

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS  
625 Indiana Avenue N.W., Suite 900  
Washington, D.C. 20004

VICTOR B. SKAAR,

*Appellant,*

v.

DENNIS MCDONOUGH, Secretary of  
Veterans Affairs,

*Appellee.*

Case No. 17-2574

October 5, 2023

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

Pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 (2018) (EAJA), Appellant Victor B. Skaar applies for an award of reasonable attorney fees and expenses. While Appellant's total fees and costs exceed \$20,000, counsel for the parties have conferred, and the Secretary has agreed not to contest an award of \$15,000. Accordingly, Appellant hereby applies for an award of \$15,000.

**ARGUMENT**

The EAJA allows prevailing parties to collect attorney fees and costs in civil actions and agency proceedings against the United States, including any agency or official acting in their official capacity. 28 U.S.C. § 2412. In actions before this Court, an appellant qualifies for an award when the veteran shows (1) that the appellant is a "prevailing party," (2) the appellant's net worth does not exceed \$2 million, (3) the Secretary's position "was not substantially justified," and (4) "an itemized statement of the fees and expenses" it is seeking. *Shealey v. O'Rourke*, 30 Vet. App. 108, 110 (2018), *aff'd sub nom. Shealey v. Wilkie*, 946 F.3d 1294 (Fed. Cir. 2020). The application must be filed within thirty days of the final judgment in the action. *Id.* This Court issued the

mandate remanding Mr. Skaar's case to the Board of Veteran's Appeals (Board) on September 5, 2023. This application is filed within the thirty-day deadline and thus is timely.

Mr. Skaar qualifies for an award of attorney fees and costs under 28 U.S.C. § 2412 because he prevailed against Secretary of Veterans Affairs Denis McDonough on portions of the litigation where the Government's stance was substantially unjustified. In particular, Mr. Skaar does not seek fees or costs in connection with briefing and argument on his motion for class certification. This application is based on attorney and law student time spent on the merits portion of this case and should be granted.

**I. Mr. Skaar is the prevailing party on the Court's two remand orders.**

A prevailing party is the recipient of either the ultimate "benefit that was sought in bringing the litigation" or a "court remand predicated upon administrative error." *Sumner v. Principi*, 15 Vet. App. 256, 264 (2001) (*en banc*), *aff'd sub nom. Vaughn v. Principi*, 336 F.3d 1351 (Fed. Cir. 2003). A remand is predicated on administrative error when the Court recognizes administrative error in its opinion or order directing the remand. *See Scarborough v. Nicholson*, 19 Vet. App. 253, 259 (2005). The Court ordered two remands in this case, and Mr. Skaar was the prevailing party on both.

First, the Court issued a limited remand on February 1, 2019, because the Board failed to address Mr. Skaar's express challenge to VA's methodology for measuring radiation exposure. *Skaar v. Wilkie*, 31 Vet. App. 16, 18 (2019) (*per curiam*) (*en banc*). Though the Board is required to decide challenges raised before it, the Board "failed to adjudicate or address that argument whatsoever." *Id.* at 17. The Court held that this "failure is error." *Id.* at 18.

Second, a three-judge panel of this Court remanded Mr. Skaar's claims on December 17, 2020. *Skaar v. Wilkie*, 33 Vet. App. 127 (2020). The Court explained that the Board had "failed to meet its obligation under 38 C.F.R. § 3.311(c) to ensure that dose estimates VA received from the

Air Force constitute ‘sound scientific evidence,’” which rendered its decision “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Id.* at 132, 139. Also, the Board “erred in failing to address” Mr. Skaar’s individual skin cancer claim. *Id.* at 132.

In each of its remand orders, the Court recognized that the Board failed to act as required by law—to adjudicate Mr. Skaar’s challenge to VA’s methodology, to meet its statutory obligation under 38 C.F.R. § 3.311(c), and to address Mr. Skaar’s skin cancer claim—meaning these are administrative errors. Thus, Mr. Skaar is the prevailing party.

**II. Mr. Skaar is eligible for an award because his net worth does not exceed \$2 million.**

To petition for fees under EAJA, an individual’s net worth must not exceed \$2 million when the litigation began. 28 U.S.C. § 2412(d)(2)(B). The undersigned counsel, as an officer of the Court, hereby states the Mr. Skaar’s net worth did not exceed \$2 million at the time this civil action was filed. (Ex. A, Declaration of Michael J. Wishnie dated October 4, 2023 (“Wishnie Decl.”) at ¶ 11). Accordingly, Mr. Skaar is eligible for an award of reasonable fees and expenses.

**III. The Secretary’s failures to address Mr. Skaar’s claims or assess evidence from the Air Force were not substantially justified.**

Under the EAJA, a party must show that the position of the United States was not substantially justified, for the portions of the litigation for which an award is sought. 28 U.S.C. § 2412(d)(1)(B). The Secretary can defeat an application 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); *Information Inter. Associates v. United States*, 75 Fed. Cl. 656, 658 (2007) (“The Government has the burden to demonstrate that its position was substantially justified.”). The Government’s position is only “substantially justified” if it has a “reasonable basis in both law and fact.” *Pierre v. Underwood*, 487 U.S. 552, 565 (1988).

The Board's failure to address or adjudicate all of Mr. Skaar's claims is substantially unjustified. The Board is "required to adjudicate all issues reasonably raised by a liberal reading of the appellant's substantive appeal." *Brannon v. West*, 12 Vet. App. 32, 35 (1998). Despite Mr. Skaar expressly challenging VA's methodology for radiation exposure, the Board failed to "address that argument whatsoever." *Skaar v. Wilkie*, 31 Vet. App. 16, 17 (2019) (per curiam) (*en banc*) ("The Board is required to 'adjudicate all issues reasonably raised' . . . and, of course, those that are expressly raised."). This Court held in its February 2019 remand that this is "error." *Id.* at 18. Similarly, in December 2020, this Court held that the Board "erred" in failing to address Mr. Skaar's skin cancer claim. *Skaar v. Wilkie*, 33 Vet. App. 127, 132 (2020).

The Board's failure to explain "how and why" the dose estimates it relied on from the Air Force is also substantially unjustified. *Skaar*, 33 Vet. App. at 142 (2020). The Government's position is not substantially justified if the "Board fail[s] to provide an adequate statement of reasons or bases in its decision." *Cullens v. Gober*, 14 Vet. App. 234, 244 (2001). Here, even though the Board is "responsible for determining whether the evidence on which it relies is sound," the Court held that the "Board's statement of reasons or bases on this issue is deficient." *Skaar*, 33 Vet. App. at 141 ("[T]he Board must provide more in the way of explaining how and why it found the Air Force dose estimate sound.").

Because the Government failed to address the claims Mr. Skaar raised or adequately explain the evidence on which it relied, the Secretary's position was not justified.

#### **IV. The Court should award Mr. Skaar attorney's fees and expenses of \$15,000.**

The prevailing party is eligible to recover "fees and other expenses," including "reasonable attorney fees," when it meets the requirements of the EAJA. 28 U.S.C. § 2412(d)(1)-(2). Where Congress has authorized the award of attorney's fees, the "most useful starting point" is "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate."

*Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The EAJA was amended in March 1996, capping an attorney’s reasonable rate to \$125 per hour “unless the court determines that an increase in the cost of living . . . justifies a higher fee.” Contract for America Advancement Act of 1996, Pub. L. No. 104-121, § 232(b)(1); 28 U.S.C. § 2412(d)(2)(A). This Court has recognized that an increase in the cost of living “since the enactment of the EAJA” may justify attorney’s fees at a rate higher than the statutory cap. *Elczyn v. Brown*, 7 Vet. App. 170, 179 (1994); *see also Levernier Constr., Inc. v. United States*, 947 F.2d 497, 503 (Fed. Cir. 1991) (“[T]he court may adjust the statutory cap governing the rate of attorney’s fees upward to account for an increase in the cost of living.”).

This Court has adopted the United States Department of Labor’s Consumer Price Index for All Urban Consumers (CPI-U or CPI-ALL) to measure the increase in cost of living. The CPI-U serves as “the appropriate cost of living index in determining whether a higher attorney fee under the EAJA is justified.” *Elczyn*, 7 Vet. App. at 181. This Court instructs parties to identify the appropriate CPI-U “for the region or local area where the services were performed.” *Id.* For Mr. Skaar, this would be the CPI-U for the Northeast Region because legal services were performed from New Haven, Connecticut.

Under the CPI-U, the increase in cost of living is calculated from March 1996, the effective date of the EAJA setting the \$125-per-hour statutory cap, to the date on which the attorney performed the legal services. *Id.*; *see also Phillips v. General Services Admin.*, 924 F.2d 1577, 1583 (Fed. Cir. 1991). The latter date, as this Court has held, should be “a single mid-point date, such as the date upon which an appellant’s principal brief, motion, or petition is filed with the Court.” *Elczyn*, 7 Vet. App. at 181. Appellant selects April 6, 2018, the date upon which the principal merits brief was filed, as the mid-point for calculating the increase in cost of living.

From March 1996 to April 2018, the CPI-U for the Northeast Region rose from 162.8 to 264.669. (Ex. D, Bureau of Labor Statistics US-CPI-ALL Urban Northeast). Applying the increase in the CPI-U to the EAJA statutory rate, Appellant seeks attorney's fees at the rate of \$203.21 per hour for Attorney Wishnie's time. (*See* Ex. A, Wishnie Decl). Additionally, Appellant seeks fees for law student representation according to the U.S. Attorney's Office "Fees Matrix." (*See* Ex. E, USAO Attorney's Fees Matrix—2015-2021; Ex. A, Wishnie Decl. ¶¶ 3-9). Reasonable hourly rates for law students are calculated according to the rates for paralegals for the years during which the legal services were performed. (*See* Ex. E, USAO Attorney's Fees Matrix—2015-2021).

Including an "itemized statement . . . stating the actual time expended and the rate at which fees and other expenses were computed" meets the requirements of the EAJA. 28 U.S.C. § 2412(d)(1)(B). Accordingly, Appellant has attached an itemized statement to this application, documenting the time and rates used to calculate fees, Ex. B, Time and Expense Records, as well as a copy of the check for the filing fee, Ex. C, Filing Fee Check. Also attached to this petition is a declaration from lead counsel stating he 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). The fees sought contain calculations based on both contemporaneous and non-contemporaneous records. To account for this and for potential redundancies, Appellant reduced contemporaneous hours by 20% of their original total and non-contemporaneous hours by 50% of their original total. After applying these reductions, compensable attorney's fees and expenses in the Court of Appeals for Veterans Claims are as follows:

<b>Name</b>	<b>Hours</b>	<b>Fee Amount</b>
Michael Wishnie	22.3	\$3,442.37
Dana Montalto	11.7	\$1,188.77
Derek Mraz	28.8	\$3,778.56
Corey Meyer	71.4	\$8,377.60
Meghan Brooks	0.5	\$65.60
John Super	3	\$249.00
Lily Halpern	14.5	\$2,088.00
Molly Petchenik	16	\$1,602.00
Neha Srinivasan	21.1	\$2,741.40
Jacqueline Huang	7.6	\$1,094.40
William Clancy	3.9	\$561.60

TOTAL FEES \$25,189.30

TOTAL EXPENSES \$50.00

TOTAL COMPENSABLE FEES AND EXPENSES \$25,239.30

REQUESTED AWARD \$15,000.00

## CONCLUSION

Appellant respectfully requests that the Court award attorney fees in total amount of \$15,000 in this matter. Counsel for the Secretary has stated that the Secretary will not oppose an award of this amount.

/s/ Michael J. Wishnie  
William Clancy, Law Student Intern  
Jacqueline Huang, Law Student Intern  
Neha Srinivasan, Law Student Intern  
Natalia Friedlander, Supervising Attorney  
Michael Wishnie, Supervising Attorney  
Veterans Legal Services Clinic  
Jerome N. Frank Legal Services Organization  
Yale Law School  
P.O. Box 209090  
New Haven, CT 06520-9090

*Counsel for Victor Skaar*



# Exhibit A

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS  
625 Indiana Avenue N.W., Suite 900  
Washington, D.C. 20004

VICTOR B. SKAAR,

*Appellant,*

v.

DENIS R. McDONOUGH, Secretary of  
Veterans Affairs,

*Appellee.*

Case No. 17-2574

October 5, 2023

**EXHIBIT A: DECLARATION OF MICHAEL J. WISHNIE**

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

1. I am an attorney licensed to practice in Connecticut, New York, and Massachusetts, and before numerous U.S. District Courts, U.S. Courts of Appeals, and the Supreme Court. I am admitted to practice before the U.S. Court of Appeals for Veterans Claims. I direct the Veterans Legal Services Clinic ("the Clinic") at Yale Law School.
2. Dana Montalto served as a Visiting Clinical Lecturer for the Clinic from July 2020 to December 2020. She received her J.D. in May 2013 from Yale Law School.
3. Meghan Brooks was a law student at Yale Law School who received her J.D. in May 2019. She was enrolled as a student in the Clinic from January 2017 to June 2019. She later served as the Robert M. Cover Fellow for the Clinic, teaching and supervising students, from July 2021 to June 2023.
4. Derek Mraz was a law student at Yale Law School who received his J.D. in May 2019. He was enrolled in the Clinic from January 2017 to December 2018.

5. Cory Mayer was a law student at Yale Law School who received his J.D. in May 2019.  
He was enrolled in the Clinic from January to May 2017 and again from August 2017 to May 2019.
6. John Super was a law student at Yale Law School who received his J.D. in May 2020. He was enrolled in the clinic from January to December 2019.
7. Lily Halpern was a law student at Yale Law School who received her J.D. in May 2021. She was enrolled in the clinic from August 2019 to May 2021.
8. Molly Petchenik was a law student at Yale Law School who received her J.D. in May 2021. She was enrolled in the clinic from January 2019 to May 2021.
9. Ms. Montalto, Ms. Brooks, Mr. Mraz, Mr. Meyer, Mr. Super, Ms. Halpern, Ms. Petchenik, and I have represented Victor B. Skaar in the above-captioned matter without charge.
10. We visited the website maintained by the United States Department of Labor, Bureau of Labor Statistics, Office of Consumer Pricing Indexing to ascertain the Consumer Price Index increases between March 1996, when the EAJA was amended, and April 2018, when Appellant's opening brief on the merits was filed with this Court.
11. Certificate of Net Worth: at no time during the course of his appeal to the U.S. Court of Appeals for Veterans Claims, did Appellant Victor B. Skaar have a net worth of, or in excess of, \$2,000,000.00.
12. I have reviewed the combined statement of services rendered by the supervising attorney and law student interns in the representation of the Appellant. I have eliminated time that is excessive or redundant, and I am satisfied that the statement accurately reflects work performed by all counsel.

13. This declaration will serve as Exhibit A to the application.
14. Attached hereto as Exhibit B is a true and correct copy of the time and expense records relevant to this petition.
15. Attached hereto as Exhibit C is a true and correct copy of the check for the filing fee, reflecting the expenses in this case.
16. Attached hereto as Exhibit D is a true and correct copy of the Consumer Price Index published by the Bureau of Labor Statistics.
17. Attached hereto as Exhibit E is a true and correct copy of the U.S. Attorney's Office "Fees Matrix" in Washington D.C.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: October 5, 2023

/s/ Michael J. Wishnie  
Michael J. Wishnie, Supervising Attorney  
Veterans Legal Services Clinic  
Jerome N. Frank Legal Services  
Organization  
P.O. Box 209090  
New Haven, CT 06511  
(203) 436-4780 (telephone)  
(203) 432-1426 (fax)

# Exhibit B

**Name: Michael Wishnie**

**Designation: Attorney**

Date	Hours	Description	Rate	Contemp. (20% Discount)	Not Contemp. (50% Discount)
12/23/17	0.4	Review & edit opp VA motion for stay	203.21	65.0272	0
3/30/18	1.3	Review & edit next draft of merits brief	203.21	211.3384	0
4/4/18	1	Review & edit final draft of brief	203.21	162.568	0
5/12/18	1.3	Review & edit opp to VA motion to strike	203.21	211.3384	0
5/13/18	1.3	Finish edit & review of BIO MTS	203.21	211.3384	0
5/13/18	1.2	Review & edit next draft BIO MTS	203.21	195.0816	0
5/14/18	0.6	Review & edit next draft BIO MTS	203.21	97.5408	0
8/19/18	1.9	Review & edit merits reply brief	203.21	308.8792	0
8/23/18	2.5	Review & edit next draft merits reply brief	203.21	406.42	0
8/24/18	1.9	Review & edit final draft of merits reply brief	203.21	308.8792	0
9/3/18	0.4	Review & edit 2d MTS BIO	203.21	65.0272	0
8/13/20	1.5	Moot CAVC argu w AVLSC students; debrief	203.21	243.852	0
8/13/20	1.5	Moot for CAVC argument	203.21	0	152.4075
8/17/20	1.5	Moot CAVC argument w [REDACTED]; debrief	203.21	243.852	0
8/17/20	1.5	Moot for CAVC argument	203.21	0	152.4075
9/2/20	2	CAVC oral argument, inc. mandatory dial-in 30 minutes	203.21	325.136	0
10/2/23	0.5	Review time records for fee petn	203.21	81.284	0
<b>TOTAL:</b>	<b>5.5</b>			<b>3137.5624</b>	<b>304.815</b>

**Name: Dana Montalto**

**Designation: Attorney**

Date	Hours	Description	Rate	Contemp. (20% Discount)	Not Contemp. (50% Discount)
		review briefs and record to prepare for mootng oral			
7/3/20	1.3	argument	203.21	0	132.0865
7/14/20	0.2	draft and file notice of appearance	203.21	0	20.321
		review memo on potential impact of Kisor v. Wilkie on			
7/17/20	0.4	case	203.21	0	40.642
7/20/20	1.5	moot oral argument and debrief	203.21	0	152.4075
8/3/20	1.5	moot oral argument and debrief	203.21	0	152.4075
8/10/20	1.5	moot oral argument and debrief	203.21	0	152.4075
8/24/20	1.5	moot oral argument and debrief	203.21	0	152.4075
8/25/20	0.3	pre-oral argument tech call with court	203.21	0	30.4815
8/31/20	1.5	moot oral argument and debrief	203.21	0	152.4075
		CAVC oral argument inc. mandatory pre-argument dial-			
9/2/20	2	in	203.21	0	203.21
<b>TOTAL:</b>	<b>11.7</b>			<b>0</b>	<b>1188.7785</b>

**Name: Derek Mraz**

**Designation: Law Student Intern**

Date	Hours	Description	Rate	Contemp. (20% Discount)	Not Contemp. (50% Discount)
12/22/17	0.5	Review and edit Skaar Mtn	164	65.6	0
12/23/17	0.5	review and edit Skaar Mtn disputing stay	164	65.6	0
1/8/18	1	Call with Drs. [REDACTED]	164	131.2	0
1/10/18	0.8	Call with Dr. [REDACTED]	164	104.96	0
1/10/18	1	reviewed and responded to Skaar emails	164	131.2	0
2/2/18	1.3	supervision and meeting, examined RBA	164	170.56	0
2/5/18	0.3	call with Skaar	164	39.36	0
2/8/18	1	brief planning	164	131.2	0
3/28/18	3.5	researched and revised brief	164	459.2	0
3/30/18	0.8	discuss brief and completed revisions	164	104.96	0
3/31/18	3	research and revision of brief	164	393.6	0
4/5/18	3.5	revise brief	164	459.2	0
4/6/18	3	Reviewed brief, edited, and filed	164	393.6	0
4/18/18	0.5	Call with other law student interns re: motion to strike brief	164	65.6	0
4/18/18	1	reviewed motion to strike and conducted initial research on response	164	131.2	0
4/20/18	0.8	team meeting to discuss response to motion to strike & supervision with M. Wishnie	164	104.96	0
4/22/18	1.5	researched response to motion to strike	164	196.8	0
4/24/18	2	drafted portion of response to motion to strike	164	262.4	0
4/27/18	1.5	reviewed research and met with team to discuss response to motion to strike	164	196.8	0
4/29/18	1.3	Revised response to motion to strike, researched portions of response	164	170.56	0
<b>TOTAL:</b>	<b>28.8</b>			<b>3778.56</b>	<b>0</b>

**Name: Corey Meyer**

**Designation: Law Student Intern**

Date	Hours	Description	Rate	Contemp. (20% Discount)	Not Contemp. (50% Discount)
1/15/18	0.4	Revising motion for extension to dispute amended RBA	164	52.48	0
1/15/18	2	Team phone call to discuss plan for the week, RBA, and review of files, emails and current case documents	164	262.4	0
1/25/18	0.5	Reviewing amended RBA and comparing to current RBA	164	65.6	0

1/26/18	0.5	Weekly team supervision	164	65.6	0
1/28/18	0.8	Preparing notice of RBA's completion	164	104.96	0
1/29/18	1.5	Preparing and filing notice of RBA's completion	164	196.8	0
2/2/18	1	Team meeting and weekly supervision on case	164	131.2	0
2/5/18	0.3	Call w/ Mr. Skaar about stay	164	39.36	0
3/3/18	5	Brief research and drafting	164	656	0
3/4/18	2	Draft brief for Skaar	164	262.4	0
3/7/18	2.5	Research and brief drafting	164	328	0
3/7/18	0.8	Team meeting to discuss brief	164	104.96	0
3/8/18	3	Brief drafting, research, fact review	164	393.6	0
3/9/18	0.5	Review brief draft	164	65.6	0
3/26/18	2.5	Research, drafting, and edits to brief	164	328	0
3/27/18	1.8	Edits to draft brief	164	236.16	0
3/28/18	4.5	Edits and revision to brief	164	590.4	0
3/30/18	3	Edits, reorganization, and research for brief	164	393.6	0
3/30/18	0.5	Weekly supervision; discussed brief	164	65.6	0
4/1/18	0.3	Review progress of brief edits	164	39.36	0
4/2/18	1	Edit brief, respond to comments, and add table of contents	164	131.2	0
4/4/18	0.8	Assemble attachments for brief, review appendix table of contents	164	104.96	0
4/4/18	1	Edits to brief, preparing IREP attachment	164	131.2	0
4/4/18	0.8	Team meeting to discuss brief, next steps prior to filing, and thoughts on oral arguments	164	104.96	0
4/5/18	1.3	Edits to brief, review of citations	164	170.56	0
4/5/18	0.8	Team meeting to discuss brief and oral arguments	164	104.96	0
4/7/18	0.8	Review brief, discuss final changes with team, add page numbers to appendix	164	104.96	0
4/18/18	0.5	Read motion to strike, email opposing counsel	164	65.6	0
4/18/18	0.5	Team call to discuss response to motion to strike	164	65.6	0
4/20/18	0.8	Team meeting to discuss response to motion to strike and weekly supervision	164	0	65.6
4/25/18	3.5	Research on response to motion to strike and drafting, focusing on implicit denial doctrine	164	0	287
4/26/18	0.5	Further research on response to motion to strike	164	0	41
4/27/18	1	Meeting to discuss motion to strike	164	0	82
4/29/18	1	Reviewed motion to strike, made edits to first draft	164	0	82
5/9/18	3.5	Review edits to motion to strike, further research and changes for draft 2	164	459.2	0
5/10/18	1	Edits to draft 2 of reply to motion to strike	164	131.2	0
5/13/18	3.3	Edits on reply to motion to strike	164	432.96	0
5/13/18	2.3	Edits to draft response to VA's motion to strike	164	301.76	0
8/9/18	2.3	Draft section III of reply brief	166	0	190.9
8/10/18	1.3	Review case materials to get caught up on filings from the summer	166	0	107.9
8/21/18	1.5	Draft and edit reply brief	166	0	124.5



8/22/18	2.3	Edit and draft merits reply brief for submission to supervisors for their review	166	0	190.9
8/22/18	0.8	Further drafting and editing for reply brief	166	0	66.4
8/23/18	0.8	Edit merits reply brief for internal consistency and check citations	166	0	66.4
8/23/18	1.5	Edit reply brief in response to supervisor comments	166	0	124.5
8/24/18	0.5	Edit section 5 of reply brief to update argument	166	0	41.5
8/24/18	1.3	Final citations review for merits reply brief	166	0	107.9
8/24/18	1.3	Prepare attachments for reply brief and assemble document for filing	166	0	107.9
<b>TOTALS</b>	<b>71.4</b>			<b>6691.2</b>	<b>1686.4</b>

**Name: Meghan Brooks**

**Designation: Law Student Intern**

Date	Hours	Description	Rate	Contemp. (20% Discount)	Not Contemp. (50% Discount)
1/29/18	0.5	Work on RBA notice filing.	164	65.6	0
<b>TOTAL:</b>	<b>0.5</b>			<b>65.6</b>	<b>0</b>

**Name: John Super**

**Designation: Law Student Intern**

Date	Hours	Description	Rate	Contemp. (20% Discount)	Not Contemp. (50% Discount)
1/23/19	1	Team meeting	166	0	83
1/29/19	1	Call w/Skaar and [REDACTED]	166	0	83
1/30/19	1	Supervision and team meeting	166	0	83
<b>TOTAL:</b>	<b>3</b>			<b>0</b>	<b>249</b>

**Name: Lily Halpern**

**Designation: Law Student Intern**

Date	Hours	Description	Rate	Contemp. (20% Discount)	Not Contemp. (50% Discount)
7/2/20	1	Prepping for Skaar oral argument	180	144	0
7/9/20	1	Prepping for Skaar oral argument	180	144	0
7/13/20	1	Prepping for Skaar oral argument	180	144	0
7/20/20	1	Prepping for Skaar oral argument	180	144	0
7/27/20	1	Prepping for Skaar oral argument	180	144	0
8/3/20	1.5	Prepping for Skaar oral argument	180	216	0
8/6/20	1	Prepping for Skaar oral argument	180	144	0
8/10/20	1	Prepping for Skaar oral argument	180	144	0
8/13/20	1	Prepping for Skaar oral argument	180	144	0

8/17/20	1	Prepping for Skaar oral argument	180	144	0
8/20/20	1	Prepping for Skaar oral argument	180	144	0
8/24/20	1	Prepping for Skaar oral argument	180	144	0
8/26/20	1	Prepping for Skaar oral argument	180	144	0
8/27/20	1	Prepping for Skaar oral argument	180	144	0
<b>TOTAL:</b>	<b>14.5</b>			<b>2088</b>	<b>0</b>

**Name: Molly Petchenik**

**Designation: Law Student Intern**

Date	Hours	Description	Rate	Contemp. (20% Discount)	Not Contemp. (50% Discount)
7/3/20	1	Created preliminary outline for oral argument	180	0	90
7/9/20	1	Modified preliminary outline for oral argument	180	0	90
7/12/20	1	Created Revised Outline for Rebuttal	180	0	90
7/13/20	1	Prepping for Skaar oral argument	180	144	0
8/2/20	1	created revised outline for rebuttal	180	0	90
8/3/20	1	created revised outline for oral argument	180	0	90
8/4/20	1	Prepping for Skaar oral argument	180	144	0
8/6/20	1	Prepping for Skaar oral argument	180	144	0
8/10/20	1	modified outline for oral argument	180	0	90
8/20/20	1	modified outline for rebuttal	180	0	90
8/22/20	1	finalized outline for oral argument	180	0	90
8/22/20	1	assembled key cases for oral argument	180	0	90
8/22/20	1	assembled record citations for oral argument	180	0	90
8/30/20	1	finalized outline for rebuttal	180	0	90
8/30/20	1	created outline for subtopic (new report)	180	0	90
8/31/20	1	reviewed key cases for oral argument	180	0	90
<b>TOTAL:</b>	<b>16</b>			<b>432</b>	<b>1170</b>

**Name: Neha Srinivasan**

**Designation: Law Student Intern**

Date	Hours	Description	Rate	Contemp. (20% Discount)	Not Contemp. (50% Discount)
9/16/23	3	Research attorneys fees and write initial research memo	180	0	270
9/17/23	2	Research attorneys fees and write initial research memo	180	0	180
9/18/23	0.5	Supervision; discuss attorney's fees research, subpoena steps	180	0	45
9/27/23	3.5	Work on attorney's fees calculations	180	504	0
9/28/23	4	Calculating Attorney's fees; creating initial calculations spreadsheet and analyzing entries from Clio	180	576	0

9/29/23	1	Attorney's fees calculations and draft application	180	144	0
9/29/23	2	Attorney's fees calculations and draft application	180	288	0
10/1/23	3	Attorney's fees calculations and draft application	180	432	0
10/2/23	0.8	Calculating attorney's fees	180	115.2	0
10/2/23	0.5	Attorney's fees calculation	180	72	0
10/2/23	0.8	Supervision on attorneys fees calculations	180	115.2	0
<b>TOTAL:</b>	<b>21.1</b>			<b>2246.4</b>	<b>495</b>

**Name: Jacqueline Huang**

**Designation: Law Student Intern**

Date	Hours	Description	Rate	Contemp. (20% Discount)	Not Contemp. (50% Discount)
9/27/23	1	Researching and calculating attorney fee rate	180	144	0
9/30/23	2.5	Drafting fee petition	180	360	0
9/30/23	0.5	Drafting fee petition	180	72	0
10/1/23	2.2	Drafting and updating fee petition	180	316.8	0
10/2/23	0.8	Discussion of fee petition at supervision meeting	180	115.2	0
10/2/23	0.3	Internal meeting discussing workflows on fee petition	180	43.2	0
10/2/23	0.3	Editing Mike Wishnie declaration for the fee petition	180	43.2	0
<b>TOTAL:</b>	<b>7.6</b>			<b>1094.4</b>	<b>0</b>

**Name: William Clancy**

**Designation: Law Student Intern**

Date	Hours	Description	Rate	Contemp. (20% Discount)	Not Contemp. (50% Discount)
9/27/23	1.3	Billable hours spreadsheet review.	180	187.2	0
10/2/23	1	Supervisor Meeting	180	144	0
10/2/23	0.8	Fee Declaration Drafting for Supervisor	180	115.2	0
10/2/23	0.8	Editing spreadsheet of billable hours for CAVC	180	115.2	0
<b>TOTAL:</b>	<b>3.9</b>			<b>561.6</b>	<b>0</b>

# Exhibit C

JEROME N. FRANK LEGAL  
SERVICES ORGANIZATION  
LITIGATION ACCOUNT

YALE LAW SCHOOL  
P.O. BOX 209090 NEW HAVEN, CT 06520

5630

51-57-119

DATE 8/10/2017

PAY  
TO THE  
ORDER OF

U.S. Court of Appeals for Veterans Claims

Fifty and 00/100

\$ 50.00

Security Features  
Including  
Colors on Back

DOLLARS 51

VOID AFTER 180 DAYS

Bank of America

FOR Victor B. Skaar NOA filing fee

J. L. Pottinger

⑈005630⑈ ⑆01190057⑆ 00002104495⑈

MP

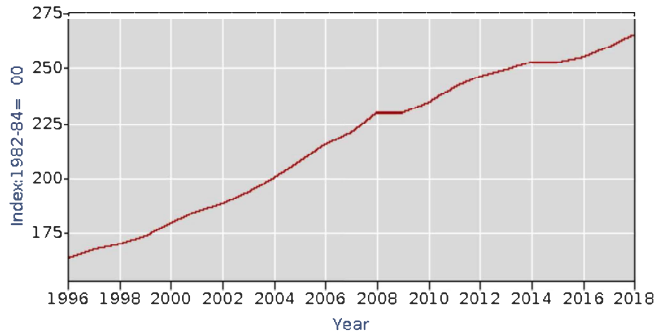
# Exhibit D

**U.S. BUREAU OF LABOR STATISTICS****Databases, Tables & Calculators by Subject****Change Output Options:** From: 1996 ▼ To: 2018 ▼ [GO](#)☒ include graphs ☐ include annual averages[More Formatting Options](#) ➔

Data extracted on: October 4, 2023 (4:42:43 PM)

**CPI for All Urban Consumers (CPI-U)****Series Id:** CUUR0100SA0

Not Seasonally Adjusted

**Series Title:** All items in Northeast urban, all urban consumers, not seasonally adjusted**Area:** Northeast**Item:** All items**Base Period:** 1982-84=100**Download:** [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996	161.4	162.2	162.8	162.9	163.0	163.1	163.4	164.0	164.6	165.1	165.4	165.7	163.6	162.6	164.7
1997	166.2	166.9	167.3	167.1	166.8	167.0	167.6	167.8	168.4	168.7	168.5	168.4	167.6	166.9	168.2
1998	168.8	169.1	169.3	169.5	169.4	169.6	169.9	170.5	170.6	171.3	171.2	171.2	170.0	169.3	170.8
1999	171.4	171.6	171.9	172.8	172.8	173.1	173.4	174.1	174.8	175.5	175.5	175.5	173.5	172.3	174.8
2000	176.2	177.6	178.5	178.5	178.4	179.0	179.8	179.9	180.7	181.2	181.5	181.3	179.4	178.0	180.7
2001	182.2	182.8	183.7	184.2	184.6	185.3	185.0	185.1	185.1	185.0	185.0	184.2	184.4	183.8	184.9
2002	184.9	186.1	187.0	187.8	187.7	187.8	188.3	189.3	189.5	189.9	190.1	189.6	188.2	186.9	189.5
2003	190.5	191.7	193.0	192.6	192.7	192.8	193.5	194.3	195.0	195.4	195.1	194.9	193.5	192.2	194.7
2004	195.9	196.8	198.6	199.4	199.9	201.1	201.0	201.0	201.2	202.5	202.6	201.9	200.2	198.6	201.7
2005	202.6	203.6	206.0	206.9	206.2	206.2	207.9	208.7	210.8	211.5	210.0	209.0	207.5	205.3	209.7
2006	211.0	211.6	212.8	214.7	215.7	216.7	217.5	218.1	216.3	215.2	214.8	215.2	215.0	213.8	216.2
2007	215.813	216.651	218.334	219.501	220.591	221.579	221.945	221.559	221.436	221.951	223.356	223.425	220.512	218.745	222.279
2008	224.325	225.213	226.926	228.133	230.089	232.649	234.545	233.788	232.841	230.837	227.236	225.091	229.306	227.889	230.723
2009	225.436	226.754	227.309	227.840	228.136	229.930	230.154	230.883	231.200	231.304	231.708	231.462	229.343	227.568	231.119
2010	232.294	232.382	233.188	233.615	234.130	233.834	233.885	234.150	234.027	234.671	235.094	235.141	233.868	233.241	234.495
2011	235.969	237.110	239.074	240.267	241.566	241.690	242.282	243.033	243.323	243.014	242.652	241.987	240.997	239.279	242.715
2012	242.879	243.850	245.125	245.850	245.709	245.201	244.984	246.252	247.409	247.564	247.097	246.456	245.698	244.769	246.627
2013	247.277	248.665	248.719	248.464	248.584	248.851	249.411	249.858	250.231	249.320	249.503	249.567	249.038	248.427	249.648
2014	251.045	251.233	252.413	252.506	253.598	253.555	253.833	253.185	253.154	252.730	251.781	250.519	252.463	252.392	252.534
2015	250.016	250.619	251.451	251.760	252.770	253.626	253.405	252.903	252.922	252.504	252.573	251.670	252.185	251.707	252.663
2016	251.739	252.250	252.854	254.270	255.023	255.471	255.386	255.545	256.085	256.605	256.541	256.427	254.850	253.601	256.098
2017	258.073	258.768	258.510	259.165	259.386	259.335	258.833	259.508	260.875	260.580	260.630	260.791	259.538	258.873	260.203
2018	262.188	263.260	263.556	264.669	265.840	265.950	265.830	266.425	266.709	266.464	265.487	265.286	265.139	264.244	266.034

U.S. BUREAU OF LABOR STATISTICS Postal Square Building 2 Massachusetts Avenue NE Washington, DC 20212-0001

Telephone: 1-202-691-5200 Telecommunications Relay Service: 7-1-1 [www.bls.gov](http://www.bls.gov) [Contact Us](#)

# Exhibit E



## USAO ATTORNEY'S FEES MATRIX — 2015-2021

*Revised Methodology starting with 2015-2016 Year*

Years (Hourly Rate for June 1 – May 31, based on change in PPI-OL since January 2011)

Experience	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
31+ years	568	581	602	613	637	665
21-30 years	530	543	563	572	595	621
16-20 years	504	516	536	544	566	591
11-15 years	455	465	483	491	510	532
8-10 years	386	395	410	417	433	452
6-7 years	332	339	352	358	372	388
4-5 years	325	332	346	351	365	380
2-3 years	315	322	334	340	353	369
Less than 2 years	284	291	302	307	319	333
Paralegals & Law Clerks	154	157	164	166	173	180

### *Explanatory Notes*

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

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

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