American Booksellers Foundation for Free Expression et al v. Sullivan Doc. 100

Marika R. Athens (AK Bar No. 0411096)
Assistant Attorney General
Department of Law
Office of Special Prosecutions and Appeals
310 K St., Suite 308
Anchorage, Alaska 99501
Telephone: 907-269-6250
Facsimile: 907-269-7939
Email: marika.athens@alaska.gov

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

AMERICAN BOOKSELLERS FOUNDATION FOR FREE EXPRESSION; AMERICAN CIVIL LIBERTIES UNION OF ALASKA; ASSOCIATION OF AMERICAN PUBLISHERS, INC.; COMIC BOOK LEGAL DEFENSE FUND; ENTERTAINMENT MERCHANTS ASSOCIATION; FREEDOM TO READ FOUNDATION; DAVID & MELISSA LLC d/b/a Fireside Books; BOOK BLIZZARD LLC d/b/a Title Wave Books; BOSCO'S, INC.; DONALD R. DOUGLAS d/b/a Don Douglas Photography; and ALASKA LIBRARY ASSOCIATION, Plaintiffs, v. JOHN J. BURNS, in his official capacity as ATTORNEY GENERAL OF THE STATE OF ALASKA Defendant.	CIVIL ACTION NO.: 3:10-cv-00193-RRB

OPPOSITION TO APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

The State of Alaska, John J. Burns, files this opposition to the plaintiffs' Application for Attorneys' Fees and Expenses filed on July 25, 2011. Under 42 U.S.C. § 1988, the plaintiffs are

Dockets.Justia.com

entitled to attorney fees. However, they are only entitled to reasonable attorney fees and, in this case, they are not entitled to all the fees they seek. The State does not oppose the plaintiffs' attorneys receiving $116,704.40 in fees and expenses.

Argument

I. PLAINTIFFS' REQUESTED HOURLY RATES ARE GENERALLY NOT REASONABLE

It is well established that attorney's fees under 42 U.S.C. § 1988 are to be calculated according to the "prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886,895 (1984). Generally, "the relevant community is the forum in which the district court sits." *Davis v. Mason County*, 927 F.2d 1473, 1488 (9th Cir. 1991). However, this can change "if local counsel was unavailable, either because they are unwilling or unable to perform because they lack the degree of experience, expertise, or specialization required to properly handle the case." *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992). However, "If a high priced, out of town attorney, renders services which local attorneys could do as well, and there is no other reason to have them performed by the former, then the judge in his discretion, might allow only an hourly rate which local attorneys would have charged for the same services." *Corbett v. Wild West Enterprises, Inc.*, 713 F. Supp 1360, 1364 (D. Nev. 1989)(citing *Chrapliwy v. Uniroyal, Inc.*, 670 F.2d 760, 768 (7th Cir. 1982)). Here, the relevant community is Anchorage, Alaska and the plaintiffs have not put forward any evidence to convince the court otherwise.

Instead of demonstrating that local counsel was unavailable, the plaintiffs merely argue that adjusted New York City, New York billing rates should apply to Michael Bamberger, Richard Zuckerman, and Devereux Chatillon because of their First Amendment expertise. While

the State does not contest that these three attorneys are highly knowledgeable and skilled in their field, this expertise is not relevant to the court's initial inquiry. Before evaluating the skill of the plaintiffs' attorneys, the court must first ask whether local counsel was unavailable.

Here, the plaintiffs have proffered no evidence that local counsel was unavailable to handle this litigation. On that basis alone, the court could reject the plaintiffs' argument that they are entitled to out of town billing rates. Further, it is doubtful that they could argue that local counsel was unavailable given that there is local counsel quite qualified to handle this type, and much more difficult types, of litigation. One such local counsel is D. John McKay, one of the local attorneys in this case, who has a great deal of experience and expertise in litigating First Amendment issues. While the other plaintiffs' attorneys ignore his expertise in their motion, he is generally recognized as one of the most experienced and most qualified First Amendment lawyers in the entire state.[1] In his declaration, he notes:

> Since coming to Alaska, the principal focus of my practice has been First Amendment-related law, and particularly representation of news media, journalists, writers, and photographers. I represent or have represented most of the news media in the state during this time, as well as a number of prominent national news organizations. For the past 27 years have also taught a Media Law course at University of Alaska Anchorage, focusing on First Amendment, libel, copyright, privacy, broadcast regulation, and related issues, and I have represented parties in a number of other cases involving First Amendment issues.

Declaration of D. John McKay, para. 2. Thus, Mr. McKay is neither a new nor inexperienced lawyer. While it may be presumed that much of his work does not advance to litigation, a review of Westlaw indicates that he has practiced in appellate and trial courts, federal court and state court, and in Alaska and Outside. *See* Ex. B. There is nothing in his history or experience that suggests that he was not eminently capable of handling this litigation without assistance from attorneys from New York City.

---

[1] *See* Ex. A.

Additionally, this case was not a complex case. It did not involve highly unusual or complex areas of the law, nor did it have multiple defendants, nor was it a highly undesirable case. Because it was a facial challenge rather than an as applied challenge, it was not equivalent to the plaintiffs representing pedophiles or some sort of other undesirable client. Rather, the case primarily addressed fairly run of the mill free speech and commerce clause arguments. These are not new arguments and, as the plaintiffs argued, similar cases to this one have been litigated across the United States, often involving some of the same attorneys here.[2]

As such, this case is quite different from two of the cases relied on by the plaintiffs. *See Gates v. Deukmejian*, 987 F.2d 1392 (9th Cir. 1992)(involving a complex class action suit against multiple defendants concerning comprehensive prison conditions where the appellate court affirmed the trial court's award of attorney fees based on a San Francisco billing rate rather than the local forum of Sacramento); *Guam Society of Obstetricians and Gynecologists v. Ada*, 100 F.3d 691 (9th Cir. 1996)(involving a highly undesirable case where the local counsel received death threats and the trial court found that the local counsel "faced unusual and trying personal and professional pressures during the pendency of the lawsuit" and the appellate court affirmed the trial court's award of attorney fees based on New York rates rather than the local forum of Guam). The third case relied on by the plaintiffs, *Corbett v. Wild West Enterprises, Inc.*, 713 F. Supp. 1360 (D. Nev. 1989), supports this court declining to use New York billing

[2] *See, e.g. PSInet, Inc. v. Chapman*, 362 F.3d 227 (4th Cir. 2004), *reh'g denied*. 372 F.3d 671, *aff'g* 167 F.Supp. 2d 878 (W.D. Va. 2001); *Amer. Booksellers Found. for Free Expression v. Dean*, 342 F.3d 96 (2d Cir. 2003), *aff'g* 202 F.Supp. 2d 300 (D. Vt. 2002); *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999), *aff'g* 4 F.Supp. 2d 1029 (D.N.M. 1998); *Southeast Booksellers Ass'n v. McMaster*, 371 F.Supp. 2d 773 (D.S.C. 2005); *ACLU v. Napolitano*, Civ. No. 00-0505 (D. Ariz. June 14, 2002), *sub nom. ACLU v. Goddard*, 2004 WL 3770439 (D. Ariz. Apr. 23, 2004); *Cyberspace Commc'ns, Inc. v. Engler*, 142 F.Supp. 2d 827 (E.D. Mich. 2001), *aff'd* 238 F.3d 420 (6th Cir. 2000); *Am. Libraries Ass'n v. Pataki*, 969 F.Supp. 160 (S.D.N.Y. 1997); *American Booksellers Foundation for Free Expression v. Coakley*, 2010 WL 4273802 (D. Mass. Oct. 26, 2010).

rates. *Corbett* involved a case where the trial court declined to use San Francisco rates rather than the local forum rates because the court found that out-of-town counsel was not required. *Id.*

Therefore, the attorney fees in this case should be based on Alaska rates. While the trial court in *American Booksellers Assoc., Inc. v. Hudnut*, 650 F.Supp 324 (S.D. Indiana 1986) found that non-local billing rates were appropriate, that case is not binding and it is distinguishable from the underlying case here. First, given the age of that case, it appears that it was one of the first cases of this nature and thus presented more novel issues of law. Second, whether or not Indiana had qualified constitutional attorneys in the 1980s is not relevant to whether attorneys were available in Alaska for this case. As such, this court should use the local Alaskan forum to set the billing rates for the out of town attorneys in this case.

Here, the State does not disagree with the billing rate set forward by Mr. McKay of $225 per hour. However, because that is on the low side for someone with his experience and knowledge, the State does not oppose Mr. Bamberger, Mr. Zuckerman and Ms. Chatillon receiving the increased billing rate of $300 per hour. The State also does not disagree with the billing rate set for by Mr. Kroot of $175 per hour. However, given that Mr. Stenson's experience is more similar to that of Mr. Kroot than that of Mr. McKay, it seems that a billing rate of $175 per hour would also be appropriate for him.

II. THE PLAINTIFFS ARE NOT ENTITLED TO BE COMPENSATED FOR ADMINISTRATIVE WORK

The plaintiffs should not recover fees for work that could have been performed by a secretary or other staff person. *See, e.g., Robinson v.* Plourde, 717 F.Supp.2d 1092, 1099 (D. Hawaii 2010)(citation omitted)("Tasks such as reviewing Court-generated notices, notifying clients of court hearings, filing documents with the Court, communication with court staff,

scheduling, and corresponding regarding deadlines, are clerical and not compensable."); *Michigan v. United States E.P.A.*, 254 F.3d 1087, 1095-96 (D.C. Cir. 2001)(holding that tasks such as copying or delivery of documents could be undertaken by clerical, not legal staff, and therefore were not part of reasonable attorney's fees); *Diaz v. Paragon Motors of Woodside, Inc.*, 2007 WL 2903920 *9 (E.D.N.Y. 2007)(deducting charges in fee-shifting case for attorney and paralegal time spent performing clerical work such as making photocopies, faxing documents and mailing documents); *Gates v. Bamhart*, 325 F.Supp.2d 1342, 1348 (M.D.Fla. 2002)(stating that "tasks of a clerical nature are not compensable as attorneys' fees"). Here, a number of the billing entries are for clerical work.

The majority of this time can be attributed to the hours billed by Mr. Kroot. They include:

6/4/10	2.3 hours	Solicit comments on draft compl. from plaintiffs
6/11/10	1.4 hours	Assemble comments from the plaintiffs, revise same; send revised compl. to plaintiffs
8/24/10	8.8 hours	Revise and finalize declarations; proof revised compl.; create Fed-Ex airbills for receipt of hard-copy declarations; incorporate comments by plaintiffs and counsel into pleadings
8/26/10	8.6 hours	Revise declarations; revise compl. and motion for preliminary injunction; prepare papers for filing; coordinate receipt of finalized declarations; create PDFs of signature pages
8/30/10	7.3 hours	Follow up with plaintiffs re: outstanding declarations; draft/revise motions; conform pleadings to local rules; create table of contents and table of authorities for memorandum in support of preliminary injunction motion
8/31/10	7 hours	Coordinate receipt of final signature pages from remaining plaintiffs; create PDFs of remaining declarations; conform documents to Mr. McKay's

		suggestions; prepare papers for filing; conference call with Mr. McKay and Mr. Stenson re: same
9/1/10	3.4 hours	Draft proposed order; prepare declarations for filing; coordinate with Mr. McKay to do the same
9/8/10	.6 hours	Research local rules; create file from docket papers
10/8/10	.6 hours.	Revise reply brief; update table of contents for same; finalize same for filing
10/28/10	.6 hours	Proof and file response to Def. motion for clarification
12/23/10	2.4 hours	Revise and proof motion to dismiss papers; add table of authorities to same
12/27/20	4.2 hours	Finalize and proof summary judgment papers; file same
4/21/11	2.1 hours	Create list of potentially obscene works listed in depositions

The State presumes that the above entry for April actually refers to declarations rather than depositions as there were not any depositions taken in this case. The total amount of the billed time in the above section is 49.3 hours. Most of this time was clerical work, but present in the block billing is some time that was spent on legal work. As such, for this section, rather than deducting the full 49.3 hours from Mr. Kroot's billed time, the State would agree that only 44 hours should be deducted.

Mr. Bamberger and Mr. Zuckerman requested attorney fees for time spent time doing clerical work:

3/21/11	.5 hours	Bamberger: send out draft brief
3/23/11	.8 hours	Bamberger: draft request for oral argument; filing issues
4/29/11	1.8 hours	Bamberger: file joint stip.; review status

4/29/11	.4 hours	Zuckerman: file joint stip.; receipt of order by court; conf. Mr. Bamberger

Mr. McKay requested attorney fees for the following time entries that are more properly considered clerical work. Given that this was done in block billing with legal work, the State would agree that these entries be reduced by ½ from the times requested:

8/31/10	7.8 hours	Review, edit, comment on declarations; emails with co-counsel; telephone conference re: matters related to filing lawsuit; proof and edit pleadings; finalize pro hac vice motion; coordinate obtaining executed declarations; finalize exhibits; review Bamberger memo to plaintiffs; prepare civil cover sheet and file complaint and related documents; obtain check for filing fee; pay clerk; address issues raised by clerk; obtain case number and judicial assignment; finalize preliminary injunction motion with case number; file declarations; telephone calls and emails with Kroot; coordinate with Stenson on preparing documents and summonses for service on defendants; work on issues with declarations
9/1/10	9.4 hours	Finalize and file remaining pleadings and motion for preliminary injunction; TC with clerk re: issue of summons; revise and file proposed order; file motion for leave to file over-length brief and hard copy; prepare draft certificate of service; attend to misc. matters relating to filings, incl. issues with size and format of declarations; e-mail re: completed filings; TC with Stenson and Kroot
9/28/10	.2 hours	E-mails; new filings; TC with clerk re: oral argument
1/28/11	.3 hours	TC with clerk; draft and file revised notice re: extension of time; e-mail to co-counsel re: same

The total above billed hours for Mr. McKay are 17.7 hours. Half of that time is 8.85 and, as such, 8.85 hours should be subtracted from Mr. McKay's hours.

III. THE PLAINTIFFS ARE NOT ENTITLED TO BE COMPENSATED FOR VAGUE AND DUPLICATIVE WORK

To establish that the hours expended are reasonable, "[t]he party seeking attorney's fees must present adequately documented time records to the court. Using this time as a benchmark, the court should exclude all time that is excessive, duplicative, or inadequately documented. *Hensley v. Eckerhart,* 461 U.S. 424, 432–34, 437 n.12 (1933). The Ninth Circuit has approved a reduction of hours because the time records were deficient and the information in them was "indefinite, non-specific, uninformative and generally inadequate." *In re Washington Public Power*, 19 F.3d 1291, 1305 (9th Cir. 1994); *see also Ackerman v. Western Elec. Co.*, 860 F.2d 1514, 1520 (9th Cir. 1988)(reducing fee awards where time records were deficient). Counsel does not receive fees for duplicative work. *Robinson v. Plourde*, 717 F.Supp.2d 1092, 1099 (D. Hawaii 2010)("The Court reduces counsel's hours for meetings, discussions and other communications, for which both attorneys billed. The general rule is that two professionals cannot bill for attending the same meeting.")(citation omitted).

Here, there are a number of billing entries for Mr. Bamberger that are inadequate because they are inadequately documented as to how they pertain to the litigation or duplicated with other attorneys:

4/27/10	1 hour	Work on email to CLU
5/5/10	.1 hours	Email L. Cranor (also billed by Mr. Zuckerman)
5/26/10	.2 hours	Call Weddleton
6/16/10	.3 hours	Conference call with Kroot and email Chmara
8/16/10	.8 hours	Meeting with Josh; miscellaneous papers
8/31/10	1.5 hours	Calls with co-counsel and work regarding filing
11/19/10	.5 hours	Meeting on Summary Judgment motion strategy

(also billed by Ms. Chatillon and Mr. Kroot)

3/4/22 .3 hours Revise paragraph for Alaska committee

For the meeting on 11/19/10, that time should also be deducted from Mr. Kroot's billed time so that only one attorney, Ms. Chatillon, is receiving payment for this meeting.

On 4/29/10, Mr. Zuckerman sent an email about both the Alaska and the Massachusetts litigation for .3 hours. Given that the Massachusetts litigation was separate from this litigation, Alaska should not be responsible for any of the time spent on that case. As such, this time should be reduced to .1.

On 6/3/11, Mr. McKay billed .2 hours reviewing new case and emails. There is no description of what this new case is, or how it or the emails affect the litigation. As such, this time should be discounted.

IV. THE PLAINTIFFS ARE NOT ENTITLED TO BE COMPENSATED FOR PUBLIC RELATIONS WORK

Federal courts routinely disallow fees for public relations work under fee-shifting statutes that allow recovery for reasonable fees. *See, e.g.*, *American Petroleum Institute v. United States E.P.A.*, 72 F.3d 907, 913 (D.C. Cir. 1991)("Costs associated with media relations . . . are not 'costs of litigation' under [the Clean Air Act]."); *Halderman by Halderman v. Pennhurst State School & Hospital*, 49 F.3d 939, 942 (3rd Cir. 1995)(stating, in considering fees under 42 U.S.C. § 1988, that "the proper forum for litigation is the courtroom, not the media."); *Watkins v. Fordice*, 7 F.3d 453, 458 (5th Cir. 1992)(holding that the trial court did not err in disallowing fees for press conferences in Voting Rights Act case). Here, on 7/7/11, Mr. McKay spent .9 hours emailing about the form of the judgment and talking with the press about the decision. It is not clear precisely how much time was spent on each act and it would be reasonable to

subtract .5 hours from his billed time, so that he receives fees for .4 hours for this work only. Additionally, Mr. Zuckerman and Mr. Bamberger spent time on 11/22/10 and 11/23/10 discussing and notifying the defense bar of the preliminary injunction. This has no bearing on the litigation in this case. The total time for Mr. Bamberger was .6 hours and for Mr. Zuckerman was .4 hours.

V. THE PLAINTIFFS ARE NOT ENTITLED TO BE COMPENSATED FOR POLITICAL WORK

While fees for extra-litigation activity sometimes may be recovered under attorney fee provisions, compensation is limited to activity that is within the purview of litigation, that is "*directly and intimately* related to the successful representation of a client," and that is work "*only a lawyer* appropriately should do." *Davis v. City and County of San Francisco*, 976 F.2d 1536, 1545, 1558 (9th Cir. 1992)(emphasis added). Compensation is not warranted just because the activity relates to the same parties or issues involved in the case if it would have occurred regardless of the pending litigation. Ninth Circuit caselaw makes clear that the only extra-litigation activites that should be compensated under fee statutes are those in which the attorney would not have been engaged *but for* the litigation. In other words, if an activity would serve the interests of the plaintiffs notwithstanding the litigation, then it is not necessary to advance the litigation and should not be part of the fee award.

The cases in which courts have permitted recovery for extra-litigation activities have involved situations where the activity would have had no purpose outside of litigation. In the leading case, the parties reached a consent decree that eliminated discriminatory hiring and promotion policies for firefighters. *Davis*, 976 F.2d at 1536. The San Francisco Board of Supervisors had to approve the consent decree before the parties could seek to have it entered,

however, so attorneys for the plaintiff class lobbied the Board for approval. *Id.* at 1545. The Ninth Circuit upheld the district court's fee award for the lobbying and the public relations because it was "directly and intimately related to the successful representation of [the] client." *Id.*

The Ninth Circuit required more than a "direct and intimate relationship," however. It also required that the work be "something only a lawyer appropriately should do." *Id.* at 1558. It therefore remanded the case to the district court to strike public relations and lobbying hours unless they involved work that only an attorney would properly do. *Id.; see also David C. Leavitt*, 900 F. Supp. 1547, 1558 (D. Utah 1995)(disallowing fees for lobbying that could have been performed by public relations persons).

Here, some of the time claimed by the plaintiffs does not meet the Ninth Circuit criteria for extra-litigation activities because the activities were not "directly and intimately related" to the representation of the plaintiffs in this case. *Davis*, 976 F.2d at 1545. Here, reviewing and revising a draft bill in the legislature was not directly and intimately related to the representation of the plaintiffs. Given that the lawsuit filed was based on the current and historical amendments to the statute, it was not necessary to the plaintiffs' success that they review pending legislation. This had no effect on the outcome and it is not clear that any of these attorneys even lobbied the legislature for a change in the law. Nor is it clear that a change in the law would have in any way affected the lawsuit given that it included that a historical version of the law was unconstitutional.

For Mr. Bamberger, the time that should not be included in an attorneys fees award includes:

1/27/11	.3 hours	Review bill

2/7/11	.8 hours	Mark-up draft bill; Stenson comments
2/9/11	.4 hours	Email; revise draft bill; call DH
2/11/11	.3 hours	Bill revision issues

This is for a total of 1.8 hours. Because of the block billing, the State would not oppose reducing this to 1.5 hours that should be deducted from his total billing amount.

For, Mr. Zuckerman, the time that should not be included in an attorneys fees award includes:

2/3/11	.1 hours	Email re HB 127
2/10/11	.3 hours	Review proposed language of Alaska amendment; emails re same; comparison with Massachusetts language
2/14/11	.1 hours	Conf. M. Bamberger re status of proposed amendment to law

This is for a total of .5 hours.

For Mr. Mckay, he spent .2 hours spent on 1/27/11 reviewing the bill that should not be part of an attorney fees award.

VI. THE PLAINTIFFS ARE NOT ENTITLED TO BE COMPENSATED FOR ALL OF THE EXPENSES THEY SUBMITTED

The State also objects, in part, to the request for $5576.29 for the expenses incurred for FedEx and delivery expenses, document reproduction, LEXIS and WESTLAW. Here, while expenses are recoverable under § 1988, they are still subject to a reasonableness review. *Guillemard-Ginorio v. Contreras*, 603 F.Supp. 2d 301, 327 (D. Puerto Rico 2009). This is especially true in a case where one could assume (because the actual costs are not itemized) that some of the expense is attributed to the plaintiffs' having out of state counsel as the lead

attorneys. As has already been discussed, the plaintiffs have not shown that out of state counsel was necessary. Further, this is not a case where the plaintiffs sought out an attorney to bring this lawsuit, but rather where out of state attorneys sought out named plaintiffs in order to bring this lawsuit. As such, the plaintiffs should not be awarded the monies spent on FedEx and Delivery expenses. There has been no showing as to why these expenses where necessary, or why cheaper methods such as the United States Postal System, email or fax were not used.

Regarding the LEXIS and WESTLAW charges, these expenses are usually recoverable but they are also subject to verification and a reasonableness review. Here, the plaintiffs have not submitted any documentation regarding what was researched or the reasonableness of the searches performed. However, because it can be presumed that LEXIS and/or WESTLAW research is a necessary part of any modern litigation, the State suggests that the research amount submitted by the plaintiffs be reduced by ½. As such, the State does not oppose the plaintiffs receiving $2801.90 in expenses.

Conclusion

The state does not oppose paying the plaintiffs $116,704.40. However, the State objects to paying anything above this. While this is below the amount requested by the plaintiffs, there is no reason for the court to apply a multiplier. A multiplier is only to be applied in extraordinary circumstances. *Perdue v. Kenny A. ex re. Winn*, 130 S. Ct. 1662, 1669 (2010)(stating that "there is a strong presumption that the lodestar is sufficient."). Given the lack of complexity to the case, the lack of novelty to the case, the lack of undesirability of the case and the fact the plaintiffs' out of state attorneys sought out this case, the state's proposal well-encompasses what is necessary to compensate them for this lawsuit. *See Kerr v. Screen Extras*

Guild, Inc., 526 F.2d 67 (9th Cir. 1975). It is the plaintiffs' burden to justify that they are entitled to a multiplier. *Blum v. Stenson*, 465 U.S. 886, 901-02 (1984). An enhancement is not necessary to provide fair and reasonable compensation. *Id.* at 901. *See also Jordan v. Multnomah County*, 815 F.2d 1258 (9th Cir. 1987)(affirming the denial of a multiplier);

This amount in fees and expenses submitted by the defendant was reached in the following manner. Mr. Bamberger submitted that he should be entitled to receive attorney fees for 65.4 hours spent on the case. For the above enumerated reasons, this number should be reduced by 9.9 hours. This leaves a total number of hours billed as 55.5 hours. As already stated, an appropriate billing amount for him is $300 an hour. 55.5 hours times $300 = $16,650.

For Mr. Zuckerman, he submitted that he should be entitled to receive attorney fees for 52.7 hours spent on the case. For the above enumerated reasons, this number should be reduced by 1.4 hours. This leaves a total number of hours billed as 51.3 hours. As already stated, an appropriate billing amount for him is $300 an hour. 51.3 hours times $300 = $15,390.

For Mr. Kroot, he submitted that he should be entitled to receive attorney fees for 318.9 hours spent on the case. For the above enumerated reasons, this number should be reduced by 44.5 hours. This leaves a total number of hours billed as 274.4 hours. As already stated, an appropriate billing amount for him is $175 an hour. 274.4 hours times $175 = $48,020.

For Ms. Chatillon, she submitted that she should be entitled to receive attorney fees for 67.6 hours spent on the case. The State does not contest this number. As already stated, an appropriate billing amount for her is $300 an hour. 67.6 hours times $300 = $20,130.

For Mr. McKay, he submitted that he should be entitled to receive attorney fees for 65 hours spent on the case. For the above enumerated reasons, this number should be reduced by 9.75 hours. This leaves a total number of hours billed as 55.25 hours. The State does not

disagree with the billing amount he submitted of $225 an hour. 55.25 hours times $225 = $12,487.50.

For Mr. Stenson, the State does not disagree with the hours that he submitted. However, as already argued, his billing rate should be reduced to $175 an hour. 7 hours times $175 = $1225.

Finally, as already expenses, the State does not oppose that the plaintiffs are entitled to $2801.90 for the expenses incurred.

In conclusion, the total of this is $116,704.40. The State does not object to this amount.

DATED this 16th day of September, 2011.

JOHN J. BURNS
ATTORNEY GENERAL

By: s/Marika R. Athens
Assistant Attorney General
Department of Law
Office of Special Prosecutions and Appeals
310 K St., Suite 308
Anchorage, Alaska 99501
Telephone: 907-269-6250
Facsimile: 907-269-7939
Email: marika.athens@alaska.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of September, 2011, a copy of the foregoing document was served electronically on:

Michael Bamberger
D. John McKay
Thomas W. Stenson

s/Marika R. Athens
Marika R. Athens