

EXHIBIT A

Declaration of David L. Cleveland
about Laura A. Malowane's declaration dated 10/16/12, filed in the Court of Appeals for
the Federal Circuit in Case No. 2010-1303

\$753 per hour, for an Arent Fox partner in the year 2012,
"is well within the rates from comparable firms."

September 19, 2017

DECLARATION OF DAVID L. CLEVELAND dated September 19, 2017

I, David L. Cleveland, pursuant to 28 U.S. C. § 1746, declare under penalty of perjury:

1. I am an attorney licensed to practice in the District of Columbia.
2. On September 19, 2017, I walked into the Clerk's Office of the U.S. Court of Appeals for the Federal Circuit, in Washington DC, and asked to see the file for *Fred E. Evans v. United States*, Case No. 2010-1303. In that file was a four-page declaration, dated 10/16/12, signed by Laura A. Malowane. I paid the clerk \$13.50, and she gave me the attached Certified Copy of that declaration [Attachment #1].
3. As you can read, Laura A. Malowane declared in part as follows:
 - “I am a Vice President of Economists Incorporated.....I have been asked by plaintiffs' counsel to provide my opinion...It is my opinion that the plaintiffs' attorneys' billing rates are reasonable and competitive with market rates...”
 - “I have reviewed The 2011 National Law Journal (NLJ) Billing Survey and Associate Class Billing Survey and the NLJ 350 Annual Survey of the Nation's Largest Law Firms..”

-the "Arent Fox partner billing rate of \$753 [per hour] is well within the range of rates from firms Comparable by Size (\$310 to \$1,000) and Comparable by Location (\$300 to \$1,000)."

I declare under penalty of perjury under the laws of the District of Columbia that foregoing is true and accurate. Dated: September 19, 2017.

Respectfully submitted,

/s/ David L. Cleveland
DAVID L. CLEVELAND
DC Bar # 424209
Catholic Charities of Washington

ATTACHMENT #1

Laura Malowane declaration dated 10/16/12

UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

FRED E. EVANS, <i>et al.</i>)	
)	
Plaintiffs-Appellants)	No. 2010-1303
)	
v.)	Appeal from the United States District
)	Court for the District of Kansas
UNITED STATES,)	in Case No. 09-CV-2096
)	
<u>Defendant-Appellee</u>)	

AND

<u>EDWARD L. BRIGHT, II, <i>et al.</i></u>)	
)	
Plaintiffs-Appellants)	No. 2010-1385
)	
v.)	Appeal from the United States District
)	Court for the Western District
UNITED STATES,)	of Missouri in Case No. 09-CV-5014
)	
<u>Defendant-Appellee</u>)	

DECLARATION OF DR. LAURA A. MALOWANE

I, Laura A. Malowane, declare as follows:

1. I am a Vice President of Economists Incorporated, an economic consulting firm in Washington, D.C. I have been employed at Economists Incorporated since 1998. Prior to that, I was an economic consultant for Princeton Economics Group and a lecturer in Economics and Statistics at Princeton University, both located in Princeton, NJ. I have testified about economic and statistical issues by declaration, at deposition, before administrative bodies and at trial. I have extensive experience in analyzing and testifying on issues related to the awarding of attorneys' fees.
2. I received my Ph.D. in Economics from Princeton University in 1998 where my areas of specialization were microeconomics and industrial organization. I also earned a Masters

degree in Economics from Princeton University in 1995, LL.B. and M.B.A. degrees from York University in 1991, and a Bachelors degree in Economics from York University in 1987. A copy of my curriculum vitae is attached as Appendix 1.

3. I have been asked by plaintiffs' attorneys to provide my opinion on whether their billing rates in this matter are reasonable given current market rates. It is my opinion that the plaintiffs' attorneys' billing rates are reasonable and competitive with market rates.
4. In formulating my opinions I have reviewed, among other things, the decision of the United State Court of Appeals for the Federal Circuit, dated September 17, 2012, and publicly available data and documents. A full list of the materials I have reviewed is attached as Appendix 2. I reserve the right to revise my opinion based on additional information that is made available to me.

BACKGROUND

5. The plaintiffs in the matter are a group of landowners with property primarily situated along a trail in Kansas and Missouri. These owners had sought to join previously filed Rail-to-Trails litigation brought against the United States in the Court of Federal Claims under the Tucker Act. Litigation regarding this matter has also taken place in the Federal District Courts in Kansas and Missouri as well as in this court, the United States Court of Appeals for the Federal Circuit. The case at hand is a consolidation of appeals from decisions in the Kansas District Court and the Missouri District Court regarding the courts' decisions that the property owners' suits were time barred. On September 17, 2012, this court decided that the District Courts' judgments in the cases be vacated and that the cases be remanded to their respective trial courts. In its decision the court awarded costs to the plaintiffs.
6. Plaintiffs' attorneys all work at the law firm of Arent Fox, a large multi-practice firm with offices in Washington, DC, New York, NY and Los Angeles, CA. In 2012, Arent Fox was the 136th largest firms in the country.¹ A list of the plaintiffs' attorneys' rates is attached as Appendix 3.

¹ The NLJ 350 Annual Survey of the Nation's Largest Law Firms.

ANALYSIS

7. In a competitive market the price (or market rate) is the lowest price that a firm can charge while not suffering economic losses. If a firm chooses to charge more than this rate, it will lose customers as competitors can and will charge less. If a firm chooses to charge less than this rate, it will lose money over the long run and will either have to raise its rates back in line with the market or go out of business. Ultimately firms in a competitive market will charge a market rate.
8. Below I examine whether the rates charged by plaintiffs' attorneys are in line with market rates charged by other attorneys from comparable firms. To do this I have reviewed The 2011 National Law Journal (NLJ) Billing Survey and Associate Class Billing Survey and The NLJ 350 Annual Survey of the Nation's Largest Law Firms (collectively the "survey"). This is a comprehensive survey that the NLJ performs annually. It encompasses billing rates of the 350 largest firms in the nation, who have offices dispersed throughout the country.² Arent Fox is included in this survey.
9. For most law firms surveyed, the NLJ provides information on the individual firm's number of attorneys, principal or largest office location, and attorney billing rates. Partner and associate attorney billing rates are provided separately, with both the minimum and maximum rates for each group being shown.
10. To determine whether the rates charged by Arent Fox are consistent with market rates, I used the NLJ survey to gather billing rate data of similar types of law firms. I used two criteria to select comparable firms – size and principal office location. For size, I began with Arent Fox's NLJ size ranking in the US (136th) and then obtained rate data for firms with slightly higher and lower size rankings.³ In total ten "Comparable by Size" firms were obtained for the plaintiffs' attorneys' firm.
11. For identifying comparables based on principal office location, I began with Arent Fox's NLJ principal location listing (Washington, DC). The NLJ provides information on three

² Previous NLJ surveys encompassed the largest 250 firms in the nation. As of 2011, the NLJ has increased the number of surveyed firms to 350.

³ Specifically, I obtained billing data for five higher ranked firms and five lower ranked firms to Arent Fox. Since billing rate data were not available for all NLJ ranked firms, the ranking of each of the comparables chosen was not necessarily within + or – five rankings of the plaintiffs' attorneys' firm.

other firms with principal offices in Washington, DC. I used these as “Comparable by Location” firms. A full list of the comparable firms used for Arent Fox is attached as Appendix 4.

12. Table 1 below compares the rates of plaintiffs’ attorneys at Arent Fox with the range in billing rates of attorneys from Comparable by Size and Comparable by Location firms. The table reveals that the rates of partners and associates from Arent Fox fall within the range of billing rates of attorneys from comparable firms. In particular, the table shows that the Arent Fox partner billing rate of \$753 is well within the range of rates from firms Comparable by Size (\$310 to \$1,000) and Comparable by Location (\$300 to \$1,000). Similarly, the Arent Fox associate rate of \$554 falls within the normal range of associate rates from firms Comparable by Size (\$195 to \$695) and Comparable by Location (\$175 to \$570).⁴

Table 1 Arent Fox Attorneys Billing Rates vs. Comparables					
Attorney Type	Arent Fox Billing Rate	Firms of Comparable Size		Firms of Comparable Location	
		Minimum Rate	Maximum Rate	Minimum Rate	Maximum Rate
Partner	\$753	\$310	\$1,000	\$300	\$1,000
Associate	\$554	\$195	\$695	\$175	\$570

Notes:
Arent Fox billing rates are current (2012), while rates of comparable firms are as of 2011.

Source:
2011 National Law Journal Billing Survey and Associate Class Billing Survey;
Arent Fox Hourly Rates - Evans v US.pdf

⁴ It should be noted that the associate from Arent Fox who worked on this matter has 8 years of experience and, as such, her rate is most appropriately compared to the upper range of billing rates of associates from comparable firms.

13. Overall, the data show that in all cases, the rates of plaintiffs' attorneys are in line with market rates.⁵ To be certain that no data outliers (i.e., either very large or very small billing rates) were driving this conclusion I reran the same analysis after first eliminating the largest and smallest billing rates within each set of attorney types from comparable firms. Once again within each attorney type category, the rates of Arent Fox's attorneys were well within the range of competing market rates.

14. Finally, it should be noted that these calculations compare the 2012 rates of plaintiffs' attorneys with the 2011 NLJ survey rates. If, as expected, the 2012 NLJ survey rates are higher than those in 2011, plaintiffs' attorneys' rates are even more competitive with market rates.

CONCLUSION

15. The billing rates of plaintiffs' attorneys in this matter are competitive with market rates.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on 10/16/12 at Washington, DC.

Laura Malowane

Laura A. Malowane

**CERTIFIED COPY
I HEREBY CERTIFY THIS DOCUMENT
IS A TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE.**

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

By: *[Signature]* Date: 09/19/2017

⁵ The NLJ survey does not provide data on billing rates for paralegals. However, since the data reveal that Arent Fox attorney rates are in line with market rates, there is no reason to expect that the competitiveness of the paralegal rates from Arent Fox would be any different.



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