

**In The
Supreme Court of the United States**

CONSOLIDATION COAL COMPANY,

Petitioner,

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
DEPARTMENT OF LABOR and ROBERT THOMPSON,

Respondents.

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

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

Evan Barret Smith
Counsel of Record
APPALACHIAN CITIZENS' LAW CENTER, INC.
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Counsel for Respondent Robert Thompson

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MOTION FOR AWARD OF ATTORNEYS FEES AND COSTS

Respondent Robert Thompson moves the Court for an award of attorney's fees and costs for his attorney at Appalachian Citizens' Law Center, Inc. Appalachian Citizens' Law Center requests an award of \$15,885.13 representing \$14,732.50 in fees and \$1,152.63 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 a time itemization and a declaration from counsel supporting this request.

This award would be payable by Consolidation Coal Co. ("the Employer") 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.

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.").

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, Mr. Thompson supports this request with the following information.

2. THE REQUESTED FEES AND COSTS ARE REASONABLE.

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

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.² *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.”

Appalachian Citizens’ Law Center is requesting a fee based on attorney Evan Smith’s customary hourly rate of \$275 and law clerk Tessa Adkins’s customary hourly rate of \$100. *See* Ex. A, Time and Expense Itemization.

Mr. Smith’s 27.8 billable hours warrants a fee award of \$7,645.00 and Ms. Adkins’s 70.6 billable hours warrants a fee award of \$7,060.00.

² There is a shortage of lawyers who are willing to represent black lung claimants due to the complexity of the cases and the often long delays in receiving fees even when a case is ultimately successful. *See* U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-10-7, BLACK LUNG BENEFITS PROGRAM: ADMINISTRATIVE AND STRUCTURAL CHANGES COULD IMPROVE MINERS’ ABILITY TO PURSUE CLAIMS 25–27 (2009), *available at* <http://www.gao.gov/assets/300/297807.pdf>. It has been over a decade since Mr. Thompson filed this claim and his lawyers are just now able to be paid for their work on his behalf. Sadly, Mr. Thompson’s lawyer before the agency (Jon Wilderman) passed away before the case was resolved, meaning that Mr. Wilderman never got to see the fruits of his labor.

The attorney's fees requested are reasonable in light of the factors specified in § 725.366. Appalachian Citizens' Law Center's requested hours are modest and efficient due to its representation of Mr. Thompson before the Tenth Circuit, its familiarity with the legal issues raised in this case, and its involvement of a skilled law student.

Mr. Smith's and Ms. Adkins's hourly rates and total request are reasonable in consideration of their 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 recent cases the Sixth Circuit awarded \$425 per hour to attorney Joe Wolfe. *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. The main office of Mr. Wolfe is only 31.7 miles away from Appalachian Citizens' Law Center's. In *Westmoreland Coal Co. v. Director, OWCP [Maggard]*, 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

costs to Roger Forman at the rate of \$350 per hour for a total award of \$27,261.07. Paralegals are regularly awarded \$100 to \$125 for relevant work.³

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 [Gosnell]*, 724 F.3d 561, 571–72 (4th Cir. 2013); *B&G Mining, Inc. v. Director, OWCP [Bentley]*, 522 F.3d 657 (6th Cir. 2008).

When Mr. Smith worked on Mr. Thompson’s case before the Court, he was awarded fees based on his hourly rate as shown by the attached declaration. *See* Ex B, Declaration of Counsel in Support of Request.

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

Appalachian Citizens’ Law Center seeks to recover its printing costs of \$1,152.63. As a matter of billing judgment, it is waiving its costs related to its attorney’s admission to the bar of this Court. *See* Ex. A.

The total award requested for this case—\$15,885.13—is a reasonable charge for the successful defense of a black lung award before the Court.

³ *See, e.g., 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. 16-4142 (6th Cir. Nov. 29, 2017) (awarding \$100/hour for legal assistant).

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

CONCLUSION

WHEREFORE, Respondent Robert Thompson requests the Court award \$15,885.13 in attorney's fees and costs to Appalachian Citizens' Law Center to be paid by Consolidation Coal Co.

Respectfully submitted,



Evan Barret Smith

Counsel of Record

APPALACHIAN CITIZENS' LAW CENTER, INC.

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Date: October 25, 2018

**EXHIBIT A - TIME AND EXPENSE
ITEMIZATION**

Appalachian Citizens' Law Center, Inc.

317 Main Street
Whitesburg, KY 41858
Phone: (606) 633-3929 | Fax: (606) 633-3925

Invoice Date: October 24, 2018

Invoice Amount: \$15,885.13

Matter: *Consolidation Coal Co. v. Director, OWCP [Thompson]* (Supreme Court No. 17-1335)

Attorney's Fees (Attorney Evan Smith (E.S.) at \$275/hour and Law Clerk Tessa Adkins (T.A.) at \$100/hour)

3/20/2018	reviewed email from Julie Kershner of Becker Gallagher notifying me of cert. petition; skimming cert. petition and drafting memo to Steve Sanders (Director of Appalachian Citizens' Law Center), Wes Addington (Associate Director of Appalachian Citizens' Law Center), and Roxanne Wilderman (widow of Jon Wilderman)	E.S.	.20	\$55.00
3/23/2018	drafted Supreme Court bar admission form; met with John Rosenberg to get him to sign it as the movant; sent to Steve Sanders for his signature as well; drafted cover letter	E.S.	1.00	\$275.00
4/9/2018	reviewed notice of docketing as sent by Cheryl Intravaia	E.S.	.10	\$27.50
4/12/2018	reviewed letter from Supreme Court saying that cert. petition had been filed	E.S.	.10	No Charge
4/18/2018	reviewed motion from DOL seeking additional time and order granting motion	E.S.	.10	\$27.50
4/23/2018	reviewed S.Ct. docket and gov't's motion to extension and order granting (.2); drafted memo to Steve Sanders and Wes Addington to discuss whether to file a response in opposition (.2); reviewed response from Steve and replying (.1)	E.S.	.50	\$137.50
5/16/2018	Started drafting opposition brief; reviewed email from Sean Bajkowski of DOL seeking consent to extension and responded	E.S.	1.50	\$412.50
5/17/2018	reviewed DOL's motion for extension of time	E.S.	.10	\$27.50
5/18/2018	reviewed order granting extension	E.S.	.10	\$27.50
5/29/2018	conference with law student Tessa Adkins to delegate additional drafting of brief	E.S.	.80	\$220.00
5/29/2018	conferenced with Evan Smith; read petition	T.A.	2.20	\$220.00
5/30/2018	continued to read petition; researched issues related	T.A.	6.00	\$600.00

	to questions presented			
6/1/2018	continued research; began to outline response brief	T.A.	6.30	\$630.00
6/4/2018	drafting response brief	T.A.	6.50	\$650.00
6/5/2018	continued drafting reponse brief	T.A.	6.00	\$600.00
6/5/2018	reviewing portion of Tessa's draft and giving feedback	E.S.	.20	No Charge
6/6/2018	continued drafting reponse brief	T.A.	6.90	\$690.00
6/7/2018	continued drafting reponse brief	T.A.	4.30	\$430.00
6/8/2018	continued drafting reponse brief	T.A.	5.50	\$550.00
6/9/2018	continued drafting reponse brief	T.A.	1.10	\$110.00
6/11/2018	editing draft of cert. opp. and drafting additional parts (2.5); conferencing with Tessa Adkins (no charge)	E.S.	2.50	\$687.50
6/11/2018	conferencing with Evan (no charge); continued drafting brief	T.A.	5.30	\$530.00
6/12/2018	continued drafting reponse brief	T.A.	6.00	\$600.00
6/12/2018	continued revising brief (.5); working with Tessa to analyze areas for factual challenge, involved reaching out to other attorneys, epidemiologists, and physicians and doing independent research (2.1); delegating additional research areas to Tessa (no charge); reviewing cert. petition in detail (.8)	E.S.	3.40	\$935.00
6/13/2018	continued drafting reponse brief	T.A.	5.80	\$580.00
6/13/2018	finished reviewing cert. petition in detail (.3); conferencing with Tessa Adkins on briefing approach and strategy; conducting legal research and providing relevant authorities (1.2)	E.S.	1.50	\$412.50
6/14/2018	continued drafting reponse brief	T.A.	3.00	\$300.00
6/15/2018	reviewing and marking up Tessa's draft from yesterday; drafted additional portions while conferencing with Tessa; reviewing Supreme Court rule on required brief contents	E.S.	5.30	\$1,457.50
6/15/2018	continued drafting reponse brief	T.A.	3.50	\$350.00
6/16/2018	editing brief	E.S.	2.00	\$550.00
6/17/2018	continued drafting reponse brief	T.A.	2.20	\$220.00
6/17/2018	continued editing brief and drafting additional parts	E.S.	2.20	\$605.00
6/18/2018	drafting table of authorities and making other revisions; conferencing with Tessa about status of brief; sending draft of brief to printers (Cockle); sending draft to Steve Sanders and Wes Addington; returned call from Cockle to discuss status of brief and logistics for finalizing	E.S.	1.80	\$495.00
6/20/2018	reviewing proof from Cockle; responding to their edits; making additional edits; and drafting additional portions (1.8) drafting email to Wes and Steve to seek their edits; reviewing Tessa's edits and making additional changes (.2)	E.S.	2.00	\$550.00
6/21/2018	reviewed feedback from Steve; reviewed feedback from Wes; made additional edit to draft and sent to	E.S.	.30	\$82.50

6/22/2018	Cockle (.3) reviewed final proof and making final edits (1.0); reviewed DOL's motion for extension (.1) received final version back and e-filed (.2)	E.S.	1.30	\$357.50
6/23/2018	Reviewed docket entry granting extension to DOL (no charge)	E.S.	.10	\$27.50
6/28/2018	reviewed email with docket update; reviewed docket	E.S.	.10	\$27.50
7/23/2018	reviewed email from DOJ and docket update; reviewed DOJ's response brief	E.S.	.50	\$137.50
7/31/2018	reviewed notice of docket entry; reviewed Consolidation Coal's reply brief	E.S.	.20	\$55.00
8/17/2018	received call from Mr. Thompson and gave him status update	E.S.	.10	\$27.50
10/1/2018	reviewed Supreme Court's omnibus order; calling Mr. Thompson and informing him	E.S.	.20	\$55.00
10/2/2018	reviewed order as entered on 10th Cir. docket	E.S.	.10	No Charge
10/16/2018	Started drafting fee petition; drafting email to Ms. Intravaia	E.S.	1.00	No Charge
10/17/2018	Reviewing response from Ms. Intravaia; drafting reply	E.S.	.10	No Charge
10/22/2018	Following up with Ms. Intravaia; reviewed her response	E.S.	.10	No Charge
10/23/2018	Reviewing counteroffer from Ms. Intravaia; drafted response; revising itemization; started drafting motion	E.S.	1.20	No Charge
10/24/2018	Revised motion; drafted declaration; finalized	E.S.	2.50	No Charge
SUBTOTAL:			98.4	\$14,732.50
			Billable	
			(103.70	
			total)	

Attorney Evan Smith 27.8 Billable Hours at \$275/Hour
Law Clerk Tessa Adkins 70.6 Billable Hours at \$100/Hour

Costs

3/23/2018	Certificate of Good Standing from Kentucky Bar (\$25.88)	No Charge
3/23/2018	Supreme Court bar admission fee (\$200.00)	No Charge
6/22/2018	printing costs for briefs	\$1,152.63
SUBTOTAL:		\$1,152.63

TOTAL: \$15,885.13

Cockle Legal Briefs

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Customer No.: APPALACHIAN
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Bill To: APPALACHIAN CITIZENS' LAW CENTER INC
317 MAIN STREET
WHITESBURG, KY 41858

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606.205.8753
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Date		Ship Via		F.O.B.		Terms	
06/22/18		Fed Ex Economy		Origin		Net 30	
Purchase Order Number			Order Date	Sales Person		Our Order Number	
36474			06/22/18			45474	
Quantity			Item Number	Description	Unit Price	Amount	
Required	Shipped	B.O.					
1	1		LAW BRIEFS	67 COPIES; #17-1335; CONSOLIDATION COAL COMPANY v DIRECTOR OFC OF WORKERS' COMP PROGRAMS ET AL. BRIEF IN OPPOSITION	920.90	920.90	
Invoice subtotal						920.90	
Proofs & Postage						231.73	
Invoice total						1152.63	
Less payments received						520.00	
Net balance due						632.63	

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Overtime charges will be made when, in our estimation, we are not allowed sufficient time to complete your brief during our regular working hours. The charge for overtime is \$50 per hour per person, in addition to the regular brief charge. Sundays and holidays - \$75 per hour. .

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Reproduced exhibits are \$31.90 per page. Larger exhibits that must be reproduced and folded in are \$34.90 per page.

For a brief of over 70 pages, perfect binding (hot glue) will be required at an additional cost.

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Extra copies of the printed brief are charged at 10¢ per page, per copy up to 150 extra copies and 7¢ thereafter.

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BASE COST			
Qty	Item	Amt.	Charge
1	Cover Count	43.80	43.80
1	Index Count x 1	21.90	21.90
4	Index Count x 2	43.80	175.20
22	Brief Pages	21.90	481.80
22	Disk Brief	-2.00	-44.00
Total BASE COST:			678.70

ITEMIZED CHARGES			
Qty	Item	Amt.	Charge
1	Additional Proofs		25.00
1.25	Alterations	50.00	62.50
1	Unbound Copy	2.80	2.80
114	Footnote Lines	0.90	102.60
17	1-150 Extra Copies	2.90	49.30
Total ITEMIZED CHARGES:			242.20

MAILING			
Qty	Who	How Sent	Charge
41	Clerk	FedEx Priority	109.88
6	Service	Priority Mail	13.40
20	Attorney	FedEx Saver	26.40
0	Courtesy		0.00
1	Return	1st Class	2.05
Handling Cost:			30.00
Proofs Shipping Cost:			50.00
Total Postage:			231.73
Total:			1,152.63
Less Downpayment:			-520.00
Invoice Amount:			632.63

**EXHIBIT B - DECLARATION OF COUNSEL
IN SUPPORT OF REQUEST**

UNITED STATES SUPREME COURT

CONSOLIDATION COAL CO.	)	
<i>Petitioner;</i>	)	
	)	
v.	)	
	)	No. 17-1335
DIRECTOR, OFFICE OF	)	
WORKERS' COMPENSATION PROGRAMS;	)	
ROBERT THOMPSON;	)	
<i>Respondents.</i>	)	

DECLARATION OF EVAN SMITH IN SUPPORT OF FEE AND COSTS REQUEST

STATE OF KENTUCKY)
)
COUNTY OF LETCHER)

EVAN B. SMITH, states as follows:

1. I am an attorney who is in good standing with the Kentucky Bar Association. After growing up in the coalfields of Eastern Kentucky, in 2012, I graduated *magna cum laude* 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. Following graduation, 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 the end of my two-year fellowship, I have stayed at Appalachian Citizens' Law Center as a staff attorney.

2. Mr. Thompson's federal black lung claim required 27.8 hours of my time before the Supreme Court.¹ These hours are itemized and explained on the attached table, which is based on records made concurrently while working on this claim.

¹ As the time entries shows, I actually spent more time on this claim but am not seeking an award for some of my time as a matter of billing judgment.

3. I request fees based on my customary hourly rate of \$275. I increased my rate to \$275 per hour to better align my rate with the market (i.e., increased overhead combined with my additional experience). I have been repeatedly awarded \$275 per hour over objections from employers. See *Westmoreland Coal Co. v. Director, OWCP [Maggard]*, No. 17-1996 (4th Cir. May 23, 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); Proposed Order Supp. Award Fee for Legal Services, *In re Birman* (Oct. 15, 2018); Proposed Order Supp. Award Fee for Legal Services, *In re Thomas* (Aug. 8, 2018). I have been awarded this rate by the U.S. Court of Appeals for the Fourth and Sixth Circuits, the Benefits Review Board, the Office of Administrative Law Judges, and OWCP's District Director in a growing number of other cases.² Before I raised my rate this year, I submitted fifty-one fee petitions in black lung cases at \$250

² See Order, *Island Creek Coal Co. v. Hunt*, No. 17-3994 (6th Cir. Sept. 11, 2018); Order, *Westmoreland Coal Co. v. Director, OWCP [Maggard]*, No. 17-1996 (4th Cir. June 6, 2018); Order, *Westmoreland Coal Co. v. Director, OWCP [Maggard]*, No. 17-1996 (4th Cir. May 23, 2018); Order, *Island Creek Coal Co. v. Director, OWCP [Conley]*, No. 16-1453 (4th Cir. April 6, 2018); Order, *Stevens v. Howard Bowers Contracting Co.*, No. 17-0383 BLA (BRB Aug. 22, 2018); Order, *Woods v. Consolidation Coal Co.*, No. 17-0389 BLA (BRB July 17, 2018); Order, *Logan v. Golden Oak Mining Co.*, BRB No. 17-0598 BLA (BRB Mar. 14, 2018); Order Awarding Attorney Fee to Evan Smith, Esq., *Miller v. Director, OWCP*, No. 2017-BLB-1, (OALJ Oct. 3, 2018); Att'y Fee Order, *Stevens v. Howard Bowers Contracting Co.*, No. 2016-BLA-05411 (OALJ Aug. 28, 2018); Att'y Fee Order, *Johnson v. Ky. Employers Mut. Ins.*, No. 2017-BLA-5256 (OALJ June 26, 2018); Att'y Fee Order, *Thomas v. E & R Coal Co.*, No. 2016-BLA-5431 (OALJ June 13, 2018); Att'y Fee Order, *Logan v. Golden Oak Mining Co.*, No. 2012-BLA-05331 (OALJ Mar. 22, 2018); Att'y Fee Order, *Fox v. Enterprise Mining Co.*, No. 2016-BLA-05090 (OALJ Feb. 28, 2018); Att'y Fee Order, *Akers v. S. Akers Mining Co.*, No. 2015-BLA-5608 (OALJ July 6, 2017); Proposed Order Supp. Award Fee for Legal Services, *In re Birman* (Oct. 15, 2018); Proposed Order Supp. Award Fee for Legal Services, *In re Chipps* (Aug. 22, 2018); Proposed Order Supp. Award Fee for Legal Services, *In re Thomas* (Aug. 8, 2018); Proposed Order Supp. Fee Award Fee for Legal Services, *In re Harrison* (June 26, 2018); Proposed Order Supp. Fee Award Fee for Legal Services, *In re McElroy* (June 1, 2018); Proposed Order Supp. Fee Award Fee for Legal Services, *In re Blackburn* (May 30, 2018); Proposed Order Supp. Fee Award Fee for Legal Services, *In re Fox* (April 11, 2018); Proposed Order Supp. Fee Award Fee for Legal Services, *In re McElroy* (Mar. 26, 2018); Proposed Order Supp. Fee Award Fee for Legal Services, *In re Fleming* (Jan. 26, 2018).

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 have each awarded me a fee at \$250 per hour.³ Before I raised my rate in 2015, the U.S. Court of Appeals for the Sixth Circuit,

³ See Order, *Peabody Coal Co. v. OWCP [Hill]*, No. 14-1278 (S. Ct. Feb. 29, 2016); *Consolidation Coal Co. v. Director, OWCP [Thompson]*, No. 16-9539 (10th Cir. Feb. 20, 2018); Order, *Energy West Mining Co. v. Blackburn*, No. 16-9533 (10th Cir. June 12, 2017); Order, *Island Creek Coal Co. v. Harrison*, No. 16-2360 (4th Cir. Dec. 19, 2016); Fees and Cost Order, *Heritage Coal Co. v. OWCP [Mitchell]*, No. 15-2038 (7th Cir. Jan. 8, 2016); Order, *E. Associated Coal Corp. v. Director, OWCP [Toler]*, No. 14-1923 (4th Cir. Nov. 24, 2015); Order, *Templeton v. Debra Lynn Coals, Inc.*, BRB No. 16-0188 BLA (BRB Mar. 26, 2018); Order, *Sadler v. Big Horn Coal Co.*, BRB No. 16-0395 BLA (BRB Mar. 26, 2018); Order, *Bonar v. Quarto Mining Co.*, No. 17-0037 BLA (BRB Jan. 24, 2018); Order, *Vialpando v. Chevron Mining, Inc.*, No. 16-573 BLA (BRB Dec. 7, 2017); Order, *Hintze v. Plateau Mining Corp.*, No. 15-0301 BLA (BRB Jan. 6, 2016); Supp. Att'y Fee Order, *Cook v. Consol of Ky.*, No. 2015-BLA-5837 (OALJ May 8, 2018); Att'y Fee Order, *Bonar v. Quarto Mining Co.*, No. 2011-BLA-5698 (OALJ Mar. 27, 2018); Att'y Fee Order, *Cook v. Consol of Ky.*, No. 2015-BLA-5837 (OALJ Jan. 30, 2018); Order Granting Att'ys' Fees, *Templeton v. Debra Lynn Coals, Inc.*, No. 2011-BLA-6036 (OALJ Jan. 25, 2018); Att'y Fee Order, *Stiltner v. Robert Coal Co.*, No. 2011-BLA-6237 (OALJ Jan. 18, 2018); Att'y Fee Order, *Blackburn v. Kencole Equipment, Inc.*, No. 2013-BLA-5603 (OALJ Oct. 17, 2017); Order Granting Claimant's Pet. for Att'ys' Fees, *Carver v. Black Energy, Inc.*, No. 2015-BLA-5541 (OALJ Aug. 9, 2017); Order Granting Att'ys' Fees, *Woods v. Consolidation Coal Co.*, No. 2012-BLA-5547 (OALJ July 18, 2017); Order Awarding Att'y Fee to Att'y Evan Smith, Esq., *Bailey v. Incoal, Inc.*, No. 2013-BLA-5416 (OALJ June 8, 2017); Att'y Fee Order, *Goolie v. McElroy Coal Co.*, No. 2016-BLA-5348 (OALJ Mar. 29, 2017); Att'y Fee Order, *Coleman v. Christin Coleman Trucking*, No. 2014-BLA-5241 (OALJ Feb. 14, 2017); Att'y Fee Order, *Miller v. Director, OWCP*, No. 2015-BLA-05672 (OALJ Jan. 12, 2017); Att'y Fee Order, *Parks v. Sidney Coal Co.*, No. 2014-BLA-05240 (OALJ Nov. 15, 2016); Att'y Fee Order, *Manasco v. Director, OWCP*, No. 2015-BLA-05809 (OALJ June 27, 2016); Att'y Fee Order, *Bishop v. Sidney Coal Co.*, No. 2015-BLA-05649 (OALJ May 9, 2016); Att'y Fee Order, *Seales v. Director, OWCP*, No. 2013-BLA-05986 (OALJ Feb. 12, 2016); Order Granting Att'ys' Fees, *Caudill v. Bates Contracting & Constr., Inc.*, No. 2015-BLA-05901 (OALJ Dec. 29, 2015); Att'y Fee Order, *Blevins v. Triple Elkhorn Mining Co.*, No. 2010-BLA-05148 (OALJ Dec. 14, 2015); Decision on Remand, *McGlothlin v. Dominion Coal Corp.*, 38 FMSHRC 2310 (FMSHRC OALJ Aug. 30, 2016); Proposed Order Supp. Award Fee for Legal Services, *In re Musick* (Dec. 28, 2017); Proposed Order Supp. Award Fee for Legal Services, *In*

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 2014.⁴ I have only been awarded fees at a rate less than \$225 per hour in a black lung benefits claim on one occasion, and I had that award (of \$207 per hour) vacated for being improper. *See Brantley v. Big Ridge, Inc.*, No. 16-0166 BLA (BRB Sept. 23, 2016). Documentation for these awards is available promptly upon request.

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 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

re Cook (Dec. 5, 2017); Proposed Order Supp. Award Fee for Legal Services, *In re Miles* (Oct. 12, 2017); Proposed Order Supp. Award Fee for Legal Services, *In re Worley* (June 6, 2017); Proposed Order Supp. Award Fee for Legal Services, *In re Miller* (Mar. 14, 2017); Proposed Order Supp. Award Fee for Legal Services, *In re Goolie* (Feb. 9, 2017); Proposed Order Supp. Award Fee for Legal Services, *In re Byrge* (Nov. 30, 2016); Proposed Order Supp. Award Fee for Legal Services, *In re Maggard* (July 22, 2016); Proposed Order Supp. Award Fee for Legal Services, *In re Manasco* (July 5, 2016); Proposed Order Supp. Award Fee for Legal Services, *In re Bishop* (June 15, 2016); Proposed Order Supp. Award Fee for Legal Services, *In re Christian* (Mar. 8, 2016); Proposed Order Supp. Award Fee for Legal Services, *In re Caudill* (Dec. 15, 2015); Proposed Order Supp. Award Fee for Legal Services, *In re Toler* (Dec. 14, 2015).

⁴ *See* Order, *Premium Coal Co. v. Director, OWCP [Byrge]*, No. 14-3719 (6th Cir. Nov. 19, 2015); Order, *Brandywine Explosives & Supply, Inc. v. Director, OWCP [Kennard]*, No. 14-3672 (6th Cir. Sept. 25, 2015); Order, *Bull Creek Coal Corp. v. Director, OWCP*, No. 14-3473 (6th Cir. July 29, 2014); Order, *Trimble v. Bull Creek Coal Corp.* (July 9, 2014); Revised Proposed Order Supp. Award Fee for Legal Services, *In re Brantley* (Sept. 25, 2017); Proposed Order Supp. Award Fee for Legal Services, *In re Gentry* (June 15, 2015); Proposed Order Supp. Award Fee for Legal Services, *In re Carver* (June 9, 2015); Proposed Order Supp. Award Fee for Legal Services, *In re Tolliver* (Feb. 13, 2015); Proposed Order Supp. Award Fee for Legal Services, *In re Cook* (Feb. 2, 2015); Proposed Order Supp. Award Fee for Legal Services, *In re Caudill* (Dec. 2, 2014); Proposed Order Supp. Award Fee for Legal Services, *In re Evans* (July 28, 2014); Proposed Order Supp. Award Fee for Legal Services, *In re Brown* (April 16, 2014).

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 as well as before the U.S. Courts of Appeals for the Fourth, Sixth, and Tenth Circuits. I also represent a black lung beneficiary seeking additional compensation in the U.S. District Court of the District of New Mexico. (I have also been successful in one of these actions in the Eastern District of Tennessee. See *Byrge v. Premium Coal Co.*, 301 F. Supp. 3d 785 (E.D. Tenn. 2017)). I specialize in federal black lung benefits law and am the lead author of *Devil in the Dust*, an online clearinghouse for black lung issues with regular coverage of appellate decisions. Earlier this year, 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 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 have successfully represented a Criminal Justice Act client in a case that resulted in a published decision from the Sixth Circuit. *See U.S. v. Coppenger*, 775 F.3d 799 (6th Cir. 2015). I represented a coal miner in a Title VII case that survived motions to dismiss and was resolved via bankruptcy. *See Halcomb v. Black Mtn. Res.*, 303 F.R.D. 496 (E.D. Ky. 2014). I also have become active representing Social Security claimants in complex cases that have been affected by the fraud of attorney Eric C. Conn. For example, in *Hicks v. Colvin*, 214 F. Supp. 3d 627 (E.D. Ky. 2016), I litigated a case resulting in an opinion holding Social Security's policy to be unconstitutional.

5. My rate often incorporates the time of our certified paralegal (Tara Damron), administrative assistant (Beau Hatton or Laura Marinaro), and direct costs (e.g., routine printing and postage) as overhead. Our access to Westlaw databases is also built into my hourly rate.

6. Therefore, \$275 per hour is a reasonable rate for my time. My 27.8 billable hours before the Court in this case support a fee award of \$7,645.00.

7. I supervised and got significant assistance in this case from a law student, Tessa Adkins. Ms. Adkins is a 2L student at Washington University School of Law who spent 70.6 hours working on this case while it was before the Court. Ms. Adkins did excellent work and saved at least four days (32 hours) of work for me in creating the first draft, conducting much of the research, and making important edits. If Ms. Adkins were on staff at Appalachian Citizens' Law Center, we would bill her at \$100 per hour—which is what we charge for our paralegal (Tara Damron) and is in line with what most other firms bill paralegals at in the black lung benefits context. Because she saved me at least 32 hours of work, this avoided \$8,800 in additional fees for my time. Our request of \$7,060 for her 70.6 hours thus represents a \$1,740

reduction in the fees for this claim. \$7,060 for Ms. Adkins's significant work is reasonable.

8. Appalachian Citizens' Law Center had costs in this matter of \$1,152.63 for printing the brief. The Law Center also had costs of \$225.88 related to my admission to the bar of the Court, but those costs are not being sought as a matter of billing judgment. The requested costs of \$1,152.63 are reasonable.

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

Executed on this 25th day of October, 2018.

Respectfully submitted,



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