

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

TINA L. LUCKETT)	
Appellant,)	
)	
v.)	CAVC No. 21-4881
)	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 **\$30,443.35**.

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).

In this case, the parties agreed to a joint motion for remand based upon the Board's failure to provide an adequate statement of reasons or bases. See pages 1-5 of the JMR. Mandate issued on January 4, 2023. 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 her net worth at the time her appeal was filed did not exceed \$2,000,000. 28 U.S.C. § 2412(d)(2)(B). Ms. Luckett 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, Ms. Luckett 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 the Court was not reasonable, either in law or in fact, and accordingly the Secretary's position was not substantially justified at either the administrative or

litigation stage in this case. There thus is nothing substantially justified in the Board's failure to provide an adequate statement of reasons or bases. Moreover, there is no evidence that special circumstances exist in Appellant's case that would make an award of reasonable fees and expenses unjust. 28 U.S.C. § 2412(d)(1)(A).

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

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

Ten attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Emma Peterson, Danielle M. Gorini, Ethan Muckelbauer, Barbara Cook, Amy Odom, David Remillard, April Donahower, Kevin Medeiros, Kaitlyn Degnan, and Zachary Stolz.¹ Attorney Emma Peterson graduated from Roger

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 Baldrige v. Nicholson*, 19 Vet.App. 227, 237-38 (2005) ("the fees sought must be 'based on the distinct contribution of each individual

Williams University Law School in 2011 and the *Laffey* Matrix establishes that \$829.00 is the prevailing market rate for an attorney with her experience.² Danielle Gorini graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$829.00 is the prevailing market rate for an attorney with her experience. Ethan Muckelbauer graduated from Washington University

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.”).

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).

Law School in 2019 and the *Laffey* Matrix establishes that \$413.00 is the prevailing market rate for an attorney with his experience. Barbara Cook graduated from University of Michigan Law School in 1977 and the *Laffey* Matrix establishes that \$997.00 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 \$829.00 is the prevailing market rate for an attorney with her experience. David Remillard graduated from Roger Williams University Law School in 2018 and the *Laffey* Matrix establishes that \$508.00 is the prevailing market rate for an attorney with his experience. April Donahower graduated from Temple University Law School in 2013 and the *Laffey* Matrix establishes that \$733.00 is the prevailing market rate for an attorney with her experience. Kevin Medeiros graduated from Suffolk University Law School in 2015 and the *Laffey* Matrix establishes that \$508.00 is the prevailing market rate for an attorney with his experience. Kaitlyn Degnan graduated from Syracuse University of Florida Law School in 2017 and the *Laffey* Matrix establishes that \$508.00 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 \$829.00 is the prevailing market rate for an attorney with his experience.

At the time their work was performed, Elizabeth Rowland and Patrick Reynolds were admitted as non attorney practitioners. Mr. Reynolds is a 2020 graduate of Northeastern University School of Law. Ms. Rowland is a 2014 graduate from Vassar College, began working as a paralegal for Chisholm Chisholm & Kilpatrick in November 2016, and was admitted to practice as a non attorney practitioner on January 16, 2018. Both Ms. Rowland and Mr. Reynolds have entered their appearances in multiple cases before the Court of Appeals for Veterans Claims. The Court has found that “[I]n formulating an EAJA award to a non-attorney practitioner, once a prevailing market rate is determined for the non-attorney practitioner based on a certain skill level, reputation, and geographic area, that prevailing market rate can be adjusted over time by application of the appropriate percentage increase of the change in the appropriate consumer price index.” See *Apodackis v. Nicholson*, 19 Vet. App. 91 (2005). Therefore, based on Ms. Rowland’s and Mr. Reynold’s court experience, Appellant seeks fees at the rate of \$208.00 per hour for representation services before the Court for their time as non attorney practitioners.

Dalton Chapman, Cassie Scott, and Olga Tretyakova are paralegals for the law firm of Chisholm Chisholm & Kilpatrick who worked on this case. The Court has found that "the Laffey Matrix . . . is a reliable indicator of fees and is far more

indicative of the prevailing market rate in the jurisdiction, particularly as to cases involving fees to be paid by government entities" *Wilson v. Principi*, 16 Vet.App. 509, 513 (2002). The U.S. Supreme Court in *Richlin Sec. Service Co. v. Chertoff*, 553 U.S. 571, 590 (2008), held "...that a prevailing party that satisfies EAJA other requirements may recover its paralegal fees from the Government at prevailing market rates." According to the Laffey Matrix, the prevailing market rate for paralegals from June 1, 2021 through May 31, 2022 is \$208.00 per hour. Therefore, Appellant seeks fees at the rate of \$208.00 per hour for representation services before the Court for the paralegals.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$226.20 per hour for Ms. Peterson, Ms. Gorini, Mr. Muckelbauer, Mr. Remillard, Ms. Donahower, Mr. Medeiros, Ms. Degnan, and Mr. Stolz for representation services before the Court.³ This rate per hour, multiplied by the number of hours billed for these eight

³ This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. See *Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to February 2022 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).

attorneys (134.40) results in a total attorney's fee amount of \$30,401.28.

Appellant seeks attorney's fees at the rate of \$221.94 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 (3.10) results in a total attorney's fee amount of \$688.01.

Appellant seeks attorney's fees at the rate of \$220.12 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 (7.20) results in a total attorney's fee amount of \$1,584.86.

⁴ Per the agreement in *Bradley v. Wilkie*, 17-3797, this rate was determined using the formula proposed by the National Veterans Legal Services Program, Veterans Benefit Manual, [1683] (Barton Stichman et al. eds. 2017-18 ed.). Specifically, the hourly rate is determined using the \$193.83 hourly rate from the last month the Cincinnati Consumer Price Index-U was available in the second half of 2017, multiplying that number using the Midwest Consumer Price Index-U for the midpoint in the case, February 2022, divided by the data from the Midwest Consumer Price Index-U for December 2017 or 230.548.

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 February 2022 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 fees at the rate of \$208.00 per hour for representation services before the Court for Ms. Rowland's and Mr. Reynold's time as non attorney practitioners. This rate per hour, multiplied by the number of hours billed (3.90) results in a total fee amount of \$811.20.

Appellant seeks fees at the rate of \$208.00 per hour for the paralegals' representation services before the Court. This rate per hour, multiplied by the number of hours billed (0.60) results in a total fee amount of \$124.80.

Based upon the foregoing, the total fee is **\$33,610.15**. However, in the exercise of billing judgment, Appellant will voluntarily reduce the total fee amount by 14 hours for some of the time spent by Mr. Remillard and seek a reduced fee of **\$30,443.35**.

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,
Tina L. Lockett
By Her Attorneys,
CHISHOLM CHISHOLM & KILPATRICK
/s/Zachary M. Stolz
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Exhibit A

Time from 10/1/2018 to 1/13/2023

Case No. 316594

Client: Lockett, Ms. Tina L.

			<u>Hours</u>
7/16/2021	EMMA	Reviewed Board Decision, researched caselaw, recommended an appeal to CAVC, and proposed legal arguments.	0.60
7/22/2021	DCHAPMAN	Reviewed and submitted notice of appeal, notice of appearance for Z. Stolz, fee agreement, and DFH. Received, reviewed, and saved esubmission confirmation to the file.	0.10
7/26/2021	DCHAPMAN	Reviewed docket to ensure appeal was processed. Updated client's file	0.10
8/11/2021	EMUCKELB	Prepared and e-filed notice of appearance, reviewed docket, received and reviewed confirmation e-mail for accuracy, and updated file.	0.20
8/19/2021	EMUCKELB	Received and reviewed e-mails from VA serving BVA decision and transmittal for accuracy; reviewed docket; updated file.	0.10
9/20/2021	EMUCKELB	Received and reviewed OGC's Notice of Appearance and updated file.	0.10
9/21/2021	EMUCKELB	Received and reviewed RBA certificate of service for accuracy, reviewed docket, and updated file.	0.10
9/30/2021	PREYNOLD	Reviewed RBA for dispute, pgs. 1-2257.	2.70
10/5/2021	EROWLAND	Determined there were items missing from the RBA, emailed VA counsel regarding issue with the file. Updated client file.	0.50
10/5/2021	EROWLAND	Prepared and e-filed notice of appearance, prepared and e-filed response to the RBA. Updated client file.	0.30
10/8/2021	DREMILLA	Prepared and e-filed notice of appearance, reviewed docket, received and reviewed confirmation e-mail for accuracy, and updated file.	0.20
10/13/2021	EROWLAND	Received and reviewed VA counsel's email response, updated client file.	0.10
10/18/2021	EROWLAND	Received and reviewed notice that CAVC stayed case for RBA dispute purposes, updated client file.	0.10
10/20/2021	CSCOTT	Received and reviewed notice that RBA was uploaded to file share program, downloaded RBA, updated client file.	0.10
10/21/2021	CSCOTT	Finished OCRing process, moved RBA into casemap folder	0.10
10/22/2021	EROWLAND	Reviewed amended RBA, determined dispute was resolved, emailed VA counsel indicating dispute was resolved. Updated client file.	0.10
11/2/2021	EROWLAND	Received and reviewed VA's final response to RBA dispute, updated client file.	0.10
11/3/2021	DREMILLA	Received and reviewed Court's notice to file opening brief for accuracy and content, calculated brief deadline, updated file.	0.10
11/3/2021	DREMILLA	Review of RBA for briefing purposes pp 1 to 312.	1.60
11/4/2021	DREMILLA	Review of RBA for briefing purposes pp. 313 to 1293.	3.00
11/4/2021	DREMILLA	Review of RBA for briefing purposes pp. 1294 to 2337	2.10
11/4/2021	OTRETYAK	Prepared the Status Letter to the client.	0.20
11/12/2021	DREMILLA	Received and reviewed Court's PBC order for accuracy, calculated PBC and opening brief deadlines, reviewed docket, and updated file.	0.10
11/12/2021	DREMILLA	Began drafting PBC memo.	0.20
11/22/2021	DREMILLA	Completed draft of PBC memo.	1.80
11/22/2021	DREMILLA	Continued drafting PBC memo.	1.80
11/24/2021	DREMILLA	Edited PBC memo; served to VA and CLS counsels; prepared and e-filed Rule 33 certificate; received and reviewed confirmation e-mail for accuracy; updated file.	0.80
12/8/2021	DREMILLA	Prepared for and participated in PBC with VA and CLS counsels; drafted memo to file summarizing outcome; updated file.	0.60
12/12/2021	APRIL	Reviewed BVA decision, case notes, and relevant RBA pages; outlined preliminary thoughts on approach to litigation strategy	0.50

Exhibit A

Time from 10/1/2018 to 1/13/2023

Case No. 316594

Client: Lockett, Ms. Tina L.

			<u>Hours</u>
12/14/2021	APRIL	Discussed case at litigation strategy meeting; drafted follow-up note to client's file	0.20
12/14/2021	DREMILLA	Spoke with client regarding status of case; memo to file.	0.20
12/16/2021	DREMILLA	Began drafting opening brief - statement of the case	1.30
12/17/2021	DREMILLA	Continued drafting statement of the case for opening brief.	2.00
12/21/2021	DREMILLA	Continued review of record for issues on appeal.	0.60
12/21/2021	DREMILLA	Continued drafting statement of the case and reviewing RBA for facts pertinent to appeal.	1.80
1/5/2022	DREMILLA	Finished drafting statement of the case	2.40
1/14/2022	APRIL	Prepared for and attended meeting to discuss opening brief arguments	1.70
1/14/2022	DREMILLA	Research of caselaw, regulations, and facts related to urinary incontinence and ratings for vulvovaginitis	2.50
1/14/2022	DREMILLA	Prepared for and participated in meeting to discuss issues for opening brief.	1.30
1/14/2022	KEVIN	Reviewed DR's draft of statement of facts of case	1.00
1/17/2022	DREMILLA	Continued research of regulations and caselaw regarding ratings of the vagina and genitourinary system. Research of medical terminology and review of the record for symptoms and etiologies. Drafted outline of argument for opening brief.	1.40
1/20/2022	APRIL	Conducted research and began review of outline of Morgan argument	1.10
1/20/2022	DREMILLA	Began drafting argument for opening brief.	1.00
1/20/2022	DREMILLA	Research of relevant caselaw and statutes relating to interpretation and the rating code.	0.40
1/21/2022	APRIL	Completed review of outline of opening brief arguments	0.80
1/24/2022	DREMILLA	Edited outline for opening brief.	0.90
1/26/2022	DREMILLA	Continued drafting first argument for opening brief.	1.10
1/31/2022	DREMILLA	Continued drafting first argument; research of relevant regulations, caselaw, and medical terms.	3.00
1/31/2022	DREMILLA	Continued drafting first argument of opening brief; continued research of relevant statutes, caselaw, and medical terms.	3.00
2/1/2022	DREMILLA	Created outline of facts and law for opening brief second argument.	0.90
2/1/2022	DREMILLA	Completed draft of first argument for opening brief.	2.70
2/7/2022	APRIL	Reviewed revised statement of facts and suggested edits/additions; skimmed argument I for overview	2.70
2/7/2022	APRIL	Completed review of draft argument I; drafted outline of suggested reorganization; reviewed outline of argument II; suggested alternative argument	2.90
2/8/2022	DREMILLA	Continued editing statement of the case for opening brief.	0.90
2/8/2022	DREMILLA	Continued editing first argument of opening brief.	2.10
2/8/2022	DREMILLA	Began reviewing and implementing edits from AD into opening brief.	1.30
2/8/2022	DREMILLA	Continued editing draft opening brief.	3.00
2/9/2022	DREMILLA	Continued editing first argument of opening brief; research of caselaw regarding regulatory interpretation.	3.00
2/9/2022	DREMILLA	Research of relevant regulatory terms; reviewed examinations of record.	1.70
2/9/2022	DREMILLA	Continued revising draft of first argument of opening brief; research of regulatory history of section 4.116.	2.00
2/10/2022	DREMILLA	Review of examinations of record for pertinent issues; drafted memo to file.	2.00

Exhibit A

Time from 10/1/2018 to 1/13/2023

Case No. 316594

Client: Lockett, Ms. Tina L.

			<u>Hours</u>
2/14/2022	APRIL	Reviewed Dave's notes on exams against relevant RBA pages; prepared rough outline of argument re: BVA finding that exams are inconsistent with Vet's lay statement	1.30
2/15/2022	DREMILLA	Drafted statement of the issues, summary of the argument and conclusion sections for opening brief.	2.00
2/15/2022	DREMILLA	Finished draft of second argument for opening brief.	0.90
2/15/2022	DREMILLA	Began drafting second argument for opening brief.	3.00
2/16/2022	APRIL	Began review of additional argument re: BVA finding about examinations	2.00
2/16/2022	APRIL	Completed review of argument re: BVA finding about examinations	2.00
2/16/2022	DREMILLA	Began implementing edits to opening brief including SOC and argument II.	1.50
2/17/2022	APRIL	Began reviewing revised draft of opening brief	0.90
2/17/2022	DREMILLA	Continued implimenting edits into statement of the case and argument II to prepare draft of opening brief.	1.10
2/21/2022	APRIL	Edited separate rating argument and added regulatory history/structure points	2.70
2/22/2022	APRIL	Finished editing final draft of opening brief; added Fountain points to exam arguments	2.70
2/22/2022	DREMILLA	Implemented edits and comments to prepare final draft of brief.	2.70
2/22/2022	DREMILLA	Completed and e-filed opening brief.	1.10
4/22/2022	APRIL	Reviewed precedential decision in Rivera-Colon and memo to the file re: relevance to issues on appeal	0.50
4/25/2022	DREMILLA	Began drafting 30(b) notice	0.20
4/27/2022	DREMILLA	Completed draft of 30(b) notice.	0.80
5/2/2022	APRIL	Reviewed draft of 30(b) submission for Rivera-Colon against Rivera-Colon decision and opening brief; suggested edits	0.50
5/13/2022	DREMILLA	Completed and filed 30(b) notice.	0.50
6/21/2022	AODOM	Participated in litigation strategy meeting and prepared memo to file regarding same.	0.20
6/21/2022	AODOM	Reviewed parties' briefs and conducted legal research regaridng rating criteira; prepared notes in advance of litigaiton strategy meeting.	1.50
7/8/2022	AODOM	Prepared for and participated in reply brief strategy meeting -- discussed regulatory interpretation argument.	0.70
7/8/2022	APRIL	Prepared for and attended meeting to discuss reply brief strategy	1.30
7/8/2022	DREMILLA	Contacted client regarding status of case; memo to file.	0.20
7/25/2022	APRIL	Reviewed VA's brief; made notes on reply arguments	0.50
7/25/2022	APRIL	Researched regulatory history of general formula for rating gynecological conditions; began outlining reply arguments	2.70
7/26/2022	APRIL	Began drafting separate rating argument	2.80
7/27/2022	AODOM	Conference with April regarding Wallemann, Holmes, Rivera-Colon, and reply brief strategy.	0.50
7/27/2022	APRIL	Continued draftng separate rating argument	3.00
7/27/2022	APRIL	Completed separate rating argument	2.70
7/27/2022	APRIL	Began drafting continuous treatment/higher rating argument	2.10
7/28/2022	APRIL	Drafted "continuous treatment" argument	2.00
7/28/2022	APRIL	Continued drafting "continuous treatment" argument and revised separate rating argument	2.40

Exhibit A

Time from 10/1/2018 to 1/13/2023

Case No. 316594

Client: Lockett, Ms. Tina L.

			<u>Hours</u>
8/1/2022	AODOM	Began reviewing and editing regulatory interpretation argument in reply brief.	0.70
8/2/2022	AODOM	Finished reviewing regulatory argument in reply brief; legal advice to April regarding reorganizing arguments.	0.60
8/3/2022	APRIL	Reviewed Amy's comments to reply arguments	0.20
8/3/2022	APRIL	Drafted examination argument; added deference argument to higher rating argument; began editing higher rating argument	2.90
8/4/2022	APRIL	Continued making edits to draft reply brief	2.40
8/5/2022	APRIL	Made final substantive edits to reply brief	0.30
8/5/2022	KEVIN	Proofread AD's reply brief for accuracy of spelling, grammar, and flow; made necessary revisions.	0.70
8/8/2022	APRIL	Made final edits to draft reply brief; checked citations to record and authority; efiled brief; updated client calendar	1.10
8/24/2022	DREMILLA	Reviewed record of proceedings for completeness; drafted letter to Court accepting record of proceedings.	0.70
9/22/2022	APRIL	Received and reviewed email from Court with order submitting case to a panel; reviewed issues presented in briefing	0.20
9/28/2022	APRIL	Received emails from Court with orders submitting case to panel and setting oral argument; reviewed orders for accuracy and saved to client's file; updated client calendar	0.20
10/4/2022	APRIL	Received email from Court with order rescheduling oral argument; reviewed order for accuracy and saved to client's file; called client to provide status update; noted call in client's file	0.30
10/31/2022	AODOM	Conference with April regarding constant versus continuous theory.	0.50
11/2/2022	BARBARA	Reviewed briefs, memo to the file about possible issues	0.50
11/19/2022	BARBARA	Reviewed Welleman and Lyles, check other cases as to DCs used, memo to the file with alternate theory	1.50
12/5/2022	BARBARA	Reviewed Copeland, memo to the file about issues	0.70
12/6/2022	AODOM	Conference with April regarding Copeland, Walleman, and oral argument strategy.	0.50
12/6/2022	APRIL	Discussed oral argument strategy	0.30
12/10/2022	APRIL	Conducted research re: separate ratings for separately listed conditions; drafted approaches to potential oral argument questions	1.10
12/10/2022	BARBARA	Review materials to begin to prep for walk through for oral argument	0.40
12/12/2022	AODOM	Strategy discussion regarding urinary frequency argument.	0.50
12/12/2022	APRIL	Researched urinary frequency argument; conducted research re: hyphenated DCs; completed responses to questions in preparation for oral argument walkthrough	1.30
12/14/2022	AODOM	Prepared for and participated in oral argument walkthrough; additional conference with oral argument strategy team regarding arguments about diagnostic code.	1.50
12/14/2022	APRIL	Prepared for and attended oral argument strategy meeting	2.10
12/14/2022	ZACH	Reviewed pleadings, records, and notes on case. Conducted legal research concerning relevant diagnostic codes. Participated in first oral argument "walk through" with team.	3.00
12/15/2022	APRIL	Received, reviewed, and responded to VA counsel's email re: JMR offer	0.10
12/15/2022	APRIL	Corresponded with VA counsel regarding JMR offer; discussed offer with client; noted call in client's file; updated client calendar	0.80
12/19/2022	APRIL	Received email from VA counsel with draft JMPR; reviewed draft against case notes, relevant RBA pages, and briefing; suggested edits for accuracy and clarity	0.40
12/20/2022	APRIL	Made final edits to JMR; emailed edited draft to VA counsel for review	0.30

Exhibit A

Time from 10/1/2018 to 1/13/2023

Case No. 316594

Client: Lockett, Ms. Tina L.

			<u>Hours</u>
12/20/2022	KDEGNAN	Substantive review of JMR to ensure accurate and complete.	0.30
12/20/2022	ZACH	Reviewed draft JMR.	0.40
12/21/2022	APRIL	Received, reviewed, and responded to VA counsel's email regarding edits to draft JMR	0.20
12/21/2022	APRIL	Received, reviewed, and responded to client email	0.20
12/22/2022	APRIL	Corresponded with VA counsel about final edits to draft JMR; reviewed final edits and signed pleading	0.20
12/22/2022	APRIL	Received, reviewed, and responded to VA counsel's email regarding edits to draft JMR	0.10
12/28/2022	APRIL	Received email from Court with JMR filed by VA counsel; reviewed JMR and saved to client's file; updated client calendar	0.10
1/4/2023	APRIL	Received emails from Court with order granting JMPR and mandate; reviewed order and saved to client's file; updated client calendar	0.10
1/13/2023	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
1/13/2023	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.00
1/13/2023	ZACH	Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy.	0.30

Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
AODOM	7.2	\$ 220.12	\$ 1,584.86
APRIL	56.9	\$ 226.20	\$ 12,870.78
BARBARA	3.1	\$ 221.94	\$ 688.01
CSCOTT	0.2	\$ 208.00	\$ 41.60
DANIELLE	1.2	\$ 226.20	\$ 271.44
DCHAPMAN	0.2	\$ 208.00	\$ 41.60
DREMILLA	69.5	\$ 226.20	\$ 15,720.90
EMMA	0.6	\$ 226.20	\$ 135.72
EMUCKELB	0.5	\$ 226.20	\$ 113.10
EROWLAND	1.2	\$ 208.00	\$ 249.60
KDEGNAN	0.3	\$ 226.20	\$ 67.86
KEVIN	1.7	\$ 226.20	\$ 384.54
OTRETYAK	0.2	\$ 208.00	\$ 41.60
PREYNOLD	2.7	\$ 208.00	\$ 561.60
ZACH	3.7	\$ 226.20	\$ 836.94
	149.2		\$ 33,610.15

History

Case Law

See the Matrix

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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/22- 5/31/23	1.085091	\$225	\$413	\$508	\$733	\$829	\$997
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* $i_{\frac{1}{2}}$ Years Out of Law School $i_{\frac{1}{2}}$ is calculated from June 1 of each year, when most law students graduate. $i_{\frac{1}{2}}$ 1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). $i_{\frac{1}{2}}$ 4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier $i_{\frac{1}{2}}$ 1-3"

from June 1, 1996 until May 31, 1999, would move into tier $i_{c,1/2}^{4-7}$ on June 1, 1999, and tier $i_{c,1/2}^{8-10}$ on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.