXPENSES OF $12,205.33.

The EAJA provides that a court "shall" award "fees and other expenses" when the other prerequisites of the statute have been met. 28 U.S.C. § 2412(d)(1)(A). The statute defines "fees and other expenses" to include reasonable attorney fees." 28 U.S.C. § 2412(d)(2)(A).

When Congress has authorized the award of "reasonable" attorney fees, the amount to be awarded is based upon "the number of hours expended on the litigation multiplied by a reasonable hourly rate." *See Hensley*, 461 U.S. at 433; *National Ass'n of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319, 1325 (D.C. Cir. 1982).

A. Hours Reasonably Expended

As the Declaration of Glenn R. Bergmann, Esq. (attached hereto as Exhibit B) documents, in the exercise of sound billing judgment, Appellant's counsel is not asking for payment for time spent on administrative matters such as copying or filing, nor for communications (either written or oral) among co-counsel. Moreover, being mindful of the reasonableness requirement, Appellant is not requesting compensation for ***118.9 hours*** – ***totaling $24,875.09 --*** of billable attorney time. (*See* Exhibit B). Appellant's counsel submits that a reasonable attorney, exercising sound billing judgment, would charge for time spent on all matters included in Exhibit B – this may have included limited time expended for "peer review" where necessary to ensure that any briefs filed contained comprehensive and complete arguments pertinent to the underlying appeal. To the extent "peer review" time was expended, such would have involved senior attorneys and would have taken the place of "supervisory review" of a substantive pleading.

B. Reasonable Hourly Rate

Under the EAJA, the amount of fees awarded "shall be based upon the prevailing market rates for the kind and quality of services furnished" but "shall not be awarded in

excess of $125.00 per hour unless the Court determines that an increase in the cost of living" is necessary. Appellant's counsel, Glenn R. Bergmann, avers that the usual and customary fee for working on similar matters has ranged from $395.00 in 2019 for attorneys with less than one year experience to $670.00 per hour in 2021 for attorneys with 20 years' experience according to the most recent fees matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO).[1]

1. The EAJA Statutory Cap of $125.00 Should be Adjusted Upward to Reflect the Increase in the Cost of Living.

Under 28 U.S.C. § 2412(d)(2)(A)(ii), attorneys may demonstrate that an increase in the cost of living justifies an increase in the $125.00 per hour statutory cap. *See Pierce v. Underwood*, 108 S. Ct. 2541, 2553 (1988) (referring to a cap of $75.00 per hour "adjusted for inflation."); *Philips v. General Serv. Admin.*, 924 F.2d 1577, 1583 (Fed. Cir. 1991). An increase for cost of living is generally allowed. *Johnston v. Sullivan*, 919 F.2d 503, 508-10 (8th Cir. 1990); *Animal Lovers Volunteer Ass'n, inc. v. Carlucci*, 867 F.2d 1224, 1227 (9th Cir. 1989); *Coup v. Heckler*, 839 F.2d 313, 320 (3d Cir. 1987); *Baker v. Brown*, 839 F.2d 1075 (5th Cir. 1988) (allowed except in unusual circumstances).

This Court in *Elcyzyn v. Brown*, 7 Vet. App. 170 (1994), decided for the first time that an Appellant's attorney can petition for a fee in excess of the then statutory cap based upon the Consumer Price Index as published by the Bureau of Labor Statistics. *Id*. at 179-181. This Court further directed attorneys filing for an increased fee based upon the CPI to choose a mid-point in the litigation to establish the appropriate date for calculating the cost of living increase. *Id*. at 181. In this case, the Court issued a memorandum decision in February 2022. Appellant selects July 2019, as the date for calculating the CPI increase. *See Elcyzyn v. Brown*, 7 Vet. App. 170, 181 (1994).

[1] *See* The Fitzpatrick Matrix, 2013-2021, U.S. Attorney's Office, District of Columbia, Civil Division ("It has been developed to provide 'a reliable assessment of fees charged for complex federal litigation in the District of Columbia,' as the United States Court of Appeals for the District of Columbia Circuit urged.") (quoting *DL v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019).

Appellant submits that the Court should increase the $125.00 per hour cap by the general inflationary index in the cost of living since March of 1996, as reflected by the CPI-U for the Washington-Arlington-Alexandria, DC-VA-MD-WV, area.[2] According to the most recent report from the Bureau of Labor Statistics, the CPI-U for the Washington-Arlington-Alexandria, DC-VA-MD-WV, area – rose 67.41% between March 1996, and July 2019. Applying the increase in the CPI to the statutory rate, Appellant's counsel should be compensated at the rate of $209.26 per hour. This rate was calculated by subtracting the CPI-U for July 2019 (265.17) from that of March 1996 (158.4), and dividing the result (106.77) by the CPI-U for March 1996. The result (.6741), representing the increase between March 1996 and July 2019 was then multiplied by the statutory rate ($125.00), demonstrating an increase of $84.26, which was added to the $125.00 statutory rate to arrive at the inflation-adjusted rate of $209.26 per hour.

In addition, Appellant avers that paralegals should be compensated at a rate of $150.00 per hour, where the customary market rate for the work done by paralegals was, $199.00 in 2020, and $200.00 in 2021, according to the most recent paralegals fees matrix prepared by the USAO.[3] This fees matrix explains that rates for the 2022 calendar year and subsequent years will be generated using the CPI to adjust for inflation.[4]

Considering the foregoing, Appellant's counsel requests a fee of $12,173.38 based upon 57.6 hours of attorney work and 0.8 hours of paralegal work; and $31.95 in expenses (See exhibit B) for a total of $12,205.33.

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[2] This Court determined that the local CPI-U should be used to calculate the cost-of-living increase. *Mannino v. West*, 12 Vet. App. 242 (1999). Accordingly, counsel has selected CPI-U for Washington-Arlington-Alexandria, DC-VA-MD-WV, to calculate the rate of inflation.

[3] *See* The Fitzpatrick Matrix, *supra*.

[4] *Id.* (explaining that because the data collected for this matrix runs through 2020, "[t]o generate rates in 2021, an inflation adjustment (rounded to the nearest whole dollar) was added. The United States Attorney's Office determine that, because courts and many parties have employed the legal service index of the Consumer Price Index to adjust attorney hourly rates for inflations, this matrix will do likewise.").

Respectfully submitted,

/s/ Glenn R. Bergmann

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Counsel for Appellant

Exhibit A

CERTIFICATE OF NET WORTH

I, Glenn R. Bergmann, of Rockville, Maryland, hereby declare that at the time this appeal was filed, Appellant did not have a net worth of, or in excess of, $2,000,000.00. *See* Paragraph 3 of the retainer agreement filed with the Court.

/s/_Glenn R. Bergmann
Glenn R. Bergmann

Exhibit B

DECLARATION OF APPELLANT'S COUNSEL, GLENN R. BERGMANN

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

1. I am an attorney licensed to practice in the State of Maryland, and am admitted to practice before the United States Court of Appeals for Veterans Claims.
2. I have represented Lewis R. Page in Page v. McDonough, Vet. App. No. 19-0865 without charge.
3. In June 2022 I visited the website maintained by the U.S. Dept. of Labor, Bureau of Labor Statistics and ascertained the CPI-U for the Washington-Arlington-Alexandria, DC-VA-MD-WV, area rose by 106.77 between March 1996, when the EAJA was amended, and July 2019.
4. In June 2022 I visited the website maintained by USAO and determined that market rate for paralegals was $199.00 in 2020, and $200.00 in 2021.

The following is a statement of the exact service rendered and expenses incurred in the representation of the Appellant. In addition to Glenn Bergmann, Esq. (GRB), attorneys who may have worked on this appeal include: Joseph Moore (JRM); Greta Allardyce (GRA); David Ames (DSA); Bryan Anderson (BBA); Chitakone Arounlangsy (CQA); Kelsey Binder (KLB); Brian Blake (BJB); Sarah Burkey (SAB); Chanel Chasanov (CGC); Andrew Cho (AHC); Sun H. Choi (SHC); Alan Coleman (ARC); Steven Cook (SJC); Simone Coyle (SKC); Corey Creek (JCC); Ceyla Esendemir (CEE); Michael Garza (MAG); Ziadanne Goodman (ZPG); Caroline Greene (CJG); Tiffany Guglielmetti (TMG); H. Ritter Haaga (HRH); Melissa Hendricks (MAH); Jordan Hensley (JLH); Nicholas Holt (NIH); Rachel Jiang (RBJ); John Juergensen (JLJ); Lila Kanovsky (MLK); Sharon Kim (SRK); Joshua Leach (JDL); Andrea MacDonald (AMM); Robert Molson (RJM); Monica Moyo (MPM); Paul Muriello (PFM); Jonathan Murphy (JCM); Joseph

Murphy (JLM); Christopher Parker (CJP); Ryan Pau (RSP); Matthew Peterson (MFP); Justin Pollard (JSP); Tom Polseno (TMP); Michele Poole (MAP); Homer Richards (HRR); James Ridgway (JDR); Samuel Rouleau (SJR); Ilan Roth (ILR); Debra Ruggieri (DLR); Scott Schulman (SAS); Kim Sheffield (KLS); Ronan Slater (RRS); Steven Spitzer (SMS); Nicole Steers (NMS); Alex Tway (ACT); Srimukhi Vunnam (SRV); Daniel Wedemeyer (DDW); Max Yarus (MWY); Megan Yi (MHY); and Hannah Youh (HCY). All are members of the Court's bar. Additionally, (P)aralegals who may have worked on this appeal include Melissa Drake (P) (MAD); Elizabeth Green (P) (ERG); Taciana Melanson (P) (TSM); and Luis Zelaya (P) (LDZ).

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Timesheet: Lewis R. Page (19-865) **June 2, 2022**

Legal Services

Date	Description of Services	Total Hours	(N/C)	Billed
12/2/18	BVA decision case screen (DDW/GRB)	.5		.5
1/30/19	T/c to client sign up (RHJ)	.2	(.2)	.0
	Correspondence to client with attachments	.1		.1
2/7	Review documents from client including POA docs	.2		.2
	Prepare/file appearance, review/sign POA	.1		.1
	Prepared Financial Hardship	.1	(.1)	.0
2/8	Review notice of docketing	.1		.1
3/5	Evaluate BVA decision denial for assignment (GRB)	.1		.1
3/6	Prepare new client correspondence outlining appellate process with attachments (JLM/GRB)	.2		.2
3/11	Prepare notice of appearance as co-counsel (RH)	.1		.1
	Review copy of BVA decision filed by VA	.1		.1
3/28	Prepare notice of appearance as co-counsel (SJC)	.1		.1
4/9	Review RBA filing notice (SJC)	.1		.1
4/18	RBA page-by-page review for legibility/completeness pursuant to R. 10; confirmed accuracy of all evidence/documents relied upon in BVA decision; determined relevance of incomplete/illegible documents identified in review, 1-1690 (JLM)	3.5		3.5
	RBA page-by-page review for legibility/completeness pursuant to R. 10; confirmed accuracy of all evidence/documents relied upon in BVA decision; determined relevance of incomplete/illegible documents identified in review, 1691-2021 (JLM)	.6		.6

Date	Description of Services	Total Hours	(N/C)	Billed
4/19	RBA page-by-page review for legibility/completeness pursuant to R. 10; confirmed accuracy of all evidence/documents relied upon in BVA decision; determined relevance of incomplete/illegible documents identified in review, 2022-3814 (JLM)	3.5		3.5
	RBA page-by-page review for legibility/completeness pursuant to R. 10; confirmed accuracy of all evidence/documents relied upon in BVA decision; determined relevance of incomplete/illegible documents identified in review, 3815-4223 (JLM)	.7		.7
	Prepare report re: RBA completeness/legibility; e-corres re: RBA review (JLM)	.4		.4
4/25	Review Rule 10 memo & pertinent portions of RBA in contemplation of RBA dispute (SJC)	.8	(.8)	.0
	Prepare statement accepting RBA (SJC)	.1		.1
4/29	Review notice to file brief (SJC)	.1		.1
5/14	Review order scheduling CLS conference (SJC)	.1		.1
5/15	RBA merits review (ignoring illegible / incomplete documents previously deemed not relevant at R. 10) in preparation for drafting Rule 33 memo identifying potential bases for alternative resolution, taking notes, 1-1,136 pg (SJC)	3.5		3.5
	RBA merits review (ignoring illegible / incomplete documents previously deemed not relevant at R. 10) in preparation for drafting Rule 33 memo identifying potential bases for alternative resolution, taking notes, 1,136-1,460 pg (SJC)	1.5		1.5
5/16	RBA merits review (ignoring illegible / incomplete documents previously deemed not relevant at R. 10) in preparation for drafting Rule 33 memo identifying potential bases for alternative resolution, taking notes, 1,460-2,596 pg (SJC)	3.5		3.5
	RBA merits review (ignoring illegible / incomplete documents previously deemed not relevant at R. 10) in preparation for drafting Rule 33 memo identifying potential bases for alternative resolution, taking notes, 2,596-3,728 pg (SJC)	3.5		3.5

Date	Description of Services	Total Hours	(N/C)	Billed
5/16	RBA merits review (ignoring illegible / incomplete documents previously deemed not relevant at R. 10) in preparation for drafting Rule 33 memo identifying potential bases for alternative resolution, taking notes, 3728-4223 pg (SJC)	1.0		1.0
5/20	Draft Rule 33 memo; identifying errors for alternative resolution consideration; DTA assist failure to obtain VA fee basis records (SJC)	2.7	(2.7)	.0
5/21	Draft Rule 33 memo; identifying errors for alternative resolution consideration; DTA failure to obtain relevant hospital records (SJC)	1.2	(1.2)	.0
5/28	Supervisory review of conference memo; review related materials & identify add'l memo content (DDW)	1.0	(1.0)	.0
	Revise Rule 33 memo, adding citations to RBA & authorities where necessary; prepare R33 Certificate of Service (SJC)	1.0	(1.0)	.0
	Create abstract RBA for CLS review (SJC)	.2	(.2)	.0
5/31	Draft assessment re: case goals/merits (SJC)	.4		.4
6/11	Review litigation file inc. Rule 33 memo in preparation for CLS conference (SJC)	.6		.6
	Participate in CLS conference (SJC)	.1		.1
	Prepare CLS conference notes for file (SJC)	.3		.3
	E-corres to and from VA re: stay. Opposed and will be filing response (SJC)	.2		.2
7/1	Draft principal brief w/ nature of case / summary of issues, statement of relevant facts & procedural history; Prepare Nature of the Case, SOF, Argument 1 (SJC)	3.0	(1.0)	2.0
	Draft principal brief; Argument 2/3 (SJC)	2.8		2.8
7/8	Review Review VA motion for a stay in preparation to draft motion in opposition (SJC)	.3		.3
7/9	E-corres to VA Re; stay (SJC)	.2	(.1)	.1
	Supervisory review of draft principal brief; review related materials & identify add'l brief content (DDW)	3.0	(1.0)	2.0
	Revise principal brief; Revise SOF/Arg 1 (SJC)	1.0	(.5)	.5
7/10	E-corres to and from VA re: new argument being raised in brief (SJC)	.2		.2
7/11	Prepare motion for extension (SJC)	.1	(.1)	.0
	E-corres to and from VA re: extension for brief (SJC)	.2	(.2)	.0

Date	Description of Services	Total Hours	(N/C)	Billed
7/15	Prepare motion Prepare response to VA's stay motion (SJC)	2.5	(2.5)	.0
7/16	Prepare motion Continue to prepare response to VA's stay motion (SJC)	.5	(.5)	.0
7/17	Revise principal brief; Revise Arg 1 (SJC)	.7	(.7)	.0
7/19	Revise principal brief; Revise Arg 2/3 (SJC)	3.3	(1.5)	1.8
7/22	Revise principal brief; Revise Arg 3/4 (SJC)	3.0	(1.5)	1.5
	Consult with B&M attorneys re; Prin Brief (SJC)	.7	(.7)	.0
	Supervisory review of response to VA stay motion (DDW)	.3	(.3)	.0
	Revise response to VA's stay motion (SJC)	.5	(.5)	.0
7/23	Revise principal brief; Revise language (SJC)	.1	(.1)	.0
7/31	Supervisory review of draft principal brief; review related materials & identify add'l brief content (DDW)	1.0	(1.0)	.0
	Revise principal brief; Revise introduction to Arg 3 (SJC)	.8	(.8)	.0
8/19	Revise principal brief; Revise language (SJC)	.2	(.2)	.0
8/26	Prepare table of authorities and table of contents for principal brief (SJC)	1.7	(1.7)	.0
	T/c from VA Re; filing an amended RBA. Indicated opposition (SJC)	.1		.1
8/28	Correspondence to client with attached principal brief (MOL)	.1		.1
9/18	E-corres to and from VA Re; withdrawing motion and position on motion for a stay (SJC)	.5		.5
10/24	E-corres to and from VA Re; Secretary's motion for extension (SJC)	.2		.2
12/2	E-corres from VA Re; motions to amend and motion for a stay/amending rba; Email received 11/27 (SJC)	.1	(.1)	.0
	Consult with Supervisor re; response to motion (SJC)	.2	(.2)	.0
12/9	Commence drafting response to VA's motion for Leave to Amend RBA (SJC)	2.5	(2.5)	.0
	Continue drafting response to VA's motion for a stay (SJC)	.8	(.8)	.0
12/10	Continue drafting response to VA's motion for a stay (SJC)	.2	(.2)	.0
	Review litigation file inc. briefs including Sec Brief (SJC)	1.5		1.5

Date	Description of Services	Total Hours	(N/C)	Billed
12/10	Supervisory review of response to VA motion to amend RBA (DDW)	.5	(.5)	.0
	Prepare response to VA's motion for Leave to Amend RBA (SJC)	1.5	(1.5)	.0
12/11	Prepare response to VA's motion for Leave to Amend RBA (SJC)	.1	(.1)	.0
	Revise response to VA's motion for a stay (SJC)	.2	(.2)	.0
12/23	E-corres to VA Re; Extension for Reply Brief (SJC)	.1	(.1)	.0
	E-corres from VA Re; Extension for Reply Brief (SJC)	.1	(.1)	.0
	Prepare motion for extension (SJC)	.1	(.1)	.0
1/30/20	Draft reply brief; Abandonment/new examination responses (SJC)	3.5		3.5
	Draft reply brief; PTRs (SJC)	1.5		1.5
	Prepare motion Draft motion to strike (SJC)	.8	(.8)	.0
	E-corres to and from VA Re; position on motion to strike (SJC)	.2	(.2)	.0
2/4	Prepare motion Continue preparing draft motion to strike (SJC)	.1	(.1)	.0
2/6	Supervisory review of draft reply brief; review related materials & identify add'l brief content (DDW)	2.9	(1.4)	1.5
	Revise reply brief; entire reply (SJC)	2.0		2.0
	Review submissions of records from VA motion to amend RBA (SJC)	1.0		1.0
	Supervisory review of motion to strike Appellee's brief in part (DDW)	.5	(.5)	.0
	Prepare motion Continue preparing motion to strike (SJC)	.3	(.3)	.0
	Prepare table of authorities and table of contents for reply brief (SJC)	.7	(.7)	.0
2/7	Correspondence to client with attached reply brief	.1		.1
2/20	Review ROP filing notice (SJC)	.1		.1
2/27	Review ROP for compliance with Rule 28 and note findings 3,414 pages (BJB)	2.5		2.5
3/2	Prepare statement accepting ROP (SJC)	.1		.1
3/3	Review Judge assignment (SJC)	.1	(.1)	.0
	Review Court order Holding the motion to strike in abeyance (SJC)	.1		.1
4/2	Review Court order Notice that the case would be a panel decision (SJC)	.1		.1

Date	Description of Services	Total Hours	(N/C)	Billed
4/20	Review Court order Scheduling oral argument (SJC)	.1		.1
6/30	Review Court order Changing time for oral argument (SJC)	.1		.1
7/16	Review Review briefs and records in preparation for oral argument (SJC)	2.0	(2.0)	.0
7/20	Review oral argument procedures and records in preparation for oral argument (SJC)	2.0	(2.0)	.0
8/4	T/c to client Re: status of appeal (oral argument) & stay pending Fed Cir. Case (MAH)	.2		.2
	T/c to VA Re: stay motion pending Euzebio & possibility for JMR agreement (MAH)	.2		.2
8/5	Prepare notice of appearance as co-counsel (DDW)	.1		.1
6/7/21	T/c to client Calling VSO rep back re: case; left VM (MAH)	.1		.1
	T/c from client VSO rep re: case & paperwork sent to Mr. Page re: TDIU (MAH)	.2		.2
	T/c from client Re: status of appeal (MAH)	.2		.2
7/6	Review materials & prepare for OA; start outline (MAH)	3.4	(3.4)	.0
7/7	Review materials & prepare for OA; work on outline (MAH)	3.5	(3.5)	.0
7/8	Review materials & prepare for OA; work on outline (MAH)	3.5	(3.5)	.0
	Review materials & prepare for OA; work on outline (MAH)	.6	(.6)	.0
7/12	Review briefs, motions, and records in preparation for oral argument (DSA)	1.3	(1.3)	.0
	Review materials & prepare for OA/moot; work on outline (MAH)	3.5	(3.5)	.0
	Review materials & prepare for OA/moot (MAH)	2.2	(2.2)	.0
7/13	Participate in moot court (DDW)	1.5	(1.5)	.0
	Participate in moot court (DSA)	1.5	(1.5)	.0
	Supervisory review of case materials in preparation for moot court; observation / limited participation in moot court (TMP)	1.2	(1.2)	.0
	Review briefs, motions, and records in preparation for oral argument (MLK)	2.0	(2.0)	.0
	Participate in moot court (MLK)	1.5	(1.5)	.0

Date	Description of Services	Total Hours	(N/C)	Billed
7/13	Review materials for preparation to participate in moot court (MAH)	3.5	(3.5)	.0
	Participate in moot court (MAH)	1.0	(1.0)	.0
7/15	Draft Rule 30(b) notice for Tadlock (MAH)	1.3	(.7)	.6
	Prepare for OA/2nd moot (MAH)	3.5	(3.5)	.0
	Prepare for OA/2nd moot (MAH)	2.1	(2.1)	.0
7/16	Supervisory review of Rule 30(b) notice (DDW)	.2	(.2)	.0
	Prepare for OA/2nd moot (MAH)	3.5	(3.5)	.0
	Prepare for OA/2nd moot (MAH)	.8	(.8)	.0
7/19	Review briefs, motions, and records in preparation for oral argument (SMS)	.5	(.5)	.0
	Prepare for OA/2nd moot (MAH)	3.5	(3.5)	.0
	Prepare for OA/2nd moot (MAH)	1.4	(1.4)	.0
7/20	Participate in pre-OA tech check w/ Court staff (TMP)	.2		.2
	Review case materials in prep for second moot; participate in second moot court as judge (TMP)	1.4	(1.4)	.0
	Review briefs, motions, and records in preparation for OA moot (SHC)	1.5	(1.5)	.0
	Participate in moot court (SHC)	1.0	(1.0)	.0
	Participate in moot court (SMS)	1.0	(1.0)	.0
	Participate in pre-OA tech check w/ Court staff (MAH)	.2		.2
	Participate in moot court (MAH)	1.0	(1.0)	.0
	Prepare for OA (MAH)	2.6	(2.6)	.0
	Participate in moot court (DDW)	1.0	(1.0)	.0
7/21	Prepare for OA (MAH)	3.5	(3.5)	.0
	Prepare for OA (MAH)	2.5	(2.5)	.0
7/23	Prepare for OA (MAH)	3.5	(3.5)	.0
	Prepare for OA (MAH)	1.7	(1.7)	.0
7/26	Prepare for OA (MAH)	3.5	(3.5)	.0
	Prepare for OA (MAH)	3.1	(3.1)	.0
7/27	Review basic OA notes w/ MH; participate in oral argument as second chair (TMP)	1.3	(1.3)	.0
	Prepare for OA (MAH)	3.5	(3.5)	.0
	Prepare for OA (MAH)	1.2	(1.2)	.0
	Participate in OA (MAH)	1.3	(1.3)	.0
7/30	T/c from client Re: status of appeal (MAH)	.1		.1
8/3	Prepare motion Responding to Secretary's motion to amend RBA (MAH)	.3	(.3)	.0

Date	Description of Services	Total Hours	(N/C)	Billed
8/3	Supervisory review of response to VA motion to amend (DDW)	.3	(.3)	.0
10/14	Prepare notice of appearance as co-counsel (SHC)	.1		.1
10/19	T/c to client left msg (SHC)	.1		.1
10/22	T/c to client checked in, doing well, informed we'd update him when decision issues (SHC)	.1		.1
12/23	T/c to client left VM re check in (SHC)	.1		.1
1/7/22	T/c to client spoke w/ client and wife, still waiting on decision; client indicated he received compensation from va recently, appears he got 100% about 3 months ago; asked that we send him letter requesting copy and he'll send to the address (SHC)	.1		.1
1/14	Review court rulings on motions to amend rba, oppositions (SHC)	.2		.2
1/20	Receive RBA (4496 pages) (DSA)	.2	(.2)	.0
1/21	Review Amended RBA to determine inclusion of all documents from original RBA plus those required to be added by 1/14/22 Court order (DSA)	.3		.3
	Review Rule 10 memo & pertinent portions of RBA in contemplation of RBA dispute (SHC)	.1	(.1)	.0
	Review ROP filing notice amended (SHC)	.1		.1
	Review ROP (Amended) for compliance with Rule 28 and note findings (DSA)	.2		.2
1/25	Prepare statement accepting RBA (MAH)	.1		.1
	Prepare statement accepting ROP (MAH)	.1		.1
3/3	T/c to client Left VM (MAH)	.1		.1
	Review mem. dec.; prepare memo summarizing outcome and consideration of R.35 (MAH)	.5		.5
3/7	Supervisory review of case materials & R.35 memo (will not seek further review) (TMP)	.2	(.2)	.0
	T/c to client to update him re mem dec (spoke to him but could not get good connection) (TMP)	.1		.1
3/14	T/c to client Mr. Page could not hear on the phone (has hearing issues) so spoke to his significant other and relayed the message re: the favorable mem dec	.2		.2
3/15	Prepare client memory drive with C-file	.1	(.1)	.0
3/16	Commence client correspondence re: case disposition and next steps (JCM)	1.0		1.0
	T/c to client re: case disposition and next steps (JCM)	.2		.2

Date	Description of Services		Total Hours (N/C)		Billed
3/18	Complete client correspondence re: case disposition and next steps (P) (LDZ)		.1	(.1)	.0
5/25	Review mandate (GRB)		.1		.1
6/2	Compile time sheet (P) (LDZ)		.3		.3
	Prepare EAJA application (P) (LDZ)		.5		.5
	Supervisory review of EAJA application (SRK)		.2		.2
	Total Services Rendered		**177.3 hrs**		**37,048.46**
	Total Services Not Charged		**(-118.9) hrs**		**(-24,875.09)**
	Total Charged Attorney Services		57.6 hrs		12,053.38
	Total Charged Paralegal Services		0.8 hrs		120.00
	Total Services Charged		**58.4 hrs**		**12,173.38**
	Expenses				
	Priority Mail	7.35	01/30/19		
	Standard Mail	0.55	03/06/19		
	Priority Mail	7.35	08/28/19		
	Priority Mail	7.75	02/07/20		
	Priority Mail	8.95	03/18/22		
	Total Expenses	31.95			31.95
	Total current services rendered plus expenses				**$12,205.33**

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

/s/Glenn R. Bergmann June 2, 2022
Glenn R. Bergmann Date