

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 18 July 2016

Case Number: 2015-STA-00061

In the Matter of:

**WILLIE WALLACE
Complainant,**

v.

**MOHICAN TRANSPORT and
ALI AL-SALIK, individually,
Respondents**

and

Case Number: 2015-STA-00062

In the Matter of:

**HOWARD SMITH
Complainant,**

v.

**MOHICAN TRANSPORT and
ALI AL-SALIK, individually,
Respondents**

Appearances:

Jack W. Schulz, Esq. Detroit, MI
For Complainants Willie Wallace and Howard Smith

Richard A. Dinon, Esq. Petoskey, MI
For Respondent Mohican Transport

Frank G. Becker, Esq. Southfield, MI
For Respondent Ali Al-Salik

Before: Stephen R. Henley
Chief Administrative Law Judge

**ORDER APPROVING SETTLEMENT AGREEMENT, DISMISSING COMPLAINT,
AND SETTING REASONABLE VALUE OF ATTORNEY'S FEES**

This proceeding arises under the employee protection provisions of the Surface Transportation Assistance Act (“STAA” or “the Act”) of 1982, 49 U.S.C. § 31105; 29 C.F.R. Part 278, implementing regulations found at 29 C.F.R. Part 24, and the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges (“Office”), found at 29 C.F.R. Part 18.

Background

The above-captioned cases were scheduled for a consolidated, formal hearing on March 22, 2016 in Detroit, Michigan. On March 21, 2016, I issued an *Order Cancelling Hearing* after counsel indicated that the parties had reached a settlement through mediation.¹ The Order also instructed the parties to submit settlement documentation for my review by April 30, 2016.

On April 1, 2016, the parties filed a *Joint Request for Extension of Settlement Agreement Deadline and Expedited Deadline for Lienholder Miller Cohen, PLC to Submit Alleged Hours and Costs* (“Request to Compel”). The parties requested an extension of the deadline to file their finalized settlement agreement “in light of difficulties obtaining alleged billable hours and costs” from Complainants’ former counsel, Miller Cohen, PLC (“Miller Cohen”).² The parties also requested that Miller Cohen be compelled “to provide confirmation of the value of its lien and costs along with supporting documentation; or in the alternative, remove Miller Cohen’s lien” altogether.

On April 6, 2016, I issued an *Order to Show Cause* (“Show Cause Order”) directing Miller Cohen to provide this Office and the parties all information relating to its lien in this matter, including all billable hours expended and all costs incurred,³ or, in the alternative, show

¹ 29 C.F.R. § 1982.111(d)(1) states that at any time after the filing of objections to the Assistant Secretary’s findings and preliminary order, the case may be settled, and, if the case is before an administrative law judge, the settlement is contingent upon the approval of the administrative law judge. Any settlement approved by the administrative law judge becomes the final order of the Secretary. 29 C.F.R. § 1982.111(e).

² The law firm of Miller Cohen previously represented both Complainants in this matter and filed complaints with OSHA on August 28, 2014 and September 22, 2014. Both Complainants subsequently dissolved their attorney-client relationship with Miller Cohen on April 13, 2015, and retained Jack Schulz as their new counsel. Mr. Shultz was formerly employed at Miller Cohen and worked on these cases in that capacity. Although Complainants had “requested their complete files” from Miller Cohen, Complainants’ state that “[t]he files alleged no costs. However, Miller Cohen placed a lien on the Complainants’ claims.” During this time, “Complainants’ OSHA charges were in the investigative phase for which a finding was not issued until June 2015.” Complainants allege that “Complainants and their counsel have requested the purported value of the lien, billable hours and costs on numerous occasions spanning months,” and Miller Cohen has acknowledged those requests, but failed to provide the requested information. Complainants have expressed concern that the amount of the lien may exceed the amount of the settlement and aver that Complainants’ current counsel has unsuccessfully requested that Miller Cohen confirm that this is not the case. Complainants provided email exchanges documenting that Complainants’ counsel had requested information regarding Miller Cohen’s fee and expenses multiple times.

³ This Office has the authority to enforce an attorney’s charging lien pursuant to 29 C.F.R. § 18.12 (stating that an administrative law judge has the power to “exercise powers vested in the Secretary of Labor that relate to proceedings before the Office of Administrative Law Judges”); 49 U.S.C. § 31105(b)(3)(B) (providing that the Secretary of Labor has the authority to determine the costs that were reasonably incurred by a complainant in

good cause as to why it should not provide this information. The order also extended the deadline for the parties to file the settlement agreement to May 16, 2016.

On April 26, 2016, Miller Cohen filed a *Response to Order to Show Cause* and a *Corrected Response to Order to Show Cause* (“Response”) on April 29, 2016. In its Response, Miller Cohen contends that Mr. Schulz submitted false statements to this tribunal regarding its willingness to disclose information related to the lien. Miller Cohen explains that providing this information will involve “a lengthy process where emails, electronically stored documents, and other electronic data must be reviewed, for many hours” because it “does not trust the time entries” that Mr. Schulz inputted while he was employed by Miller Cohen.⁴ It further states that Mr. Schulz internally charged a \$648 Westlaw bill to Complainants during his employment. Finally, Miller Cohen acknowledges that it “filed a lien on the file” and confirms that it had a contingency fee arrangement with both Complainants, with Miller Cohen collecting one third of any recovery by Complainants plus costs. Miller Cohen requests that I withdraw my April 6 Order; that I “[r]equest of the Complainants that they split the Westlaw \$648 cost”; and that I “[p]ermit the Employer to issue a \$20,000.00 check to the Miller Cohen and Attorney Schulz’s law firms, which will permit them to engage mediation to resolve the issue.”

On April 20, 2016, counsel for Complainants filed a *Motion for the Termination of Miller Cohen, PLC’s Equitable Interests for Failure to Comply With Order* (“Motion for Termination”) requesting that all equitable interests of Miller Cohen in these matters be terminated for failure to provide the information referenced in the Show Cause Order. On May 3, 2016, Respondent Mohican Transport filed a *Supplemental Response* to the Show Cause Order. In it, Mohican Transport sought to clarify that its joint filing of the Request to Compel “was limited to requesting an extension of time to submit the proposed settlement agreement, and was not in any way intended to take a position one way or the other regarding the interaction between Miller Cohen and Mr. Schulz.”

On May 6, 2016, I issued an *Order Compelling Production of Billing Information* (“Order Compelling Production”) instructing Miller Cohen to provide all information relating to its lien in this matter, including all billable hours expended and expenses incurred, and extending the deadline to file the settlement agreement to June 6, 2016.⁵

On May 11, 2016, Miller Cohen filed *Motion for Extension to Respond to Order Compelling Production of Billing Information* (“Motion for Extension”) requesting an extension of time to allow it to file motion for reconsideration of the Order Compelling Production on the grounds that this Office does not have jurisdiction over this matter. Miller Cohen also stated that it would be unable “to finalize the billing information within that short period of time.” (Motion for Extension at 2.) Alternatively, it argued that the proposal it put forth in its Response was

bringing a complaint under the STAA); *see also Kalla v. Progressive Mich. Ins. Co.*, 2016 Mich. App. LEXIS 66, at *3-4 (Mich. Ct. App. Jan. 14, 2016) (commenting that “[t]he ability to enforce an attorney’s charging lien is ancillary to a trial court’s exercise of jurisdiction over the cases before it”).

⁴ I find it unnecessary to provide an exhaustive review of Miller Cohen’s response to the alleged falsehoods in the Request to Compel.

⁵ The Order Compelling Production declined to order Miller Cohen’s proposed resolution after explaining that, as the presiding judge in these matters, I am not privy to the parties’ settlement negotiations and will review a settlement agreement only when it is submitted for my approval.

agreeable to Complainants based upon previous email exchanges, and that I should order Complainants to accept the settlement amount and attorney's fees as suggested by Miller Cohen. (Motion for Extension at 4-6.)

On May 20, 2016,⁶ Complainants' counsel filed a *Response to Miller Cohen's Motion for Extension of Time* ("Response to the Motion for Extension") in which it seeks to "formalize their refusal to agree to any extension of time or the resolution of this matter proposed" by Miller Cohen. Complainants request the court terminate Miller Cohen's equitable interests.

On May 20, 2016, Miller Cohen filed a *Reply to Motion for Extension to Respond to Order Compelling Production of Billing Information* ("Reply to Response to Motion for Extension"). Miller Cohen states that the Response to the Motion for Extension "did not dispute that Atty Schulz was in agreement" with the resolution proposed by Miller Cohen, and that Complainants failed to comment on this Office's "authority to rule upon the Miller Cohen lien." Miller Cohen also attached "the incomplete invoices for the Willie Wallace and Howard Smith cases," with the proviso that "these invoices are incomplete and have yet to be finalized."⁷ Miller Cohen asserts that "the electronic records of time spent on these two cases is being retrieved and reviewed. Miller Cohen has sought the assistance of a computer services firm to make this review." Miller Cohen states that it "expressly reserves the right to revise the invoices." Miller Cohen also repeats the requests it made in its Motion for Extension, described above.

On May 20, 2016, Complainants' counsel filed a *Sur Reply to Miller Cohen's Motion for Extension of Time* ("Sur Reply"). In it, Complainants "reaffirm their disagreement with Miller Cohen's proposed resolution, including mediation. Despite multiple orders from this tribunal, Miller Cohen has not 'finalized' its hours or confirmed that its lien is less than the amount reserved for attorney fees in the settlement agreement—the exact thing sought by both parties to finalize their agreement." Complainants' counsel stated that Miller Cohen "first suggested that it can't trust the hours entered by" Mr. Schulz on "the final business day prior to the initial deadline to submit the settlement agreement," March 31, 2016. Complainants also stated that the filing was to "formalize their objection to Miller Cohen's position that the ALJ does not have the ability to resolve the present lien dispute." Complainants again requested termination of Miller Cohen's equitable interests.⁸ On June 3, 2016, Miller Cohen filed a *Motion to Strike Sur Reply*.

On June 6, 2016, I issued an order extending the time for the parties to file a settlement agreement by 30 days. On June 15, 2016, Complainants filed a *Motion for Approval of Settlement Agreement and Resolution of the Equitable Interest of Miller Cohen, PLC* ("Motion for Approval of Settlement Agreement"). In it, Complainants state that Miller Cohen "has never billed a client in the firm's history" at a rate of \$300. Complainants also state that they sought documentation from Miller Cohen of the \$648 Westlaw bill because Complainants' current counsel "does not remember doing any research on Westlaw" while he was employed at Miller

⁶ Complainants' Response to Motion for Extension was received May 20, 2016, but is dated May 13, 2016.

⁷ The attached invoices include the date; a description of the service; the lawyer that expended the time; the client name; and units of time in quarter hour increments. The invoices do not include a billing rate.

⁸ Complainants also assert that "they should not be subjected to" the Westlaw fee because no supporting documentation was provided.

Cohen. Complainants attached a Confidential Settlement Agreement and Release (“Settlement Agreement”)⁹ and email communications with Miller Cohen. On June 27, 2016, Complainants filed a *Contingent Dismissal of Claims Against Ali Al-Salik* (“Motion for Dismissal”), requesting the conditional dismissal of all claims against Mr. Al-Salik, contingent upon approval of the Settlement Agreement.

On June 29, 2016, Miller Cohen filed its *Response to Motion for Resolution of Equitable Interest of Miller Cohen and Motion for Determination of Rights of Miller Cohen* (“Motion for Determination of Rights”), including the following attachments: an affidavit by Richard Mack; the 2014 Economics of Law Practice Attorney Income and Billing Rate Summary Report from the State Bar of Michigan; and the retainer agreements between Miller Cohen and Complainants. Miller Cohen states that it is “billing at \$300/hour.” Miller Cohen contends that the billing records it provided are “less than the actual attorney fee hours spent.” Miller Cohen further contends that since “the work of the associate was reviewed by a partner with 18 years of experience in this field of law,” it is appropriate to bill all hours at an hourly rate of \$300. Miller Cohen requests that the matter go to arbitration based on the following language in the retainer agreements with Complainants:

If client decides to terminate the case after Miller Cohen P.L.C. has provided substantial legal services, Client must pay Miller Cohen P.L.C. an amount equal to reasonable attorney’s fees as determined by an Arbitrator selected from the American Arbitration Association. The costs of arbitration will be equally split between the parties.¹⁰

Finally, Miller Cohen argues that it “has a due process right to notice and an opportunity to be heard” before the attorney charging lien is determined by this tribunal. Miller Cohen “requests an evidentiary hearing with pre-hearing discovery” where it “seeks to explore the extent of the hours which Attorney Schulz claims to have spent on this matter.”

Discussion

Settlement Agreement

The STAA and implementing regulations provide that proceedings may be terminated on the basis of a settlement if either the Secretary or the Administrative Law Judge approves it. 49 U.S.C. § 31105(b)(2)C); 29 C.F.R. § 1978.111(d)(2). Under the STAA, a settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. *Edmisten v. Ray Thomas Petroleum*, ARB No. 10-020, ALJ No. 2009-STA-00036 (ARB Dec. 16, 2009). Consistent with this required review, the regulations direct the parties to file a copy of the settlement “with the ALJ or the Administrative Review Board, United States Department of Labor, as the case may be.” 29 C.F.R. 1978.111(d)(2). Any settlement approved by the Assistant Secretary, the ALJ or the ARB

⁹ A signature page of the faxed attached Settlement Agreement was illegible. Complainants re-faxed the signature page to this Office on July 6, 2016.

¹⁰ The retainer letters were not provided previously although all billing information had been requested.

constitutes the final order of the Secretary and may be enforced pursuant to § 1978.113. 29 C.F.R. § 1978.111(e).

Having reviewed the settlement agreement and its provisions, which includes dismissal of the complaint with prejudice, I find the terms, obligations, and conditions fair, adequate and reasonable, and in the public interest. I also find Complainants and Respondent Mohican Transport and Ali Al-Salik were competently represented by counsel and that the settlement was not procured through duress. Accordingly, I approve the parties' Settlement Agreement and dismiss Respondent Ali Al-Salik. The parties shall implement the terms of the approved agreement as stated therein.¹¹

Lien Value

It is evident to me that the law firm of Miller Cohen and Mr. Schulz are unable to amicably resolve the lien dispute, given the numerous contentious filings in this matter and the plenteous amount of time already invested without apparent success. Miller Cohen has had over three months since my April 6, 2016, order to submit the relevant billing information. However, the invoices it provides in its Reply to Response to Motion for Extension expressly describe them as "inaccurate." Although Miller Cohen indicates that it has "sought the assistance of a computer services firm" in order to revise the entries, most of the entries are from Mr. Schulz, who would presumably be the sole person able to verify their accuracy.¹²

I decline to terminate Miller Cohen's equitable interests or grant any additional extension of time, and deny Miller Cohen's request to reconsider whether this Office has jurisdiction over the matter. Although Miller Cohen asserts that the terms of Complainants' retainer agreements dictate that this matter goes to arbitration, a fair interpretation of the specific language cited by Miller Cohen leads me to conclude that it applies only when a client terminates the case after Miller Cohen has provided substantial legal services. However, Complainants have not terminated their respective cases, just representation by Miller Cohen, and have instead vigorously pursued each to its conclusion. I find the language cited by Miller Cohen does not cover a fee for changing attorneys and thus conclude it inapposite to this case. Accordingly, I will now evaluate the billing information submitted by Miller Cohen in order to arrive at a reasonable fee. As noted above, to the extent that this fee exceeds Complainants' recovery, it is not compensable.¹³

¹¹ I note that the agreement provides for a settlement of all claims, complaints, and causes of action Complainant may have against Respondents. However, this approval applies only to the STAA complaint over which the Office of Administrative Law Judges has jurisdiction. The Court will retain jurisdiction until the terms of the settlement agreement are satisfied. The settlement agreement shall be treated as confidential financial information pursuant to 29 C.F.R. § 70.26.

¹² Additionally, non-contemporaneous billing records are routinely rejected by this Office because the burden is on the attorney to provide documentation to show that his fees are reasonable. It is difficult to establish that reasonable fees have been billed for services that an attorney did not attest to in close temporal proximity to performance of those services.

¹³ Additionally, I find Miller Cohen does not have a due process right to an evidentiary hearing, and that request is hereby DENIED. Miller Cohen has had adequate notice and has been given ample time to respond.

Reasonable attorney's fees are determined using the lodestar approach, where the number of reasonably expended hours is multiplied by a reasonable hourly rate to yield a presumptively reasonable fee. *Perdue v. Kenny A.*, 559 U.S. 542 (2010).¹⁴ In *Kenny A.*, the Court noted the twelve "Johnson factors"¹⁵ traditionally considered in establishing a fee, and stated that the lodestar amount includes most, if not all, of the relevant factors for determining a reasonable fee. *Kenny A.*, 559 U.S. at 551. Thus, a case's novelty and complexity "presumably [are] fully reflected in the number of billable hours recorded by counsel." *Id.* at 553 (quoting *City of Burlington v. Dague*, 505 U.S. 557, 562-63 (1992)). Additionally, factors related to "the quality of . . . counsel's representation normally are reflected in the reasonable hourly rate." *Id.* (quoting *Del. Valley*, 478 U.S. at 566). Further, an adjudicator may not rely on contingency as a basis for awarding an enhancement beyond the lodestar amount. See *Kenny A.*, *supra* at 558-59 (holding that the district court's reliance on the contingency of the outcome as a basis for fee enhancement contravened *Dague*).

Hourly Billing Rates

An attorney's reasonable hourly rate is "to be calculated according to the prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984); see also *Kenny A.*, *supra* at 551. Attorney's fees are based on the hourly rate for the place where the case was filed. See *Smith v. Lake City Enterprises, Inc.*, ARB No. 12-112, -113, ALJ No. 2006-STA-032 (ARB Sept. 12, 2013) ("the relevant market community for determining a reasonable hourly billing rate for the legal work performed before the ALJ is the place where the case was filed").

The complaint was filed in Chicago, Illinois, which is within the East North Central geographic region as defined by the Survey of Law Firm Economics.¹⁶ The East North Central geographic region bills an average hourly rate of \$261 for an associate or staff lawyer; an hourly rate of \$201 is the lower quartile; median is \$245; the upper quartile is \$300; and the ninth decile is \$359. Non-equity partners in the East North Central region billed an average of \$312; an hourly rate of \$250 is the lower quartile; median is \$300; the upper quartile is \$365; and the ninth decile is \$450. Equity partners and shareholders in the East North Central region billed an average of \$392; an hourly rate of \$315 is the lower quartile; median is \$385; the upper quartile is \$465; and the ninth decile is \$510. The 2014 Economics of Law Practice submitted by Miller Cohen gives a mean hourly rate of \$274 for plaintiff-side employment lawyers in Michigan for the year 2013; the 25th percentile is \$200; the median is \$250; the 75th percentile is \$330; and the 95th percentile is \$450. Attorneys across all fields of practice, within Michigan, with 16 to 25

¹⁴ See also *Pa. v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546 (1986); *Jackson v. Butler & Co.*, ARB Nos. 03-116, 03-144, ALJ No. 2003-STA-026 (ARB Aug. 31, 2004) (following the federal fee-shifting precedents); *Ambrose v. Detroit Edison Co.*, 65 Mich. App. 484, 491-92 (1975) (stating that where a contingency fee agreement had been in place, the related charging lien is calculated based upon principles of quantum meruit).

¹⁵ In *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), the Fifth Circuit set out the following twelve factors to be considered in determining a reasonable fee: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the level of skill required to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the attorney's customary hourly rate; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount involved in the case and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

¹⁶ I take judicial notice of the 2014 Survey of Law Firm Economics, published by Altman & Weil.

years of experience bill a mean hourly rate of \$291; the 25th percentile is \$200; the median is \$269; the 75th percentile is \$350; the 95th percentile is \$488. Equity partners across all fields of practice, within Michigan, bill a mean hourly rate of \$333; the 25th percentile is \$225; the median is \$310; the 75th percentile is \$417; and the 95th percentile is \$545. Associates across all fields, within Michigan, bill a mean hourly rate of \$218; the 25th percentile is \$175; the median is \$208; the 75th percentile is \$250; and the 95th percentile is \$320.

Miller Cohen has requested an hourly billing rate of \$300 for all attorney hours billed for the work of both Richard Mack and Jack Schulz. It has not indicated the number of years of experience of Jack Schulz. It stated that Richard Mack is a “member and part owner of Miller Cohen” with 18 years of legal experience.

I find that an hourly rate of \$250 for Mr. Mack is reasonable. This rate is the median hourly rate for plaintiff employment law and is above the 25th percentile rate of equity partners in Michigan across all fields of practice, according to the 2014 Economics of Law Practice submitted by Miller Cohen. Additionally, this rate is appropriate according to the Survey of Law Firm Economics. I find that an hourly rate of \$201 for Mr. Schulz is reasonable, which is equal to the lower quartile rate of an associate in the region according to the Survey of Law Firm Economics. This rate is also appropriate according to the 2014 Economics of Law Practice; it is above the 25th percentile for Michigan associates across all fields and the 25th percentile of attorneys working for plaintiffs in employment law.

Compensable Time

Attorney’s fees must relate to the bringing of the complaint. *See, e.g., Murray v. Air Ride, Inc.*, 1999-STA-034 (ALJ May 31, 2000). Although reasonable time spent drafting a fee petition for attorney’s fees is compensable, there has been no fee petition in this instance. The time that Miller Cohen expended, and listed on its invoice, since Complainants severed their attorney-client relationship is not compensable. It is not reasonable to bill former clients for time expended after the representation has ended, much less time that was spent in furtherance of withholding pertinent information. Therefore, I strike the following entries, reproduced below, all of which occurred after the termination of Complainants’ attorney-client relationship with Miller Cohen:

3/3/2016 review emails, respond to Jack Schulz	RichardM Review Smith, Howard	0.5
3/3/2016 email jack with updates	RichardM E-mail to Smith, Howard	0.25
3/3/2016 prepare emails to schultz	RichardM Prepare Smith, Howard	0.5
4/19/2016 prepare response to jack schulz stipulation	RichardM Prepare Smith, Howard	3.00

4/20/2016 Finalize response to jack schulz stipulation	RichardM Prepare Smith, Howard	2.00
4/29/2016 prepare brief for attorney lien issue, respond to Jack attempts to take attorney fee	RichardM Prepare Smith, Howard	1.00
5/11/2016 prepare motion for extension	RichardM Prepare Smith, Howard	2.00
5/20/2016 Call from Ali Al-Salile	RichardM Telephone Smith, Howard	0.5

The remaining entries total 37.5 hours, with attorney Jack Schulz billing 35.25 hours and attorney Richard Mack billing 2.25 hours. Miller Cohen explicitly states on its billing information that its “invoice of bills and costs” are “inaccurate.” Accordingly, I find that Miller Cohen has not established that the invoice in its entirety is reasonable. I find that crediting 75% of Jack Schulz’s entries and all of Richard Mack’s entries¹⁷ results in a fee that reasonably reflects the value of services rendered by Miller Cohen. Crediting the hours as described results in total attorney’s fees for Miller Cohen totaling \$5,876.44 (26.44 hours billed for work done by Jack Schulz at a rate of \$201; and 2.25 hours billed by Richard Mack at a rate of \$250).

Westlaw Expense

There is a Westlaw Expense of \$648.51 on Miller Cohen’s invoice, dated November 24, 2014, with the description: *Computerized Research for the month of November*. I find that the Westlaw expense of \$648.51 is sufficiently documented, and that it represents a reasonable cost incurred by Miller Cohen as a result of its services.

¹⁷ Miller Cohen contends in its filings that the hours billed by Jack Schulz are inaccurate and cannot be trusted.

ORDER

Accordingly, the Settlement Agreement is APPROVED and Complainants' Motion for Dismissal of all claims is GRANTED. This matter is hereby DISMISSED with prejudice. Miller Cohen's equitable interest in Complainants' recovery is \$6,524.95,¹⁸ the reasonable value of services and costs rendered during its representation of Complainants.

SO ORDERED:

STEPHEN R. HENLEY

Chief Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed. An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents. Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a). At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health

¹⁸ \$5,876.44 (attorney's fees) + \$648.51 (Westlaw expense) = \$ 6,524.95 total.

Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded. Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded. If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1978.110(b).