

**IN THE UNITED STATES COURT OF APPEALS  
FOR VETERANS CLAIMS**

**CARMEN L. ENCARNACION,** )  
 )  
Appellant, )  
 )  
v. )  
**DENIS MCDONOUGH,** )  
Secretary of Veterans Affairs, )  
 )  
Appellee. )

**Vet.App.No. 21-1411**

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

Pursuant to the Equal Access to Justice Act (EAJA), the Appellant, Carmen L. Encarnacion, moves the Court for an award of reasonable attorney fees in the amount of \$29,356.31.

In order to be eligible for an award of attorney’s fees under EAJA, a claimant must demonstrate (1) that he or she is a prevailing party; (2) that he or she is eligible to receive an award; and (3) that the position of the United States was not substantially justified. *Bazalo v. Brown*, 9 Vet.App. 304, 308 (1996). Additionally, the claimant must provide an itemized statement from the claimant’s attorney as to the services provided. *Id.*

Here, the Appellant satisfies all the requirements. First, the Appellant is a prevailing party. A prevailing party includes one who obtains relief in the form of a remand predicated on administrative error. *Zuberi v. Nicholson*, 19 Vet.App. 541, 546 (2006). In this case, the Appellant is a prevailing party because the Court, in its May 18, 2023, decision, found that the Board erred when it failed to assess whether the Appellant’s July 2018 submission

qualified as a motion to reconsider the Board's earlier decision. Although the Court granted the Secretary's motion for reconsideration of the Court's January 2023 decision, the Court's May 2023 decision was "principally a restatement of the earlier decision vacating the June 2020 Board decision, modified only slightly to address matters raised in the Secretary's reconsideration motion." *See* May 2023 Precedential Decision, Page 2).

Second, the Appellant is eligible to receive an EAJA award. A showing of eligibility may be made by stating in the application that the Appellant's net worth at the time the appeal was filed did not exceed \$2 million. *Bazalo*, 9 Vet.App. at 309. The undersigned counsel hereby states that the Appellant's net worth did not exceed \$2 million at the time this action was filed. Furthermore, the Appellant is not a business entity.

Third, the government's position in this case was not substantially justified. There was not a reasonable basis in law supporting the Board's decision. *See Stillwell v. Brown*, 6 Vet.App. 291, 302 (1994) ("[A] position can be justified even though it is not correct, and . . . it can be substantially (i.e., for the most part) justified if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact.") (internal quotations omitted).

Lastly, the undersigned counsel has attached the billing statements describing the request for \$29,356.31 in fees. *See* Exhibit A. This amount is based on 44 hours of work completed by the undersigned counsel, which was performed at a rate of \$212.42 per hour (\$125 per hour plus a cost-of-living adjustment from March 1996, using the CPI-U for the South urban region and September 2021, the date closest to the date the Appellant drafted the initial brief). It is also based on 101 hours of work completed by Julia N. Giesecking,

Esq., and Lorenzo Di Salvo, Esq., which is detailed in their declaration. *See* Exhibit B. Their rate is \$203.15 per hour based on the CPI for the Detroit-Warren-Dearborn region in October 2021.

Respectfully submitted,

FOR THE APPELLANT:

September 7, 2023  
Date

/s/Javier Centonzo  
JAVIER CENTONZIO  
CENTONZIO LAW, PLLC  
8240 118<sup>th</sup> Avenue North, Suite 300  
Largo, Florida 33773  
Phone: (727) 900-7290  
jac@centonziolaw.com

# **Exhibit A**

**EXHIBIT A**

Carmen L. Encarnacion

Docket **21-1411**

5/13/21 – 2.6

RBA review (legibility & completeness)

5/13/21 – 0.5

Reviewed Board's decision

5/14/21 – 2.9

Reviewed RBA (content), 1-703

5/17/21 – 3.1

Reviewed RBA (content), 703-1608

5/18/21 – 3

Reviewed RBA (content), 1608-2234

5/20/21 – 2.8

Reviewed RBA (content), 2234-2890

5/22/21 – 2.6

Reviewed RBA (content), 2890-3422 (end)

6/21/21 – 0.9

Researched and identified case law and statutes relevant to matter based on issues identified in Board decision

6/22/21 - 2.8

Drafted Summary of Issues for Rule 33 Conference

6/24/21 - 1.4

Continued drafting Summary of Issues

6/25/21 - 1.1

Continued drafting Summary of Issues

6/28/21 – 0.2

Prepared supplemental materials

6/28/21 – 0.6

Completed final edits to Summary of Issues, filed

6/30/21 – 0.2

Prepared and filed certification of service

8/18/21 – 0.3

Prepared for staff conference

8/18/21 – 0.3

Staff conference held

9/13/21 – 2.8

Began drafting Appellant's brief, table of contents, course of proceedings, relevant facts, statement of issues, and conducted additional research

9/14/21 – 3

Continued drafting appellant's brief

9/15/21 – 2.6

Continued drafting appellant's brief

9/17/21 – 0.6

Completed final edits to appellant's brief, filed

1/5/22 – 1.2

Reviewed appellee's brief

1/31/22 – 0.4

Reviewed Record of Proceedings for completeness

9/8/22 – 0.1

Reviewed and responded to email from Pro Bono Consortium re: introduction email to co-counsel

9/16/22 – 0.1

Reviewed CAVC e-notice: Oral Argument scheduled for October 27, 2022, at Syracuse University

9/27/22 – 0.1

Reviewed co-counsel's Motion for Clarification

9/29/22 – 0.2

Reviewed Court's order detailing the two legal questions that the Court wished to address at oral argument

10/3/22 – 0.2

Reviewed *Solze* Notice

10/4/22 – 0.4

Phone call with client to discuss case status and answer questions about oral argument

10/21/22 – 0.1

Reviewed Court's order

10/27/22 – 1

Watched oral argument

10/28/22 – 0.5

Phone call with client to discuss oral argument and answer questions

1/30/23 – 0.6

Reviewed Precedential decision vacating the May 2018 and June 2020 Board decisions and remanding the matter back to the Board

2/14/23 – 0.5

Phone call with client to discuss Court's decision and case status

2/28/23 – 0.8

Reviewed Motion for Reconsideration filed by appellee

5/18/23 – 0.9

Reviewed Court's decision granting Motion for Reconsideration and withdrawing the January 30, 2023, decision but still vacating the June 15, 2020, Board decision

8/25/23 – 0.5

Reviewed timesheet from co-counsel

8/31/23 – 1.2

Drafted EAJA petition

9/6/23 – 0.9

Final edits to EAJA petition

**TOTAL FEES:** \$9,346.48 (44 hours of work at \$212.42 per hour)

**There were no costs associated with my representation.**

**Total amount of bill: \$9,346.48**

I, Javier Centonzo, under penalty of perjury, affirm that the above is a true and accurate accounting of the time I spent on the case of Carmen L. Encarnacion, Docket No. 21-1411. In the exercise of billing judgment, I omitted time spent on administrative tasks, and time that appeared duplicative.



# **Exhibit B**

Veterans' Rights Law Group PLLC  
373 Neff Rd.  
Grosse Pointe, MI 48230

Matter: Carmen L. Encarnacion  
USCAVC Docket: 21-1411

Date	Description	Time	Type	Rate	Initials	Total
9/2/2022	Telephone call with LDS re: Pro Bono Consortium request to join the case for the purposes of presenting oral argument at Syracuse School of Law as the attorneys who are presently representing the client cannot travel for oral argument.	0.20	BW	\$203.15	JNG	40.63
	Review docket to include reviewing BVA Decision, Appellant's brief, and Appellee's brief to determine the issues presented for oral argument in this case. Took notes on relevant facts and arguments in preparation for file review.	2.90	BW	\$203.15	JNG	589.14
9/7/2022	Review email from Pro Bono Constortium re: introduction email between current attorneys and JNG.	0.10	BW	\$203.15	JNG	20.32
	Review email from Pro Bono Constortium re: contact information for client and case documents.	0.10	BW	\$203.15	JNG	20.32
9/12/2022	Draft NOA - JNG	0.10	BW	\$203.15	JNG	20.32
	File NOA using ECF system	0.10	BW	\$203.15	JNG	20.32
	Review CAVC e-notice: NOA of JNG	0.10	BW	\$203.15	JNG	20.32
	Draft NOA - LDS	0.10	BW	\$203.15	LDS	20.32
	File NOA using ECF system	0.10	BW	\$203.15	LDS	20.32
	Review CAVC e-notice: NOA of LDS	0.10	NC	\$203.15	LDS	0.00
	Review CAVC e-notice: NOA of LDS	0.10	BW	\$203.15	JNG	20.32
	Review and analyze documents in pp. 8 to 375 of RBA, flagging those of particular importance, taking notes on information in order to analyze matter in preparation of oral argument and potential future pleadings, along with record references. (367)	1.40	BW	\$203.15	JNG	284.41
	Review and analyze documents in pp. 376 to 647 of RBA, flagging those of particular importance, taking notes on information in order to analyze matter in preparation of oral argument and potential future pleadings, along with record references. (271)	1.10	BW	\$203.15	JNG	223.47
	Review and analyze documents in pp. 648 to 1007 of RBA, flagging those of particular importance, taking notes on information in order to analyze matter in preparation of oral argument and potential future pleadings, along with record references. (359)	1.40	BW	\$203.15	JNG	284.41
	Review and analyze documents in pp. 1008 to 1383 of RBA, flagging those of particular importance, taking notes on information in order to analyze matter in preparation of oral argument and potential future pleadings, along with record references. (375)	1.50	BW	\$203.15	JNG	304.73
9/13/2022	Review and analyze documents in pp. 1384 to 1755 of RBA, flagging those of particular importance, taking notes on information in order to analyze matter in preparation of oral argument and potential future pleadings, along with record references. (371)	1.40	BW	\$203.15	JNG	284.41
	Review and analyze documents in pp. 1756 to 2112 of RBA, flagging those of particular importance, taking notes on information in order to analyze matter in preparation of oral argument and potential future pleadings, along with record references. (356)	1.40	BW	\$203.15	JNG	284.41
	Review and analyze documents in pp. 2113 to 2462 of RBA, flagging those of particular importance, taking notes on information in order to analyze matter in preparation of oral argument and potential future pleadings, along with record references. (349)	1.20	BW	\$203.15	JNG	243.78
	Review and analyze documents in pp. 2463 to 2860 of RBA, flagging those of particular importance, taking notes on information in order to analyze matter in preparation of oral argument and potential future pleadings, along with record references. (397)	1.60	BW	\$203.15	JNG	325.04
	Review and analyze documents in pp. 2861 to 3246 of RBA, flagging those of particular importance, taking notes on information in order to analyze matter in preparation of oral argument and potential future pleadings, along with record references. (385)	1.60	BW	\$203.15	JNG	325.04
9/14/2022	Review and analyze documents in pp. 3247 to 3421 of RBA, flagging those of particular importance, taking notes on information in order to analyze matter in preparation of oral argument and potential future pleadings, along with record references. (174)	0.60	BW	\$203.15	JNG	121.89
	Research jurisdiction issue raised during review of the record. Specifically, the difference between substitution and accrued benefits as it pertains to how the claims are processed and the claimant's rights under each distinct statute (§ 5121 vs. § 5121A). Review of relevant case law discussing the difference between these two, such as <i>Zevalkink v. Brown</i> , <i>Ralston v. West</i> , and <i>Hyatt v. Shinseki</i> .	2.80	BW	\$203.15	JNG	568.82
	Continue research jurisdiction issue raised during review of the record. Specifically, the difference between substitution and accrued benefits as it pertains to how the claims are processed and the claimant's rights under each distinct statute (§ 5121 vs. § 5121A). Review of relevant case law discussing the difference between these two, such as <i>Jackson v. Shinseki</i> (2014), <i>Padgett v. Nicholson</i> (cases decided under the accrued benefits rules, prior to congress creating § 5121A).	2.30	BW	\$203.15	JNG	467.25
9/15/2022	Continue researching substitution issue to include review Substitution in Case of Death of Claimant (Final Rule), 79 Fed. Reg. 52977, 52979 (September 5, 2014) promulgating VA's rules for implementing § 5121A. Continue with Shepardizing 38 C.F.R. § 20.900(a)(2) and 38 C.F.R. § 3.1010 (substitution regulations) to review the Court's treatment of these cases.	2.90	BW	\$203.15	JNG	589.14
	Continue to research substitution issue raised during review of the record. Specifically, the Federal Circuit's holding in <i>NOVA</i> , 809 F.3d 1359, 1361 (2016) finding that the Board does not have jurisdiction over a claim unless the AOJ first makes an appealable decision as to whether the claimant is a proper substitute under the Board's regulations regarding substitution. Shepardized <i>NOVA</i> for similar cases to the case at bar.	2.40	BW	\$203.15	JNG	487.56
	Discuss substitution issue with colleague, with both attorneys providing their own insight and experience, to fully flesh out VA's failure to treat accrued claims as fundamentally different from substitution claims and previous attempts by the Court to address these issues on appeal. Discussed strategies to show prejudicial harm based on VA's errors in adjudicating the case as substitution vs. accrued benefits.	1.60	BW	\$203.15	JNG	325.04
	Draft outline/argument centering on VA's errors in adjudication related to substitution vs. accrued benefits, incorporating research notes and notes from record review on case specific facts.	1.30	BW	\$203.15	JNG	264.10

	Draft email to Secretary's counsel re: informing the Secretary that there is an issue with jurisdiction in this case, based on VA's failure to properly adjudicate the claims under § 5121A, including citation to regulations and the RBA.	0.30	BW	\$203.15	JNG	60.95
9/16/2022	Review CAVC e-notice: Oral Argument scheduled for October 27, 2022 at Syracuse University	0.10	BW	\$203.15	JNG	20.32
9/22/2022	Review email from Secretary's counsel re: response to 9/14/22 email. Secretary's counsel detailed all the reasons why she does not agree with Appellant's additional jurisdiction argument.	0.20	BW	\$203.15	JNG	40.63
	Review email from Secretary's counsel re: Appellant's position on a motion for clarification of the issues.	0.10	BW	\$203.15	JNG	20.32
	Draft email to Secretary's counsel re: unopposed to motion for clarification and offering to draft as a joint motion	0.10	BW	\$203.15	JNG	20.32
	Review email from Secretary's counsel re: joint motion for clarification attached.	0.10	BW	\$203.15	JNG	20.32
	Review Joint Motion for Clarification	0.10	BW	\$203.15	JNG	20.32
9/26/2022	Draft email to Secretary's counsel re: no edits to motion	0.10	BW	\$203.15	JNG	20.32
9/27/2022	File Motion for Clarification using ECF system	0.10	BW	\$203.15	JNG	20.32
	Review CAVC notice re: Motion for Clarification filed	0.10	NC	\$203.15	JNG	0.00
	Review CAVC notice re: Motion for Clarification filed	0.10	BW	\$203.15	LDS	20.32
9/29/2022	Review CAVC e-notice: Court's grant of motion for clarification	0.10	BW	\$203.15	JNG	20.32
	Review CAVC e-notice: Court's grant of motion for clarification	0.10	NC	\$203.15	LDS	0.00
	Review Court's order detailing the two legal questions that the Court wishes to address at oral argument, <i>where neither question was briefed by either party</i> .	0.20	BW	\$203.15	JNG	40.63
9/30/2022	Draft email to Secretary's counsel re: informing Secretary that Appellant intends to file a <i>Solze</i> notice as to the jurisdiction issue related to substitution detailed in the 9/14/22 email	0.10	BW	\$203.15	JNG	20.32
10/3/2022	Draft <i>Solze</i> notice, incorporating research notes and outline pertaining to proper substitution procedure.	0.90	BW	\$203.15	JNG	182.84
	File <i>Solze</i> Notice using ECF system	0.10	BW	\$203.15	JNG	20.32
	Review CAVC notice re: <i>Solze</i> Notice filed	0.10	NC	\$203.15	JNG	0.00
	Review CAVC notice re: <i>Solze</i> Notice filed	0.10	BW	\$203.15	LDS	20.32
10/6/2022	Review CAVC e-notice: Court instructed attorneys to discuss issues with substitution raised in the 10/3/22 <i>Solze</i> notice to include specific discussion of <i>Breedlove v. Shinseki</i> .	0.20	BW	\$203.15	JNG	40.63
	Review CAVC e-notice: Court instructed attorneys to discuss issues with substitution raised in the 10/3/22 <i>Solze</i> notice to include specific discussion of <i>Breedlove v. Shinseki</i> .	0.20	NC	\$203.15	LDS	0.00
10/7/2022	Review CAVC e-notice: Court notice that oral argument will take place at Syracuse University College of Law.	0.10	BW	\$203.15	JNG	20.32
	Review CAVC e-notice: Court notice that oral argument will take place at Syracuse University College of Law.	0.10	NC	\$203.15	LDS	0.00
10/10/2022	Research Question One from Court's 9/29/22 order. Specifically, what constitutes a jurisdiction conferring NOD, to include case law discussing the "one NOD rule." Review of pertinent case law stemming from <i>Hamilton v. Brown</i> , 39 F3d. 1574 (Fed. Cir. 1994).	2.80	BW	\$203.15	JNG	568.82
	Continue researching Question One from Court's 9/29/22 order. Review of <i>Hall v. McDonough</i> , 34 Vet.App. 329 (2021) and associated cases, to include reviewing Supreme Court precedence relating to claims processing rules vs. jurisdictional requirements.	1.90	BW	\$203.15	JNG	385.99
10/11/2022	Continue researching Question One from Court's 9/29/22 order. Review of <i>Hall v. McDonough</i> , 34 Vet.App. 329 (2021) and associated cases, to include reviewing Supreme Court precedence relating to claims processing rules vs. jurisdictional requirements.	2.70	BW	\$203.15	JNG	548.51
	Discuss Question One with LDS, with each attorney providing their own unique insight into the developing argument that the NOD filed by Appellant is not the jurisdiction conferring NOD in this case; thus the Board's finding that it did not have jurisdiction was erroneous.	1.90	BW	\$203.15	JNG	385.99
	Discuss Question One with LDS, with each attorney providing their own unique insight into the developing argument that the NOD filed by Appellant is not the jurisdiction conferring NOD in this case; thus the Board's finding that it did not have jurisdiction was erroneous.	1.90	NC	\$203.15	LDS	0.00
	Review research notes and RBA notes to develop argument asserting that the jurisdictional conferring NOD in the instant case was the veteran's initial NOD in 2010 as the spouse is merely substituted into the ongoing process of adjudicating the claim. Draft outline detailing argument with supporting citations and case law.	2.90	BW	\$203.15	JNG	589.14
	Research policy and persuasive arguments addressing Question Two from the Court's 9/29/22 order. Specifically, persuasive case law for why the Board should be required to sympathetically construe an NOD as a motion for reconsideration if submitted within 120 days of an RO's implementation of a Board decision.	2.20	BW	\$203.15	JNG	446.93
10/12/2022	Review email from Secretary's counsel re: informing Appellant's counsel that the Board was going to treat the July 2018 NOD as a motion for reconsideration (discussed by the Court's second question) and that Secretary would file a <i>Solze</i> notice.	0.10	BW	\$203.15	JNG	20.32
10/13/2022	Draft email to Secretary's counsel re: asking for Secretary to clarify if the Secretary is seeking to get the case dismissed two weeks prior to oral argument for lack of jurisdiction. Notified Secretary's counsel that our office would also file a <i>Solze</i> notice based on the information provided by the Secretary.	0.20	BW	\$203.15	JNG	40.63
	Review email from Secretary's counsel re: not offering JMR, still arguing for affirmance of the 2020 Board decision. Noted that the Board has flagged the NOD as a motion for reconsideration ("MFR") and that Secretary will forward the letter from the Board (noting that the motion is docketed) as soon as the Secretary receives it.	0.10	BW	\$203.15	JNG	20.32
	Draft <i>Solze</i> notice notifying the Court that the questions raised in the Court's 9/29/22 order have been mooted by the actions of the Board in this case.	0.30	BW	\$203.15	JNG	60.95
	File <i>Solze</i> Notice using ECF system	0.10	BW	\$203.15	JNG	20.32
	Review CAVC notice re: <i>Solze</i> Notice filed (by Appellant)	0.10	NC	\$203.15	JNG	0.00
	Review CAVC notice re: <i>Solze</i> Notice filed (by Appellant)	0.10	BW	\$203.15	LDS	20.32
	Review CAVC notice re: <i>Solze</i> Notice filed (by Appellee)	0.10	BW	\$203.15	JNG	20.32
	Review CAVC notice re: <i>Solze</i> Notice filed (by Appellee)	0.10	NC	\$203.15	LDS	0.00
	Review Appellee <i>Solze</i> Notice	0.30	BW	\$203.15	JNG	60.95

10/21/2022	Review CAVC e-notice: Court order that Board may not take any action on "any related claim or issue currently pending before the Court" and instructing attorneys to discuss any legal implications of the Board's October 13 letter during oral argument, to include discussion of <i>Cerullo</i> .	0.10	BW	\$203.15	JNG	20.32
	Review CAVC e-notice: Court order that Board may not take any action on "any related claim or issue currently pending before the Court" and instructing attorneys to discuss any legal implications of the Board's October 13 letter during oral argument, to include discussion of <i>Cerullo</i> .	0.10	NC	\$203.15	LDS	0.00
	Research <i>Breedlove v. Shinseki</i> as it relates to the issue of substitution at the VA/BVA level. Taking notes on case and cases found through Shepardizing <i>Breedlove</i> to address the Court's 10/6/22 order. To include review of cases such as <i>Reeves v. Shinseki</i> , <i>Smith v. McDonough</i> , and <i>Merritt v. Wilkie</i> .	2.90	BW	\$203.15	JNG	589.14
	Draft detailed outline/argument based on research notes, case law, and case specific facts to address the Court's question as to how <i>Breedlove v. Shinseki</i> relates to the substitution issue present in this case for presentation at oral argument.	2.70	BW	\$203.15	JNG	548.51
10/22/2022	Research <i>Cerullo</i> and associated case law in response to the Court's 10/21/22 order to determine whether the Board's 10/13 letter impacts the jurisdiction of the Court in the present case and whether the Board's actions have any effect when jurisdiction rests with the Court on appeal.	2.90	BW	\$203.15	JNG	589.14
	Continue researching <i>Cerullo</i> and associated case law in response to the Court's 10/21/22 order to determine whether the Board's 10/13 letter impacts the jurisdiction of the Court in the present case and whether the Board's actions have any effect when jurisdiction rests with the Court on appeal.	2.40	BW	\$203.15	JNG	487.56
	Draft outline of <i>Cerullo</i> argument based on research notes, case law, and case specific facts to and current case law for presentation at oral argument.	1.60	BW	\$203.15	JNG	325.04
	Research whether the Board's 2016 referral to VA for VA to make a decision on substitution conferred any right on the claimant that the referral action be complied with prior to the further Board adjudication of the claim, similar to <i>Stegall</i> for remand actions. Reviewed <i>Sucic v. McDonald</i> , 640 Fed. Appx. 901 (Fed. Cir. 2016) which pointed to <i>Godrey v. Brown</i> as recognizing the need for the RO to adjudicate pending claims referred to it.	2.30	BW	\$203.15	JNG	467.25
10/23/2022	Draft outline/argument based on research notes, case law, and case specific facts to address argument that the Court should consider the 2016 referral instruction as an enforceable mandate, similar to a remand, such that the Board's continued adjudication after the referral was ignored by VA constitutes remandable error.	1.90	BW	\$203.15	JNG	385.99
	Draft full outline of timeline of notable events in the appeal stream with record citations, beginning with the veteran's death and continuing to present day. This timeline includes all pleadings and all VA actions related to the claims insofar as VA treated the claims as accrued benefits/DIC vs. Substitution.	2.10	BW	\$203.15	JNG	426.62
10/24/2022	Draft full argument to present during oral argument, incorporating already created outlines discussing the arguments related to the Court's 9/29/22, 10/6/22, and 10/21/22 orders containing multiple issues the Court ordered for discussion, incorporating relevant case law, regulations, statutes, and case specific facts. Draft as argument in anticipation of possible supplemental briefing on issues not raised in the initial briefs.	2.90	BW	\$203.15	JNG	589.14
	Continue drafting full argument to present during oral argument, incorporating already created outlines discussing the arguments related to the Court's 9/29/22, 10/6/22, and 10/21/22 orders containing multiple issues the Court ordered for discussion, incorporating relevant case law, regulations, statutes, and case specific facts. Draft as argument in anticipation of possible supplemental briefing on issues not raised in the initial briefs.	2.70	BW	\$203.15	JNG	548.51
	Continue drafting full argument to present during oral argument, incorporating already created outlines discussing the arguments related to the Court's 9/29/22, 10/6/22, and 10/21/22 orders containing multiple issues the Court ordered for discussion, incorporating relevant case law, regulations, statutes, and case specific facts. Draft as argument in anticipation of possible supplemental briefing on issues not raised in the initial briefs.	2.60	BW	\$203.15	JNG	528.19
10/25/2022	Incorporate full argument into outline format for ease of reference during oral argument.	2.90	BW	\$203.15	JNG	589.14
	Prepare for walk through of oral argument.	1.80	BW	\$203.15	JNG	365.67
	Participated in oral argument walk-through; discussed questions to be answered during argument on all issues the Court has ordered Appellant to be ready to discuss.	2.20	BW	\$203.15	JNG	446.93
	Attorney prepared for and participated as a judge in the oral argument walk-through. Preparation included review of pleadings and caselaw. Participated by asking questions and oral argument strategy strategy.	2.90	BW	\$203.15	LDS	589.14
10/26/2022	Travel to Syracuse NY	1.90	BW	\$203.15	JNG	385.99
10/27/2022	Last minute preparation for oral argument, to include review of outlines, arguments, and edits to opening statement. Present oral argument.	3.00	BW	\$203.15	JNG	609.45
10/27/2022	Return travel from Syracuse NY	1.90	BW	\$203.15	JNG	385.99
11/7/2022	Draft email to Secretary's counsel re: Secretary's position on a motion for supplemental briefing in case to fully discuss issues that were not initially briefed, but were being actively considered by the Court.	0.10	BW	\$203.15	JNG	20.32
	Review email from Secretary's counsel re: opposed to motion for supplemental briefing.	0.10	BW	\$203.15	JNG	20.32
11/8/2022	Draft Motion for Supplemental Briefing	0.30	BW	\$203.15	JNG	60.95
	File Motion for Supplemental Briefing using ECF system	0.10	BW	\$203.15	JNG	20.32
	Review CAVC notice re: Motion for Supplemental Briefing filed	0.10	NC	\$203.15	JNG	0.00
	Review CAVC notice re: Motion for Supplemental Briefing filed	0.10	BW	\$203.15	LDS	20.32
11/10/2022	Review CAVC notice re: Appellee's response to Appellant's November 8, 2022 Motion	0.10	BW	\$203.15	JNG	20.32
	Review CAVC notice re: Appellee's response to Appellant's November 8, 2022 Motion	0.10	NC	\$203.15	LDS	0.00
1/17/2023	Review CAVC notice re: Panel denied Appellant's opposed November 8, 2022 Motion.	0.10	BW	\$203.15	JNG	20.32
	Review CAVC notice re: Panel denied Appellant's opposed November 8, 2022 Motion.	0.10	NC	\$203.15	LDS	0.00
1/30/2023	Review CAVC notice re: Precedential decision vacating the May 2018 and June 2020 Board decisions and remands the matter back to the Board.	0.10	BW	\$203.15	JNG	20.32
	Review CAVC notice re: Precedential decision vacating the May 2018 and June 2020 Board decisions and remands the matter back to the Board.	0.10	NC	\$203.15	LDS	0.00

	Review and analyze precedential decision.	0.60	BW	\$203.15	JNG	121.89
2/21/2023	Review CAVC notice re: Motion for Reconsideration filed by Appellee	0.10	BW	\$203.15	JNG	20.32
	Review CAVC notice re: Motion for Reconsideration filed by Appellee	0.10	NC	\$203.15	LDS	0.00
	Review and analyzed Motion for Reconsideration filed by Appellee	0.90	BW	\$203.15	JNG	182.84
5/18/2023	Review CAVC notice re: Panel granted Motion for Reconsideration and withdraws the January 30, 2023 decision but still vacates the June 15, 2020 Board decision, resulting in remand.	0.20	BW	\$203.15	JNG	40.63
	Review CAVC notice re: Panel granted Motion for Reconsideration and withdraws the January 30, 2023 decision but still vacates the June 15, 2020 Board decision, resulting in remand.	0.20	NC	\$203.15	LDS	0.00
	Review and analyze precedential decision.	1.30	BW	\$203.15	JNG	264.10
6/9/2023	Review CAVC e-notice: Judgment	0.10	BW	\$203.15	JNG	20.32
	Review CAVC e-notice: Judgment	0.10	NC	\$203.15	LDS	0.00
8/9/2023	Review CAVC e-notice: Mandate entered	0.10	BW	\$203.15	JNG	20.32
	Review CAVC e-notice: Mandate entered	0.10	NC	\$203.15	LDS	20.32
	<b>TOTALS:</b>	<b>101.00</b>				<b>\$ 19,766.50</b>
	<b>DISBURSMENTS:</b>					
	Mileage to and from Syracuse (calculated based on IRS mileage rate)					111.08
	Hotel in Syracuse (one night)					132.25
	<b>TOTAL FEES AND DISBURSMENTS</b>					<b>\$ 20,009.83</b>

As lead counsel, the undersigned certifies that:

(1) The combined billing statement was reviewed and is satisfied that it accurately reflects the work performed by all representatives; and (2) consideration was given eliminating all time that is excessive or redundant.

Dated: 9/7/2023

/s/ Julia Giesecking

Appellant's Counsel