

No. 24-784

In The
Supreme Court of the United States

ARCH RESOURCES, INC. FKA ARCH COAL, INC.; *ET AL.*;

Petitioners;

v.

DOUGLAS PENNINGTON, ACTING DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, U.S. DEPARTMENT OF LABOR; *ET AL.*;

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

**RESPONDENT'S MOTION FOR AWARD OF ATTORNEYS'
FEES AND EXPENSES**

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Howard*

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MOTION FOR AWARD OF ATTORNEY'S FEES AND EXPENSES

Respondent Cynthia Howard moves the Court for an award of attorney's fees and expenses for her attorneys at AppalReD Legal Aid and Wolfe, Williams & Austin. Her attorneys request an award of \$27,197.05 representing \$24,915 in fees and \$2,282.05 in costs under 33 U.S.C. § 928, *incorporated by reference into* 30 U.S.C. § 932(a), for work done before the Court in this case. Attached are time and expense itemizations and declarations from counsel supporting this request.

This award would be payable by Arch Resources, Inc. under 20 C.F.R. § 725.367(a)(1). It does not oppose this request.

1. A Court Order Is Necessary, Even Though the Parties Agree on this Motion.

Although the parties agree on the amount to be awarded, a court order is required. The Black Lung Benefits Act provides for awards of attorney's fees "in an amount approved by the . . . court" before which the work was performed and further specifies that "[i]n all cases fees for attorneys representing the claimant shall be approved in the manner herein provided." 33 U.S.C. § 928(a), (c). Unapproved fees are

punishable by up to a year in prison. *Id.* § 928(e).¹ A court order is required even where, as here, the parties agree on the amount of the award. *See Eifler v. Peabody Coal Co.*, 13 F.3d 236, 238 (7th Cir. 1993) (Posner, J.) (“The statute is clear. Approval is required whether or not the amount of the attorney’s fee sought by the claimant’s attorney is contested.”).

Given the agreement between the parties on opposing sides of this case, the Court should have no difficulty concluding that the request is reasonable and thus properly awardable under 33 U.S.C. § 928. Lest there be any doubt though, Ms. Howard supports this request with the following information.

2. The Requested Fees and Expenses Are Reasonable.

These fees were incurred in the defense of David Howard’s award of black lung benefits. This certiorari petition involved legal challenges to the Sixth Circuit’s interpretation of the relevant statute and regulations. The result of this case was that Mr. Howard’s award was

¹ 33 U.S.C. § 928(e) (“A person who receives a fee, gratuity, or other consideration on account of services rendered as a representative of a claimant, unless the consideration is approved by the deputy commissioner, administrative law judge, Board, or court . . . shall, upon conviction thereof, for each offense be punished by a fine of not more than \$1,000 or be imprisoned for not more than one year, or both.”).

fully affirmed, which provides benefits to his widow including ongoing monetary benefits for the rest of her unmarried life.

An attorney for a successful black lung benefits claimant is entitled to a reasonable fee. “A claimant may be represented throughout these proceedings by an attorney and the Act provides that when the claimant wins a contested case the employer, his insurer, or the Black Lung Disability Trust Fund shall pay a ‘reasonable attorney’s fee’ to the claimant’s lawyer.” *U.S. Dep’t of Labor v. Triplett*, 494 U.S. 715, 717 (1990) (internal citations omitted). It is important that this fee be sufficient to attract lawyers to represent black lung claimants because lawyers are generally forbidden from charging claimants for legal services and can only be paid when an award is final. *Id.* The attorney must apply for fees at each level of the adjudicatory process in order to recover for time spent before that level. *See* 20 C.F.R. § 725.366(a).

Under 20 C.F.R. § 725.366(b), the fee must be “reasonably commensurate with the necessary work done” and must take into account several factors, including, “the quality of the representation, the qualifications of the representative, the complexity of the legal issues involved, the level of proceedings to which the claim was raised, the level

at which the representative entered the proceedings, and any other information which may be relevant to the amount of fee requested.”

AppalReD Legal Aid is requesting a fee based on attorney Evan Smith’s customary hourly rate of \$325, attorney Justin Apperson’s customary hourly rate of \$250 and law clerk Michael Millan’s customary hourly rate of \$100. Mr. Smith’s 58.4 billable hours warrant a fee award of \$18,980, Mr. Apperson’s 2.2 billable hours warrant a fee award of \$550, and Mr. Millan’s 10.5 billable hours warrant a fee award of \$1,050. The total fees for AppalReD Legal Aid are thus \$20,580. *See* Ex. A, AppalReD Time Itemization.

Wolfe, Williams & Austin is requesting a fee based on attorney Donna Sonner’s customary hourly rate of \$375, attorney Brad Austin’s customary hourly rate of \$325, and attorney Cameron Blair’s customary hourly rate of \$275. Ms. Sonner’s 5.4 billable hours warrant a fee award of \$2,025, Mr. Austin’s 4.4 billable hours warrant a fee award of \$1,430, and Mr. Blair’s 3.2 billable hours warrant a fee award of \$880. The total fees for Wolfe, Williams & Austin are thus \$4,335. *See* Ex. B, Wolfe, Williams & Austin Time and Expense Itemization.

The attorney's fees requested are reasonable in light of the factors specified in § 725.366. AppalReD Legal Aid and Wolfe, Williams & Austin's requested hours are modest and efficient due to Wolfe, Williams & Austin's representation of Ms. Howard before the Sixth Circuit, and both firms' familiarity with the legal issues raised in this case. AppalReD Legal Aid's involvement of a law student helped keep research time low for its attorneys.

The rates and total request are reasonable in consideration of the attorneys' experience and qualifications and are supported by the current hourly rates of other attorneys and paralegals representing claimants in federal black lung benefits claims. For example, in three cases the Sixth Circuit awarded \$425 per hour to attorney Joe Wolfe of Wolfe, Williams & Austin. *See Island Fork Constr. v. Bowling*, No. 16-4319 (6th Cir. Jan. 2, 2018); *Grayson Coal & Stone Co. v. Teague*, No. 16-4142 (6th Cir. Nov. 29, 2017); *Appleton & Ratliff Coal Corp. v. Ratliff*, No. 15-4255 (6th Cir. April 19, 2017). In *Island Creek Coal Co. v. Marcum*, No. 15-4301 (6th Cir. Jan. 9, 2017), the Sixth Circuit awarded fees at the rate of \$400 per hour to Mr. Wolfe. Wolfe, Williams & Austin's offices are in the same region as AppalReD Legal Aid's. In *Westmoreland Coal Co. v. Director*,

OWCP, No. 17-1996 (4th Cir. May 23, 2018), the Fourth Circuit awarded fees to attorney Joseph Allman at the rate of \$350 per hour. In *West Virginia CWP Fund v. Bender*, No. 12-2034 (4th Cir. June 8, 2015), the Fourth Circuit awarded fees and expenses to Roger Forman at the rate of \$350 per hour for a total award of \$27,261.07. Paralegals and law students are regularly awarded \$100 to \$150 for relevant work.²

The use of prior fee awards has been recognized by the Courts of Appeals as appropriate guidance for use in federal black lung benefits claims due to the relatively small number of practitioners and the prohibition on private fee arrangements. See *E. Associated Coal Corp. v. Director, OWCP*, 724 F.3d 561, 571–72 (4th Cir. 2013); *B&G Mining, Inc. v. Director, OWCP*, 522 F.3d 657 (6th Cir. 2008). The attached declarations show that the attorneys here were awarded the same or similar rates while this case was before the Court.

The requested hourly rates are reasonable for federal black lung benefits work on behalf of claimants.

² See, e.g., *Coleman v. Christen Coleman Trucking*, No. 18-3317 (6th Cir. Apr. 13, 2020) (“We typically award . . . \$100 to \$150 per hour for paralegal work.”); *Newton v. Big Ridge Coal Co.*, No. 17-0044 BLA, 2017 WL 5898721, at *2 n.5 (Benefits Review Bd. Oct. 24, 2017) (affirming \$125/hour for paralegal); *Grayson Coal & Stone Co. v. Teague*, No. 16-4152 (6th Cir. Nov. 29, 2017) (awarding \$100/hour for legal assistant).

Wolfe, Williams & Austin seeks to recover its printing costs of \$2,282.05. *See* Ex. B.

The total award requested for this case—\$27,197.05—is a reasonable charge for the successful defense of a black lung award before the Court.

The reasonableness of this request is demonstrated by the fact that Arch Resources is not contesting this request even though it has a direct financial incentive to challenge any unreasonable requests.

CONCLUSION

WHEREFORE, Respondent Cynthia Howard requests the Court award \$27,197.05 in attorneys' fees and expenses. Of this \$20,580 would be payable to AppalReD Legal Aid³ and \$6,617.05 would be payable to Wolfe, Williams & Austin.

Respectfully submitted,



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 APPALRED LEGAL AID
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Brad A. Austin
 WOLFE WILLIAMS & AUSTIN
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³ AppalReD Legal Aid is the common and doing-business-as name of Appalachian Research and Defense Fund of Kentucky, Inc.

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Date: August 5, 2025

EXHIBIT A – APPALRED LEGAL AID TIME ITEMIZATION



AppalReD Legal Aid

120 N FRONT AVENUE
PRESTONSBURG, KY 41653
(606) 886-9876
FAX (606) 886-0079
Low Income Taxpayer Clinic: 1-800-477-1394
Central Intake: 1-866-277-5733
www.ardfky.org

Area Offices:
Barbourville, KY
Hazard, KY
Pikeville, KY
Prestonsburg, KY
Richmond, KY
Somerset, KY

Angeleigh Dorsey
Executive Director
angied@ardfky.org

John M. Rosenberg
Director Emeritus

Case: ***Arch Resources, Inc. v. Pennington*** (24-784)

Date: August 5, 2025

Itemized Time

ES – Attorney Evan Smith - \$325/Hour

JA – Attorney Justin Apperson - \$250/Hour

MM – Law Student Michael Millan - \$100/Hour

<u>Date</u>	<u>Notes</u>	<u>Initials</u>	<u>Time</u>
12/10/2024	emailing with Brad Austin of Wolfe, Williams & Austin (“WW&A”) about cocounseling case	ES	0.3
12/11/2024	Emailing back and forth with Brad	ES	0.2
1/9/2025	Following up with Brad; reviewed his response	ES	0.1
1/10/2025	Emailing further with Brad	ES	0.1
1/13/2025	reviewed email with cert. petition; pulled relevant parts to review in detail later	ES	0.1
1/14/2025	reviewed cert. petition; investigated whether Mr. Howard's estate had been probated; called & had 23-minute phone call with Ms. Howard to discuss case, potential probate, etc.; drafted email to WW&A attorneys	ES	1.7
1/15/2025	reviewed emails from Brad & Donna from WW&A; drafted response	ES	0.3
1/17/2025	reviewed email from Donna with Director's Exhibits (“DX”); reviewed relevant docs; reviewed SCOTUS docket (petition still does not appear to be docketed); drafted email to WW&A attorneys; research 6th Cir. docket & emailed relevant DOL attorney	ES	0.6
1/22/2025	emailing WW&A attorneys about next steps	ES	0.1

1/23/2025	discussing case plan & strategy with cocounsel for 54 minutes; reviewed emails from Donna with briefs to pull from; received call back from DOL counsel & spoke for 7 minutes; followed up with cocounsel	ES	1.4
1/23/2025	reviewed message from Brad Austin regarding docketing info; responded to him & other WW&A attorneys	ES	0.1
1/24/2025	reviewed docket; e-filed appearance; messaged with cocounsel	ES	0.3
1/27/2025	reviewing 6th Cir. brief for Mr. Howard	ES	0.9
1/28/2025	emailing with WW&A attorneys throughout the day; talking to reps from Counsel Press to hire them for help with printing & work out details; drafting notice of death & motion to add party; emailing Stone Mountain to seek relevant case docs; reviewed response; emailing opposing counsel to seek same	ES	3.6
1/29/2025	reviewed response from opposing counsel about seeking relevant docs; responded & emailed back & forth with him; he declined to provide requested docs; texted with Brad Austin; asked recent Kagan clerk for assistance on whether additional pleading was needed to add Mrs. Howard at this stage	ES	0.3
1/30/2025	reviewed DX from Mrs. Howard's survivor's claim as sent by Brad; asked about pay orders in Mr. Howard's claim; Donna said they're still waiting on Form 1078 to be able to get them from DOL; reviewed extension motion filed by OSG; passed along to cocounsel & discussed next steps; started drafting brief & reviewing relevant secondary guidance	ES	1.4
1/31/2025	reviewed messages from cocounsel regarding records docs I was seeking; responded; reviewed email from National Mining Association attorney re: intent to file amicus; informing cocounsel	ES	0.2
2/3/2025	reviewed docket entry about extension; called & left voicemail with clerk's office to clarify whether it applied to all respondents; got call back & clarity that it did & that docket would be updated to indicate so; messaged cocounsel	ES	0.2
2/10/2025	reviewed email with pay order; drafting response; drafting message to group about timing of response	ES	0.2

2/19/2025	reviewed email from Donna Sonner; reviewed email from potential amicus; reviewed yesterday's decision from the 7th Cir. and noted argument to incorporate into this brief	ES	0.5
2/20/2025	reviewed email from Counsel Press re: status of brief; responding to them re: extension (.1)	ES	No Charge
2/26/2025	skimmed amicus briefs filed by Milliman, Inc. & National Mining Association; drafted email to cocounsel re: briefs; drafted email to Claims Examiner to repeat request for docs that we were seeking	ES	0.6
3/10/2025	introducing law student Michael Millan to case	ES	0.5
3/10/2025	Intro discussion of Memo assignment and background research of cases and amicus briefs	MM	2.0
3/11/2025	Research on Patriot Coal's Bankruptcy History	MM	2.5
3/12/2025	Research and memo writing	MM	2.5
3/12/2025	discussing status of work with Michael Millan	ES	0.3
3/13/2025	Memo writing	MM	3.0
3/14/2025	Discussion of memo with supervising attorney	MM	0.5
3/14/2025	reviewed memo from law student Michael Millan & discussing case and Patriot Coal issues with him	ES	0.3
3/14/2025	reviewing cert. petition more closely to prepare for drafting response	ES	0.3
3/17/2025	continued working on brief	ES	1.4
3/17/2025	additional work on brief	ES	1.9
3/18/2025	working on brief	ES	3
3/20/2025	emailing with cocounsel about record docs & briefing deadline; reviewing OSG's extension; reviewed clerk's order granting; messaging with cocounsel & printer to update them	ES	0.4
3/21/2025	reviewed email from Cam with record docs; reviewed FOIA response from DOL; downloaded & reviewed part of transcript in which Mr. Howard testified about his work; called & spoke with Mrs. Howard to give her an update and confirm my understanding of factual parts of Mr. Howard's work	ES	0.4
3/26/2025	reviewed email from Donna about seeking pay order; drafting response about what I'm seeking	ES	0.1
4/2/2025	working on brief	ES	1
4/3/2025	continued working on brief; reviewing <i>FDA v. Wages</i> to consider how this affects case	ES	4.3
4/4/2025	tried calling Ms. Howard; got call back & discussed factual aspects of case	ES	0.1
4/5/2025	continued working on brief	ES	5

4/6/2025	working on brief	ES	3.3
4/7/2025	continued working on brief; emailing to cocounsel; reviewed Donna's response (2.1); discussing comms strategy with AppalReD comms director (.2)	ES	2.3
4/7/2025	revising brief; reviewing emails from Donna; reviewing & incorporating Donna's revisions; emailing cocounsel	ES	1.7
4/8/2025	reviewed additional edits from Donna; incorporating those; drafting email to cocounsel	ES	0.2
4/8/2025	continued revising brief with assistance of cocounsel	ES	4.1
4/9/2025	emailing and speaking with cocounsel, printer, and allies towards finalization of brief	ES	0.4
4/13/2025	revising brief	ES	0.9
4/14/2025	additional edits; sending latest draft to coworkers and colleagues for additional review	ES	1.1
4/14/2025	read the petition for writ of certiorari submitted by Arch Coal and the brief in opposition drafted by Evan Smith; briefly skimmed the amicus briefs filed by the National Mining Association and Milliman; made line edits with grammatical and typographical suggestions to the brief in opposition and discussed my thoughts on the strength of the substantive arguments with Evan	JA	2.2
4/14/2025	additional editing of brief; discussing with Justin Apperson	ES	1.3
4/15/2025	continued revising brief; sending to printer; editing proof; sending to cocounsel for final edits	ES	5
4/16/2025	reviewing proof including Table of Authorities; final revisions to brief including phone call to printer re: finalization; reviewed filings; reviewed DOJ brief	ES	3.3
4/17/2025	reaching out to coworkers and colleagues to provide appreciation for their assistance and work on postfiling communications	ES	0.8
4/22/2025	reviewed hard copies of brief; sent to cocounsel & others who provided assistance; working with coworkers on postfiling communications work	ES	1
4/28/2025	received call from Mrs. Howard & discussed her thoughts after reading the brief	ES	0.1
4/28/2025	being interviewed by reporter about case; discussing with Mrs. Howards; emailing reporter (1.0)	ES	No Charge

4/29/2025	emailing with reporter about potential coverage of case (.2, but no charge); reviewed notice of reply brief being filed & skimmed Arch's reply (.1)	ES	0.1
4/30/2025	phone call with reporters from Pittsburgh Post-Gazette about case (1.0, but no charge); reviewing reply brief in detail & messaging cocounsel about it and my view; calling & speaking with Mrs. Howard (.4)	ES	0.4
4/30/2025	reviewed drafted language about case from newspaper; responded to clarify relevant facts (0.4)	ES	No Charge
5/1/2025	reviewing piece in <i>Lexington Herald-Leader</i> ; doing additional communications work related to case (0.5)	ES	No Charge
5/6/2025	reviewed docket notice saying that petition was circulated for 5/22/25 conference	ES	0.1
5/14/2025	phone call with reporter Victoria Malis to fact check <i>Pittsburgh Post Gazette</i> article (0.3)	ES	No Charge
5/14/2025	second fact check call with editor of <i>Pittsburgh Post-Gazette</i> (0.3)	ES	No Charge
5/27/2025	reviewed Supreme Court order list once posted; messaged cocounsel; called & informed Mrs. Howard	ES	0.1
7/8/2025	Working on time itemization (.8)	ES	No Charge
7/9/2025	Continued working on time itemization; drafting email to cocounsel to gather their itemizations for fee petition (.3)	ES	No Charge
7/14/2025	Followed up cocounsel about status of their itemization; 15-minute phone call with Ms. Sonner (.3)	ES	No Charge
7/15/2025	reviewed itemizations from cocounsel; created simplified pdf and drafted email to cocounsel to ensure consensus before we present to opposing counsel; reviewed email from Brad; drafted email to opposing counsel (.5)	ES	No Charge
7/17/2025	Reviewed email from Mr. Prochot saying that they would need more time; responding to say that's fine (.1)	ES	No Charge
7/18/2025	reviewed response from opposing counsel; replied and reached out to cocounsel regarding question pertaining to their part; reviewed response from cocounsel; discussed back & forth; emailed Mr. Prochot (.3)	ES	No Charge
7/21/2025	Reviewed and participated in email conversation about fee petition (.1)	ES	No Charge

7/24/2025	Started drafting fee petition (.3)	ES	No Charge
7/29/2025	Additional work on fee petition (.2)	ES	No Charge
7/30/2025	Additional work on fee petition (1.6)	ES	No Charge
7/31/2025	Emailing with cocounsel about fee petition (0.1)	ES	No Charge
8/1/2025	Discussed declaration from cocounsel with them; reviewed draft; reviewed edits; discussed with them (.4)	ES	No Charge
8/4/2025	Reviewed email from cocounsel confirming materials are ready to share; drafting email to Mr. Prochot (.2)	ES	No Charge
8/5/2025	Reviewed consent from Mr. Prochot; finalized motion; calling Supreme Court clerk's office to discuss filing process; spoke with clerk who needed to consult with deputy clerk; received call back; e-filed; e-mailed copies to counsel; gave paper copies of Tiffany to mail (.5)	ES	<u>No Charge</u>

71.1
Billable
(80.6
Total)

Attorney Evan Smith 58.4 Billable Hours (67.9 Total) at \$325/Hour = \$18,980.00

Attorney Justin Apperson 2.2 Billable Hours at \$250/Hour = \$550.00

Law Student Michael Millan 10.5 Billable Hours at \$100/Hour = \$1,050.00

TOTAL: \$20,580.00

**EXHIBIT B – WOLFE, WILLIAMS & AUSTIN TIME AND
EXPENSE ITEMIZATION**

[illegible]

Name: David M. Howard SSN: xxx-xx-6902 File No. 220870

Total Hours: 13.00

12/11/2024	Contacted by Evan Smith about potentially co-counseling on this case; he has a few of the cases that are in abeyance pending the outcome of this case; respond that we are good with the idea. (BA)	0.25
1/10/2025	Phone call to Cynthia Howard to explain what is going on with the miner's case; ask if she was ok with Evan Smith co-counseling with us and she was fine; phone call to Evan Smith to advise he can call her to get his paperwork signed. (BA)	0.25
1/10/2025	Initial review of issues; upload Employer's Petition to the Supreme Court. (DNS)	0.25
1/10/2025	Discuss issues with Attorney Brad Austin. (DNS)	0.50
1/10/2025	Discuss issues with Attorney Donna Sonner. (BA)	0.50
1/10/2025	Research on rules regarding filing, deadlines, and word limit. (DNS)	0.25
1/17/2025	Review; we took over this case from Stone Mountain; we don't have the DX and may need it for the Supreme Court case; call Robin Napier at Stone Mountain to request the DX; receive the DX, upload to file, and email copy to Evan Smith. (DNS)	0.20
1/21/2025	Receive from Counsel Press to Supreme Court labels with footnote to be affixed to the bottom of page ii in Arch Resources, Inc. and Apogee Coal Company LLC v. Direcore, OWCP, USDOL, and David Howard; forward email to Evan Smith regarding labels to be affixed to bottom of page. (DNS)	0.05
1/23/2025	Set up conference call; email Attorneys Sonner, Austin, and Smith to call in to discuss the case at noon today. (CB)	0.25
1/23/2025	Participate in phone conference with Attorneys Sonner, Blair, and Smith to discuss upcoming supreme court response and outline for brief; agree to use printing service for the response; Attorney Smith will start the brief and we will all work together on first draft; we do not have a docketing statment yet with case number. (BA)	0.75
1/23/2025	Participate in phone conference with Attorneys Austin, Blair, and Smith regading briefing issues. (DNS)	0.75

1/23/2025	Participate in phone conference with Attorneys Sonner, Austin, and Smith regarding briefing issues. (CB)	0.75
1/31/2025	Phone call to OWCP; left voicemail for Claims Examiner Jason McAllister requesting copies of any pay orders issued in miner's claim. (DNS)	0.25
2/3/2025	Second attempt to reach CE Jason McAllister; left voicemail. (DNS)	0.05
2/10/2025	Third attempt to reach CE Jason McAllister; left voicemail. (DNS)	0.05
2/10/2025	Recive return call from CE Jason McAllister; he will forward the most recent pay order; receive the pay order, upload to file, and forward copy to Attorney Evan Smith; cc'd Attorneys Austin and Blair. (DNS)	0.25
2/10/2025	Review the LM DX for pay orders; sent to Attorneys Austin, Blair, and Smith; email to CE Jason McAllister inquiring as to whether there are more besides the September 4, 2024 order and the October 11, 2016 agreement to pay benefits. (DNS)	0.25
3/17/2025	Search our records for transcript and unable to locate one; check with Attorney Smith as to whether he has received any more pay order from CE Jason McAllister. (DNS)	0.25
3/20/2025	Discuss case with Attorneys Smith, Austin, and Sonner; advise I will reach out to William Prochot regarding hearing transcript and ALJ exhibits. (CB)	0.25
3/20/2025	Draft and send correspondence to William Prochot requesting hearing transcript and the LM exhibits as we did not represent claimant at the time when case was before the ALJ. (CB)	0.25
3/20/2025	Review email response from William Prochot; he will have them sent to us through secure file transfer. (CB)	0.05
3/20/2025	Review the DX #1-46 in the LM claim as well as the hearing transcripts dated 10/30/17 and 7/17/19; request employer's counsel, William Prochot at Greenberg Traurig, send us their exhibits as well. (CB)	0.50
3/20/2025	Review Employer's Exhibits #1-26 in the LM claim. (CB)	0.25
3/20/2025	Share the DX, hearing transcripts, and Employer's exhibits with Attorneys Sonner, Blair, and Smith. (CB)	0.25

3/26/2025	Email CE Jason McAllister regarding pay order; inquire as to if the OWCP issued a pay order after the ALJ's February 25, 2020 Decision and Order in the LM claim; attach the two pay orders we have issued in 2016 and 2024. (DNS)	0.05
4/7/2025	Spoke to duty officer at OWCP as CE Jason McAllister has not responded to my emails; the duty officer thinks an adjusted pay order may have been issued waiving the amount due DOL; email again to CE Jason McAllister about any pay orders issued after November 2016 in the LM claim; also request if there were any amended orders issued adjusting the amount due from the Employer; advise we need this information as soon as possible as briefs are due with the Supreme Court next week. (DNS)	0.50
4/7/2025	Review draft of supreme court brief and send suggested edits to Attorney Evan Smith. (DNS)	0.40
4/7/2025	Review the November 15, 2022 pay order received today via email from CE Jason McAllister. (DNS)	0.25
4/7/2025	Review brief and send suggested changes to Attorney Smith. (DNS)	0.35
4/8/2025	Discuss issues regarding employer's failure to meet deadline for submission of liability evidence with Attorney Blair. (DNS)	0.10
4/8/2025	Further review of brief; email to Attorney Smith and cc'd Attorneys Austin and Blair. (DNS)	0.10
4/8/2025	Review Attorney Smith's additions to brief; email to concur. (DNS)	0.10
4/14/2025	Review latest draft of brief; send suggested edits to Attorney Smith. (DNS)	0.35
4/15/2025	Review latest draft of brief; send suggested edits to Attorney Smith. (CB)	0.65
4/15/2025	Spend substantial time reviewing and editing the response brief; read for grammar flow; check cites. (BA)	1.85
4/17/2025	Review, dated 4/15/25, Brief in Opposition Proof from Ann Tosel at Counsel Press. (BA)	0.25
4/17/2025	Review, dated 4/16/25, Updated Brief in Opposition from Ann Tosel at Counsel Press; need to review the updated brief and see if any more edits need to be made. (BA)	0.25

4/17/2025	Review, dated 4/16/25, Brief in Opposition from Ann Tosel at Counsel Press; need to review the updated brief to see if there are additional edits or it is approved to print; if approved, certificates will be sent shortly. (BA)	0.25
5/7/2025	Pay \$2,282.05 to Counsel Press, Inc. for filing of the supreme court response brief. (BA)	0.05
5/27/2025	Review; Certificate was denied by the Supreme Court on May 27, 2025; upload summary disposition order list. (DNS)	0.10

Attorneys:

DNS - Donna Sonner

BA - Brad Austin

CB - Cameron Blair

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**EXHIBIT C - DECLARATIONS OF COUNSEL IN SUPPORT OF
REQUEST**

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FLOYD)

1. I am an attorney in good standing with the Kentucky Bar Association. After growing up in the coalfields of Eastern Kentucky, in 2012, I graduated from the University of Pennsylvania Law School where I served as Articles Editor of the Law Review and also received a Master's in Public Administration. I clerked on the U.S. Court of Appeals for the Sixth Circuit for Judge John M. Rogers before joining Appalachian Citizens' Law Center as a Skadden Fellow. Following my fellowship, I stayed at Appalachian Citizens' Law Center as a staff attorney until the end of 2018. In 2019, I became AppalReD Legal Aid's advocacy director.

3. My customary hourly rate is \$325 per hour. Since I increased my rate last year, I have been awarded that rate by the U.S. Court of Appeals for the Sixth Circuit, DOL's Benefits Review Board ("BRB"), Office of Administrative Law Judges ("OALJ") and OWCP's District Director. *See* Addendum Listing Awards, *infra*. I last increased my rate in March 2021 to \$300 per hour. I have been awarded that rate by the U.S. Court of Appeals for the Sixth Circuit, the U.S. District Court for the Eastern District of Kentucky, DOL's Benefits Review Board, DOL's Office of Administrative Law Judges, and DOL's OWCP's District Director, including over objection. *See Spatafore v. Consolidation Coal Co.*, No. 20-0193 BLA (BRB Jan. 6, 2023); *Ison v. Arch of Ky/Apogree Coal Co.*, No. 2017-BLA-05578 (OALJ Oct. 27, 2023); *Caudill v. Incoal, Inc.*, No. 2019-BLA-05910 (OALJ June 30, 2023); *In re Caudill* (2B3KT-2018152 Aug. 3, 2022). For years before, I was repeatedly awarded \$275 per hour over objections from employers. *See Coleman v. Christen Coleman Trucking*, No. 18-3317 (6th Cir. April 13, 2020); *Westmoreland Coal Co. v. Director, OWCP [Maggard]*, No. 17-1996 (4th Cir. May 23, 2018); *Coleman v. Christin Coleman Trucking*, No. 17-0262 BLA (BRB June 9, 2020); *Osborne v. Johnson Floyd Coal Co.*, No. 18-0075 BLA (BRB May 7, 2020); *Stiltner v. A & K Transportation, Inc.*, No. 18-0388 BLA (BRB April 28, 2020); *Brantley v. B[ig] Ridge, Inc.*, No. 16-0166 BLA (BRB Aug. 12, 2019); *Anderson v. Sapphire Co.*, No. 18-460 BLA (BRB July 26, 2019); *Gibson v. Va. Drilling Co.*, No. 2017-BLA-5364 (Nov. 2, 2020); *Lay v. Cumberland River Coal Corp.*, No.

2017-BLA-5944 (OALJ June 5, 2019); *Stiltner v. A&K Trans.*, No. 2019-BLA-5303 (OALJ May 14, 2019); *Birman v. Lone Mtn. Processing, Inc.*, No. 2015-BLA-5428 (OALJ Mar. 26, 2019); *Brantley v. Big Ridge, Inc.*, No. 2015-BLA-5394 (OALJ Feb. 13, 2019); *Yonts v. ICG Knott Cnty., LLC*, No. 2017-BLA-5737 (OALJ Nov. 5, 2018); *Thomas v. E & R Coal Co.*, No. 2016-BLA-5431 (OALJ June 13, 2018); *Akers v. S. Akers Mining Co.*, No. 2015-BLA-5608 (OALJ July 6, 2017); *In re Gibson* (Aug. 28, 2020); *In re Burke* (May 12, 2020); *In re Stiltner* (May 20, 2019); *In re Birman* (Oct. 15, 2018); *In re Thomas* (Aug. 8, 2018). I was awarded this rate by the U.S. Supreme Court, the U.S. Courts of Appeals for the Fourth, Sixth, and Tenth Circuits, the U.S. District Courts for the Eastern District of Kentucky and the District of New Mexico, the Benefits Review Board, the Office of Administrative Law Judges, and OWCP's District Directors. My prior fee awards are summarized in an attached addendum. Prior to 2018, I submitted fifty-one fee petitions in black lung cases at \$250 per hour and never had my rate found unreasonable by an adjudicator. The U.S. Supreme Court, the U.S. Courts of Appeals for the Fourth, Seventh, and Tenth Circuits, the U.S. Department of Labor's Benefits Review Board, the U.S. Department of Labor's Office of Administrative Law Judges, the Federal Mine Safety and Health Review Commission's Office of Administrative Law Judges, and the U.S. Department of Labor's District Director each awarded me a fee at \$250 per hour. Before I raised my rate in 2015, the U.S. Court of Appeals for the Sixth Circuit, the Benefits Review Board, the Office of Administrative Law Judges, and the District Director's offices awarded me fees at \$225 per hour from my very first black lung fee petition in 2014. Due to their volume, these awards are not attached but are available at: <https://bit.ly/2RXi4KY>

4. I am well-qualified to represent black lung claimants. I represent claimants at all levels of the federal black lung benefits system, from the office of the Department of Labor's District Director to the U.S. Supreme Court. I have represented black lung claimants before the Fourth, Sixth, and Tenth Circuits in cases resulting in published decisions. *See Wilgar Land Co. v. Director, OWCP*, 85 F.4th 828 (6th Cir. 2023); *Samons v. National Mines Corp.*, 25 F.4th 455 (6th Cir. 2022); *Joseph Forrester Trucking v. Director, OWCP*, 987 F.3d 581 (6th Cir. 2021); *Big Horn Coal Co. v. Sadler*, 924 F.3d 1317 (10th Cir. 2019); *Shepherd v. Incoal, Inc.*, 915 F.3d 392 (6th Cir. 2019); *Energy West Mining Co. v. Blackburn*, 857 F.3d 817 (10th Cir. 2017); *Aberry Coal, Inc. v. Fleming*, 847 F.3d 310 (6th Cir. 2017); *E. Associated Coal Corp. v. Director, OWCP [Toler]*, 805 F.3d 502 (4th Cir. 2015); *Brandywine Explosives & Supply v. Director, OWCP [Kennard]*, 790 F.3d 657 (6th Cir. 2015); *Navistar, Inc. v. Forester*, 767 F.3d 638 (6th Cir. 2014). I have successfully represented claimants before the U.S. Supreme Court at the certiorari stage. *See Consolidation Coal Co. v. Director, OWCP [Thompson]*, No. 17-1335; *Peabody Coal Co. v. Director, OWCP [Hill]*, No. 14-1278. I have also authored an amicus brief before the U.S. Supreme Court concerning the black lung benefits system. *See Br. for Nat'l Black Lung Ass'n, Lucia v. SEC*, No. 17-130 (April 2, 2018). I currently represent claimants at each stage before the U.S. Department of Labor and the Sixth Circuit. I have also represented black lung beneficiaries seeking enforcement and additional

compensation in U.S. District Court. *See Rice v. Bituminous Casualty Corp.*, 666 F. Supp. 3d 674 (E.D. Ky. Mar. 31, 2023); *Templeton v. Appolo Fuels, Inc.*, No. 6:19-cv-71, 2021 WL 920982 (E.D. Ky. Mar. 10, 2021); *Thacker v. Old Republic Ins. Co.*, 416 F. Supp. 3d 651 (E.D. Ky. 2019); *Vialpando v. Chevron Mining, Inc.*, No. 1:18-cv-251, 2018 WL 5017754 (D.N.M. Oct. 16, 2018); *Byrge v. Premium Coal Co.*, 301 F. Supp. 3d 785 (E.D. Tenn. 2017). From 2014 to 2018, I was the lead author of *Devil in the Dust*, an online clearinghouse for black lung issues with regular coverage of appellate decisions. In 2018, the *West Virginia Law Review* published an article I wrote called “Black Lung in the 21st Century: Disease, Law, and Policy.” In 2014, the *University of Pennsylvania Law Review Online* published an essay I wrote about changes to black lung benefits law. I have made presentations about black lung benefits law at events held by the National Black Lung Association, the National Coalition of Black Lung and Respiratory Disease Clinics, the West Virginia Black Lung Conference, the University of Virginia’s College at Wise, the Harvard Kennedy School’s Center for Public Leadership, Appalachian Citizens’ Law Center, the *West Virginia Law Review*, a law journal at the University of Kentucky College of Law, and the University of New Mexico Health Sciences Center School of Medicine’s Project ECHO. I have also successfully represented a miner with black lung before the Federal Mine Safety and Health Review Commission in a discrimination case. *See McGlothlin v. Dominion Coal Corp.*, 37 FMSHRC 1256 (2015). Apart from my black lung work, I represent clients in a broad variety of legal matters, mostly civil appeals, frequently in public benefits cases. *See, e.g., Doucette v. Commissioner*, 13 F.4th 484 (6th Cir. 2021); *Potter v. Commissioner*, 9 F.4th 369 (6th Cir. 2021); *Griffith v. Commissioner*, 987 F.3d 556 (6th Cir. 2021); *Hicks v. Colvin*, 214 F. Supp. 3d 627 (E.D. Ky. 2016), *aff’d* 909 F.3d 786 (6th Cir. 2018); *U.S. v. Coppenger*, 775 F.3d 799 (6th Cir. 2015); *Ky. Unemployment Insurance Commission v. Miles*, No. 2018-SC-455, 2020 WL 2092021 (Ky. April 30, 2020); *Lazar v. Lazar*, 678 S.W.3d 472 (Ky. App. 2023); *Young v. House*, 648 S.W.3d 706 (Ky. App. 2022).

6. My rate incorporates administrative assistants and direct costs (e.g., routine printing and postage) as overhead. My access to Westlaw and Bloomberg Law databases is also built into my rate.

7. Therefore, \$325 per hour is a reasonable rate for my time, including my older time which should be awarded at my current rate to account for delay.

8. I got assistance in this case from Justin Apperson, a staff attorney and Equal Justice Works Opioid Response Fellow at AppalReD Legal Aid. Mr. Apperson is a recent graduate of William & Mary Law School. Since joining AppalReD Legal Aid, he represents clients in nearly all our practice areas including public benefits law. Mr. Apperson had 2.2 billable hours for which \$250 per hour is a reasonable rate. I also got assistance from Michael Millan, a law student at the University of Pennsylvania. Mr. Millan performed 10.5 billable hours of research assistance for which \$100 per hour, is a reasonable (likely below market) rate.

9. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 30th day of July 2025.

Respectfully submitted,



EVAN B. SMITH

ADDENDUM - List of Prior Fee Awards for Evan Smith

\$325 per Hour (Customary Rate from March 2024 to Present)

U.S. Court of Appeals

1. *Island Creek Coal Co. v. Director, OWCP [Hughes]*, No. 24-3244 (6th Cir. June 5, 2025)

U.S. Department of Labor's Benefits Review Board

2. *Hughes v. Island Creek Coal Co.*, No. 23-0029 BLA (BRB June 25, 2025)
3. *Holt v. Consolidation Coal Co.*, No. 23-0407 BLA (BRB June 25, 2025)
4. *Burke v. Kiah Creek Mining*, No. 20-0218 BLA (BRB Feb. 14, 2025)

U.S. Department of Labor's Office of Administrative Law Judges

5. *Hughes v. Island Creek Coal Co.*, No. 2023-BLA-05874 (OALJ April 23, 2025)
6. *Holt v. Consolidation Coal Co.*, No. 2022-BLA-05552 (OALJ Sept. 27, 2024)

U.S. Department of Labor's OWCP District Directors

7. *In re Holt* (BXHB6-2014219 May 20, 2025)
8. *In re Hall* (BWXHB-2014213 April 29, 2025)
9. *In re Caudill* (2B3KT-2018152 April 29, 2025)
10. *In re Hall* (BWXHB-2014213 Dec. 19, 2024)
11. *In re Spatafore* (B49KD-2011084 July 19, 2024)
12. *In re Adams* (BGM7P-2013284 July 7, 2024)
13. *In re Gray* (2B5TL-2018248 May 8, 2024)

\$300 per Hour (Customary Rate from March 2021 to March 2024)

U.S. Court of Appeals

1. *Wilgar Land Co. v. Director, OWCP [Adams]*, No. 22-3709 (6th Cir. Dec. 13, 2023)
2. *H & P Coal Co. v. Director, OWCP [Mabe]*, No. 20-3331 (6th Cir. June 14, 2021)
3. *Manalapan Mining Co. v. Director, OWCP [Burkhart]*, No. 20-3240 (6th Cir. May 12, 2021)

U.S. District Courts

4. *Templeton v. Appolo Fuels, Inc.*, No. 6:19-cv-71 (E.D. Ky. Sept. 9, 2021)

U.S. Department of Labor's Benefits Review Board ("BRB")

5. *Ison v. Arch of Ky./Apogee Coal Co.*, No. 22-0526 BLA (Feb. 20, 2024)
6. *Caudill v. Incoal, Inc.*, No. 22-0440 BLA (Jan. 2, 2024)
7. *Holt v. Consolidation Coal Co.*, No. 21-0419 BLA (BRB Sept. 5, 2023)
8. *Spatafore v. Consolidation Coal Co.*, No. 20-0193 BLA (BRB Jan. 6, 2023)

9. *Kirk v. Ruth Contracting Corp.*, No. 18-0405 BLA (BRB June 22, 2022)
10. *Toler v. Director, OWCP*, No. 20-0320 BLA (BRB April 25, 2022)
11. *Martha Gray v. Grays Knob Coal Co.*, No. 20-503 BLA (BRB Mar. 23, 2022)
U.S. Department of Labor's Office of Administrative Law Judges
12. *Waddles v. National Mines Corp.*, No. 2020-BLA-05275 (OALJ July 10, 2024)
13. *Adams v. Wilgar Land Co.*, No. 2011-BLA-06068 (OALJ Mar. 26, 2024)
14. *Holt v. Consolidation Coal Co.*, No. 2017-BLA-05314 (OALJ Jan. 22, 2024)
15. *Anderson v. Canada Coal Co.*, No. 2021-BLA-05066 (OALJ Jan. 8, 2024)
16. *Ison v. Arch of Ky/Apogree Coal Co.*, No. 2017-BLA-05578 (OALJ Oct. 27, 2023)
17. *Hughes v. Island Creek Coal Co.*, No. 2020-BLA-05556 (OALJ June 30, 2023)
18. *Caudill v. Incoal, Inc.*, No. 2019-BLA-05910 (OALJ June 30, 2023)
19. *Brummett v. Left Fork Mining Co.*, No. 2019-BLA-05809 (OALJ Feb. 23, 2023)
20. *Johnson v. Sapphire Coal Co.*, No. 2020-BLA-05524 (OALJ Nov. 21, 2022)
21. *Evans v. Dixie Pine Coal Co.*, No. 2012-BLA-06228 (OALJ Aug. 17, 2022)
22. *Spatafore v. Consolidation Coal Co.*, No. 2020-BLA-06146 (OALJ July 7, 2022)
23. *Salyers v. Ky. Prince Mining Co.*, No. 2021-BLA-06063 (OALJ June 13, 2022)
24. *Give[n]s v. Director, OWCP*, OALJ No. 2016-BLA-05211 (OALJ May 17, 2022)
25. *Kirk v. Ruth Contracting Corp.*, OALJ No. 2016-BLA-05836 (OALJ Oct. 22, 2021)
U.S. Department of Labor's OWCP District Directors
26. *In re Holt* (2BPNF-2019254 June 9, 2025)
27. *In re Hamby* (BGZRM-2022307 Jan. 3, 2025)
28. *In re Adams* (BGM7P-2013284 July 17, 2024)
29. *In re Anderson* (Mar. 7, 2024)
30. *In re Evans* (Dec. 1, 2023)
31. *In re Keathley* (Nov. 13, 2023)
32. *In re Waddles* (Oct. 27, 2023) – survivor's claim
33. *In re Waddles* (Oct. 27, 2023) – miner's claim
34. *In re Shepherd* (Oct. 19, 2023)
35. *In re Evans* (Oct. 17, 2023)
36. *In re Holt* (Oct. 5, 2023)
37. *In re Lay* (Sept. 19, 2023)
38. *In re Hughes* (July 7, 2023)
39. *In re Spatafore* (May 16, 2023)
40. *In re Mabe* (May 16, 2023)
41. *In re Mabe* (April 21, 2023)
42. *In re Salyers* (Mar. 6, 2023)
43. *In re Stamper* (Jan. 5, 2023)
44. *In re Hess* (Nov. 17, 2022)
45. *In re Coleman* (Sept. 7, 2022)
46. *In re Caudill* (Aug. 3, 2022)
47. *In re Johnson* (July 7, 2022)
48. *In re Fields* (July 7, 2022)
49. *In re Reed* (May 17, 2022)
50. *In re Burkhardt* (April 18, 2022) – miner's claim

51. *In re Burkhardt* (April 18, 2022) – survivor’s claim
52. *In re Childers* (Feb. 23, 2022)
53. *In re Hamby* (Sept. 24, 2021)
54. *In re Blanton* (Aug. 3, 2021)
55. *In re Curry* (May 12, 2021)

\$275 per Hour (Customary Rate from January 2018 to February 2021)

U.S. Supreme Court

1. *Consolidation Coal Co. v. Director, OWCP [Thompson]*, No. 17-1335 (S. Ct. Dec. 3, 2018)

U.S. Courts of Appeals

2. *Aberry Coal, Inc. v. Fields*, No. 19-3483 (6th Cir. Jan. 6, 2021)
3. *Enterprise Mining Co. v. Childers*, No. 19-3561 (6th Cir. June 17, 2020)
4. *Kentucky Prince Mining Co. v. Salyers*, No. 19-3056 (6th Cir. May 19, 2020)
5. *Coleman v. Christen Coleman Trucking*, No. 18-3317 (6th Cir. April 13, 2020)
6. *Good Coal Co. v. Haynes*, No. 19-3142 (6th Cir. April 1, 2020)
7. *Big Horn Coal Co. v. Sadler*, No. 17-9558 (10th Cir. Aug. 2, 2019)
8. *Kenwest Terminals, LLC v. Salyers*, No. 17-4058 (6th Cir. Dec. 4, 2018)
9. *Westmoreland Coal Co. v. Director, OWCP [Mabe]*, No. 16-1210 (4th Cir. Oct. 31, 2018)
10. *Island Creek Coal Co. v. Hunt*, No. 17-3994 (6th Cir. Sept. 11, 2018)
11. *Westmoreland Coal Co. v. Director, OWCP [Maggard]*, No. 17-1996 (4th Cir. June 6, 2018)
12. *Westmoreland Coal Co. v. Director, OWCP [Maggard]*, No. 17-1996 (4th Cir. May 23, 2018)
13. *Island Creek Coal Co. v. Director, OWCP [Conley]*, No. 16-1453 (4th Cir. April 6, 2018)

U.S. District Courts

14. *Thacker v. Old Republic Ins.*, No. 7:18-cv-85 (E.D. Ky. Jan. 24, 2020)
15. *Vialpando v. Chevron, Inc.*, No. 1:18-cv-251 (D.N.M. July 10, 2019)

U.S. Department of Labor’s Benefits Review Board (“BRB”)

16. *Ramey v. TRC Mining Corp.*, No. 19-0204 BLA (BRB May 21, 2021)
17. *McClanahan v. Brem Coal Co.*, No. 15-0348 BLA (BRB April 14, 2021)
18. *Bailey v. Incoal, Inc.*, No. 17-0532 BLA (BRB Mar. 3, 2021)
19. *Salyers v. Kentucky Prince Mining Co.*, No. 17-0415 BLA (BRB Dec. 10, 2020)
20. *Lay v. Cumberland River Coal Co.*, No. 19-0289 BLA (BRB Oct. 29, 2020)
21. *Hess v. Beatrice Pocahontas Co.*, No. 19-0403 BLA (BRB Oct. 23, 2020)
22. *Blanton v. Bizwil, Inc.*, No. 18-0150 BLA (BRB Oct. 16, 2020)
23. *Coleman v. Christin Coleman Trucking*, No. 17-0262 BLA (BRB June 9, 2020)
24. *Osborne v. Johnson Floyd Coal Co.*, No. 18-0075 BLA (BRB May 7, 2020)
25. *Gentry v. B & W Resources, Inc.*, No. 18-0382 BLA (BRB May 5, 2020)
26. *Stiltner v. A & K Transportation, Inc.*, No. 18-0388 BLA (BRB April 28, 2020)
27. *Brantley v. B[fig] Ridge, Inc.*, No. 16-0166 BLA (BRB Aug. 12, 2019)
28. *Thompson v. Consolidation Coal Co.*, No. 15-356 BLA (BRB May 29, 2019)

29. *Murley v. Appolo Fuels, Inc.*, No. 17-664 BLA (BRB May 9, 2019)
30. *Mabe v. Westmoreland Coal Co.*, No. 17-0485 BLA (BRB Mar. 7, 2019)
31. *Birman v. Lone Mtn. Processing, Inc.* No. 17-0416 BLA (BRB Dec. 7, 2018)
32. *Stevens v. Howard Bowers Contracting Co.*, No. 17-0383 BLA (BRB Aug. 22, 2018)
33. *Woods v. Consolidation Coal Co.*, No. 17-0389 BLA (BRB July 17, 2018)
34. *Logan v. Golden Oak Mining Co.*, No. 17-0598 BLA (BRB Mar. 14, 2018)
- U.S. Department of Labor's Office of Administrative Law Judges ("OALJ")
35. *Gray v. Grays Knob Coal Co.*, No. 2016-BLA-05687 (June 30, 2022)
36. *Gentry v. B & W Resources, Inc.*, No. 2015-BLA-05537 (May 20, 2021)
37. *Logan v. Director, OWCP*, No. 2015-BLA-05347 (Jan. 8, 2021)
38. *Gibson v. Va. Drilling Co.*, No. 2017-BLA-5364 (Nov. 2, 2020)
39. *Blanton v. Bizwil, Inc.*, No. 2016-BLA-5424 (OALJ Oct. 26, 2020)
40. *Hall v. Consol of Ky, Inc.*, No. 2018-BLA-6200 (OALJ Oct. 6, 2020)
41. *Perry v. Double A Mining, Inc.*, No. 2018-BLA-5630 (OALJ Sept. 9, 2020)
42. *Lykens v. C&H Coal Co.*, No. 2015-BLA-5871 (OALJ July 16, 2020)
43. *Gray v. Grays Knob Coal Co.*, No. 2019-BLA-5419 (OALJ July 16, 2020)
44. *Toler v. Director, OWCP*, No. 2017-BLA-5472 (OALJ July 16, 2020)
45. *Curry v. Director, OWCP*, No. 2019-BLA-5555 (OALJ May 27, 2020)
46. *Ramey v. TRC Mining Corp.*, No. 2017-BLA-5034 (OALJ June 28, 2019)
47. *Lay v. Cumberland River Coal Corp.*, No. 2017-BLA-5944 (OALJ June 5, 2019)
48. *Lewis v. Teco Coal Co.*, No. 2018-BLA-6218 (OALJ May 14, 2019)
49. *Murley v. Appolo Fuels, Inc.*, No. 2019-BLA-5122 (OALJ April 2, 2019)
50. *Birman v. Lone Mtn. Processing, Inc.*, No. 2015-BLA-5428 (OALJ Mar. 26, 2019)
51. *Woods v. Consolidation Coal Co.*, No. 2017-BLA-5296 (OALJ Mar. 20, 2019)
52. *Boggs v. Director, OWCP*, No. 2018-BLA-5711 (OALJ Feb. 25, 2019)
53. *Combs v. Cumberland River Coal Co.*, No. 2018-BLA-5808 (OALJ Feb. 14, 2019)
54. *Brantley v. Big Ridge, Inc.*, No. 2015-BLA-5394 (OALJ Feb. 13, 2019)
55. *Murley v. Appolo Fuels, Inc.*, No. 2013-BLA-6134 (OALJ Jan. 8, 2019)
56. *Yonts v. ICG Knott County, LLC*, No. 2017-BLA-5737 (OALJ Nov. 5, 2018)
57. *Miller v. Director, OWCP*, No. 2017-BLB-1, (OALJ Oct. 3, 2018)
58. *Stevens v. Howard Bowers Contracting Co.*, No. 2016-BLA-05411 (OALJ Aug. 28, 2018)
59. *Johnson v. Ky. Employers Mut. Ins.*, No. 2017-BLA-5256 (OALJ June 26, 2018)
60. *Thomas v. E & R Coal Co.*, No. 2016-BLA-5431 (OALJ June 13, 2018)
61. *Logan v. Golden Oak Mining Co.*, No. 2012-BLA-05331 (OALJ Mar. 22, 2018)
62. *Fox v. Enterprise Mining Co.*, No. 2016-BLA-05090 (OALJ Feb. 28, 2018)
63. *Akers v. S. Akers Mining Co.*, No. 2015-BLA-5608 (OALJ July 6, 2017)
- U.S. Department of Labor's OWCP District Directors
64. *In re Ramey* (Sept. 15, 2021)
65. *In re Perry* (July 16, 2021)
66. *In re Murley* (Mar. 31, 2021)
67. *In re Stiltner* (Feb. 25, 2021) – miner's claim
68. *In re Stiltner* (Feb. 25, 2021) – survivor's claim

69. *In re Osborne* (Feb. 2, 2021)
70. *In re Daniels* (Jan. 5, 2021) – survivor’s claim
71. *In re Haynes* (Dec. 30, 2020) – miner’s claim
72. *In re Haynes* (Dec. 30, 2020) – survivor’s claim
73. *In re Logan* (Dec. 22, 2020)
74. *In re Gentry* (Dec. 9, 2020)
75. *In re Birman* (Nov. 27, 2020)
76. *In re Brantley* (Nov. 9, 2020)
77. *In re Gibson* (Aug. 28, 2020)
78. *In re Gentry* (Aug. 26, 2020)
79. *In re Toler* (July 6, 2020)
80. *In re Hall* (June 12, 2020)
81. *In re Burke* (May 12, 2020)
82. *In re Ramey* (Mar. 4, 2020)
83. *In re Hunt* (Jan. 24, 2020)
84. *In re Anderson* (Dec. 27, 2019)
85. *In re Thompson* (Dec. 13, 2019)
86. *In re Blackburn* (Nov. 1, 2019)
87. *In re Newsome* (Oct. 24, 2019)
88. *In re Conley* (July 30, 2019)
89. *In re Lewis* (July 22, 2019)
90. *In re Daniels* (July 22, 2019)
91. *In re Johnson* (June 24, 2019)
92. *In re Murley* (May 6, 2019)
93. *In re Boggs* (April 11, 2019)
94. *In re Bonar* (Feb. 15, 2019)
95. *In re Stevens* (Dec. 6, 2018)
96. *In re Mitchell* (Nov. 5, 2018)
97. *In re Birman* (Oct. 15, 2018)
98. *In re Chipps* (Aug. 22, 2018)
99. *In re Thomas* (Aug. 8, 2018)
100. *In re Harrison* (June 26, 2018)
101. *In re McElroy* (June 1, 2018)
102. *In re Blackburn* (May 30, 2018)
103. *In re Fox* (April 11, 2018)
104. *In re McElroy* (Mar. 26, 2018)
105. *In re Fleming* (Jan. 26, 2018)

\$250 per Hour (Customary Rate from October 2015 through December 2017)

U.S. Supreme Court

1. *Peabody Coal Co. v. OWCP [Hill]*, No. 14-1278 (S. Ct. Feb. 29, 2016)

U.S. Courts of Appeals

2. *Consolidation Coal Co. v. Director, OWCP [Thompson]*, No. 16-9539 (10th Cir.

Feb. 20, 2018)

3. *Energy West Mining Co. v. Blackburn*, No. 16-9533 (10th Cir. June 12, 2017)
4. *Island Creek Coal Co. v. Harrison*, No. 16-2360 (4th Cir. Dec. 19, 2016)
5. *Heritage Coal Co. v. OWCP [Mitchell]*, No. 15-2038 (7th Cir. Jan. 8, 2016)
6. *E. Associated Coal Corp. v. Director, OWCP [Toler]*, No. 14-1923 (4th Cir. Nov. 24, 2015)

U.S. Department of Labor's Benefits Review Board ("BRB")

7. *Templeton v. Debra Lynn Coals, Inc.*, BRB No. 16-0188 BLA (BRB Mar. 26, 2018)
8. *Sadler v. Big Horn Coal Co.*, BRB No. 16-0395 BLA (BRB Mar. 26, 2018)
9. *Bonar v. Quarto Mining Co.*, No. 17-0037 BLA (BRB Jan. 24, 2018)
10. *Vialpando v. Chevron Mining, Inc.*, No. 16-573 BLA (BRB Dec. 7, 2017)
11. *Hintze v. Plateau Mining Corp.*, No. 15-0301 BLA (BRB Jan. 6, 2016)

U.S. Department of Labor's Office of Administrative Law Judges ("OALJ")

12. *Sadler v. Big Horn Coal Co.*, No. 2011-BLA-05460 (OALJ Dec. 11, 2020)
13. *Sadler v. Big Horn Coal Co.*, No. 2015-BLA-05366 (OALJ June 19, 2020)
14. *McElroy v. Cumberland River Coal Co.*, No. 2015-BLA-5868 (OALJ Sept. 14, 2018)
15. *Cook v. Consol of Ky.*, No. 2015-BLA-5837 (OALJ May 8, 2018)
16. *Bonar v. Quarto Mining Co.*, No. 2011-BLA-5698 (OALJ Mar. 27, 2018)
17. *Cook v. Consol of Ky.*, No. 2015-BLA-5837 (OALJ Jan. 30, 2018)
18. *Templeton v. Debra Lynn Coals, Inc.*, No. 2011-BLA-6036 (OALJ Jan. 25, 2018)
19. *Stiltner v. Robert Coal Co.*, No. 2011-BLA-6237 (OALJ Jan. 18, 2018)
20. *Blackburn v. Kencole Equipment, Inc.*, No. 2013-BLA-5603 (OALJ Oct. 17, 2017)
21. *Carver v. Black Energy, Inc.*, No. 2015-BLA-5541 (OALJ Aug. 9, 2017)
22. *Woods v. Consolidation Coal Co.*, No. 2012-BLA-5547 (OALJ July 18, 2017)
23. *Bailey v. Incoal, Inc.*, No. 2013-BLA-5416 (OALJ June 8, 2017)
24. *Goolie v. McElroy Coal Co.*, No. 2016-BLA-5348 (OALJ Mar. 29, 2017)
25. *Coleman v. Christin Coleman Trucking*, No. 2014-BLA-5241 (OALJ Feb. 14, 2017)
26. *Miller v. Director, OWCP*, No. 2015-BLA-05672 (OALJ Jan. 12, 2017)
27. *Parks v. Sidney Coal Co.*, No. 2014-BLA-05240 (OALJ Nov. 15, 2016)
28. *Manasco v. Director, OWCP*, No. 2015-BLA-05809 (OALJ June 27, 2016)
29. *Bishop v. Sidney Coal Co.*, No. 2015-BLA-05649 (OALJ May 9, 2016)
30. *Seales v. Director, OWCP*, No. 2013-BLA-05986 (OALJ Feb. 12, 2016)
31. *Caudill v. Bates Contracting & Constr., Inc.*, No. 2015-BLA-05901 (OALJ Dec. 29, 2015)
32. *Blevins v. Triple Elkhorn Mining Co.*, No. 2010-BLA-05148 (OALJ Dec. 14, 2015)

Federal Mine Safety and Health Review Commission's Office of Administrative Law Judges

33. *McGlothlin v. Dominion Coal Corp.*, 38 FMSHRC 2310 (FMSHRC OALJ Aug. 30, 2016)

U.S. Department of Labor's OWCP District Directors

34. *In re Musick* (Dec. 28, 2017)
35. *In re Cook* (Dec. 5, 2017)
36. *In re Miles* (Oct. 12, 2017)
37. *In re Worley* (June 6, 2017)
38. *In re Miller* (Mar. 14, 2017)
39. *In re Goolie* (Feb. 9, 2017)
40. *In re Byrge* (Nov. 30, 2016)
41. *In re Maggard* (July 22, 2016)
42. *In re Manasco* (July 5, 2016)
43. *In re Bishop* (June 15, 2016)
44. *In re Christian* (Mar. 8, 2016)
45. *In re Caudill* (Dec. 15, 2015)
46. *In re Toler* (Dec. 14, 2015)

\$225 per Hour (Customary Rate from 2014 until October 2015)

U.S. Courts of Appeals

1. *Premium Coal Co. v. Director, OWCP [Byrge]*, No. 14-3719 (6th Cir. Nov. 19, 2015)
2. *Brandywine Explosives & Supply v. Director, OWCP [Kennard]*, No. 14-3672 (6th Cir. Sept. 25, 2015)
3. *Bull Creek Coal Corp. v. Director, OWCP [Trimble]*, No. 14-3473 (6th Cir. July 29, 2014)

U.S. Department of Labor's Benefits Review Board ("BRB")

4. *Trimble v. Bull Creek Coal Corp.* No. 13-335 BLA (BRB July 9, 2014)

U.S. Department of Labor's OWCP District Directors

5. *In re Brantley* (Sept. 25, 2017)
6. *In re Carver* (June 9, 2015)
7. *In re Tolliver* (Feb. 13, 2015)
8. *In re Cook* (Feb. 2, 2015)
9. *In re Caudill* (Dec. 2, 2014)
10. *In re Evans* (July 28, 2014)
11. *In re Brown* (April 16, 2014)

DECLARATION OF WOLFE WILLIAMS & AUSTIN ATTORNEYS
BRAD AUSTIN, DONNA SONNER, AND CAMERON BLAIR
IN SUPPORT OF FEES AWARD

Commonwealth of Virginia
County of Wise

BRAD AUSTIN, DONNA SONNER, AND CAMERON BLAIR, state as follows:

1. The attorneys from our office which are included in this fee petition are in good standing with their respective bars. Attorney Austin has been licensed in the Commonwealth of Virginia since 2013. Attorney Sonner has been licensed in Tennessee since 1988. Attorney Blair has been licensed in the Commonwealth of Kentucky since 2013 and in West Virginia since 2012.

2. The black lung benefits claim of David Howard required 5.40 hours of Attorney Sonner's time; 4.40 hours of Attorney Austin's time; and 3.20 hours of Attorney Blair's time. The respective attorneys' time is itemized and explained in the attached tables, which are based on records made concurrently while working on this case.

3. The attorneys' customary hourly billing rates are \$375 per hour for Attorney Sonner; \$325 per hour for Attorney Austin; and \$275 per hour for Attorney Blair. These attorneys have hundreds of fee awards at their prior hourly rates of \$350 for Attorney Sonner; \$300 per hour for Attorney Austin; and \$250 per hour for Attorney Blair, and each of their rates have increased recently \$25 per hour to account for inflation, increased experience, and other factors. *See e.g. Donald Spuduck v. Director, OWCP*, 2023-BLO-00046 (July 28, 2025); *Margaret M. Bailey v. ICG Beckley LLC and Director, OWCP*, Case No. 2024-BLA-05657 (July 28, 2025); *Glenn Riggs v. Jacobs Ranch Coal LLC and Director, OWCP*, Case No. 2023-BLA-05143 (July 30, 2025); *Yolanda J. Yazzie, obo and survivor of Jerome K. Yazzie*, Case Nos. 2023-BLA-05301 and 2023-BLA-05491 (July 30, 2025).

4. The three attorneys from Wolfe Williams & Austin are well-qualified to represent black lung claimants. They represent claimants at all levels of the federal black lung benefits system, from the office of the Department of Labor's District Director to the United States Supreme Court. These attorneys have drafted arguments before the United States Supreme Court; the United States Courts of Appeal for the Third, Fourth, Sixth, Seventh, Ninth, Tenth, and Eleven Circuits; the Benefits Review Board; the Office of Administrative Law Judges; and participated in dozens of oral arguments.

5. Attorneys Sonner, Austin, and Blair declare under penalty of perjury that the foregoing is true and correct.

Executed on this 1st day of August, 2025.

Respectfully submitted,

/s/ Brad A. Austin

Brad A. Austin
VA Bar: 86509

/s/ Donna Sonner

Donna Sonner
TN Bar: 013057

/s/ Cameron Blair

Cameron Blair
KY Bar: 95376
WV Bar: 11958

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was e-filed and served via USPS First Class and email on the following on this 5th day of August 2025:

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*Attorney for the Director, Office of Workers' Compensation Programs,
U.S. Department of Labor*

with ORIGINAL to

SUPREME COURT OF THE UNITED STATES
1 First Street, NE
Washington, DC 20543



Evan Barret Smith