

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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HORNBECK OFFSHORE SERVICES, L.L.C.)	CIVIL ACTION NO. 10-1663(F)(2)
et al.)	
Plaintiffs,)	
)	
VERSUS)	
)	Section F
KENNETH LEE “KEN” SALAZAR, IN HIS)	Judge Martin L. C. Feldman
OFFICIAL CAPACITY AS SECRETARY,)	
UNITED STATES DEPARTMENT OF)	
INTERIOR; UNITED STATES)	
DEPARTMENT OF INTERIOR; ROBERT)	
“BOB” ABBEY, IN HIS OFFICIAL)	Magistrate 2
CAPACITY AS ACTING DIRECTOR,)	Magistrate Joseph C. Wilkinson, Jr.
MINERALS MANAGEMENT SERVICE;)	
AND MINERALS MANAGEMENT)	
SERVICE,)	
)	
Defendants.)	
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PLAINTIFFS’ OBJECTIONS TO MAGISTRATE JUDGE’S FINDINGS AND RECOMMENDATION ON QUANTUM OF ATTORNEY’S FEES¹

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Hornbeck Offshore Services, L.L.C., the Chouest Entities and the Bollinger Entities, which respectfully submit their Objections to Magistrate Judge Wilkinson’s Findings and Recommendation (Rec. Doc. 265)

¹ Although the Court just issued its Order approving the Magistrate Judge’s Findings and Recommendations (Rec. Doc. 268), these Objections are timely pursuant to 28 U.S.C. §636(b)(1)(C).

pursuant to 28 U.S.C. § 636(b)(1). Plaintiffs request that this Court review and revise the Magistrate Judge's quantum decision solely to address two apparently inadvertent omissions by the Magistrate Judge. First, to include in the mathematical calculation of the lodestar amount the reasonable and necessary attorney's fees incurred by Plaintiffs in filing their Motion for Recovery of Attorney's Fees (Rec. Doc. 213) and their Motion to Set Amount of Attorney's Fees and Costs (Rec. Doc. 233), which, according to the Magistrate Judge – and even the Government – are properly recoverable. *See* Rec. Doc. 265 at 26, 27, 32, and 8, 25, 28 (Plaintiffs are entitled to recover “those reasonable fees incurred in connection with their motion for attorney's fees”); Rec. Doc. 246, Memorandum in Opposition to Plaintiffs' Motion for Attorneys' Fees and Cost (filed under seal), at 6 (“a reasonable fee request would include costs related to . . . Plaintiffs' motion for recovery of fees and costs”); Rec. Doc. 256, Memorandum in Opposition to Plaintiffs' Supplement to Motion to Set Attorneys' Fees and Costs, at 7 (recognizing Plaintiffs' entitlement to recover fees for attorneys' work on Plaintiffs' Motion to Set Amount of Attorney's Fees and Costs). Second, to include in the mathematical calculation of the lodestar amount 85% of the total actual hours billed by John F. Cooney of Venable L.L.P. between June 22, 2010 and September 29, 2010 at the rate of \$450/hr, as recommended by the Magistrate Judge.

Based on these omissions, Plaintiffs request an upward adjustment of the lodestar amount recommended by the Magistrate Judge from \$440,596.68 to \$530,441.93, to capture the reasonable and necessary attorney's fees incurred by Plaintiffs in connection with their Motion for Recovery of Attorney's Fees and Motion to Set Amount of Attorney's Fees, which, as supported by the record, totaled \$89,845.25, *See* Rec. Doc. 234 at Ex. D-2; Rec. Doc. 251, and an additional upward adjustment of the lodestar amount recommended by the Magistrate Judge

by \$101,974, to a final lodestar amount of \$632,415.93, as supported by the record. *See* Rec. Doc. 234 at Declaration of John F. Cooney at ¶12 and Exhibit C filed under seal.

In the Findings and Recommendation, the Magistrate Judge concluded that Plaintiffs “cannot recover any attorney’s fees for legal work done before June 22, 2010, the day the preliminary injunction was issued” and “cannot recover for any attorney’s fees incurred after [September, 29, 2010] (*except those reasonable fees incurred in connection with their motion for attorney’s fees*).” Rec. Doc. 265 at 26-27 (underscoring original; bold italics added). Accordingly, the Magistrate Judge found that Plaintiffs are entitled to recover their reasonable fees incurred in connection with their Motion for Recovery of Attorney’s Fees and Motion to Set Amount of Attorney’s Fees, as even the Government concedes.

To calculate the lodestar amount, the Magistrate Judge first deducted from the total hours requested by Plaintiffs all hours billed by their attorneys before entry of the preliminary injunction on June 22, 2010, for a subtotal of 1,803.60 hours for the Jones Walker firm. Rec. Doc. 265 at 31. Then, the Magistrate Judge deducted all time incurred after September 29, 2010, for a total of 1,706.40 hours for the Jones Walker firm. Rec. Doc. 265 at 31. Based on a finding that there should be a 15% across-the-board reduction in reasonable hours billed and a finding that Plaintiffs should recover their fees for only 50% of Jones Walker attorney Marjorie McKeithen’s time, the Magistrate Judge arrived at a total calculation of recoverable Jones Walker hours of 1409.81. Rec. Doc. 265 at 50. The mathematical calculation performed is reflected as follows: $1,706.40 \times .85 = 1450.44 - 40.63 = 1409.81$ hours (total Jones Walker hours recoverable after deducting pre-June 22, 2010 time and post-September 29, 2010 time (1,706.40) reduced by 15% = 1450.44; deduct 40.63 hours (50% of Ms. McKeithen’s time) from 1450.44 = 1409.81 hours). Consequently, after deducting all post-September 29, 2010 time to

calculate the lodestar, the Magistrate Judge inadvertently failed to recapture those post-September 29th hours that were devoted to Plaintiffs' request to recover their attorney's fees based on the Government's contemptuous conduct. In short, although the Magistrate Judge concluded that Plaintiffs are entitled to recover their reasonable fees incurred in seeking their attorney's fees, the recommended lodestar amount did not capture those fees.

As reflected in the Declaration of Carl D. Rosenblum submitted in support of Plaintiffs' Motion to Set Amount of Attorney's Fees, Jones Walker opened a separate file, File No. 124440, "to capture all of the attorney time and costs . . . to be rendered in connection with Plaintiffs' Motion for Recovery of Attorney's Fees (Rec. Doc. 213), as well as quantifying the amount of attorney's fees and costs sought." Rec. Doc. 233-2. As further reflected in Exhibit D-2 to Mr. Rosenblum's Declaration (Rec. Doc. 234, filed under seal), the amount of Jones Walker attorney's fees incurred by Plaintiffs through January 2011 for File No. 124440 totaled \$44,348.00. Thereafter, Plaintiffs filed under seal a Supplemental Appendix, which reflects that Plaintiffs incurred an additional \$47,087.25 in Jones Walker attorney's fees for File No. 124440 through February 2011. Rec. Doc. 251; Rec. Doc. 250 (Order, dated March 30, 2011, granting Plaintiffs' Ex Part Motion for Leave to File Supplemental Declaration and Supplemental Appendix and further ordering that the supplemental appendix shall be filed under seal). After deducting the time of Mary E. Rolland and after reducing the hourly rate for the most experienced paralegal to \$95/hr, as recommended the Magistrate Judge, the Supplemental Appendix reflects an additional \$45,497.25 in Jones Walker attorneys fees. Therefore, under the Findings and Recommendations the total amount of recoverable Jones Walker attorney's fees incurred by Plaintiffs in connection with their motion for recovery of attorney's fees is \$89,845.25 (\$44,348.00 + \$45,497.25).

As the Magistrate Judge correctly concluded in excluding from his post-September 29th fee reduction “those reasonable fees incurred in connection with their motion for attorney’s fees,” Rec. Doc. 265 at 27, Plaintiffs are entitled to recover the attorney’s fees they incurred for “the cost of bringing” the Government’s violation of this Court’s preliminary injunction order “to the attention of the court” as “part of the damages” they suffered. *Cook v. Ochsner Found. Hosp.*, 559 F.2d 270, 272 (5th Cir. 1977). Because the Magistrate Judge, however, inadvertently omitted to include in the mathematical calculation of the recommended lodestar amount any attorney’s fees incurred by Plaintiffs to bring their Motion for Recovery of Attorney’s Fees and their Motion to Set Amount of Attorney’s fees, Plaintiffs respectfully ask this Court to revise the recommended \$440,596.68 lodestar amount set forth in the Findings and Recommendation by adjusting it upward by \$89,845.25 to include those properly recoverable fees.

Additionally, in calculating the lodestar amount, the Magistrate Judge included only 30.6 hours of the time by John F. Cooney. Rec. Doc. 265 at 50. The Magistrate Judge intended to include all hours of Mr. Cooney between June 22, 2010 and September 29, 2010 but at the reduced rate of \$450/hr as “the highest reasonable rate in this district.” *See* Rec. Doc. 265 at 17-19. As reflected in Exhibit C to the Declaration of John F. Cooney, the total hours billed by Mr. Cooney between June 22, 2010 and September 29, 2010 were 266.6 hours (37 in June, 121.50 in July, 76.4 in August and 31.7 in September). After applying the 15% across-the-board reduction, the lodestar amount for Mr. Cooney should be \$101,974.00 (266.6 hours x .85 = 226.61 x \$450/hr = \$101,974.00) rather than \$13,770.00.

Consequently, as adjusted, Plaintiffs respectfully request reimbursement of \$632,415.93, rather than the recommended \$440,596.68 amount, plus the \$444.33 amount recommended for costs.²

Respectfully submitted,

s/ Carl D. Rosenblum

CARL D. ROSENBLUM, T.A. (2083)
GRADY S. HURLEY (13913)
ALIDA C. HAINKEL (24114)
MARJORIE A. MCKEITHEN (21767)
JONES, WALKER, WAECHTER, POITEVENT,
CARRÈRE & DENÈGRE
201 St. Charles Avenue, 49th Floor
New Orleans, Louisiana 70170
Telephone: (504) 582-8000
Fax: (504) 589-8170
crosenblum@joneswalker.com

And

JOHN F. COONEY
(admitted Pro Hac Vice)
Venable LLP
575 7th Street, N.W.
Washington, D.C. 20004
Telephone: (202) 344-4812

**Attorneys for Plaintiffs,
Hornbeck Offshore Services, L.L.C.,
The Chouest Entities and The Bollinger Entities**

² See Rec. Doc. 265 at 3 (recommending that Plaintiffs be reimbursed \$444.33 in costs).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all parties by email or by using the CM/ECF system which will send a Notice of Electronic filing to all counsel of record, this 7th day of June, 2011.

s/ Carl D. Rosenblum
