



Issue Date: 11 April 2013

CASE NOS. 2011-LHC-00173

OWCP NOS. 18-084475

In the Matter of:

JESUS AZUA,
Claimant,

vs.

NASSCO, INC.,
Self-Insured Employer

ORDER CONCERNING ATTORNEY'S FEES

This case arises from a claim brought under the Longshore and Harbor Workers' Compensation Act, as amended (the "Longshore Act"), 33 U.S.C. § 901 et seq. The claim was brought against NASSCO, INC., ("Employer") for the injuries arising from Claimant's fall while descending stairs during the course of his work with Employer on August 24, 2004. On March 24, 2008, I issued a decision and order awarding benefits to Claimant. On February 22, 2011, Claimant's attorney submitted a Petition for Modification of Award, under 33 U.S.C § 922. On June 22, 2011, both parties agreed to stipulations ("Stipulations"), and on July 8, 2011, I approved the stipulations. On March 14, 2012, Claimant's counsel submitted his fee petition ("Fee Application") requesting compensation for legal services provided on Claimant's behalf. Employer submitted its objection ("First Opposition") on May 5, 2012. Claimant's counsel responded ("First Reply") to Employer's objections on May 21, 2012.

Claimant's counsel, Eric Dupree, seeks a fee award totaling \$77,041.37 for 224.80 hours of services performed. The total amount requested represents 61.50 hours of attorney work by Mr. Dupree at an hourly rate of \$500.00; 99.10 hours for work performed by associate attorney Paul Myers at an hourly rate of \$300.00; 1 hour for work performed by paralegal Ana Tolentino at an hourly rate of \$150.00; 50.80 hours for work performed by paralegal Monica Cruz at an hourly rate of \$150.00; and \$8,791.37 in costs.

Employer opposes Claimant's counsel's fee request on multiple grounds. Specifically, Employer argues that the Fee Application is filled with numerous "block billing" entries; that Claimant's counsel cannot claim time that is over one year prior to the filing of the claim; that Claimant's counsel's relevant community is San Diego; that Claimant's counsel's rate as well as the claimed rates of his associate attorney and staff are excessive; that the case lacked complexity; that Claimant obtained less than initially claimed and thus *Hensley* should apply;

that the claimed hours are excessive; and, finally, that the hours claimed post-stipulation are excessive. Employer does not object to the claimed costs.

For the reasons set forth below, Mr. Dupree is awarded a reduced fee of \$62,720.87 for the services he provided in this case.

DISCUSSION AND ANALYSIS

I. Attorney Fee Threshold Requirements

Subsections 28(a) and (b) of the Act empower administrative law judges (“ALJs”) to award reasonable attorney’s fees. 33 U.S.C. §§ 928(a)-(b) (2006). Under subsection 28(a), an employer may be liable for fees if the employer declines to pay any compensation within 30 days of notice of the injury and the Claimant uses an attorney to successfully prosecute his claim. *Id.* Compensation for preparation of the fee petition must also be included in calculating a reasonable fee because uncompensated time spent on petition for a fee would automatically diminish the value of the fee eventually received. *See Anderson v. Director, OWCP*, 91 F.3d 1322, 1325 (9th Cir. 1996). There is no contention that Claimant’s counsel did not meet the attorney fee threshold requirements. The analysis below will therefore address only the issues concerning the “block billing” entries; the date that the Employer’s liability for attorney fees began; the relevant community and market rate; the complexity of the case; Employer’s *Hensley* objection; and the alleged excessiveness of the claimed hours, including those claimed post-stipulation.

II. “Block Billing”

An attorney is entitled to compensation for all necessary work performed. The appropriate test for determining whether an attorney’s work is necessary is whether at the time the attorney performed the work in question, the attorney could reasonably have regarded the work as necessary. *Cabral v. Gen. Dynamics Corp.*, 13 BRBS 97 (1981); *Cherry v. Newport News Shipbuilding & Dry Dock Co.*, 8 BRBS 857 (1978).

In general, the BRB has disallowed fees for entries it has deemed to be unnecessary, excessive, or duplicative. *Edwards v. Todd Shipyards Corp.*, 25 BRBS 49 (1991) (reducing the number of hours billed for telephone calls, as they constituted over half of all hours billed); *Gardner v. Railco Multi Constr. Co.*, 19 BRBS 238 (1987); *Berkstresser v. Wash. Metro. Area Transit Auth.*, 16 BRBS 231 (1984). It is well-established that fees for services “deemed excessive” may be reduced or disallowed by an administrative law judge only where a judge provides sufficient justification for the reasons meriting the reduction. *Brown v. Marine Terminal Corp.*, 30 BRBS 29, 34 (1996) (en banc); *Linscomb v. Trinity Marine Indus., Inc.*, 36 BRBS 78, 79 (2002) (citing *Beacham v. Atlantic & Gulf Stevedores, Inc.*, 7 BRBS 940 (1978)).

Any counsel seeking an attorney’s fee must produce a fee petition supported by a “statement of the extent and character of the necessary work done, described with particularity as to the professional status... of each person performing such work, the normal billing rate for each such person, and the hours devoted by each such person to each category of work. 20

C.F.R. § 702.132(a). Therefore, the fee applicant bears the burden of documenting the appropriate hours expended in the litigation and must submit evidence in support of those hours worked. *See Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir.1992).

Block billing makes it more difficult to determine how much time was spent on particular activities. *See, e.g., Role Models Am., Inc. v. Brownlee*, 353 F.3d 962, 971 (D.C. Cir. 2004) (reducing requested hours because counsel's practice of block billing “lump[ed] together multiple tasks, making it impossible to evaluate their reasonableness”); *see also Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (holding that applicant should “maintain billing time records in a manner that will enable a reviewing court to identify distinct claims”); *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000) (holding that a district court may reduce hours to offset “poorly documented” billing). The Ninth Circuit has upheld reductions of hours that have been unreasonably lumped together because it was difficult to determine how much time was spent on particular activities. *See Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007); *see also Role Models Am., Inc. v. Brownlee*, 353 F.3d 962, 971 (D.C. Cir. 2004) (reducing requested hours because counsel's practice of block billing “lump[ed] together multiple tasks, making it impossible to evaluate their reasonableness”). Employer argues that the Fee Application is filled with “numerous block billing entries” involving general meetings, instructions to the staff, “and/or other entries indicating several different tasks in the same entry.” First Opposition at 3. In support of its argument, Employer provided a list of entries within the Application that serve as specific examples of block billing. Claimant’s counsel responded by stating that the entries in question are permissible “task billing” as they include all inter office discussions, phone calls, and discrete billable attorney work related to a single task. First Opposition at 3.

Upon reviewing the Fee Petition and Claimant’s Opposition, I find the descriptions sufficiently specific as to the task and personnel involved in accordance with the regulation. For example, on May 18, 2011, one of the dates specifically mentioned by Employer, there are indeed lengthy “block” descriptions accompanying each billable hour. *See* First Reply at 3. However, each “block” corresponds to a specific task and is divided sufficiently as to make clear what was completed and who did the work. Accordingly, I deny this objection by Employer.

III. Fees for time claimed between April 17, 2008 and February 2010

On February 22, 2011, Claimant’s counsel filed the Section 22 modification petition. Employer, while conceding that Claimant’s counsel is entitled to a fee claimed after February 2011, objects to time claimed by Claimant’s counsel between April 2008 and February 2010. Employer argues that “it defies credibility to award fees for time spent by Claimant’s attorneys and their assistants for time that is over one year prior to the actual filing of the formal Section 22 modifications claims.” First Opposition at 4. However, the Ninth Circuit has held that under the Longshore Act, Claimant is entitled to recover reasonable attorney fees for both the pre-controversion and post-controversion periods. *Dyer v. Cenex Harvest States Co-op.*, 563 F.3d 1044 (9th Cir. 2009). Furthermore, the Ninth Circuit found no evidence to suggest that Congress intended to “...impose a temporal limitation on attorney's fees [to pre-controversion claims].” *Id.* at 1049. Here, the hours between April 17, 2008 and February 27, 2010 involved key preparation for the modification claim, including extensive correspondence between Claimant’s counsel and Claimant’s physician as to Claimant’s ongoing medical condition, rehabilitation, and ability to

work. Such time expenditures make sense given Claimant's modification claim was based on Claimant's residual earning capacity and change in disability status following his surgery. *See* Petition for Modification, filed February 22, 2011, at First Reply ex.19). Therefore, I find that the hours in contention are all reasonably related to the Section 22 claim. Accordingly, I deny this objection by Employer.

IV. Excessive Hourly Rates

The Act provides for the recovery of a "reasonable attorney's fee" payable by the employer when there is a "successful prosecution" of a claim. 33 U.S.C. § 928. The accompanying regulations provide that a fee application must indicate the normal billing rate for each person who performed services on behalf of the claimant and that any attorney's fee approved shall be "reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded. . . ." 20 C.F.R. § 702.132(a). Here, Employer disputes the appropriate rate as well as the amount of hours claimed.

As in other fee shifting statutes, the lodestar method is the proper method for calculating attorney fees in Longshore litigation and is the fundamental starting point in determining a "reasonable attorney's fee." *Christensen v. Stevedoring Servs. of Am.*, 557 F.3d 1049, 1052-1053 (9th Cir. 2009); *Van Skike v. Dir., OWCP*, 557 F.3d 1041, 1046 (9th Cir. 2009). The lodestar method multiplies the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Christensen*, 557 F.3d at 1053, n.4, n.5. Once the lodestar is determined, adjustments may be made depending on the circumstances of the case. *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). Yet, the lodestar method itself addresses most, if not all, of the relevant factors for calculating an attorney's fee award. *Perdue v. Kenny A.*, 559 U.S. ___, 130 S.Ct. 1662, 1673 (2010).

A fee is generally considered "reasonable" if it is "sufficient to induce a capable attorney to undertake the representation" of a meritorious case. *Id.* at 1672. The aim of fee-shifting statutes is to compensate successful lawyers in fee-shifting cases with an award that "roughly approximates" the fee the prevailing attorney would have received from a paying client billed by the hour in a comparable case. *Kenny A.*, 559 U.S. ___, 130 S.Ct. at 1672 (relying on *Blum v. Stenson*, 465 U.S. 886, 895, 104 S.Ct. 1541 (1984)) (emphasis in original). In order to encourage able counsel to undertake Longshore cases, the fees awarded must be commensurate with those they could obtain in other types of cases. *Christensen*, 557 F.3d. at 1053-54.

Attorney fees are calculated according to the prevailing market rate in the relevant legal community. The claiming attorney has the burden to prove the hourly rate in the relevant community for attorneys having similar experience, skill, and reputation. *Christensen*, 557 F.3d. at 1053 (citing *Blum*, 465 U.S. at 896 n.11); *Van Skike*, 557 F.3d at 1046; *see Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). In cases under the Act, attorneys representing claimants are not permitted to negotiate fees with their clients and there is no direct private market for Longshore matters, but that "does not absolve courts of the duty to arrive at a market rate." *Van Skike*, 557 F.3d at 1046. In the absence of sufficient proof from the fee applicant, an administrative law judge ("ALJ") may set a rate by referring back to what ALJs have authorized in other Longshore cases. *Id.*

A. *Relevant Community*

The circuit courts and the Board appear to be in agreement that the relevant geographic community for determining the prevailing hourly rate is, presumptively, the litigation forum. *See e.g., Christensen v. Stevedoring Servs. of Am.*, 557 F.3d 1049, 1053, 43 BRBS 6(CRT) (9th Cir. 2009) (relevant geographic area is "generally" where the district court sits). Moreover, on remand from the Ninth Circuit, the BRB held in *Christensen v. SSA/Homeport*, BRB No. 03-0302 (May 13, 2010), that the "relevant community" is where Claimant's counsel has his office.

Here, both Employer and Claimant's attorney acknowledge that the relevant community is San Diego. First Reply at 4; First Opposition at 5. Nevertheless, Claimant's attorney argues that market evidence from both the Bay Area and Los Angeles metropolitan areas is "roughly similar" and should be considered. First Reply at 4. While Claimant may choose to present evidence from other coastal areas in California, San Diego remains the relevant community in question and evidence from other geographic areas will be of less value in determining the prevailing hourly rate. Accordingly, the relevant community is San Diego.

B. *Hourly rate for Mr. Dupree*

Claimant's counsel seeks an hourly rate of \$500 per hour. To establish market billing rate and to support his requested rate, Claimant's counsel supplied fifteen exhibits with varying degrees of relevance to the issue at hand.

Employer objects to Claimant's counsel's requested rate and instead argues that \$368.00 per hour is the appropriate rate for Claimant's counsel's services performed between 2008 and 2011, and a rate of \$388.00 per hour should be used for any services performed thereafter. In support of its argument, Employer provided the rates of two workers' compensation attorneys within the San Diego area and cited to the Ninth Circuit's decision in *Eberly-Sherman v. Dept. of Army/NAF*, 471 Fed. Appx. 629 (9th Cir. 2012) (unpublished) (substantial evidence supports the finding that "workers' compensation practice requires legal skills similar to those required by Longshore practice.") First Opposition at 7. In addition, Employer makes the following objections to Mr. Dupree's requested \$500.00 hourly rate:

First, Employer argues that the requested hourly rate is unreasonable in light of the Ninth Circuit's decision in *Christensen*, as it is inconsistent with what an attorney of reasonably comparable skill, experience, and reputation could charge private, paying clients for similar services in the "relevant community." *Christensen v. Stevedoring Servs. of America*, 557 F.3d 1049, 1053-54 (9th Cir. 2009). Accordingly, Employer asserts that a reasonable hourly rate should be based on what an attorney with reasonably comparable skill, experience, and reputation could command in San Diego, California. First Opposition at 5. Therefore, Employer argues that the Altman Weil Surveys¹ provided by Claimant's counsel, which list hourly rates for attorneys in California as a whole as well as the San Francisco Bay area and the Los Angeles metropolitan area, are inapplicable as they fail to provide any rates from the relevant community of San Diego. First Opposition at 6. I agree that Claimant's counsel's submission of the Altman

¹ Fee Application, exhibits 8-9.

Weil's surveys does not provide an accurate indication of the prevailing "market" rate in San Diego. Instead, the surveys merely list generic billing rates and are not specific enough to be relevant to this discussion beyond the most general sense. Additionally, while the 2008 survey does provide billing rates for partners and associates at San Francisco Bay Area and Los Angeles metropolitan area firms, it fails to provide an accurate description of the rates pertaining to specific areas of law, let alone Longshore litigation. For that reason I do not find the surveys provided by Claimant's counsel to be persuasive.

Second, Employer contests the relevance of the declarations of two respected Longshore attorneys submitted by Claimant's counsel, Mr. Hillsman and Mr. Dysart, on the grounds that they "...are self-serving and fail to take into account the difference between a Longshore practice and civil litigation." *Id.* at 5. I find that both attorneys in question are premier experts in the field of Longshore litigation and are familiar with the relevant legal community in question. However, the persuasive aspects of their declarations are tempered by the simple fact that higher fee awards in the relevant communities they work in can only benefit their own fee applications in the future. Accordingly, I find the declarations to be self-serving and therefore not as persuasive.

Third, citing *Christensen*, Employer discounts the cases provided by Claimant's counsel in exhibits five, six and seven of the Fee Application on the basis that they are neither relevant, material, nor dispositive when determining an appropriate hourly rate for a particular attorney. *Id.* at 6. I agree with Employer in that the cases presented by Claimant's counsel are not dispositive for the determination of a particular attorney's hourly rate, as the Ninth Circuit has unequivocally stated that past fee awards are not by themselves an accurate depiction of the private market.² See *Christensen v. Stevedoring Servs. of America*, 557 F.3d 1049, 1053-54 (9th Cir. 2009). Accordingly, while I find the holdings helpful, I do not find them to be persuasive.

Fourth, Employer argues that the "Dupree Matrix"³ is defective as it seeks to compare the work of attorneys in civil and/or complex litigation to the legal work required in Longshore cases, which is the equivalent of "comparing apples to oranges." First Opposition at 7. After reviewing the Dupree Matrix and its derivatives, I find that it suffers from the same defects as the surveys discussed above. While the Dupree Matrix purports to provide all the relevant decisions from the districts courts from the southern, central, and northern districts of California, it fails to isolate cases that involve Longshore litigation and or directly coincide with the relevant community in this case. Accordingly, I do not find the Dupree Matrix to be persuasive.

Pursuant to the BRB's decisions in *Christensen* and *Van Skike*, as well the reasoning behind the Ninth Circuit opinion provided by Employer, I reject Claimant's counsel's argument that the various declarations and tables he has submitted in support of his requested hourly rate offer an accurate measure of rates for comparable work that Claimant's counsel could realistically obtain from paying clients in San Diego. For that reason, the proffered evidence contained in the various exhibits provided by Claimant's counsel does not effectively support a rate of \$500 for his legal services.

² Fee Application, exhibits 5-7.

³ Fee Application, exhibits 12-15.

Employer argues that the relevant market rate in this case is more “closely comparable” to the rates charged by Mr. Easley and Mr. Winter, two attorneys with similar legal work in San Diego. First Opposition at 7. According to Employer, both Mr. Easley and Mr. Winter have handled the majority of Employer’s Longshore cases since 1997. *Id.* Furthermore, Mr. Easley has 30 years of experience with the Longshore Act, Jones Act, as well as admiralty and maritime law. First Opposition, Attachment A at 1. Mr. Winter has 26 years of experience, is a certified specialist in admiralty and maritime law, and is on the Advisory Commission for the State Bar of California for the Admiralty and Maritime Law Specialization Certification. *Id.* at 2. Most importantly, both attorneys charged rates between \$350.00 and \$365.00 per hour for their services from 2008-2011. First Opposition at 7. Therefore, Employer argues that even if one was to factor in Claimant’s counsel’s superior legal experience, the relevant market rate would be at most \$368.00 per hour from 2008 to 2011 and \$388.00 for all legal services in 2012. *Id.* at 7-8. Employer argues that these dollar amounts are consistent with the undersigned’s prior fee awards to Claimant’s counsel. *Id.*

Claimant’s counsel has been practicing law for over 30 years and has provided quality representation in Longshore cases. He has worked for insurance defense in respected firms such as Littler Mendelson, Fastiff & Tichy and has also represented claimants. He has written law review articles and been engaged in various speaking engagements. He is a member of diverse professional associations and has held teaching positions. He has proven himself to be a very capable lawyer in front of the ALJ.

Given these considerations along with Employer’s objections, including the Ninth Circuit’s reasoning in *Christiansen*, I find that the appropriate hourly rate for Mr. Dupree is \$388.00 per hour. This rate takes into account his experience, skill, and reputation in the legal community, as well as the nature of this particular case and a comparison to the hourly rates of Mr. Winter and Mr. Easley. Accordingly, Mr. Dupree’s hourly rate is set at \$388.00 per hour.

C. Hourly Rate for Mr. Myers

Employer contests the requested hourly rate of \$300.00 for Claimant’s counsel’s associate, Mr. Myers, and instead insists that \$225.00 per hour constitutes a reasonable hourly rate. First Opposition at 8. In support of its contention, Employer again cites the rates of Mr. Easley and Mr. Winter, two “acknowledged experts” in Longshore litigation, to highlight the alleged excessive nature of Mr. Myers’ requested rate. *Id.*

Here, Employer argues that Mr. Myers cannot be entitled to a rate of \$300.00 per hour based on the fact that expert attorneys such as Mr. Winters and Mr. Easley, with over 25 years of experience, are charging \$350.00 to \$365.00 per hour. First Opposition at 8. Moreover, Mr. Myers is claiming in excess of 99 hours, a good portion of which he spent consulting with Mr. Dupree and another expert attorney. *Id.* These facts indicated to Employer that Mr. Myers is not only inefficient, but is not entitled to a premium rate when he “...essentially worked as an assistant to Mr. Dupree, as opposed to handling cases on his own.” *Id.*

In support of Mr. Myers requested rate of \$300.00 per hour, Claimant's counsel again relies on surveys (Fee Application ex. 8-9), as well the Dysart and Hillman declarations (Fee Application ex. 10-11) mentioned above.

I reject Employer's argument that Mr. Myers was inefficient, as I found no evidence to support such a claim. Furthermore, it has been my experience that young attorneys that consult with senior attorneys are saving time rather than wasting it. With that said, I do not find the surveys to be particularly helpful for the same reasons stated above, as they fail to specify the community in question and the type of litigation involved. Moreover, I am cautious to rely heavily on declarations that are self-serving in nature as they promote higher fees for attorneys in markets in which the declarants practice. Taking that into consideration, along with Mr. Meyers relative lack of experience as compared to Mr. Easley and Mr. Winters [*See* First Opposition at 8] I determine that a reasonable hourly rate for Mr. Myers is \$225.00 per hour.

D. Hourly Rate for Ms. Cruz and Ms. Tolentino

Here, Claimant's counsel produced the curriculum vitae of Ms. Cruz, which indicates that she is a certified paralegal, to support the claimed rate of \$150.00 per hour for her services. Fee Application at ex. 3. Employer disagrees with the requested rate, and instead argues that the \$110.00 fee award in *Eberly Sherman* for a paralegal in Oregon is a more appropriate rate. *See* First Reply at. 9. However, Employer's argument fails as no evidence has been provided by either counsel to indicate that the market rate in Oregon is comparable to that of San Diego. In the absence of sufficient proof from Employer and the impressive qualifications of Ms. Cruz, I have been persuaded to grant the requested rate. Accordingly, both Ms. Cruz's and Ms. Tolentino's hourly rate is set at \$150.00 per hour.

V. Lack of Complexity and Hensley Objections

A. Reduction in Fee Award based on Lack of Complexity

Employer objects to the total hours claimed by Claimant's attorney given the lack of complexity in the case. However, an attorney is entitled to compensation for all necessary work performed, provided the attorney could reasonably regard the work as necessary to establish entitlement. *Cabral v. Gen. Dynamics Corp.*, 13 BRBS 97 (1981); *Cherry v. Newport News Shipbuilding & Dry Dock Co.*, 8 BRBS 857 (1978). I find nothing in the record to indicate that Claimant's counsel was being disingenuous for the work claimed on the Claimant's behalf. Moreover, the issues surrounding the residual earning capacity of Claimant are sufficiently complex to justify the time and work expended. Therefore, I find the hours claimed are both reasonable and necessary. Accordingly, I reject Employer's objection based on lack of complexity.

B. Hensley Objection

Employer objects to Claimant's counsel's fee application based upon a *Hensley* analysis. In *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the U.S. Supreme Court held that a district court must take into account the relationship between the extent of success and the size of the attorney's fee award. The extent of a claimant's success is a crucial factor in determining the

proper amount of an attorney's fee award. In that case, the Court held that where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the court did not adopt each contention raised. However, where the plaintiff achieved only limited success, the Court held that a court should award only that amount of fees that is reasonable in relation to the results obtained. *Id.* at 436.

Employer asserts that the facts establish that Claimant's counsel was not successful regarding Claimant's asserted claim for a higher weekly wage, a lower residual wage-earning capacity, and entitlement to lifetime medical treatment for a claimed work-related psychological impairment. First Opposition at 9. However, the modification claim was based primarily on the Claimant's contentions relating to the prior determination of Claimant's residual earning capacity. *See* Petition for Modification, filed February 22, 2011 at First Reply ex.19. Consequently, because Claimant's counsel was successful in negotiating a lower residual wage-earning capacity as well as a payment for retro-benefits based in part on the wage-earning capacity issue, a reduction based on *Hensley* is not appropriate. Accordingly, I reject Employer's *Hensley* objection.

VI. Excessive Hours

An attorney is entitled to compensation for all necessary work performed. The proper test for determining if the attorney's work is necessary is whether at the time the attorney performs the work in question the attorney could reasonably regard the work as necessary to establish entitlement. *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981); *Cherry v. Newport News Shipbuilding & Dry Dock Co.*, 8 BRBS 857 (1978). *See Battle v. A.J. Ellis Constr. Co.*, 16 BRBS 329 (1984) (unsuccessful settlement negotiations held compensable under this standard); *Berkstresser v. Washington Metro. Area Transit Auth.*, 16 BRBS 231 (1984) (time spent reading a memorandum compensable even though it ultimately had no bearing on the outcome).

Here, Employer objects to the approximately 54.5 hours spent by Claimant's counsel and his staff in meetings and or reviewing e-mails to and from one another, as well as the approximately 54.1 hours Claimant's counsel spent in meetings or discussions with Claimant. First Opposition at 10. Employer argues that the above hours are excessive and unreasonable and should be reduced across the board by at least 25%. *Id.* In addition, Employer objects to the approximately 4.7 hours spent by Claimant's counsel in discussions with Mr. Gillelan, because Claimant's counsel is an expert in the field and presumably any discussions with another attorney are unnecessary and thus excessive. *Id.*

After carefully reviewing the specific notations provided by Employer in its First Opposition ex. B, and cross-referencing those notations with the Fee Application itself, I find that the hours spent were both reasonable and necessary for the work performed. As the Ninth Circuit noted in *Moreno*, "... lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee. It would therefore be the highly atypical civil rights case where plaintiff's lawyer engages in churning." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). Certainly, an attorney needs to discuss the case with his client, especially in a modification claim where additional information must be sought. Further, I doubt that Claimant's counsel would have consulted Mr. Gillelan unless it was necessary to the case, precisely *because*

Claimant's counsel does have significant expertise. Accordingly, I reject Employer's objections regarding excessive hours claimed.

VII. Post Stipulation Claimed Hours

It is well established that time spent in preparing fee applications under 42 U.S.C. § 1988 is compensable. *Clark v. City of Los Angeles*, 803 F.2d 987, 992 (9th Cir.1986). "Such compensation must be included in calculating a reasonable fee because uncompensated time spent on petitioning for a fee automatically diminishes the value of the fee eventually received. *Anderson v. Dir., Off. of Workers Compen. Programs*, 91 F.3d 1322, 1325 (9th Cir. 1996). Here, I find that all hours spent post stipulation were reasonable and necessary. Accordingly I reject Employer's objection regarding post stipulation hours.

VIII. Calculations.

Taking into account the foregoing considerations, I award the following:

	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Mr. Dupree	61.50	\$388.00	\$23,862.00
Mr. Myers	99.10	\$225.00	\$22,297.50
Ms. Cruz	50.80	\$150.00	\$7,620.00
Ms. Tolentino	1.00	\$150.00	\$150.00

In addition, the undersigned is granting the amount of \$8,791.37 in costs. Accordingly, Mr. Dupree is entitled to fees and costs in the amount of \$62,720.87 for services and costs he provided in this action.

ORDER

NASSCO, INC., is therefore **ORDERED** to pay to Mr. Eric A. Dupree \$62,720.87 for the legal services he provided to the Claimant in this case.

RUSSELL D. PULVER
Administrative Law Judge

San Francisco, California