

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

WALTER G. LONG)	
Appellant,)	
)	
v.)	CAVC No. 16-1537
)	EAJA
DENIS MCDONOUGH,)	
SECRETARY OF)	
VETERANS AFFAIRS,)	
Appellee)	

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

Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), and the Court's Rule 39, Appellant, through counsel, seeks a total fee in the amount of **\$63,057.24**.

The basis for the application is as follows:

Grounds for an Award

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

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

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

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

A. *The Appellant Is a Prevailing Party*

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

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

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

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

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

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

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

After oral argument, and an appeal to the Federal Circuit, the Federal Circuit Court vacated and remanded the CAVC's decision affirming the Board's denial of an extraschedular rating for bilateral hearing loss based on the Court's error in requiring direct causation between Appellant's ear pain and his service connected disabilities. See pages 1-9 of the Precedential Decision. In its October 19, 2022 Memorandum Decision, this Court vacated and remanded the Board's decision indicating that the Federal Circuit did not address the overall discussion of how to read and apply the caselaw regarding extraschedular consideration, but remanded "with instructions for the Veterans Court to remand to the Board for additional fact findings." See pages 1-2 of the Memorandum Decision. Based upon the foregoing, and because the three-part test promulgated in *Blue* is satisfied, Appellant is a prevailing party.

B. Appellant Is Eligible For An EAJA Award

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

C. The Position of the Secretary Was Not Substantially Justified

In *White v. Nicholson*, 412 F.3d 1314 (Fed. Cir. 2004) the Federal Circuit applied the totality of the circumstances test and noted that "EAJA requires that the record must supply the evidence of the Government's substantial justification." 412 F.3d at 1316. The Secretary's position during proceedings before the Agency or and in Court was not reasonable, either in law or in fact, and accordingly the Secretary's position was not substantially justified at either the administrative or litigation stage in this case. There thus is nothing substantially justified in the Board's denial of an extraschedular rating for bilateral hearing loss. Moreover, there is no evidence that special circumstances exist in Appellant's case that would make an award of reasonable fees and expenses unjust. 28 U.S.C. § 2412(d)(1)(A).

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

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

Eleven attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Jenna Zellmer, Danielle M. Gorini, Christian McTarnaghan, Matthew Pimentel, Nicholas Phinney, Shawn Murray, Alyse Phillips, April Donahower, Amy Odom, Barbara Cook, and Zachary Stolz.¹ Attorney Jenna Zellmer graduated from Boston University Law School in 2013 and the *Laffey* Matrix establishes that \$388.00 is the prevailing market rate for an attorney with

¹“There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer.” *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1301 (11th Cir. 1988); *see also Baldridge v. Nicholson*, 19 Vet.App. 227, 237-38 (2005)(“the fees sought must be ‘based on the distinct contribution of each individual counsel.’”). “The use in involved litigation of a team of attorneys who divide up the work is common today for both plaintiff and defense work.” *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). “Careful preparation often requires collaboration and rehearsal[.]” *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. *See Baldridge*, 19 Vet.App. at 237 (“An application for fees under EAJA where multiple attorneys are involved must also explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.”). The Exhibit A in this case is separated into two documents. The first reflects time spent on the case prior to October 1, 2018 after which Chisholm Chisholm & Kilpatrick switched time keeping programs. The continuing Exhibit A reflects work performed after October 1, 2018.

her experience.² Danielle Gorini graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$591.00 is the prevailing market rate for an attorney with her experience. Christian McTarnaghan graduated from Suffolk University Law School in 2014 and the *Laffey* Matrix establishes that \$388.00 is the prevailing market rate for an attorney with his experience. Matthew Pimentel graduated from Roger Williams University Law School in 2013 and the *Laffey* Matrix establishes that \$452.00 is the prevailing market rate for an attorney with his experience. Nicholas Phinney graduated from Roger Williams University Law School in 2007 and the *Laffey* Matrix establishes that \$532.00 is the prevailing market rate for an attorney with his experience. Shawn Murray graduated from Boston College Law School in 2014 and the *Laffey* Matrix establishes that \$388.00 is the prevailing market rate for an attorney with

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

his experience. Alyse Phillips graduated from Roger Williams University Law School in 2014 and the *Laffey* Matrix establishes that \$388.00 is the prevailing market rate for an attorney with her experience. April Donahower graduated from Temple University Law School in 2013 and the *Laffey* Matrix establishes that \$452.00 is the prevailing market rate for an attorney with her experience. Amy Odom graduated from University of Florida Law School in 2006 and the *Laffey* Matrix establishes that \$532.00 is the prevailing market rate for an attorney with her experience. Barbara Cook graduated from University of Michigan Law School in 1977 and the *Laffey* Matrix establishes that \$665.00 is the prevailing market rate for an attorney with her experience. Zachary Stolz graduated from the University of Kansas School of Law in 2005 and the *Laffey* Matrix establishes that \$591.00 is the prevailing market rate for an attorney with his experience.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$196.63 per hour for Ms. Zellmer, Ms. Gorini, Mr. McTarnaghan, Mr. Pimentel, Mr. Phinney, Mr. Murray, Ms. Phillips, Ms. Donahower, and Mr. Stolz for representation services before the Court.³ This rate per hour, multiplied by the number of hours billed for these nine

³This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. See *Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase

attorneys (285.90) results in a total attorney's fee amount of \$56,216.52.

Appellant seeks attorney's fees at the rate of \$191.73 per hour for Ms. Cook's representation services before the Court.⁴ This rate per hour, multiplied by the number of hours billed for Ms. Cook (21.10) results in a total attorney's fee amount of \$4,045.50.

Appellant seeks attorney's fees at the rate of \$194.65 per hour for Ms. Odom's representation services before the Court.⁵ This rate per hour, multiplied by the number of hours billed for Ms. Odom (8.50) results in a total attorney's fee amount of \$1,654.53

was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to September 2016 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

⁴ This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for the Midwest, Cincinnati – the second half of 2016. *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to September 2016 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

⁵ This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Washington-Arlington-Alexandria, DC-MD-VA-WV. *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to September 2016 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

In addition, Appellant seeks reimbursement for the following expenses:

Filing Fee:	\$50.00
Postage:	\$5.75
Private Investigator:	\$225.00
Airfare to and from DC – Zach and Jenna:	\$395.20
Hotel in DC – Zach and Jenna:	\$398.06
Ground Transportation- Zach and Jenna:	\$66.69

Based upon the foregoing, the total fee sought is **\$63,057.24.**

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

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

Exhibit A

		<u>Hours</u>
3/25/2016 NP	Reviewed BVA decision. Gave opinion and recommendation for an appeal to Court.	0.40
5/4/2016 DMG	Reviewed file and appeal documents. Filed Notice of Appeal, Notice of Appearance for Robert Chisholm as lead counsel, and Fee Agreement with the Court. Received, reviewed, and saved Court confirmation email to the file. Updated case file.	0.20
5/5/2016 SDM	Prepare and file notice of appearance, review docket, update client file	0.10
5/5/2016 DMG	Reviewed emails from Court with docketed appeal documents. Saved emails to the file. Checked Court docket sheet to ensure Notice of Appeal, Notice of Appearance for Robert Chisholm as lead counsel, and Fee Agreement were properly docketed. Updated case information and case file.	0.20
5/6/2016 NP	Prepared & filed notice of appearance; updated file.	0.10
5/20/2016 SDM	Review and save copy of BVA decision transmittal, update client file	0.10
5/24/2016 SDM	Review and save copy of board decision, update client file	0.10
6/2/2016 SDM	Review and save email with Aee notice of appearance, update client file	0.10
6/29/2016 SDM	Review and save RBA cert of serv, update client file	0.10

Exhibit A

		<u>Hours</u>	
7/12/2016	SDM	Prepare status letter to send to client, update client file	0.10
7/12/2016	SDM	Review case notes	0.40
7/12/2016	SDM	Review RBA, casemap RBA pages 1-1011, further review to confirm presence of wrongly labled item	2.10
7/19/2016	SDM	Review and save order to file brief, update client file	0.10
7/19/2016	SDM	Draft, review, and edit PBC Memo	1.90
7/25/2016	SDM	Review and save PBC order, update client file	0.10
8/2/2016	NP	Proofread PBC memo & reviewed memo for legal accuracy	0.10
8/2/2016	SDM	Finalize PBC memo, send to OGC and CLS, prepare and file cert of serv, update client file	0.20
8/2/2016	SDM	Edit, and cite check PBC memo	0.30
8/22/2016	SDM	Call client to discuss PBC and next steps in case	0.10
8/22/2016	SDM	Prepare for and participate in PBC, type recap for the file, update client file	0.80
9/13/2016	SDM	Draft argument and remaining sections of opening brief	1.20
9/13/2016	SDM	Draft statement of the case for opening brief	1.50
9/14/2016	NP	Proofread oipening brief & reviewed opening brief for legal accuracy	0.50

Exhibit A

			<u>Hours</u>
9/14/2016	SDM	Review, edit, and cite check draft opening brief	0.60
9/14/2016	SDM	Make suggested edits to opening brief	0.90
9/21/2016	SDM	E-file opening brief, update client file	0.10
9/22/2016	SDM	Respond to OGC e-mail, review and save motion to stay case	0.10
9/23/2016	SDM	Prepare opposition to Secretary's motion to stay case	0.50
9/26/2016	SDM	Finalize and e-file opposition to secretary's motion to stay case	0.10
9/27/2016	SDM	Review and save order granting Aee motion to stay case, update client file	0.10
3/9/2017	SDM	Receive e-mail with order lifting stay, review order, update client file	0.10
5/8/2017	SDM	Receive e-mail with Aee brief, save brief, update client file	0.10
5/15/2017	SDM	Review Board decision, opening brief, and secretary's brief, prepare outline to draft reply brief	1.20
5/15/2017	SDM	Complete initial draft of reply brief	1.60
5/16/2017	MP	Review reply brief for SDM. Suggest edits prior to filing.	0.30
5/16/2017	SDM	Review, edit, and cite check draft reply brief	0.60
5/19/2017	SDM	Edit and finalize reply brief, e-file brief, update client file	0.90

Exhibit A

			<u>Hours</u>
6/2/2017	SDM	Receive e-mail with ROP, save and review ROP, prepare and e-file letter accepting ROP, update client file	0.20
6/13/2017	SDM	Receive and review e-mail assigning Judge to case, update client file	0.10
9/7/2017	SDM	Receive e-mail with court order staying case, review and save order, update client file	0.10
9/18/2017	SDM	Call client to discuss case, unable to leave message; note to the file.	0.10
12/21/2017	SDM	Review precedential holding in King v. Shulkin, pending which this case was stayed. Take notes on how King may impact outcome	0.40
1/8/2018	SDM	Review pleadings, prepare and e-file rule 30(b) letter	0.40
9/5/2018	JZ	Drafted and filed notice of appearance.	0.10
9/26/2018	JZ	Called client to discuss case status, left voicemail. Sent email as followup.	0.20
			<u>Amount</u>
			19.60
			\$3,853.93
Expenses			
Filing Fee			50.00
Total Expenses			\$50.00
			<u>Amount</u>
			19.60
			\$3,903.93

Exhibit A

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Danielle M. Gorini	0.40	196.63	\$78.66
Jenna Zellmer	0.30	196.63	\$58.99
Matthew Pimentel	0.30	196.63	\$58.99
Nicholas Phinney	1.10	196.63	\$216.29
Shawn D. Murray	17.50	196.63	\$3,441.00

Exhibit A

Time from 10/1/2018 to 10/23/2022

Case No. 231398

Client: Long, Mr. Walter G.

			<u>Hours</u>
10/11/2018	JENNA	Called client and left voicemail. Memo to the file re: motion to lift stay and difficulty contacting client.	0.20
10/16/2018	CMC	Review motion to lift stay for legal accuracy, style, and grammar.	0.10
10/16/2018	JENNA	Spoke to client re: status of case, note to file on conversation. Emailed OGC re: position on motion to lift stay, drafted motion.	0.50
10/18/2018	JENNA	Reviewed email from OGC re: position on motion to lift stay, reviewed draft motion, edited, finalized and filed motion.	0.30
1/25/2019	JENNA	Called client and left voicemail re: stayed case. Emailed Court to follow up on motion to lift stay	0.30
1/29/2019	JENNA	Listened to voicemail from client, called back and left voicemail. Note to the file.	0.20
2/13/2019	JENNA	Reviewed CAVC email re: court order denying motion to lift stay. Updated client file and calendar.	0.20
4/26/2019	JENNA	Called client and left voicemail to discuss status of case. Note to the file.	0.10
5/16/2019	JENNA	Reviewed CAVC email re: case ordered for en banc, reviewed Morgan to note differences and determine issues for argument	0.90
5/21/2019	AODOM	Reviewed parties' briefs, memo to the file re recommendations.	0.80
5/21/2019	BARBARA	Review Morgan and pleadings to assess merits of strategy moving forward	0.40
5/21/2019	BARBARA	Discuss merits and motion for supplemental pleading and oral argument at litigation strategy assessment meeting.	0.40
5/21/2019	JENNA	Reviewed record, pleadings, and case notes in preparation for litigation strategy meeting in light of en banc order. Participated in meeting, outlined next steps for motion for oral argument and motion for supplemental pleadings.	2.00
5/21/2019	ZACH	Reviewed all pleadings and recent case law concerning extraschedular evaluations. Participated in meeting regarding strategy and motions for oral argument and supplemental pleading.	2.20
5/23/2019	BARBARA	Review and edit motion for oral argument	0.20
5/23/2019	JENNA	Researched case law that has come out since pleadings were filed, drafted motion for oral argument. Exchanged emails with OGC re: position on motions.	1.60
5/23/2019	ZACH	Reviewed motions concerning oral argument and supplemental pleading.	0.60
5/28/2019	JENNA	Reviewed and incorporated suggested edits to motions, added analysis. Called client and left voice mail to discuss en banc order. Finalized and filed motions.	2.00
5/29/2019	JENNA	Spoke to client re: en banc order, note to file on conversation.	0.40
6/10/2019	JENNA	Reviewed CAVC emails re: aee appearances filed, responses to motions filed, reviewed pleadings and updated client file and calendar.	0.30
6/13/2019	JENNA	Reviewed CAVC email re: Court order granting motions for leave. Calendared due date for supplemental pleading	0.20
6/19/2019	JENNA	Reviewed CAVC email re: scheduling order for en banc argument, reviewed for accuracy, updated client file and calendar.	0.20
6/21/2019	JENNA	Reviewed Morgan decision, and prior E-S case law. Began drafting supplemental pleading.	3.00
6/21/2019	JENNA	Finished first half of supplemental briefing argument, began drafting second half.	2.70
6/24/2019	JENNA	Finished drafting supplemental brief, reviewed, edited	0.80
6/25/2019	BARBARA	Review and edit draft supplemental pleading; review amendnemt to 3.321 and suggest adding about that change	0.60
6/26/2019	JENNA	Reviewed and incorporated suggested edits to supplemental pleadings, listened to oral argument in Morgan for research, began editing draft.	1.90
6/27/2019	BARBARA	Review and edit revised draft, review court order, make suggestions on merits section, review RBA for reasons anxiety and depression denied, note to the file.	0.40

Exhibit A

Time from 10/1/2018 to 10/23/2022

Case No. 231398

Client: Long, Mr. Walter G.

			<u>Hours</u>
6/27/2019	JENNA	Conducted additional legal research, including prior pleadings in precedent cases, added argument about Yancy, edited draft	3.00
6/28/2019	ZACH	Reviewed notes on case. Reviewed supplemental pleading.	2.00
7/1/2019	JENNA	Reviewed and incorporated additional suggested edits to supplemental pleading	0.90
7/2/2019	JENNA	Made final edits to supplemental pleadings, finalized, and filed	0.50
7/15/2019	JENNA	Reviewed CAVC emails re Aee motion for leave to exceed page limit and supplemental memo filed, updated client file.	0.10
7/18/2019	JENNA	Reviewed CAVC emails re: court order granting motion for leave to file memo over the page limit, updated client file and calendar	0.10
8/6/2019	JENNA	Reviewed record and drafted timeline of case, and began preparing oral argument binder.	3.00
8/7/2019	AODOM	Participated in oral argument walkthrough.	0.80
8/7/2019	BARBARA	Participated in first oral argument walkthrough	0.80
8/7/2019	JENNA	Participated in first oral argument walkthrough, continued preparing binder.	2.90
8/7/2019	ZACH	Reviewed all pleadings and record. Conducted legal research concerning recent extraschedular decisions. Participated in first "walk through" for oral argument	3.00
8/16/2019	JENNA	Reviewed Secretary's memo, conducted legal research, prepared questions and topics, took notes on themes and arguments for oral argument	3.00
8/19/2019	JENNA	Continued working on oral argument opening argument and other prep re: case law	3.00
8/22/2019	JENNA	Continued to review caselaw and prepare for oral arguments, listen to relevant oral arguments	3.00
8/22/2019	JENNA	Edited oral argument outline	0.50
8/22/2019	JENNA	Prepared for and participated in first moot as first chair.	3.00
8/22/2019	ZACH	Reviewed Secretary's response to Court order and memorandum. Focused on parsing out what Secretary was proposing and how it would work in practice.	3.00
8/22/2019	ZACH	Continued review of case and all pleadings. Prepared for moot Court conducting legal research on cited cases. Participate in moot Court as "judge." Continued prep work in light of upcoming "second chair" duties.	3.00
8/24/2019	JENNA	Reviewed oral argument binder, case law, and took notes for additional points to add to oral argument outline	2.50
8/26/2019	AODOM	Participated in second moot argument as opposing counsel	0.80
8/26/2019	JENNA	Participated in second moot and strategy session, called client and left voicemail, exchanged emails with client and confirmed live stream link. Edited oral argument outline	3.00
8/26/2019	JENNA	Reviewed case law and added findings to oral argument binder	0.30
8/26/2019	JENNA	Edited oral argument outline, and practiced as first chair for oral argument re: fielding possible questions	2.30
8/26/2019	ZACH	Participated in second moot. Acted as judge and contributed strategy points and possible rebuttal to Secretary's proposed e-s framework.	2.50
8/26/2019	ZACH	Reviewed Secretary's response and attached memorandum. Reviewed some of the caselaw cited by Secretary in attempt to understand broad framework proposed.	2.90
8/27/2019	JENNA	Made final edits to oral argument outline, and practiced argument	2.50
8/27/2019	JENNA	Reviewed additional case law, regulations, oral argument binder and opening statement. Listened to previous E-S arguments	2.50
8/27/2019	JENNA	Travelled to Washington DC from Providence - car to airport, flight, car to hotel	3.00
8/27/2019	ZACH	Travel to DCA from PVD.	3.00

Exhibit A

Time from 10/1/2018 to 10/23/2022

Case No. 231398

Client: Long, Mr. Walter G.

			<u>Hours</u>
8/28/2019	JENNA	Listened to previous arguments and reviewed oral argument binder, outline, and opening statement	2.00
8/28/2019	JENNA	Travelled from hotel to Court, met with clerk and opposing counsel, participated in oral argument	2.50
8/28/2019	JENNA	Travelled back from Washington DC to Providence - delayed flight	4.00
8/28/2019	ZACH	Last preparation, travel to, and participate in oral argument.	2.50
8/28/2019	ZACH	Travel from DCA to PVD. Delay included.	4.00
11/15/2019	JENNA	Spoke to client re: status of en banc argument, note to file on conversation	0.30
3/24/2020	JENNA	Called and emailed client to provide status update.	0.20
4/13/2020	JENNA	Called client and left voicemail. Note to the file.	0.10
5/26/2020	JENNA	Called client and left voice mail to discuss status of case. Note to the file.	0.10
8/13/2020	JENNA	Called client and left voice mail re: status of case. Note to the file.	0.10
9/29/2020	JENNA	Call client to discuss status, left voicemail. Note to the file	0.10
10/6/2020	JENNA	Emailed client to check in on status	0.20
10/19/2020	JENNA	Call client, researched alternate phone numbers, obits, etc. Note to the file.	0.60
10/30/2020	JENNA	Drafted and mailed client letter.	0.20
11/30/2020	JENNA	Left voicemails at 3 different numbers for vet; note to the file.	0.20
12/1/2020	JENNA	Spoke to client's son re: communication issues with vet. Note to file	0.30
12/8/2020	JENNA	Reviewed PI report with possible phone numbers for vet. Call all 8 numbers, left voicemails, note to file.	0.80
12/10/2020	JENNA	Spoke to client re: status, waiting on prec dec, note to file on conversation.	0.20
12/23/2020	JENNA	Spoke to client re: status of appeal, note to file on conversation	0.40
12/30/2020	ZACH	Reviewed Court's precedential decision and refreshed self on record and pleadings.	0.90
1/5/2021	JENNA	Reviewed case file notes, pleadings, and panel decision. Took notes on initial thoughts	1.00
1/7/2021	JENNA	Reviewed dissent and concurrence, researched law. Took notes for strategy	0.80
1/7/2021	ZACH	Drafted letter to client concerning decision and appeal options.	0.40
1/8/2021	APRIL	Met to discuss viability of motion for reconsideration or Federal Circuit appeal	0.90
1/8/2021	BARBARA	Discuss whether and what to appeal, how to handle stayed cases	0.90
1/8/2021	JENNA	Discussed potential motion for recon and Fed circuit appeal at litigation strategy meeting	1.20
1/8/2021	ZACH	Discussed possible appeal at litigation strategy meeting. Reviewed pleadings below and conducted legal research concerning current state of extraschedular evaluations as case has been pending for 5 years.	2.00
1/11/2021	JENNA	Researched law and began drafting/outlining motion for recon	0.80
1/12/2021	JENNA	Reviewed case law and en banc decision, finished drafting motion for recon.	1.20
1/15/2021	ZACH	Continued review of case for possible Circuit appeal. Discussed posture of case and several trailing cases at Court. Outlined legal errors to address in Circuit appeal.	2.50
1/19/2021	JENNA	Called client and left voicemail. Note to the file.	0.10
1/21/2021	JENNA	Called client to discuss decision, left voice mail on cell and home numbers. Note to the file.	0.10
1/22/2021	JENNA	Spoke to client re: Fed Cir appeal, note to file on conversation. Reviewed CAVC email re: judgment entered, ensured accuracy of the document, updated client file and calendar.	0.60

Exhibit A

Time from 10/1/2018 to 10/23/2022

Case No. 231398

Client: Long, Mr. Walter G.

			<u>Hours</u>
1/28/2021	ZACH	Prepared appeal to Federal Circuit.	0.40
2/9/2021	ZACH	Reviewed order that appeal was transferred to Circuit. Updated client file.	0.20
2/19/2021	ZACH	Reviewed docketing notice and updated client file and calendar.	0.20
2/22/2021	APRIL	Reviewed case notes to apprise self of case status; reviewed notice of docketing; consulted court rules to confirm accuracy of filing deadlines per docketing statement; updated client file	0.20
3/3/2021	APRIL	Prepared notices of appearance and certificate of interest	0.50
3/4/2021	APRIL	Edited, finalized, and efiled entry of appearance and certificate of interest; updated client file	0.30
3/4/2021	CMC	Review notice of appearance and certificate of interest for accuracy. Review rules.	0.20
3/5/2021	APRIL	Received email from Court with government counsel's notice of appearance; reviewed notice for accuracy and saved to client's file	0.10
3/17/2021	APRIL	Received email from Court with VA counsel's notice of appearance; reviewed notice for accuracy and saved to client's file; updated client calendar	0.10
3/18/2021	APHILLIP	Reviewed CAVC decision, BVA decision, and summary of meeting regarding issues raised on appeal; conducted preliminary research concerning causation; drafted issues presented and relief sought for docketing statement	1.80
3/18/2021	BARBARA	Review docketing statement issues	0.20
3/19/2021	APRIL	Efiled docketing statement; updated client file with confirmation of efilings	0.10
3/23/2021	APRIL	Received email from Court with government's docketing statement; reviewed document for accuracy and saved to client's file	0.10
4/2/2021	APRIL	Researched case law interpreting statutory and regulatory term "result of" and other causation-oriented terms; researched case law concerning proximate cause concept	1.70
4/5/2021	APRIL	Continued research for brief - reviewed Bailey re: causation requirement for benefits for complications, reviewed case law interpreting what causes are too remote to be proximate	0.30
4/7/2021	APRIL	Researched case law pertinent to jurisdiction and standard of review and prohibition of CAVC fact-finding	0.90
4/7/2021	APRIL	Researched case law concerning limits of scope of proximate cause and superseding cause doctrine; outlined research results and reasoning from CAVC decision dissents	3.00
4/26/2021	APRIL	Began drafting opening brief - statement of jurisdiction, statement of case, standard of review	2.30
5/3/2021	APRIL	Continued drafting statement of the case and drafted extraschedular background portion of argument	0.80
5/4/2021	APRIL	Continued drafting argument - Veterans Court de novo fact finding. Began drafting argument - standard for causation	2.00
5/4/2021	APRIL	Drafted argument - Veterans Court de novo fact finding	2.50
5/6/2021	APRIL	Continued to research and draft causation standard argument	1.20
5/6/2021	APRIL	Conducted legal research and drafted portions of causation standard argument	3.00
5/13/2021	APRIL	Continued researching and drafting proximate cause argument	2.70
5/14/2021	AODOM	Reviewed brief, provided suggestions regarding same.	0.80
5/14/2021	APRIL	Completed draft of opening brief	1.70
5/21/2021	BARBARA	Review and edit facts, suggest adding nature of the case, suggest more focus on ear pain, suggest changes to jurisdictional statement to clarify the two tests.	1.50
5/21/2021	BARBARA	Reviewed statute and regulation on secondary, suggest approaching second argument from misinterpretation stance; edit draft up to second argument for clarity	1.60

Exhibit A

Time from 10/1/2018 to 10/23/2022

Case No. 231398

Client: Long, Mr. Walter G.

			<u>Hours</u>
5/24/2021	APRIL	Received and reviewed notice of CAVC's docketing of erroneous dismissal order; posted notice to client's file; called CAVC clerk's office to resolve issue; left voicemail requesting call back; noted call in client's file	0.10
5/24/2021	APRIL	Prepared notice of Federal Circuit's recall of order of dismissal and mandate for filing in the CAVC	0.30
5/24/2021	APRIL	laced and received phone calls to CAVC (x2) and Federal Circuit clerks' offices regarding docketing of reinstatement of FC appeal; documented calls in client's file	0.30
5/24/2021	JENNA	Filed notice of reinstatement of appeal	0.10
5/27/2021	ZACH	Reviewed edits to draft opening brief	0.40
5/28/2021	BARBARA	Suggest additional edits, and review 1155 and CAVC decision	0.60
6/1/2021	BARBARA	Edit draft with broader issue in mind, research 1155 FC cases	1.30
6/3/2021	APRIL	Reviewed Barb's suggested additional edits to draft opening brief and related research	0.30
6/3/2021	BARBARA	Complete review of draft, change arguments to broaden the scope of the argument beyond ES	0.80
6/7/2021	APRIL	Reviewed citing references to statute 1155	0.70
6/7/2021	APRIL	Revised opening brief issues presented, statement of facts, and jurisdictional argument	2.90
6/9/2021	APRIL	Completed revised draft of opening brief	0.40
6/9/2021	APRIL	Began editing legal standard argument	3.00
6/9/2021	APRIL	Continued editing legal standard argument	3.00
6/10/2021	BARBARA	Start to review revised draft and suggest making link to 3.321 sooner	0.70
6/11/2021	APRIL	Researched case law concerning "caused by" and "result of" and causal chains; began revisions to draft brief	2.10
6/11/2021	BARBARA	Complete review, suggest focus on result from, add affirmative holding desired, insert more on 3.321	1.00
6/13/2021	APRIL	Completed revisions culminating in most recent draft of opening brief	2.20
6/15/2021	APRIL	Reviewed Amy's suggested edits to draft opening brief	0.10
6/16/2021	AODOM	Participated in meeting about restructuring opening brief.	0.50
6/16/2021	APRIL	Met with team to discuss revisions to opening brief	0.40
6/16/2021	APRIL	Added prejudice argument	0.50
6/16/2021	APRIL	Made revisions to draft opening brief	3.00
6/16/2021	ZACH	Reviewed notes on case, conducted legal research, reviewed opening brief draft. Discussed draft and strategy	3.00
6/17/2021	APRIL	Implemented suggested edits culminating in draft of opening brief	0.50
6/17/2021	APRIL	Called client to provide status update; left voice mail requesting call back; noted call in client's file; reviewed Court rules governing format and contents of brief and appendix; prepared cover page, certificate of interest, and statement of related cases; assembled judgment, opinion, docket sheet, and Board decision for appendix	1.30
6/17/2021	APRIL	Checked citations to appendix for CAVC opinion, BVA decision, and docket entries	1.40
6/17/2021	BARBARA	Began to review and edit final draft, suggest further segue with 1110, other minor changes for clarification and flow	1.30
6/17/2021	BARBARA	Completed review of draft brief to ensure accurate citation to record before the agency and law. Made edits where necessary.	1.60

Exhibit A

Time from 10/1/2018 to 10/23/2022

Case No. 231398

Client: Long, Mr. Walter G.

			<u>Hours</u>
6/18/2021	APRIL	Checked citations to record for entries in record before lower court; revised citations in opening brief to conform to appendix numbering; read through and edited opening brief draft for clarity and flow; redacted and inserted Bates numbering into draft appendix	2.50
6/18/2021	APRIL	Checked citations to record and authority; prepared certificate of compliance; performed final review of brief for compliance with court rules; efiled brief; updated client file	2.60
6/18/2021	CMC	Review opening brief for compliance.	0.40
6/22/2021	APRIL	Prepared letter to client with copy of opening brief	0.10
6/24/2021	APRIL	Received and reviewed email from court with notice of completion of compliance review; saved opening brief post-compliance review to client's file; reviewed draft joint appendix for completeness of redaction; password-protected appendix; emailed appendix to VA counsel	0.30
7/7/2021	APRIL	Emailed client to request contact to provide status update	0.10
7/7/2021	APRIL	Received, reviewed, and responded to opposing counsel's request for position on motion to extend brief deadline	0.10
7/7/2021	APRIL	Listened to voicemail and received and reviewed email from opposing counsel; returned missed call and provided password for joint appendix; noted call in client's file	0.10
7/12/2021	APRIL	Received emails from Court with government's motion for extension of time to file response brief and clerk's stamp granting motion; reviewed motion for accuracy and saved to client's file; updated client calendar	0.10
7/13/2021	APRIL	Received phone call from client; provided status update and answered client questions; noted call in client's file	0.20
7/15/2021	AODOM	Reviewed and analyzed Taldon v. McDonough; note to the file regarding same.	0.50
8/4/2021	APRIL	Prepared notice of supplemental authority re: Tadlock	0.60
8/5/2021	APRIL	Implemented suggested edits to draft notice of supplemental authority	0.10
8/5/2021	BARBARA	Reviewed Court rule and suggest addition to draft supplemental authority	0.20
8/6/2021	APRIL	Finalized and efiled citation to Tadlock as supplemental authority	0.20
9/7/2021	APRIL	Received, reviewed, and responded to opposing counsel's email requesting position on motion to extend brief deadline	0.10
9/8/2021	APRIL	Received email from Court with government's second motion for extension of time to file response brief; reviewed motion for accuracy and saved to client's file; updated client calendar	0.10
9/9/2021	APRIL	Received email from Court with order granting government's motion for extension of brief deadline; reviewed order for accuracy and saved to client's file; updated client calendar	0.10
9/16/2021	APRIL	Reviewed CAVC's decision and pleadings in Spicer v. McDonough and assessed impact on issue on appeal	1.20
10/27/2021	APRIL	Received, reviewed, and responded to opposing counsel's request for position on third extension motion	0.10
10/27/2021	APRIL	Received email from Court with opposing counsel's third motion for extension of brief deadline; reviewed motion for accuracy and saved to client's file; updated client calendar	0.10
11/1/2021	APRIL	Received email from Court with order granting opposing counsel's third motion to extend brief deadline; reviewed order for accuracy and saved to client's file; updated client calendar	0.10
11/4/2021	APRIL	Received, reviewed, and responded to email from opposing counsel with draft joint appendix; saved draft to client's file	0.10
11/4/2021	APRIL	Received email from Court with notice of completion of compliance review of government's brief; reviewed notice for accuracy and saved to client's file	0.10
11/4/2021	APRIL	Received email from Court with government's brief; reviewed brief for overview of arguments; noted arguments in client's file	0.40
11/6/2021	BARBARA	Discuss legal theories and reply brief approach	0.60

Exhibit A

Time from 10/1/2018 to 10/23/2022

Case No. 231398

Client: Long, Mr. Walter G.

				<u>Hours</u>
11/9/2021	APRIL	Discussed case at litigation strategy meeting		0.10
11/9/2021	BARBARA	Discuss case at litigation strategy meeting		0.10
11/9/2021	JENNA	Discussed case strategy with team		0.20
11/9/2021	JENNA	Reviewed CAVC holding in Long, reviewed opening brief and VA brief at Federal Circuit to prepare for reply litigation strategy meeting		0.90
11/14/2021	APRIL	Prepared letter to client with copy of government's brief		0.20
11/16/2021	AODOM	Prepared for and participated in reply brief strategy meeting.		1.00
11/16/2021	APRIL	Prepared for and attended meeting to discuss reply brief strategy		1.20
12/28/2021	APRIL	Reviewed and pulled excerpts from government's brief for use in reply brief; began researching and outlining reply brief arguments		3.00
12/29/2021	APRIL	Completed draft of schedular alternatives reply argument		0.20
12/29/2021	APRIL	Drafted reply argument re: Veterans Court's factfinding		2.10
12/29/2021	APRIL	Drafted reply argument re: Veterans Court's legal standard		2.50
12/29/2021	APRIL	Began drafting schedular alternatives reply argument		3.00
12/30/2021	APRIL	Revised draft of reply brief		1.80
1/3/2022	BARBARA	Review and suggest edits to draft reply re: more explanation as to why DoJ suggested interpretation is wrong. Review DoJ brief and suggest possible additional comments and points to make from that. Suggest adding Larson for mootness, moving Morgan in the brief, clarifying relief		1.30
1/5/2022	APRIL	Began revising draft reply		2.60
1/17/2022	APRIL	Completed revisions to reply brief argument I and revised argument II.		3.00
1/18/2022	APRIL	Continued revising reply brief arguments I and II		2.40
1/19/2022	APRIL	Revised reply argument III		2.30
1/21/2022	APRIL	Began revising argument I and adding subarguments I.a. and I.bb.		3.00
1/21/2022	APRIL	Completed revisions to argument I and addition of subarguments I.a. and I.bb.		3.00
1/21/2022	BARBARA	Review and suggest edits to revised draft of reply.		1.20
1/26/2022	APRIL	Made final edits to reply arguments		1.90
1/26/2022	ZACH	Reviewed VA pleading, opening brief, and notes on case. Reviewed reply brief and discussed with April		3.00
1/27/2022	AODOM	Proofread reply brief.		0.00
1/27/2022	APRIL	Made final edits to reply brief; supplemented and repaginated draft joint appendix; checked citations to record and authority; efiled brief; updated client calendar		2.30
1/27/2022	APRIL	Reorganized arguments and made necessary edits to accommodate reorganization; drafted summary and conclusion		3.00
1/27/2022	CMC	Final review of reply brief for compliance with Court's rules.		0.20
1/31/2022	APRIL	Prepared letter to client with copy of reply brief		0.10
1/31/2022	APRIL	Received email from Court with reply brief post-compliance review; reviewed document and saved to client's file; updated client calendar		0.10
2/3/2022	APRIL	Ensured accuracy, completeness, and redaction of joint appendix contents; saved joint appendix in proper form; efiled joint appendix		1.40
2/3/2022	CMC	Review final version of joint appendix for accuracy and compliance with rules.		0.30

Exhibit A

Time from 10/1/2018 to 10/23/2022

Case No. 231398

Client: Long, Mr. Walter G.

			<u>Hours</u>
2/4/2022	APRIL	Received emails from Court with joint appendix post-compliance review, notice to advise court of scheduling conflicts, and notice to submit paper copies. Reviewed attached documents for accuracy and saved to client's file. Consulted Court's rules regarding paper copies. Coordinated preparation of paper copies.	0.40
2/8/2022	APRIL	Received and reviewed email from Court confirming receipt of paper copies of briefs and appendix	0.10
2/8/2022	APRIL	Received and reviewed email from Court with government counsel's response to notice to advise of scheduling conflicts	0.10
2/9/2022	APRIL	Received and reviewed email from Court with notice of receipt of paper copies of government's brief; updated client file	0.10
2/9/2022	APRIL	Reviewed court session calendar; downloaded and completed form 32; drafted good cause statement re: scheduling conflicts; finalized and efiled response to notice to advice of scheduling conflicts; updated client file	0.50
2/11/2022	APRIL	Received and reviewed email from Court with acceptance of oral argument scheduling conflicts	0.10
2/12/2022	ZACH	Discussion of strategy for opening brief and docketing statement at litigation strategy meeting	0.40
3/18/2022	APRIL	Completed and proof read docketing statement	0.40
3/21/2022	APRIL	Received email from Court with order scheduling oral argument; reviewed order and saved to client's file; saved required response forms to client's file; reviewed court's revised protocols for oral argument	0.20
4/1/2022	APRIL	Prepared and efiled response to notice of oral argument and certification of compliance with oral argument protocols; scheduled oral argument strategy discussion	0.60
4/4/2022	APRIL	Received email from Court with government's response to notice of oral argument; reviewed response and saved to client's file	0.10
4/9/2022	APRIL	Reviewed parties' pleadings and prepared preliminary outline of points for oral argument	2.50
4/11/2022	APRIL	Revised preliminary outline into agenda for initial oral argument strategy discussion	0.90
4/11/2022	BARBARA	Review pleadings and note possible approaches	0.80
4/13/2022	AODOM	Prepared for and participated in oral argument walk-through.	1.50
4/13/2022	APRIL	Attended meeting to discuss strategy for oral argument	1.10
4/13/2022	BARBARA	Discuss issues and oral argument presentation with team	0.10
4/13/2022	BARBARA	Review April's notes/questions; read Slaughter; reviewed DoJ brief and BVA decision	0.30
4/13/2022	BARBARA	Review complaint, pleadings in case complained of, CAVC process and ABA standards for sanctions	0.70
4/21/2022	APRIL	Called client to provide status update; left voice mail requesting call back; noted call in client's file; prepared for first moot oral argument	2.30
4/22/2022	APRIL	Began drafting oral argument opening statement and points for discussion; began assembling oral argument binder	2.00
4/24/2022	APRIL	Refined theory of case and roadmap for oral argument	2.80
4/25/2022	AODOM	Prepared for and participated in first moot and post-moot conference with April.	1.00
4/25/2022	APRIL	Prepared for and held first moot oral argument and follow-up discussion	2.90
4/25/2022	BARBARA	Prepare for and participate in moot and post-moot discussion	0.80
4/25/2022	ZACH	Prepared for and participated in first full moot court. Preparation included review of all pleadings and relevant cases. Participation was as "judge" asking questions and participating in oral argument strategy.	3.00
4/26/2022	APRIL	Attended orientation to studio space in preparation for oral argument	0.50

Exhibit A

Time from 10/1/2018 to 10/23/2022

Case No. 231398

Client: Long, Mr. Walter G.

			<u>Hours</u>
4/28/2022	AODOM	Prepared for and participated in second moot.	0.80
4/28/2022	APRIL	Received, reviewed, and responded to Court email regarding oral argument orientation	0.10
4/28/2022	APRIL	Received, reviewed, and responded to email from Court regarding remote oral argument procedures	0.10
4/28/2022	APRIL	Audited oral argument in Ollis v. Shulkin to prepare for oral argument	0.70
4/28/2022	APRIL	Revised working draft of oral argument opening statement; began reviewing authorities cited in pleadings to prepare for oral argument	0.80
4/28/2022	APRIL	Prepared for second moot	1.00
4/28/2022	APRIL	Completed preparation for and held final moot oral argument; received email from Court with order granting permission to argue remotely; reviewed order and saved to client's file	1.20
4/28/2022	BARBARA	Prepare for and participate in moot and post-moot discussion	0.70
4/28/2022	ZACH	Prepared for and participated in 2nd moot. Preparation included review of case and drafting of additional questions. Participated as "judge" and contributed to oral argument strategy.	2.10
4/30/2022	APRIL	Completed review of authorities cited in pleadings, pulled relevant excerpts from record and CAVC decision for quick reference in oral argument	2.50
4/30/2022	APRIL	Continued reviewing authorities cited in pleadings, audited oral argument in Payne v. Wilkie to prepare for oral argument	2.70
5/1/2022	APRIL	Assembled oral argument binder and revised opening statement	1.20
5/1/2022	APRIL	Reviewed parties' pleadings and compiled key points into quick reference for oral argument	2.50
5/2/2022	APRIL	Logged onto videoconference for oral argument; revised and rehearsed opening statement	1.00
5/2/2022	APRIL	Made final preparations for oral argument	1.50
5/2/2022	APRIL	Attended and presented oral argument; participated in follow-up discussion with team	2.50
5/4/2022	APRIL	Returned missed client call; noted call in client's file	0.10
6/29/2022	APRIL	Received email from Court with opinion; reviewed opinion and saved to client's file; prepared cover letter to client for mailing of opinion	0.50
6/29/2022	JENNA	Reviewed CAVC email re: judgment from Fed Cir entered. Reviewed Fed Cir decision, updated client file and calendar.	0.90
6/29/2022	ZACH	Reviewed Federal Circuit decision. Drafted memo to the file.	0.70
6/30/2022	APRIL	Called client to provide status update; left voice mail requesting call back; noted call in client's file	0.10
7/12/2022	APRIL	Received phone call from client; discussed Federal Circuit decision; noted call in client's file	0.40
7/13/2022	APRIL	Updated file to reflect pending remand from CAVC	0.10
8/23/2022	JENNA	Reviewed CAVC email re: FC mandate entered, ensured accuracy of document, updated client file	0.20
9/28/2022	APRIL	Received email from Court with order dissolving en banc panel; reviewed order for accuracy and saved to client's file; updated client calendar	0.10
9/28/2022	ZACH	Reviewed order dissolving en banc Court and assigning case to Judge Toth.	0.10
10/19/2022	APRIL	Received email from Court with memorandum decision; reviewed decision and saved to client's file; called client and left voice mail requesting call back to discuss decision; noted call in client's file; updated client calendar	0.20
10/19/2022	DANIELLE	Prepared and e filed Notice of Appearance. Received, reviewed, and saved Court confirmation email. Checked docket sheet to ensure proper filing. Updated case file.	0.20
10/19/2022	DANIELLE	Began to review file. Began preparing EAJA Petition and Exhibit A for CAVC case.	1.50

Exhibit A

Time from 10/1/2018 to 10/23/2022

Case No. 231398

Client: Long, Mr. Walter G.

			<u>Hours</u>
10/19/2022	ZACH	Reviewed Court's decision implementing Fed Cir decision. Prepared letter to client concerning Court's decision. Ensured case file was updated with necessary letters, pleadings, and correspondence so that client could be properly informed of case progress, disposition, and next steps.	0.70
10/20/2022	APRIL	Drafted summary of Court's decision to client's file	0.20
10/20/2022	DANIELLE	Continued and completed review of file. Completed preparation of EAJA Petition and Exhibit A for Fed Circuit case. Submitted completed EAJA Application for proofreading and billing accuracy review.	2.50
10/20/2022	ZACH	Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy.	0.50

Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
AODOM	8.5	\$ 194.65	\$ 1,654.53
APHILLIP	1.8	\$ 196.63	\$ 353.93
APRIL	132.6	\$ 196.63	\$ 26,073.14
BARBARA	21.1	\$ 191.73	\$ 4,045.50
CMC	1.2	\$ 196.63	\$ 235.96
DANIELLE	4.2	\$ 196.63	\$ 825.85
JENNA	77.3	\$ 196.63	\$ 15,199.50
ZACH	49.2	\$ 196.63	\$ 9,674.20
	295.9		\$ 58,062.61

Expenses:	Postage:	\$5.75
	Private Investigator:	\$225.00
	Airfare to and from DC - Zach and Jenna:	\$395.20
	Hotel in DC - Zach and Jenna:	\$398.06
	Ground Transportation in DC- Zach and Jenna:	\$66.69
Total:		\$59,153.31

USAO ATTORNEY'S FEES MATRIX — 2015-2021

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	2020-21
31+ years	568	581	602	613	637	665
21-30 years	530	543	563	572	595	621
16-20 years	504	516	536	544	566	591
11-15 years	455	465	483	491	510	532
8-10 years	386	395	410	417	433	452
6-7 years	332	339	352	358	372	388
4-5 years	325	332	346	351	365	380
2-3 years	315	322	334	340	353	369
Less than 2 years	284	291	302	307	319	333
Paralegals & Law Clerks	154	157	164	166	173	180

Explanatory Notes

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO) to evaluate requests for attorney's fees in civil cases in District of Columbia courts. The matrix is intended for use in cases in which a fee-shifting statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, or by other Department of Justice components, or in other kinds of cases. The matrix does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. A "reasonable fee" is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. *See, e.g., Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Consistent with that definition, the hourly rates in the above matrix were calculated from average hourly rates reported in 2011 survey data for the D.C. metropolitan area, which rates were adjusted for inflation with the Producer Price Index-Office of Lawyers (PPI-OL) index. The survey data comes from ALM Legal Intelligence's 2010 & 2011 Survey of Law Firm Economics. The PPI-OL index is available at <http://www.bls.gov/ppi>. On that page, under "PPI Databases," and "Industry Data (Producer Price Index - PPI)," select either "one screen" or "multi-screen" and in the resulting window use "industry code" 541110 for "Offices of Lawyers" and "product code" 541110541110 for "Offices of Lawyers." The average hourly rates from the 2011 survey data are multiplied by the PPI-OL index for May in the year of the update, divided by 176.6, which is the PPI-OL index for January 2011, the month of the survey data, and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
3. The PPI-OL index has been adopted as the inflator for hourly rates because it better reflects the mix of legal services that law firms collectively offer, as opposed to the legal services that typical consumers use, which is what the CPI-

Legal Services index measures. Although it is a national index, and not a local one, *cf. Eley v. District of Columbia*, 793 F.3d 97, 102 (D.C. Cir. 2015) (noting criticism of national inflation index), the PPI-OL index has historically been generous relative to other possibly applicable inflation indexes, and so its use should minimize disputes about whether the inflator is sufficient.

4. The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed in *Laffey v. Northwest Airlines, Inc.* 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore (DC-MD-VA-WV) area. The USAO rates for years prior to and including 2014-15 remains the same as previously published on the USAO's public website.
5. The various "brackets" in the column headed "Experience" refer to the attorney's years of experience practicing law. Normally, an attorney's experience will be calculated starting from the attorney's graduation from law school. Thus, the "Less than 2 years" bracket is generally applicable to attorneys in their first and second years after graduation from law school, and the "2-3 years" bracket generally becomes applicable on the second anniversary of the attorney's graduation (*i.e.*, at the beginning of the third year following law school). See *Laffey*, 572 F. Supp. at 371. An adjustment may be necessary, however, if the attorney's admission to the bar was significantly delayed or the attorney did not otherwise follow a typical career progression. See, *e.g.*, *EPIC v. Dep't of Homeland Sec.*, 999 F. Supp. 2d 61, 70-71 (D.D.C. 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp. 2d 56, 60-61 (D.D.C. 2013) (same). The various experience levels were selected by relying on the levels in the ALM Legal Intelligence 2011 survey data. Although finer gradations in experience level might yield different estimates of market rates, it is important to have statistically sufficient sample sizes for each experience level. The experience categories in the current USAO Matrix are based on statistically significant sample sizes for each experience level.
6. ALM Legal Intelligence's 2011 survey data does not include rates for paralegals and law clerks. Unless and until reliable survey data about actual paralegal/law clerk rates in the D.C. metropolitan area become available, the USAO will compute the hourly rate for Paralegals & Law Clerks using the most recent historical rate from the USAO's former *Laffey* Matrix (*i.e.*, \$150 for 2014-15) updated with the PPI-OL index. The formula is \$150 multiplied by the PPI-OL index for May in the year of the update, divided by 194.3 (the PPI-OL index for May 2014), and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
7. The attorney's fees matrices issued by the United States Attorney's Office are intended to facilitate the settlement of attorney's fees claims in actions in which the United States may be liable to pay attorney's fees to the prevailing party and the United States Attorney's Office is handling the matter. The United States Attorney's Office is presently working to develop a revised rate schedule, based upon current, realized rates paid to attorneys handling complex federal litigation in the District of Columbia federal courts. This effort is motivated in part by the D.C. Circuit's urging the development of "a reliable assessment of fees charged for complex federal litigation in the District." *D.L. v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019). This new matrix should address the issues identified by the majority in *D.L.*, but it is expected that it will be some time before a new matrix can be prepared. In the interim, for matters in which a prevailing party agrees to payment pursuant to the matrices issued by the United States Attorney's Office, the United States Attorney's Office will not demand that a prevailing party offer the additional evidence that the law otherwise requires. See *Eley*, 793 F.3d at 104 (quoting *Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995)) (requiring "evidence that [the] 'requested rates are in line with those prevailing in the community for similar services'").