

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Ruben Villanueva, Jr.)	
<i>Appellant,</i>)	
)	
V.)	Docket No. 21-3663
)	
Denis McDonough,)	
Secretary Of Veterans Affairs)	
<i>Appellee</i>)	

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

I. APPELLANT’S APPLICATION FOR AWARD OF REASONABLE ATTORNEY’S FEES & EXPENSES	2
II. PROCEDURAL HISTORY.....	2
III. BASIS FOR AN AWARD	4
1. Appellant is a prevailing party for EAJA purposes.	4
2. Appellant is eligible for award based upon net worth.	5
3. The position of the secretary of veterans affairs was not substantially justified.	5
4. Itemized statement of services rendered and amounts of reasonable fees and expenses.	6
5. Fees and expenses should be made payable to “the MilVet Law Firm PLLC” with the conjunction “or” linking the appellant as payee.	7
IV. THIS COURT SHOULD AWARD APPELLANT REASONABLE ATTORNEY’S FEES AND EXPENSES OF \$13,938.25	8
Exhibit A.....	13
Exhibit B.....	29
Exhibit C.....	30
Exhibit D	31

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**I. APPELLANT’S APPLICATION FOR AWARD OF REASONABLE ATTORNEY’S FEES
& EXPENSES**

Appellant, Mr. Villanueva, hereby applies to this honorable Court for an award of his attorney’s fees and expenses in the amount of \$13,938.25. This application is made pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and this Court’s Rule 39. Mr. Villanueva has expressly authorized this application.

II. PROCEDURAL HISTORY

On March 1, 2021, the Board of Veterans Appeals (Board) issued a decision addressing the issues of an earlier effective date for the grant of service connection tinnitus. The Board determined that the issue of Clear and Unmistakable Error for an earlier effective date for tinnitus remained adjudicated at the Regional Office level and was not subject to Board review. A timely appeal to this Court was submitted on May 28, 2021.

A teleconference between the parties, in accordance with Rule 33 of this Court, was held on October 7, 2021. The parties were unable to reach an

agreement to a joint disposition of the case. Both parties filed briefs and the Appellant filed a reply brief. The matter was then assigned to Judge Falvey, who issued a decision on May 16, 2021, affirming the Board's decision. The Appellant then filed a motion for reconsideration and in the alternative by Panel on June 1, 2022. This motion was granted on September 12, 2022, the single-judge decision was withdrawn, and the Court ordered the Secretary to provide information on the status of the CUE claim. The Secretary responded on September 14, 2022, and the case was assigned to a panel of Judges on September 19, 2022. Appellant filed an opposed motion for leave to reply to Appellee's Response to the Court's September 12, 2022, Order, which was granted on September 27, 2022. The panel of judges then determined this appeal should proceed before a single judge, and Judge Falvey set aside the Board's decision and remanded the matter for further proceedings.

Per the Court's order, Judge Falvey found that remand was warranted for the Board to address several factual issues in the first instance. *See* 38 U.S.C. § 7252(a) (stating that the Court may remand as appropriate); *Maggitt v. West*, 202 F.3d 1370, 1377-78 (Fed. Cir. 2000). Specifically, the court noted that the Board had made insufficient factual findings on material issues so as to allow for appellate review, thus, requiring remand. *See Nutrition 21 v. United States*, 930 F.2d 867, 869 (Fed. Cir. 1991).

Judgement was entered on October 31, 2022. On January 4, 2023, time for reconsideration, review, or appeal of the Court's decision expired and the decision became final. The mandate of the Court, pursuant to U.S. Vet. App. R. 41(a), was effective January 4, 2023.

III. BASIS FOR AN AWARD

This Court identified four elements to award attorney's fees to an eligible party pursuant to the EAJA: (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. *See Owens v. Brown*, 10 Vet.App. 65, 66 (1997); *see also* 28 U.S.C. §§ 2412(d)(1)(A), (B). As demonstrated below, Appellant satisfies each of these requirements.

1. APPELLANT IS A PREVAILING PARTY FOR EAJA PURPOSES.

To obtain "prevailing party" status, a party need only to have obtained success "on any significant issue in litigation which achieve[d] some of the benefit . . . sought in bringing the suit." *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993). This Court 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.

Blue v. Wilkie, 30 Vet.App. 61, 67 (citing *Dover v. McDonald*, 818 F.3d 1316 (Fed. Cir. 2016)).

Appellant is a prevailing party entitled to an award of fees and costs because the Court granted judgment in favor of the appellant and remanded the matter for further proceedings. The Court's judgement complies with the standards set forth in *Blue* since it (1) was predicated upon the Board's administrative error, (2) divested the Court's jurisdiction in the matter, and (3) specifically detailed actions that the Board must take that leaves open the possibility of favorable relief.

2. APPELLANT IS ELIGIBLE FOR AWARD BASED UPON NET WORTH.

Appellant is a party eligible to receive an award of reasonable fees and expenses because their net worth did not exceed \$2 million at the time this civil action was filed. The undersigned counsel hereby states that Appellant's net worth did not exceed \$2 million at the time this civil action was filed and Appellant did not own any unincorporated business, partnership, corporation, association, unit of local government, or organization, of which the net worth exceeded \$7 million and which had more than 500 employees. *See Bazalo v. Brown*, 9 Vet.App. 304, 309, 311 (1996).

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

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

In this case, the Secretary's administrative position was not substantially justified. As described in § II. of this brief (Procedural History), *supra*, the Court vacated and remanded the Board's decision because the Court found that the Board erred by failing to provide required factual findings regarding material issues concerning the matter on appeal, thus, frustrating judicial review. *See Nutrition 21 v. United States*, 930 F.2d 867, 869 (Fed. Cir. 1991). Accordingly, this error, and any other errors made by the Board, had no reasonable basis in fact or in law.

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

An itemized statement of the services rendered is attached to this application as Exhibit A, and the reasonable fees for which Appellant seeks compensation are listed below in this section. Included in Exhibit A is a

certification that counsel has “(1) reviewed the combined billing statement and is satisfied that it accurately reflects the work performed by all counsel and (2) considered and eliminated all time that is excessive or redundant.”

Baldrige and Demel v. Nicholson, 19 Vet.App. 227, 240 (2005). In exercising billing judgment, Appellant eliminated 1.8 hours of attorney time from the itemized statement and this fee petition.

5. FEES AND EXPENSES SHOULD BE MADE PAYABLE TO “THE MILVET LAW FIRM PLLC” WITH THE CONJUNCTION “OR” LINKING THE APPELLANT AS PAYEE.

Appellant has signed a fee agreement that is on file with the Court for this appeal. This agreement explicitly states that Appellant has contracted with The MilVet Law Firm PLLC for their appeal, and that the attorney who has countersigned the fee agreement signed on behalf of The MilVet Law Firm PLLC. Thus, the appropriate name that should be listed on the payee line for any check issued as a result of this petition is that of The MilVet Law Firm PLLC. The fee agreement also states that Appellant has explicitly authorized The MilVet Law Firm PLLC to apply for any EAJA award and that Appellant explicitly agrees that any award under the EAJA is to be paid to The MilVet Law Firm. Consequently, the appropriate conjunctive term for any payment listing both The Milvet Law Firm PLLC and Appellant would be the term “or.” An example of the requested payee terms appearing on a check is as follows:

**Pay to the order of: The MilVet Law Firm PLLC
or
Appellant's Name**

**IV. THIS COURT SHOULD AWARD APPELLANT REASONABLE ATTORNEY'S FEES
AND EXPENSES OF \$13,938.25**

Mr. Paul Jennings represented Appellant in this matter. Mr. Jennings was licensed to practice law in 2016 and the USAO Matrix establishes that \$388.00 is the prevailing market rate for an attorney with his experience.¹ Under the EAJA, the amount of fees awarded “shall be based upon the prevailing market rates for the kind and quality of services furnished” but “shall not be awarded in excess of \$125.00 per hour unless the Court determines that an increase in the cost of living” is necessary. Under 28 U.S.C. §2412(d)(2)(A)(ii), attorneys may demonstrate that an increase in the cost of living justifies an increase in the \$125.00 per hour statutory cap. *See Pierce v. Underwood*, 108 S. Ct. 2541, 2553 (1988) (referring to a cap of \$75.00 per hour “adjusted for inflation.”); *Philips v. General Serv. Admin.*,

¹ The U.S. Attorney's Office maintains a matrix, formerly 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.2d4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (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).

924 F.2d 1577, 1583 (Fed. Cir. 1991). The statutory \$125.00 hourly fee should be increased to \$261.25 for work performed in the Tampa, FL geographical area, and \$262.50 for work performed in the Seattle/Tacoma, WA geographical area in light of the increase in the cost of living as demonstrated by the Consumer Price Index. *See Pierce v. Underwood*, 108 S. Ct. 2541, 2553 (1988); *Elczyn v. Brown*, 7 Vet.App. 170, 179-181 (1994); 28 U.S.C. §2412(d)(2)(A)(ii).

This Court directed attorneys filing for an increased fee based upon the CPI to choose a mid-point in the litigation to establish the appropriate date for calculating the cost of living increase. *Elczyn*, 7 Vet.App. at 181. Appellant chooses June 2022, the month when Appellant filed their motion for reconsideration, which is approximately mid-point to when counsel for Appellant commenced representation and this Court issued its final decision, according to the docket.²

This Court has held that when calculating CPI-U increases time that an attorney has worked at various locations must be appropriately apportioned based on the physical location where work has occurred. *Speigner v. Wilkie*, 31 Vet.App. 41, 46 (2019). Throughout the course of this

² Since the original single-judge decision was withdrawn, the midway point of the litigation must be calculated based upon the subsequent later entered final judgment.

appeal, Mr. Jennings resided and worked in two separate locations.³ At the initiation of the appeal, Mr. Jennings resided and worked in Wesley Chapel, FL, which is part of the Tampa-St. Petersburg-Clearwater, FL Region.⁴ On approximately June 10, 2022, Mr. Jennings relocated to Washington state and has continuously resided and worked within the Pierce and King County areas.⁵ Accordingly, all CPI-U increases sought for time billed prior to June 10, 2022, utilize the Tampa-St. Petersburg-Clearwater, FL Region CPI-U and all CPI-U increases sought for time billed after June 10, 2022, utilize the Seattle-Tacoma-Bellevue, WA Region CPI-U.

Appellant submits that the Court should increase the \$125.00 per hour cap for all work performed in the Tampa, FL region by the general inflationary index in the cost of living since March of 1996, as reflected by the CPI-U for the Region. *See* Exhibit B; *Mannino v. West*, 12 Vet.App. 242 (1999). Applying the increase in the CPI to the statutory rate, Appellant's counsel should be compensated at the rate of \$261.25 per hour. This rate was calculated by subtracting the CPI-U for June 2022 (\$275) from that of 1996 (131.6), and dividing the result (143.4) by the CPI-U for March 1996. The

³ The Firm has also maintained a separate address in Virginia Beach, VA, and Lacey, WA for mailing purposes.

⁴ The Bureau of Labor Statistics "Tampa-St. Petersburg-Clearwater, FL Core Based Statistical Area includes Hernando, Hillsborough, Pasco, and Pinellas Counties." https://www.bls.gov/regions/southeast/news-release/consumerpriceindex_tampa.htm

⁵ The Seattle-Tacoma-Bellevue, WA Metropolitan Statistical Area includes King County, Pierce County, and Snohomish County. https://www.bls.gov/regions/west/news-release/occupationalemploymentandwages_seattle.htm

result (1.09), representing the increase between March 1996 and June 2022 was then multiplied by the statutory rate (\$125.00), demonstrating an increase of \$136.25, which was added to the \$125.00 statutory rate to arrive at the inflation adjusted rate of \$261.25 per hour.

Appellant submits that the Court should increase the \$125.00 per hour cap for all work performed in the Seattle-Tacoma-Bellevue, WA region by the general inflationary index in the cost of living since 1996, as reflected by the CPI-U for the Region. *See* Exhibit C; *Mannino v. West*, 12 Vet.App. 242 (1999). Applying the increase in the CPI to the statutory rate, Appellant's counsel should be compensated at the rate of \$262.50 per hour. This rate was calculated by subtracting the CPI-U for June 2022 (326.656) from that of Mid 1996 (155.6), and dividing the result (171.056) by the CPI-U for March 1996. The result (1.10), representing the increase between Mid-1996 and June 2022 was then multiplied by the statutory rate (\$125.00), demonstrating an increase of \$137.50, which was added to the \$125.00 statutory rate to arrive at the inflation adjusted rate of \$262.50 per hour.

Appellant seeks attorneys' fees at the following rates for representation in the Court of Appeals for Veterans Claims.

<u>Name</u>	<u>Rate</u>	<u>Hours</u>	<u>Total Fee Amount</u>
Paul D. Jennings	\$261.25	42.4	\$ 13,938.25
(2016 law graduate)	\$262.50	10.9	

No additional reimbursement is sought for expenses.

WHEREFORE, Appellant respectfully requests that the Court award attorney's fees in the total amount of \$13,938.25.

Respectfully submitted,
/s/ Paul Jennings
The Milvet Law Firm PLLC
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Suite 101
Lacey, WA 98516
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Fax: 253 248-0145
Email: Paul@milvetlaw.com
WA/51175

Exhibit A

Villanueva, Jr-CAVC 21-3663

Date	Activity	Description	Rate	Hours	Line Total
03/01/2021	Board Decision Review	Board decision published in VBMS. Pulled decision and reviewed. Board states claim was freestanding EED issue and that AOJ still has not decided CUE. No open items for RO show in VBMS. RO decision on appeal stated no evidence showing tinnitus in 2003, but CUE claim included evidence showing tinnitus diagnosed on exit exam. Appears Board is mistaken and RO did decide CUE claim.	\$261.25	0.8	\$209.00
03/04/2021	Client Communication	Discussed options for Board decision. Client desired appeal to Court, agreed that after prior communication with RO they would deem CUE claim was decided and would not reopen.	\$261.25	0.4	\$104.50
05/28/2021	Case Preparation	Complete notice of appearance and	\$261.25	0.2	\$52.25

		appeal, submit all case initiation documents to court.			
06/01/2021	CM/ECF Document Notice	Docketing time notice, annotated dates in calendar	\$261.25	0.1	\$26.13
06/24/2021	Board Decision Review	Copy of BVA decision published. Reviewed page by page to ensure accurate copy of decision on appeal.	\$261.25	0.2	\$52.25
08/02/2021	Email	OGC contacted and asked for stay in issuing RBA, states they need signed consent form. Replied unopposed to stay, but consent form was submitted several weeks ago, provided signed copy.	\$261.25	0.3	\$78.38
08/02/2021	Email	OGC replied that stay likely not needed since signed form is provided, should issue RBA shortly.	\$261.25	0.1	\$26.13
08/02/2021	RBA Review	RBA issued via moveit. Signed into secure system and downloaded copy of RBA. Opened file to ensure it was correct RBA.	\$261.25	0.2	\$52.25
08/03/2021	RBA Review	Begin review of RBA, total of 1474 pages.	\$261.25	3.2	\$836.00

		Reviewed page by page until page 658, beginning of scanned service records.			
08/05/2021	RBA Review	Continued RBA review from page 658. Page by page review conducted until RBA review complete at page 1474.	\$261.25	3.7	\$966.63
08/24/2021	CM/ECF Document Notice	Notice to file brief, Rule 33 conference will be conducted.	\$261.25	0.1	\$26.13
08/26/2021	CM/ECF Document Notice	Conference, rule 33, set for September 22, 2021 at 10AM.	\$261.25	0.1	\$26.13
09/03/2021	Case Law/Statute Review	Researched applicable statutes and caselaw. Of note, Deshotel, Giglio, Adams, Cogburn, Douglas, Sheppard, and 38 C.F.R. § 20.104, addressing dismissal by Board and explicitly denied claim of CUE.	\$261.25	1.6	\$418.00
09/05/2021	Rule 33 Memorandum	Began drafting Rule 33 memo. Started on initial Argument headings for arguments A and B. Completed legal cites and analysis for Argument A. Finished legal cites for Argument B.	\$261.25	2.1	\$548.63

09/06/2021	Rule 33 Memorandum	Completed analysis for Argument B. Completed introduction portion of memo and all factual and procedural history, with cites to RBA.	\$261.25	2.4	\$627.00
09/07/2021	Rule 33 Memorandum	Completed conclusion section, reviewed entire memo and edited as needed. Saved final copy for submission.	\$261.25	1.1	\$287.38
09/07/2021	Rule 33 Memorandum	Emailed copy of Rule 33 memo to OGC and CLS. Completed COS for Memo and uploaded to Court.	\$261.25	0.3	\$78.38
09/19/2021	Email	OGC will be out of office. Requests that different date be scheduled for conference.	\$261.25	0.2	\$52.25
09/20/2021	Email	Responded to OGC and CLS, let them know unavailability due to NOVA conference. Provided dates that are open.	\$261.25	0.3	\$78.38
09/21/2021	Email	OGC stated they are good for date of 10/7 at 2:30pm	\$261.25	0.1	\$26.13
09/21/2021	Email	CLS states provided date is open for them.	\$261.25	0.1	\$26.13
09/21/2021	Email	Let CLS and OGC	\$261.25	0.1	\$26.13

		know that date was amicable.			
09/21/2021	Email	OGC responded stating they will file motion to reschedule.	\$261.25	0.1	\$26.13
09/21/2021	CM/ECF Document Notice	Motion to reschedule Rule 33 conference to 10/7 at 2:30	\$261.25	0.1	\$26.13
10/07/2021	Rule 33 Conference	Preparation for conference. Prepared talking points and pulled all relevant cites for discussion.	\$261.25	0.4	\$104.50
10/07/2021	Rule 33 Conference	Conference conducted. OGC stated they would defend. Briefly discussed implicit denial and safeguards for dismissal. OGC felt neither applied, declined follow up email with more information, stated they would review brief once filed to see if opinion changed.	\$261.25	0.3	\$78.38
10/08/2021	Client Communication	Updated client on status of case. Client stated that it was fine and to continue until resolution.	\$261.25	0.3	\$78.38
10/21/2021	Document Preparation	Drafting and filing entry of appearance with CAVC as co-counsel - Tricia Petek.	\$261.25	0.2	\$52.25

11/02/2021	Appellant Brief	Begin work on brief. Format brief and prepare Statement of Case. Completed Statement of Facts with cites to corresponding RBA cites.	\$261.25	1.8	\$470.25
11/03/2021	CAVC Brief	Continued work on brief. Argument sections for both arguments completed.	\$261.25	1.5	\$391.88
11/03/2021	CAVC Brief	Reviewed and adjusted arguments. Prepared corresponding statement of issue. Completed summary of the argument and conclusion. Reviewed in preparation for assembly of TOA.	\$261.25	1.8	\$470.25
11/04/2021	CAVC Brief	Completed all edits and remaining items in body of brief. Formatted TOC and TOA. Complete read through of final brief.	\$261.25	2.2	\$574.75
11/05/2021	CM/ECF Document Notice	Uploaded final copy of brief.	\$261.25	0.1	\$26.13
01/03/2022	Email	OGC asked for extension for filing of brief. Responded that we are unopposed.	\$261.25	0.2	\$52.25

01/04/2022	CM/ECF Document Notice	Motion from OGC seeking extension.	\$261.25	0.1	\$26.13
02/17/2022	CM/ECF Document Notice	Appellee brief uploaded. Copy of brief pulled and reviewed. Annotation made for arguments raised by Secretary that must be addressed in reply brief.	\$261.25	0.7	\$182.88
03/01/2022	Case Law/Statute Review	Researched prejudicial error standard and applicable caselaw to address arguments raised by Secretary. Further research on Board's jurisdiction in reference to CUE claim to address arguments Secretary raised in their brief.	\$261.25	1.4	\$365.75
03/02/2022	CAVC Brief	Reply brief for Appellant commenced. Formatted brief and addressed arguments regarding jurisdiction and harm that Secretary raised. Completed argument headers, legal citations, and reasoning for all arguments.	\$261.25	4.5	\$1,175.63

03/02/2022	CAVC Brief	Draft summary of the argument section and conclusions. Review in preparation for completion of TOA.	\$261.25	0.7	\$182.88
03/03/2022	CAVC Brief	Format and prepare TOC and TOA. Final review and read through of brief. Saved as PDF in preparation for submission.	\$261.25	1.5	\$391.88
03/09/2022	CM/ECF Document Notice	ROP notice. Downloaded copy of ROP for later review.	\$261.25	0.1	\$26.13
03/11/2022	Document Review	Reviewed ROP and cross referenced to all cites in briefs on file. No discrepancies noted.	\$261.25	0.7	\$182.88
03/24/2022	CM/ECF Document Notice	Assigned to Judge Falvey.	\$261.25	0.1	\$26.13
05/16/2022	CM/ECF Document Notice	Memorandum decision issued affirming Board decision. Reviewed and noted several areas of concern that may warrant reconsideration.	\$261.25	0.6	\$156.75
05/18/2022	Client Communication	Discussed decision with client, they agreed with course of action seeking reconsideration. Discussed supplemental claim	\$261.25	0.5	\$130.63

		option as well under AMA, but noted that it RO denied BVA appeal would take on average 18-36 months currently.			
05/30/2022	Case Law/Statute Review	Conducted case law research of Kisor, Deshotel, Evans, Adams, Andrews, in preparation for motion to reconsider.	\$261.25	0.8	\$209.00
05/31/2022	Motion-CAVC	Begin preparing motion for reconsideration or panel review. Formatted and prepared history of the case. Drafted argument headings for Arguments A and B.	\$261.25	1.9	\$496.38
06/01/2022	Motion-CAVC	Completed legal cites and analysis for both arguments. Drafted conclusion and reviewed. Prepared TOC and TOA and reviewed final copy, saved as PDF for submission.	\$261.25	3.4	\$888.25
06/01/2022	CM/ECF Document Notice	Uploaded motion for reconsideration/panel review.	\$261.25	0.1	\$26.13
07/20/2022	CM/ECF Document	Order that Secretary respond in 30 days to	\$262.50	0.1	\$26.25

	Notice	motion.			
08/18/2022	Email	OGC asked for extension to respond to Court order, stated they had COVID. Responded that we are unopposed.	\$262.50	0.2	\$52.50
08/18/2022	CM/ECF Document Notice	Motion from OGC to extend time.	\$262.50	0.1	\$26.25
08/26/2022	CM/ECF Document Notice	Secretary response uploaded. Reviewed in detail, annotated arguments raised in defense of their position that RO did not deny CUE.	\$262.50	0.8	\$210.00
09/12/2022	CM/ECF Document Notice	Order that single judge decision is withdrawn. Court has ordered that Secretary respond in 14 days to provide status of current CUE claim.	\$262.50	0.2	\$52.50
09/14/2022	CM/ECF Document Notice	OGC response to Court order. Reviewed, noted that OGC stated VBMS showed that RO has not adjudicated the pending CUE motion. Review of VBMS for client though shows no open claims.	\$262.50	0.3	\$78.75

09/14/2022	Email	Reviewed historic notes in VBMS. All notes showed that CUE claim was closed on February 7, 2021, with decision being mailed next business days. Screen captures made and email sent, with captures, to OGC to inform them of these findings. Inquired if OGC would like to amend their response or is opposed to us filing reply.	\$262.50	0.7	\$183.75
09/14/2022	Email	Drafted email to OGC. Let them know of findings and that provided photo showing that internal VBMS notes indicated RO had indeed closed/adjudicated claim so that amended response could be provided to Court. Also sought leave to file response if Secretary did not want to amend.	\$262.50	0.3	\$78.75
09/15/2022	Email	OGC responded, needs to discuss with supervisor and will respond by tomorrow.	\$262.50	0.1	\$26.25
09/16/2022	Email	Reached out to OGC as	\$262.50	0.1	\$26.25

		nearing COB and no response was yet received.			
09/19/2022	Phone Conversation	Call OGC to check status. No answer, left voicemail.	\$262.50	0.1	\$26.25
09/19/2022	Email	OGC responded and stated supervisor was out last week. Would give response soon.	\$262.50	0.1	\$26.25
09/19/2022	Email	Detailed email from OGC. Stated that their understand was that Court wanted to know if anything changed, namely after the March 1, 2020 decision. Does not feel any amended filing is needed and is opposed to our asking for leave from Court.	\$262.50	0.3	\$78.75
09/19/2022	CM/ECF Document Notice	Notice that case is assigned to Panel for review and that oral argument will be scheduled.	\$262.50	0.1	\$26.25
09/19/2022	Email	OGC stated they would talk to supervisor today.	\$262.50	0.1	\$26.25
09/19/2022	CM/ECF Document Notice	Case assigned to panel for decision.	\$262.50	0.1	\$26.25
09/19/2022	Motion-CAVC	Prepared motion to request leave to reply.	\$262.50	0.3	\$78.75

		Detailed basis for request.			
09/19/2022	Motion-CAVC	Begin drafting Motion replying to appellee's response. Detailed Secretary's response.	\$262.50	0.5	\$131.25
09/20/2022	Motion-CAVC	Finished drafting reply, detailed VBMS entries, redacted screen pulls, labeled, attached. Uploaded Request for Leave, and Reply motions to Court.	\$262.50	1.1	\$288.75
09/21/2022	Phone Conversation	Contact client for update. Detailed current status of appeal. Informed client of pending oral arguments and estimated time line for proceedings to continue. Client stated they agreed to all courses of action.	\$262.50	0.4	\$105.00
09/23/2022	CM/ECF Document Notice	Secretary responded opposing motion for leave. Reviewed response, Secretary notes that VBMS notes are not in RBA. Review of Westlaw shows no prior cases where VBMS notes have been cited to or placed in	\$262.50	0.9	\$236.25

		RBA, or otherwise presented before Court. Noted this for possible issue to raise at oral arguments.			
09/23/2022	CM/ECF Document Notice	Oral argument scheduled for 12/15/2022, 10am, in D.C.	\$262.50	0.1	\$26.25
09/26/2022	Client Communication	Client called for case status update. Client stated they could not afford to travel to DC and were worried. Explained that they did not need to be present for oral arguments. Client stated so long as they didn't need to travel they were good to go.	\$262.50	0.4	\$105.00
09/27/2022	CM/ECF Document Notice	Judge stamp approving our motion for leave.	\$262.50	0.1	\$26.25
10/27/2022	CM/ECF Document Notice	Panel returns appeal to single judge. Single judge decision published, findings that Board must address in first instance. Since Board did not address VBMS notes in first instance decision lacks reason and bases.	\$262.50	0.3	\$78.75

10/31/2022	CM/ECF Document Notice	Judgement entered.	\$262.50	0.1	\$26.25
01/04/2023	CM/ECF Document Notice	Mandate entered. Effective date 1/3/22.	\$262.50	0.1	\$26.25
01/23/2023	Document Preparation	Began work on EAJA application. Completed procedural history and basis for award. Pulled BLS data for COLA adjustment calculations.	\$262.50	1.4	\$367.50
01/24/2023	Document Preparation	Continue EAJA application. Review and adjust all hours for CPI. Reduce as needed. Review application for submission.	\$262.50	1.9	\$498.75
		Total:		55.1	
		Reduction:		1.8	
		Final:		53.3	\$13,938.25

CERTIFICATION

I have reviewed the billing statement and I am satisfied that it accurately reflects the work performed by counsel and I have considered and eliminated all time that is excessive or redundant.

Date: January 24, 2023.

/s/ Paul Jennings
The Milvet Law Firm PLLC
975 Carpenter Rd NE
Suite 101

Lacey, WA 98516
Tel: 253-328-7166

Exhibit B

Bureau of Labor Statistics Data

<https://data.bls.gov/pdq/SurveyOutputServlet>



Databases, Tables & Calculators by Subject

Change Output Options: From: To: 

☐ Include graphs ☐ Include annual averages [More Formatting Options](#) 

Data extracted on: January 23, 2023 (4:25:18 PM)

CPI for All Urban Consumers (CPI-U)

Series Id: CUUR335DSA0,CUUS335DSA0
Not Seasonally Adjusted
Series Title: All items in Tampa-St. Petersburg-Clearwater, FL, all urban consumers, not seasonally adjusted
Area: Tampa-St. Petersburg-Clearwater, FL
Item: All items
Base Period: 1987=100

Download:  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996													131.6		
1997													134.0		134.6
1998													137.5	137.1	137.9
1999													140.6	139.4	141.8
2000													145.7	145.1	146.2
2001													148.8	148.0	149.6
2002													153.9	152.2	155.6
2003													158.1	157.5	158.6
2004													162.0	160.9	163.1
2005													168.5	166.4	170.6
2006													175.2	173.9	176.6
2007													184.288	182.886	185.689
2008													190.136	188.884	190.388
2009													189.905	188.604	191.206
2010													193.504	193.292	193.716
2011													198.938	197.908	199.968
2012													203.637	202.716	204.558
2013													206.786	206.436	207.136
2014													210.815	210.736	210.895
2015													211.557	211.414	211.699
2016													214.037	212.502	215.572
2017											220.102		219.461	218.529	220.394
2018	221.794		223.157		224.027		224.608		225.874		225.247		224.263	223.318	225.207
2019	222.774		226.927		229.018		229.334		229.219		229.740		228.134	226.791	229.478
2020	231.258		231.619		231.032		233.447		236.804		236.989		233.844	231.698	235.989
2021	239.135		242.910		245.419		248.811		251.221		255.851		247.951	243.219	252.682
2022	262.052		267.590		273.245		276.750		277.490		280.395		273.597	268.823	278.371

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Exhibit C

Bureau of Labor Statistics Data

<https://data.bls.gov/pdq/SurveyOutputServlet>



Databases, Tables & Calculators by Subject

Change Output Options:

From: 1996 To: 2022



Include graphs

Include annual averages

[More Formatting Options](#) ➔

Data extracted on: January 23, 2023 (4:25:33 PM)

CPI for All Urban Consumers (CPI-U)

Series Id: CUURS49DSA0,CUUS49DSA0
Not Seasonally Adjusted
Series Title: All items in Seattle-Tacoma-Bellevue, WA, all urban consumers, not seasonally adjusted
Area: Seattle-Tacoma-Bellevue WA
Item: All items
Base Period: 1982-84=100

Download:



Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996													157.5	155.6	159.4
1997												165.0	163.0	161.9	164.1
1998		166.5		166.4		167.5		168.5		169.3		169.4	167.7	166.6	168.9
1999		170.6		172.2		172.7		173.4		174.7		174.4	172.8	171.6	174.0
2000		176.1		177.8		179.2		180.3		182.1		181.5	179.2	177.3	181.1
2001		184.0		184.2		186.3		186.8		187.9		186.1	185.7	184.4	186.9
2002		187.6		188.8		189.4		190.3		190.9		190.0	189.3	188.3	190.3
2003		191.3		192.3		191.7		194.4		193.7		191.0	192.3	191.6	193.1
2004		193.5		194.3		195.3		194.6		196.5		195.1	194.7	194.0	195.4
2005		197.6		201.3		199.8		199.9		203.3		200.9	200.2	199.2	201.3
2006		203.6		207.4		208.2		209.6		209.8		209.3	207.6	205.8	209.5
2007		211.704		215.767		215.510		215.978		218.427		218.966	215.656	213.810	217.502
2008		221.728		223.196		228.068		227.745		225.915		222.580	224.719	223.569	225.869
2009		224.737		225.918		227.257		227.138		226.277		225.596	226.028	225.580	226.475
2010		226.085		226.513		226.118		227.645		227.251		226.862	226.693	226.196	227.190
2011		229.482		231.314		233.250		233.810		235.916		234.812	232.765	230.815	234.715
2012		235.744		237.931		239.540		240.213		241.355		237.993	238.663	237.344	239.981
2013		239.898		240.823		242.820		242.767		242.787		241.055	241.563	240.777	242.350
2014		242.770		246.616		247.642		247.185		247.854		245.050	246.018	245.125	246.912
2015		245.496		247.611		251.622		251.617		250.831		250.385	249.364	247.814	251.115
2016		250.942		253.815		256.098		256.907		256.941		256.821	254.886	253.122	256.651
2017		259.503		261.560		263.756		263.333		264.653		265.850	262.668	260.656	264.680
2018		268.031		270.309		272.395		271.625		272.805		273.293	271.089	269.527	272.652
2019		275.304		276.765		278.631		280.286		278.682		279.421	277.984	276.230	279.738
2020		282.115		280.484		281.055		284.905		284.505		283.409	282.693	281.281	284.105
2021		286.950		290.068		296.573		299.704		303.099		304.856	295.560	289.628	301.493
2022		310.078		316.525		326.656		326.796		330.173		330.489	322.167	315.507	328.827

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Exhibit D

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