

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

United States of America and)	
State of New Jersey et al.)	
Ex rel Robert Fulk)	Case # 1:11cv890
v.)	
United Parcel Service, et al.)	

**DECLARATION OF ZACHARY A. KITTS IN SUPPORT OF PLAINTIFF'S FEE
PETITION FOR AN AWARD OF REASONABLE ATTORNEY'S FEES, COSTS AND
EXPENSES**

1. My name is Zachary A. Kitts. I am over 21 years of age and am competent to testify to the matters set forth herein. I have personal knowledge of the facts set forth herein.
2. I submit this sworn testimony in support of Wu, Grohovsky & Whipple's Petition for reasonable attorney's fees and costs in the above-referenced case. Those bills are attached to this Declaration as *Exhibit D*.
3. I find the hourly rate of \$515.00 per hour to be reasonable for the work of Shan Wu, Julie Grohovsky, Doug Whipple and Doug Gleason. Each of these lawyers has more than 20 years of experience. I further find that the hourly rate of \$250 is reasonable for the work of associate attorneys Jon Cook and Sebastian Hoeges. Paralegal time at the rate of \$140.00 is reasonable for the work of Kendall Clark and Kristina Duncan Hoeges. It is my opinion that these hourly rates are reasonable and supported by the market in the Northern Virginia area for litigation in this Court.
4. It is also my opinion that 349.3 hours of work on this case by the lawyers and paralegals of Wu, Grohovsky & Whipple (WGW) was reasonable and necessary under the circumstances of this case for a total of \$154,014.96 in fees.
5. I also find the amount of \$648.75 in costs and expenses is reasonable.

6. As a result, I find that the total amount of \$154,663.71 in attorney's fees, costs and expenses was reasonable and necessary under the circumstances.
7. My understanding is that WGW will claim my bill as part of the "expenses" provided for under the statute, and will submit that claim together with their petition.

BACKGROUND, EXPERIENCE AND QUALIFICATIONS AS AN EXPERT WITNESS

8. I obtained my law degree from American University's Washington College of Law in May of 2001 and was admitted to the Virginia Bar that year. From August of 2001 until August of 2002 I was a Law Clerk to Judge John Hanson Briscoe in Maryland. Since entering private practice in 2002 at Tate & Bywater in Vienna, Virginia, I have focused my practice on commercial litigation in federal courts, including qui tam litigation under the federal False Claims Act and employment law.
9. In February 2007 I co-founded the firm of Cook Kitts & Francuzenko, PLLC. In February 2012 Justin Gilbert and I left Cook Kitts & Francuzenko and founded K&G Law Group, PLLC, where I am currently employed.
10. I am a member in good standing of the Virginia, Maryland, and District of Columbia bars, as well as the bars of numerous federal courts. I have been admitted on a *pro hac vice* basis to other state and federal courts across the country including, most recently, the U.S. District Court for the Northern District of Illinois.
11. I am a contributing author to several Virginia Law Foundation publications, including a new chapter on qui tam litigation in the 2014 edition of *Employment Law in Virginia* and the chapter entitled *Employee Rights and Employer Responsibilities* in the 2015 publication of *The Virginia Lawyer: A Deskbook for Practitioners*. Both of these volumes are among the most popular publications by Virginia CLE.

12. In any given year I am invited to speak at a number of CLEs, usually dealing with qui tam litigation, employment law and fee-shifting issues. In 2015, for example, I have already spoken at the Northern Virginia and Richmond presentations of the *Annual Employment Law Update* for Virginia CLE. I am also scheduled to speak with John Bredehoft at the Virginia Bar Association Employment Law Conference in September of this year.
13. In 2011, at the request of Virginia CLE, I prepared a two-hour CLE seminar focused on attorney's fee petitions entitled *Attorney's Fee Awards in Virginia*. I presented that seminar with John Rigby, an Arlington lawyer who also performs expert witness testimony on the topic of reasonable attorney fees, and Craig Wood, a partner with the firm of McGuire Woods. The popularity of this seminar has caused several different bar groups to request a presentation of the seminar. In any given year I usually speak at several CLE seminars on topics related to my practice.
14. I have received numerous awards and accolades from my peers in the legal community. I have been named to the Virginia edition of Super Lawyers magazine every year since 2011 and I have been included in the Washington, D.C. edition of Super Lawyers magazine every year since 2013. In 2015 I was included in the twenty-first edition of *Best Lawyers in America* for qui tam/false claims act litigation.
15. I am a past-president of the Employment Law Section of the Fairfax County Bar Association, as well as a past member of the Board of Governors of the Virginia Trial Lawyers Association. I am also active in a number of other bar groups.
16. Since 2012 I have served on the Mandatory Continuing Legal Education Board of the Virginia State Bar.

KNOWLEDGE OF PREVAILING HOURLY RATES IN NORTHERN VIRGINIA

17. Since entering private practice in 2002, I have had primary responsibility for setting the hourly rates I charge my clients. During that time I have used a number of sources to set my hourly rates, including the United States Department of Justice's Laffey Matrix. A copy of the current Laffey Matrix is attached hereto as *Exhibit A*.
18. I also use other sources of information to set my hourly rates. For example, I speak with certain other lawyers from time to time about their billing rates. I have developed a reputation such that other attorneys consult with me on fee-shifting matters and the reasonableness of attorney's fees when they want an additional opinion or are interested in hearing additional feedback.
19. I have also served as a testifying expert witness on issues related to attorney's fees, reasonable hourly rates, and the reasonableness of attorney's fees.
20. Although I have practiced in state and federal courts across the country, the majority of my practice is before this Court. Since 2002 I have been counsel of record in more than 74 cases in the U.S. District Court for the Eastern District of Virginia. Most of those cases have been in the Alexandria Division.
21. I have represented a wide range of clients before this Court, ranging from individuals to publicly-traded corporations.
22. Much of my practice involves statutes with fee-shifting provisions, including the federal False Claims Act and various state false claims acts, among other laws with a fee-shifting provision. I have litigated a number of successful fee petitions in state and federal courts in the Commonwealth of Virginia, including a number of successful fee petitions before this Court.

23. My fee petitions before this Court include *Scott v. Arrowhead Group, Inc.*, 2007 WL 5084072 (E.D. Va. 2007) and *Hanzlik v. Birach, et al.*, 2010 WL 1695619 (E.D.Va. 2010). In the Hanzlik case I was awarded 100% of the attorney's fees sought, with Judge Cacheris calling my hourly rate "reasonable, perhaps even low for an attorney of [my] expertise and experience." I was also awarded 100% of the fees I sought last year by Judge Trenga; the caption of that case is *Kang v. Ultrasound Scanning Services, Inc., et al.*, 1:13cv1391.
24. I have also handled a number of fee petitions successfully in Courts of the Commonwealth. In 2013 my firm recovered more than \$350,000 in fees and costs for work performed in litigation in the Circuit Court for the City of Alexandria in *Henry Lewis v. City of Alexandria*. This was a retaliation case brought under the Virginia Fraud Against Taxpayers Act, which is the state equivalent to the federal False Claims Act. Several fee petitions were filed in this case.
25. My knowledge of prevailing hourly rates for lawyers and my expertise with fee-shifting litigation is such that I have served as a paid expert witness numerous times on the topic of reasonable hourly rates charged by lawyers, the standard of care a lawyer owes a client in litigation involving a statutory or contractual fee-shifting provision, and other topics related to attorney's fee petitions.
26. In 2012 I was an expert witness in a legal malpractice case concerning the standard of care a law firm owes its client in fee shifting litigation. The caption of the case was *D'Eramo v. Cook, et al.* Case # 0800870F-15. The case was brought in the Circuit Court for the City of Newport News, Virginia.

27. Pursuant to an expert witness fee agreement, I am being compensated for my expert witness testimony at the rate of \$450 per hour. This also happens to be my Laffey Matrix rate for 2014-2015.

REASONABLE HOURLY RATES FOR THE LAWYERS OF WU GROHOVSKY & WHIPPLE

28. I find the hourly rate of \$515.00 per hour to be reasonable for the work of Shan Wu, Julie Grohovsky, Douglas Whipple and Doug Gleason. All four lawyers have more than twenty years of experience, and \$515 per hour is slightly lower than the \$520 per hour rate set as reasonable by the 2014-2015 Laffey Matrix rate for lawyers with that amount of experience. A copy of the 2014-2015 Laffey Matrix on which I rely is attached hereto as Exhibit A.

29. Associate attorneys Jonathan Cook and Sebastian Hoeges are lawyers at WGW with more than three but less than five years of experience each. I find the rate of \$250 per hour to be reasonable for the work of Mr. Cook and Mr. Hoeges. This rate is also slight below the Laffey Matrix rate of \$255 per hour for a lawyer with three years of post-law school experience.

30. I also find the rate of \$140 per hour to be reasonable for the work of paralegal Kristina Duncan Hoeges. This is also below the Laffey rate of \$150 per hour for paralegal time.

31. These rates are also well below the rates described as reasonable by other lawyers who provide expert witness testimony about hourly attorney's rates. As just one example, I have attached as *Exhibit B* to my testimony a declaration from Craig Reilly, another lawyer with an extensive litigation and expert witness practice in the Eastern District of Virginia. This declaration was submitted in support of a fee petition in a case before this

Court although Mr. Reilly originally submitted the declaration as part of a state court case.

32. Mr. Reilly testifies that rates well in excess of the Laffey Matrix – and well in excess of those sought by Wu Grohovsky & Whipple – are reasonable and are supported by the market in Northern Virginia. Specifically, Mr. Reilly testifies that as of 2011, rates for lawyers with 11 to 19 years of experience ranged from a low of \$520 per hour to a high of \$675 per hour, and testifies that for a lawyer with 8 to 10 years of experience, the rate would range from a low of \$465 to a high of \$640 per hour.
33. Mr. Reilly’s matrix was prepared more than four years ago, and over the last four years lawyer rates have increased gradually.
34. I would have no hesitation in advising a client, friend, or family member to pay these hourly rates for the work of Wu Grohovsky & Whipple. In my opinion, these rates are reasonable and are supported by the market for litigation before this Court.
35. In particular, federal False Claims Act litigation (as well as litigation under state and local FCA statutes) is complex and specialized. This was not the type of case that any lawyer – even a highly skilled, highly experienced federal court litigator – could have handled with the same end result. Despite the specialized knowledge needed, the lawyers of WGW do not seek rates higher than the average rates although they would be entitled.
36. I also think it is reasonable under these circumstances for the lawyers of WGW to be paid at the hourly rates prevalent at the time the petition is filed for work performed over the last four years. If the Court does not accept the Laffey Matrix rate for 2015 as reasonable for work performed over the last three and half years, I think the rates then in effect should be used.

THE TOTAL AMOUNT OF TIME SPENT ON THIS CASE WAS REASONABLE

37. When I render an expert opinion in an attorney's fee matter, I begin by looking for certain problem areas that I often see in legal bills. One of the first things I look for is block-billing of time.
38. So-called "block-billing" entries are a common mistake made by many law firms. Block-billing occurs when a lawyer lists a large number of unrelated tasks together with a large block of time. An example of block-billing would be a time entry of nine hours, together with a list of five or six distinct, unrelated tasks.
39. Block-billing is disfavored by Courts and clients because block entries do not allow a reviewer to assess how much time was spent on various tasks. That means a client has no real way of telling what they are paying for, and a Court has no real way of determining whether the time was spent reasonably.
40. By way of contrast, none of the time entries by the lawyers of WGW are for large blocks of time performing a number of unrelated tasks. Each time entry is limited to one or at most two tasks, and where more than one task is listed the tasks are closely related.
41. Another frequent problem I look for is "churning." A law firm churns a case by repeatedly bringing in new lawyers after the case is already well underway. Each new lawyer must then spend numerous hours of unproductive work familiarizing themselves with the case materials before they are able to begin productive work.
42. Sometimes of course it is necessary to bring new lawyers into a case after it is underway, there is nothing wrong with that *per se*. However, when it happens again and again throughout a case without a good reason it is not compensable time in my professional opinion.

43. The lawyers of WGW did not churn this case even when they brought in new lawyers, as they did twice during the case. For example, in April of 2014 the law firm added a new lawyer to the case. That lawyer, Jon Cook, began work on the case, but no hours were billed to the client for unproductive work by Mr. Cook such as reviewing the file. Although he must have performed work reviewing the file, it does not show up in the bills to the client.
44. There are also instances of WGW bringing in new lawyers without churning. For example, Doug Gleason was brought into the case in January of 2015, he performed certain research tasks in response to specific requests from a government entity. In general, when new lawyers are brought into a case after time has passed, the best practice is to assign work to those lawyers that they can perform without having to study the entire background of the case. That is what WGW did with Mr. Gleason.
45. Another thing I look for when I review legal bills is whether the lawyers tracked their time contemporaneously with their work on the case. The lawyers of WGW did this each and every day they worked on the case.
46. That is important because time entries recorded weeks or months after the events (or even days after the events) are much less reliable than contemporaneous work performed.

TIME SPENT ON ATTORNEY COMMUNICATION

47. Another thing I look for in my review of legal bills is excessive time spent on lawyer conferences. This is another billing tactic that is sometimes abused by law firms. Excessive lawyer conferences are often problematic because the client is being asked to pay for the work of multiple lawyers and it is difficult to measure the value of the conference for the client.

48. That, again, is not to say that lawyer conferences are per se unreasonable or abusive, just that there needs to be a good justification for the conferences if such work is billed to a client.
49. In my professional opinion, the requirements of this case made regular communications by the lawyers of WGW – both communications within the firm and communications with government lawyers outside the firm -- a necessity.
50. The qui tam provisions of the federal FCA (like all qui tam FCA statutes) are designed to foster a public-private partnership between lawyers in private practice and lawyers working for the government. It is important to understand that the single most important goal of any qui tam lawyer in private practice is to convince one or more government entities to intervene in the case. Therefore, it is important to communicate with and provide help and assistance to every government entity for whom a claim is brought.
51. For qui tam lawyers in private practice this means being strategic in these communications. Simply calling a government lawyer every week to check on the progress will not be helpful and will make the relator's lawyer a nuisance. Instead, the interests of qui tam relators like Mr. Fulk are best served by lawyers who communicate strategically with the government and provide useful, relevant, interesting information or insights to the government on a regular basis.
52. Many (or perhaps most) qui tam cases involve one or two government entities, and many or most cases therefore involve communicating and working with one or two different sets of government lawyers. For example, if a case involves claims for fraud against the United States and the Commonwealth of Virginia, regular communications with lawyers

from the U.S. Department of Justice and the Virginia Office of the Attorney General would be required.

53. This case however involved communicating with and working with 21 *different* sets of government lawyers. That is an enormous amount of work on its own, but it was also important for the lawyers of WGW to communicate with other lawyers within their firm so that each lawyer would be up to date on the developments with each of the 21 government entities.
54. In my experience bringing multi-state FCA cases, the investigations and progress of each government entity will normally proceed at different paces and focus on perhaps slightly different issues. One government entity might see an issue as interesting and request input on that issue while a different government agency might have questions about a different issue.
55. It was important for the lawyers of WGW to keep each other up to speed on the progress of all 21 different government entities. That way, if government lawyers from any one of the 21 entities called for, say, Julie Grohovsky on a day when she happened to be out of the office, Shan Wu would be able to answer the question and communicate intelligently with those particular lawyers.
56. This is important because government lawyers handling these cases often have very short turnaround times when they make a request from the relator's lawyers.
57. Lawyers litigating qui tam/FCA cases for state and federal governments are generally speaking overwhelmed by their workloads. State and federal prosecutors are normally forced to take a triage-style approach to cases, meaning that they must decide relatively quickly which cases will get attention and which cases will not get attention.

58. That means, among other things, that when government lawyers ask questions or seek input from the relator's lawyers, the information provided must be thorough, accurate, and quick. In the best case scenario, the government lawyers will come to trust and rely on the judgment, skill, knowledge and experience of the relator's lawyers, but this will happen if and only if the relator's lawyers earn that level of trust.
59. Lawyers like WGW best represent the interests of their client when they spend time and effort in meaningful communication with these government entities and earning the trust of the government lawyers. That means that the lawyers of WGW must communicate effectively internally as well as externally. On the facts of the case, the time spent in lawyer conferences among the lawyers of WGW was reasonable and necessary.
60. It is obvious that this approach worked because eventually WGW was asked to provide extensive, detailed memoranda to government entities. This would have happened if the lawyers of WGW had not earned the trust of their government counterparts.
61. Ultimately, the careful, methodical approach of WGW paid off because they obtained a settlement in excess of \$25.7 million for only two of the 21 government entities. This resulted in a total recovery for their client Mr. Fulk in excess of \$3.87 million.
62. I am confident that the careful methodical approach to internal and external communications played a role in this outcome for Mr. Fulk.

TIME SPENT ON RESEARCH TASKS PERFORMED AT THE REQUEST OF THE GOVERNMENT

63. It is also important that government entities asked for research help and input in this case. It is always a good sign when government lawyers ask for input and help from a relator's lawyer. The more detailed and involved the help is, the better.

64. In this case, the government asked for specific detailed research memoranda from relator's lawyers. In my experience, it is always a good sign when the government asks for tailor-made work product from the relator's lawyers. The lawyers of WGW worked in a timely and effective manner to provide this work product.

COSTS INCURRED

65. I find the costs and expenses of \$648.75 to be reasonable and necessary under the circumstances.

66. Those costs are associated with the filing fee and with service of the disclosure statements and other documents on the various government entities.

RESULTS OBTAINED

67. I also look at the results obtained for the client and the level of effort needed to obtain that result. Much work went into this case over more than four years, but the level of effort was proportional to the complexities of the case and the end result was excellent for the WGW's client, Mr. Fulk.

68. The lawyers of WGW delivered truly excellent results for their client. Intervention was obtained by the United States and the state of New Jersey, and a settlement in excess of \$25.7 million was obtained on behalf of only two of the 21 government entities, with the rest of the cases remaining pending.

69. Of that amount, 15% was paid to Mr. Fulk from the United States' settlement and 17% from the New Jersey settlement, for a total award to him in excess of \$3.87 million. To put things in perspective, if Mr. Fulk were paying for the legal work of WGW by the hour, he would have spent \$154,616.11 in attorney's fees and costs and received \$3.87

million in return. This would have been a good expenditure of his money and he would have received real value for his money.

CONCLUSION

70. I find the total amount of \$154,663.71 to be reasonable in attorney's fees, costs, and expenses.

I MAKE THIS OATH UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA.

Date: June 1, 2015

/s/

Zachary A. Kitts