

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF WEST VIRGINIA**

**KEITH REED, ELIZABETH  
SCHENKEL, EMILY WINES, MARK  
GARAN, and AUGUST ULLUM,  
individually and on behalf of others  
similarly situated,**

**Plaintiffs,**

**v.**

**ALECTO HEALTHCARE SERVICES  
LLC, and ALECTO HEALTHCARE  
SERVICES WHEELING, LLC d/b/a  
OHIO VALLEY  
MEDICAL GROUP and d/b/a OVMC  
PHYSICIANS,**

**Defendants.**

**Civil Action No.: 5:19-cv-263  
Judge Bailey**

**AFFIDAVIT OF TIMOTHY F. COGAN**

1. Timothy F. Cogan, counsel for the Plaintiffs, states that the following represents a true description of his experience as an attorney, as well as the work he has performed representing Plaintiffs in the above-described case.
2. He is a 1980 graduate of West Virginia University (WVU) College of Law. At WVU, he served on the National Moot Court team. After, he authored an article for the West Virginia Law Review.
3. He is admitted to the U.S. District Courts for Northern and Southern Districts of West Virginia; the Northern and Southern District of Ohio; the State Bars of Ohio and Maryland and the District of Columbia (inactive); the Fourth and Sixth Courts of Appeal; and the U.S. Supreme Court.

4. He is currently a shareholder in Cassidy, Cogan, Shapell & Voegelin, L.C. and has been approximately forty (40) years.
5. He clerked for the Hon. Arthur M. Recht on *Pauley v. Kelly*, see 255 S.E.2d 85 (1979), which held unconstitutional funding public schools in West Virginia.
6. He handled at least two “WARN Act” cases in this Court prior to this case.
7. He has handled class action cases before this case, most notably as lead counsel arguing *Amos v. PPG Industries, Inc.*, 699 F.3d 448, (6<sup>th</sup> Cir. 2012), rev’g 2009 WL 2062947 (S.D. Oh.), cert. den 133 S.Ct. 2008 (eventually settled circa 2018 for a predicted payout in excess of \$20 million). A national class action spanning more than a decade, *Amos* has been cited by *Wright & Miller, CJS*, law reviews and other courts of appeal; *Mamula v. Satralloy*, 578 F.Supp. 563 (S.D. Oh. 1983), an early labor/ERISA class action granting injunction in favor of employees in plant closing case, with Patrick Cassidy); *Perko v. Advance Auto Stores Company, et al.*, Oh. Co, W.Va. C.A. No. 01-C-459 (with Patrick Cassidy and Wray Voegelin); and *Rinard v. Eastern Co.*, 978 F.2d 265, 1992 WL 308647 (6<sup>th</sup> Cir. 1992)(ERISA claim for reversion of pension plan, reversing district court)(William Payne arguing).
8. He has been involved in other cases:
  - a. Other employment cases, such as *Lemasters v. Dept of Corrections*, 313 S.E.2d 436 (W.Va. 1984)(representation of correctional officer); *Guy v. City of Steubenville* 1998 WL 13866 (7<sup>th</sup> Dist 1/15/98)(representing police officer); and *Asaad v. Res-Care, Inc.*, 478 S.E.2d 357 (1996)(representation of physician); and several *Tecnocap* cases before this Court.

- b. Six appellate unemployment compensation group cases, including *Abate v. Wheeling-Pittsburgh Steel Corp.*, 711 N.E.2d 299 (Oh.App. 7<sup>th</sup> Dist. 1998) (unemployment arising out of WPSC work stoppage; employees won approximately \$25 million in benefits), app. not allowed, 696 N.E.2d 604 (with Cassidy); *Smittle v. Gatson*, 465 S.E.2d 873 (W.Va. 1995); and *Curry v. Gatson*, 376 S.E.2d 183 (W.Va. 1986)(racial harassment amounts to good cause for quitting work).
- c. ERISA cases include long-term disability cases in Ohio and West Virginia, e.g. *Faulkner v. Columbia Gas Transmission, LLC*, 2011 WL 589728 (N.D.W.Va. 2/10/11)(ERISA claim reversing denial of benefits).
- d. First Amendment cases include *Wheeling Park Commission v. Hotel & Restaurant Employees*, 479 S.E.2d 876 (1996)(picketing as first amendment conduct)(Cassidy arguing). The West Virginia Supreme Court of Appeals, *CJS*, and at least two law reviews or services have cited this case.
- e. Seven criminal cases at the federal court of appeals include *U. S. v. Noble*, 1993 WL 411745 (4th Cir. 1991)(reversing criminal conviction in part).
- f. At least seven state criminal trials and/or appeals, include *State v. Clements*, 300 S.E.2d 600 (W.Va. 1981), cert.den. 106 S.Ct. 165; *State ex rel. Shelton v. Painter*, 655 S.E.2d 794 (W. Va. 2007)(habeas corpus proceeding, reversing punishment in first degree murder); *State v. Christman*, Wash. Co. Oh. No. 05-CR-B-310 (defendant not guilty in jury trial); *State v. Hackathorn*, Monroe Co. Oh. (not guilty verdict in vehicular homicide at bench trial); *State v. Bowersock*, 2006 WL 3873440 (Oh App. 7th Dist.)(reversing conviction in bench trial).

- g. Discrimination cases, including *McClure Management et al v. Eric Taylor & James Turner*, 504 S.E.2d 165 (W.Va. 2020)(affirming award of \$950,000 for discrimination in public accommodations)(Cassidy argued); *Roghelia v. Hopedale Mining*, 2014 Ohio 2935, 2014 WL 2999182, (7<sup>th</sup> Dist Ct. App.) (reversing directed verdict) jurisd. declined Oh.S.Ct. 12/24/14; *Scott v. PPG Industries, Inc.*, 1990 WL 200655 (4<sup>th</sup> Cir.)(affirming rejection of attempt by employer to seek contribution from union in equal pay and Title VII claims against employer); and *Smith v. Scottsdale Ins. Co.*, 2014 WL 4199207 (N.D.W.Va. 8/22/14), aff'd (4<sup>th</sup> Cir. No. 15-002).
  - h. At least four FBL and ten appellate SSD/SSI cases in courts of appeal include *Skukan v. Consolidation Coal*, 993 F.3d 1228 (6<sup>th</sup> Cir. 1992), rev'd 512 U.S 231, later case 46 F.3d 15; and *Bass v. McMahon*, 499 F.3d 506 (6<sup>th</sup> Cir. 2007), respectively.
  - i. Medical negligence defense cases including *McAllister v. Weirton Hosp. Co.*, 312 S.E.2d 738 (1983), and *Johnson v. West Virginia University Hospitals*, 413 S.E.2d 889 (1991)(defense of WVUH).
9. He has handled over the years numerous arbitrations for the Steelworkers and the Chemical Workers Council of the UFCW.
10. Has served on the Ethics Commission of the State of West Virginia.
11. Along with Patrick Cassidy, was appointed a Special West Virginia Attorney General in environmental litigation regarding the Waste Technologies Plant in East Liverpool, Ohio in this Court.

12. At Wheeling University, he taught business law for several years. He also designed and taught a Legal Environment course in the University's Master's in Organizational Leadership sequence and taught Criminal Law and Constitutional Law at Wheeling Jesuit.
13. He has presented on labor and employment at WVU College of Law and judged its Trial Competition, Baker Cup, and National Energy and Sustainability Moot Court Competition.
14. A mentor in the William Blackstone (Wheeling) Inn of Court; he is president of the Ohio County Bar Assn.
15. Communications with other counsel with knowledge of the rates charged by attorneys with his experience inform him that the market rate in this state for an attorney with his level and type of experience and academic background is at least \$450 per hour.
16. The efficient handling of civil litigation requires and allows the use of trained non-attorney staff, at a lower hourly cost, to perform many tasks necessary for proper handling of a client's legal affairs. He strives to minimize costs by utilizing paralegal support personnel whenever he can, and then pass that savings on by billing that work only at the lower paralegal rate of \$100.00 per hour.
17. According to contemporary time records he regularly created and maintained documenting to the nearest tenth of an hour all the legal work he performed for Cassidy, Cogan, Shapell & Voegelin, L.C. and the Plaintiffs, he spent a total of 76.60 hours representing Plaintiffs in this case, as was necessary for the competent and zealous presentation of their claims and to obtain the favorable result in this matter. These hourly totals include time spent preparing this affidavit. After the exercise of reasonable billing judgment, his compensable time is described in the following contemporaneous records.

18. His firm's outstanding expenses in this case amount to \$795.30, as reflected in the attached Bill.

Further, affiant sayeth not.

  
\_\_\_\_\_  
Timothy F. Cogan

STATE OF WEST VIRGINIA:  
COUNTY OF OHIO: TO WIT:

Timothy F. Cogan, being duly sworn according to law, avers and says that the facts and allegations contained in the foregoing AFFIDAVIT OF TIMOTHY F. COGAN are true except so far as they are therein stated to be upon information and belief, and that so far as they are therein stated to be upon information and belief, he believes them to be true.

  
\_\_\_\_\_  
TIMOTHY F. COGAN

Taken, sworn to and subscribed before me this 7<sup>th</sup> day of October, 2022.



  
\_\_\_\_\_  
Notary Public

My Commission Expires: June 22, 2024

Keith Reed et al. v. Alecto, et al.

File No: 19045-01M  
 Invoice No: 1

Re: WARN Act - Alecto Healthcare, et al

			Hours	
09/09/2019	TFC	Complaint; research; emails	2.00	900.00
10/07/2019	TFC	Telephone conference with John Stember, Vince Mersich	0.20	90.00
10/24/2019	TFC	Review order and respond	0.20	90.00
04/16/2020	TFC	Conference call; conference with Vince and Maureen	0.60	270.00
05/01/2020	TFC	Review APO; emails	0.30	135.00
06/22/2020	TFC	Review and respond to emails	0.40	180.00
07/20/2020	TFC	Emails re: mediation	0.40	180.00
08/07/2020	TFC	Review fee agreement and email re: acceptance; emails re: teleconference	0.60	270.00
08/10/2020	TFC	Revise amended complaint, stipulation	0.30	135.00
08/11/2020	TFC	Review and respond to emails re: amended complaint, stipulation	0.20	90.00
08/12/2020	TFC	Emails re: scheduling order, stipulation, etc.	0.30	135.00
08/14/2020	TFC	Email re: Alecto status; respond to e-mail re: dates	0.40	180.00
08/18/2020	TFC	E-mails re: scheduling Revise Order	1.10	495.00
08/19/2020	TFC	E-mails to and revisions of Joint Stipulation and Motion re: Scheduling and amended complaint	1.20	540.00
08/24/2020	TFC	E-mails; filing Amended Complaint	0.20	90.00
09/16/2020	TFC	conference call re: mediation, case planning	1.00	450.00
10/05/2020	TFC	conference call with attorneys and in part with named plaintiffs; draft checklist	2.30	1,035.00
10/06/2020	TFC	Mediation with Alecto, etc.	3.60	1,620.00
10/09/2020	TFC	respond to email	0.30	135.00
10/12/2020	TFC	conf. call; research re: Piercing the Corporate Veil (PCV)	1.00	450.00
10/13/2020	TFC	PCV memo	0.80	360.00
10/14/2020	TFC	research	0.60	270.00
11/03/2020	TFC	Respond to email & provide sample	0.20	90.00
02/18/2021	TFC	telephone conference re: expert	1.10	495.00

Re: WARN Act - Alecto Healthcare, et al

Hours

02/22/2021	TFC	expert designation	0.20	90.00
02/25/2021	TFC	review email	0.10	45.00
03/26/2021	TFC	review discovery responses	0.10	45.00
03/29/2021	TFC	conference call; craft motion	0.50	225.00
04/23/2021	TFC	review discovery	0.20	90.00
05/17/2021	TFC	emails re: changing meeting date & time	0.10	45.00
05/18/2021	TFC	review response to deficiency letter	0.20	90.00
06/16/2021	TFC	Motion to compel hearing	1.10	495.00
06/28/2021	TFC	conference call re: discovery	0.70	315.00
10/05/2021	TFC	review discovery; email re: tel. conf. w/ Vince Mersich	0.40	180.00
12/02/2021	TFC	emails re: motion to extend	0.70	315.00
02/02/2022	TFC	review numerous emails re: scheduling	0.30	135.00
02/04/2022	TFC	review notice of dismissal of plaintiff	0.10	45.00
02/09/2022	TFC	review Plaintiff's response to Defendants' discovery, including responses to RFA	1.00	450.00
03/10/2022	TFC	email seeking resume or declaration; review resume	0.40	180.00
04/04/2022	TFC	review objections to 30(b)(6) notice	0.30	135.00
04/21/2022	TFC	emails re: meeting with Defendant	0.30	135.00
04/22/2022	TFC	note schedule change	0.30	135.00
05/05/2022	TFC	email re: dep	0.30	135.00
05/06/2022	TFC	emails re: Wines dep.	0.20	90.00
05/10/2022	TFC	dep. prep	1.20	540.00
05/11/2022	TFC	Ullum dep. & conference with client	2.10	945.00
05/19/2022	TFC	deposition of Sarrao	5.00	2,250.00
05/23/2022	TFC	deposition prep	3.60	1,620.00
05/24/2022	TFC	deposition prep	1.00	450.00
05/25/2022	TFC	deposition prep	3.70	1,665.00
05/26/2022	TFC	prep & deposition	3.50	1,575.00



Re: WARN Act - Alecto Healthcare, et al

			Hours	
06/07/2022	TFC	review motions & opposition re: class status	0.60	270.00
06/08/2022	TFC	deposition of Dunmyer	1.00	450.00
06/30/2022	TFC	review reply brief; email to co-counsel; review exhibit #2	0.40	180.00
07/01/2022	TFC	attend 30(b)(6) dep	2.70	1,215.00
07/06/2022	TFC	review SJ brief & respond	0.30	135.00
07/07/2022	TFC	review Dunmeyer dep.	0.30	135.00
07/18/2022	TFC	review motion (extension of time)	0.10	45.00
07/22/2022	TFC	review Defendant MSJ	0.40	180.00
07/23/2022	TFC	conference call with co-counsel	0.80	360.00
07/25/2022	TFC	prepare for class cert. hearing; review prepared outline of oral argument; class cert. hearing; conference w/ client	2.20	990.00
07/27/2022	TFC	voir dire; email regarding conference with counsel in other Alecto suit in WDPA; review class cert. order	1.10	495.00
	TFC	voir dire; emails assigning work, e.g. verdict form	0.90	405.00
07/29/2022	TFC	research for & draft of verdict form; other MIL - e.g. voluntary departures, advice of counsel defense; emails re: MIL; review defendant reply	6.00	2,700.00
07/30/2022	TFC	research re: single employer	0.50	225.00
08/01/2022	TFC	review verdict form changes & file; review plaintiffs' reply brief; research re: single employer issue; review changes to MILs & file; emails re: filings; deliver exhibits; review 26(a)(3)	2.70	1,215.00
08/02/2022	TFC	Plaintiff's objection to verdict form; various emails re: reviewing tasks; plaintiffs' objection to voir dire; plaintiff's response to motion to strike jury demand; review SJ ruling	1.70	765.00
08/04/2022	TFC	emails re: documents	0.10	45.00
08/09/2022	TFC	review class notice	0.10	45.00
08/10/2022	TFC	review revised class notice & associated emails	0.50	225.00
08/11/2022	TFC	review emails re: notice & review & respond to email re: fee petition	0.40	180.00
08/12/2022	TFC	emails re: damages filing	0.60	270.00
08/15/2022	TFC	affidavit application revision; emails about damages calculation	1.90	855.00
08/17/2022	TFC	review email for Bren regarding expunged document filed	0.10	45.00
08/23/2022	TFC	review defendant's response to plaintiffs' damages report	0.30	135.00

Re: WARN Act - Alecto Healthcare, et al

			Hours	
08/25/2022	TFC	(individual) damages hearing, including preparation	1.30	585.00
08/26/2022	TFC	conference call re: adequacy of notice by Defendant; Plaintiff notice to class	1.00	450.00
08/29/2022	TFC	emails to and from Maureen, Bren	0.20	90.00
09/22/2022	TFC	review memo & order	0.10	45.00
09/27/2022	TFC	motion to withdraw and order	0.10	45.00
09/29/2022	TFC	review status report	0.10	45.00
10/05/2022	TFC	affidavit	1.20	540.00
		<b>Total Services</b>	<u>76.60</u>	<u>34,470.00</u>

SUMMARY

<u>Aty/P-legal</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Timothy F. Cogan	76.60	\$450.00	\$34,470.00

06/20/2022	Transcript Costs REALTIME REPORTERS LLC #1064	303.50
06/29/2022	Transcript Costs REALTIME REPORTERS LLC #1064	491.80
	<b>Total Advances</b>	<u>795.30</u>
	<b>Total This Invoice</b>	35,265.30
	<b>Balance Due</b>	<u>\$35,265.30</u>

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF WEST VIRGINIA

KEITH REED, ELIZABETH  
SCHENKEL, EMILY WINES, MARK  
GARAN, and AUGUST ULLUM,  
individually and on behalf of others  
similarly situated,

Plaintiffs,

v.

ALECTO HEALTHCARE SERVICES  
LLC, and ALECTO HEALTHCARE  
SERVICES WHEELING, LLC d/b/a  
OHIO VALLEY  
MEDICAL GROUP and d/b/a OVMC  
PHYSICIANS,

Defendants.

Civil Action No.: 5:19-cv-263  
Judge Bailey

**APPLICATION FOR ATTORNEY FEES**

COMES NOW Timothy F. Cogan (“Cogan”) and applies or petitions for an award of attorney fees. In support thereof, he incorporates the contents of the affidavits from William Payne (**Exhibit A** hereto), David Fusco (**Exhibit B** hereto), and Don Tennant (**Exhibit C** hereto), reflecting the undersigned’s skill, ability, and experience (42 years in the practice of law).

Memorandum in Support

*Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169 (4th Cir. 1994) identifies the locus of a market rate: “the community in which the court sits is the first place to look to in valuating the prevailing market rate,” *id* at 179, though applying an out-of-district rate on its facts.

Further, an hourly rate is reasonable when it is “in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 890 n. 11 (1984). The requested fee must be reasonable, *Hensley v. Eckhart*, 461 U.S. 424 (1983) and the most important factor in determining the reasonableness of the fee is the degree of success involved. *Farrar v. Hobby*, 506 U.S. 103, 114 (1983). Here, the Court granted summary for plaintiffs.

*The Johnson-Barber* factors were referenced in *Daly v. Hill*, 790 F.2d 1071, 1076 n. 2, 1078 (4th Cir. 1986). The twelve factors identified in *Johnson* might guide a district court's discretion in calculating a fee award are as follows:

(1) the time and labor required;

Given the results obtained, summary judgment in favor of plaintiffs, the time for Cogan is modest, providing for an upward adjustment of the fee.

(2) the novelty and difficulty of the questions;

The questions were fact intensive, though not extremely novel, providing for no adjustment of the fee, meaning that it remains at \$450.

(3) the skill requisite to properly perform the legal service;

As the declarations state, Cogan has skill and experience proportionate to his length as an attorney. His skills also reflect his association from time to time with top-flight lawyers such as Arthur M. Recht, for whom he clerked on Pauley-Bailey case, dealing with funding of public schools in West Virginia; G. Charles Hughes; William Payne and David Fusco, both declarants.

(4) the preclusion of other employment by the attorney due to acceptance of the case;

Little preclusion was involved given the brief amount of time spent, though deposition preparation on the order of six hours precluded other work on that day, providing for no adjustment of the fee.

(5) the customary fee;

This is more than his more recently-awarded fee, see the Payne affidavit, submitted some time ago, when counsel sought a lower rate, providing for no adjustment of the fee.

(6) whether the fee is fixed or contingent;

The fee sought here was contingent.

(7) time limitations imposed by the client or the circumstances;

Given the vagaries of modern practice, the 14 days in the Local Rules, LR Civ. P. 7.02(b)(1) operates as a tight time limitation on responding to the motions. As well, the time spent on some days, totaling 6 hours, would to that extent preclude other work.

(8) the amount involved and the results obtained;

The result, admittedly largely the result of his co-counsel's work, was a grant of summary judgment on liability as to Alecto Wheeling and that the Alecto Helathcare Services constituted a single employer with Alecto Wheeling, provides for an upward adjustment of fees.

(9) the experience, reputation, and ability of the attorney;

For the 1995 *West Virginia Law Review*, Cogan wrote, "Is The Doctor Hostile," cited by the Department of Labor in its *Preamble* to its regulations, 65 Fed. Reg. 79,940, 79,943 (Dec. 20, 2000), by the federal courts of appeal, and by the Department of Labor in its revision of federal regulations, dealing with benefits in a "labor case."

He also was employed by the Department of Labor as a union election observer in the *Boyle v. Miller* rerun, in Billings, Montana, Washington DC, and Washington PA (district election) in 1972-3.

Among his cases are:

- *Amos v. PPG Industries, Inc.*, 699 F.3d 448, 194 L.R.R.M. (BNA) 2585, 54 EBC 1921 (6<sup>th</sup> Cir. 2012), reversing, 2009 WL 2062947, cert. den 133 S.Ct. 2008 (eventually settled circa 2018). *Amos* has been cited by *Wright & Miller*, *CJS* and law reviews;
- *Curry v. Gatson*, 180 W.Va. 648, 376 S.E.2d 183 (1986)(racial harassment amounts to good cause for quitting work under UC statute);
- *Mamula v. Satralloy, Inc.*, 578 F.Supp. 563 (SD Oh. 1983), an early ERISA case granting injunction in favor of employees in plant closing case, with Patrick Cassidy;
- Six criminal cases at the Fourth Circuit
- *State ex rel. Shelton v. Painter*, 221 W.Va. 578, 655 S.E.2d 794 (2007)(reversing punishment in first degree murder);
- *Abate v. Wheeling-Pittsburgh Steel Corp.*, 126 Ohio App.3d 742, 711 N.E.2d 299 (Oh. App. 7<sup>th</sup> Dist. 1998) (unemployment arising out of WPSC work stoppage; employees won \$25 million in benefits), app. not allowed, 696 N.E.2d 604 (Lundberg Stratton, J., would grant)(with Patrick Cassidy); and *Smittle v. Gatson*, W.Va. 416, 465 S.E.2d 873 (1995)(group unemployment case under labor dispute proviso of UC Act);
- *Woodell v. Ormet*, 156 O.App.3d 602, 808 NE2d 402, 174 LRRM 3402 (7<sup>th</sup> Dist. 2004), later case 2005 WL 2033285, 2005-Ohio-372 (7<sup>th</sup> Dist.)(successful defense of claim for emotional distress arising out of labor dispute);

- *Johnson v. West Virginia University Hospitals*, 186 W.Va. 648, 413 S.E.2d 889 (1991)(defense of WVUH); *McAllister v. Weirton Hosp. Co.*, 173 W.Va. 75 312 S.E.2d 738 (1983); *Lemasters v. Dept of Corrections*, 175 W.Va. 463, 313 S.E.2d 436 (1984)(representation of correctional officer); *Guy v. City of Steubenville* 1998 WL 13866 (7<sup>th</sup> Dist 1/15/98)(representation of police officer); *Asaad v. Res-Care, Inc.* 197 W.Va. 684 478 S.E.2d 357 (1996)(representing physician);
- *Roghelia v Hopedale Mining*, 2014 Ohio 2935, 2014 WL 2999182, 30 A.D. Cas. (7<sup>th</sup> Dist. Ct. App.) juris declined Oh. S. Ct. 12/24/14 (reversing directed verdict in disability discrimination case);
- *McClure Management et al v. Erik Taylor & James Turner*, 243 W.Va. 604, 504 S.E.2d 165 (2020)(affirming award of \$950,000 for housing discrimination)(Patrick Cassidy argued);
- *Mountain State Carbon, LLC v. RG Steel Wheeling, LLC*, 2013 WL 639052 (N.D.W.Va. 2/21/13)(intervention in claim against steelmaker)(with David Fusco);
- Numerous state criminal trials, including *State v. Clements*, 175 W.Va. 463, 334 S.E.2d 600 (1985); *State v. Christman*, Monroe Co., Oh. No. 05-CR-B-310 (defendant not guilty in jury trial); *State v. Hackathorn*, Monroe Co., Oh. (not guilty verdict in vehicular homicide at bench trial); *State v. Bowersock*, 2006 WL 3873440 (O App. 7th Dist.)(reversing conviction in bench trial); *State v. Fazio*, 1994 WL 631654 (7th Dist. 7/2/04); *State v. Roberts*, 1999 WL 152128 9 (4th Dist App. 03/11/99);
- *Wallace v. Wheeling Pittsburgh Steel Corp.*, 2007 WL 1795950 (S.D.Oh)(discrimination claim against employer and union), later case 2008 WL 4347358 (S.D. Oh. 9/19/08)(granting motions for judgment on pleadings);

- *Rinard v. Eastern Co.*, 978 F.2d 265 1992 WL 308647 (6<sup>th</sup> Cir 1992)(ERISA claim, reversing district court)(William Payne argued);
- *Mylan Pharmaceuticals, Inc. v. United Steel, Paper and Forestry Rubber, Mfg., Energy, Allied Indus. and Service Workers Intern. Union*, 2011 WL 1157862 (N.D.W.Va.)(granting summary judgment and awarding attorney fees);
- *Faulkner v. Columbia Gas Transmission, LLC*, 2011 WL 589728 (N.D.W.Va. 2/10/11)(successful ERISA claim for denial of benefits);
- A dozen or so federal black lung and social security cases at the courts of appeal, including *Skukan v. Consolidation Coal*, 993 F.3d 1228 (6<sup>th</sup> Cir. 1992), rev'd 512 U.S 231, later case 46 F.3d 15.

He was appointed to, and served on, the Ethics Commission of the State of West Virginia. The West Virginia attorney general appointed Cogan, along with Cassidy, as a Special West Virginia Attorney General in environmental litigation regarding the Waste Technologies Plant in East Liverpool, Ohio.

He served on the Institutional Review Board at Wheeling Jesuit, now Wheeling University, where he taught business law for several years. He also designed and taught a Legal Environment course in the University's Master's in Organizational Leadership sequence and taught Criminal Law and Constitutional Law at Jesuit. He presented on labor and employment at WVU Law School and judged its Trial Competition and Baker Cup, and its National Sustainability competition for the past two years.

The NAACP, Wheeling Jesuit University, and the Martin Luther Committee have bestowed awards on him. He is a mentor at the Wheeling Inns of Court; and serves as the president of the Ohio County Bar Association. All this combines to support the rate of \$450/hour.



(9) the “undesirability” of the case;

As a contingent fees case with the titular employer, Alecto Wheeling, lacking assets, the case was undesirable, providing for an upward adjustment of fees.

(10) the nature and length of the professional relationship with the client;

The professional relationship with the clients has lasted slightly under three years.

(11) awards in similar cases.

His last awarded rate was \$350 per hour, perhaps sixteen months ago. Cogan’s rate in contingency cases is much higher than \$350 an hour, though those calculations are inhibited by the secrecy of settlement agreements demanded in so many of such cases.

In the case of *Layne v. Integrity Kokosing Pipeline Service, LLC*, NDWVA 5:16-CV-167, Lead Counsel Sharon Potter billed \$350 per hour several years ago in this Court. Doc. 122-1, ¶3. She has five years’ less experience than Cogan. See *Board of Trustees of IBEW v. Aetna*, Civil Action 5:93-CV-199 (Stamp)(nearly two decades ago, this Court awarded fees at \$260/hour for Cogan). *See also* attached declarations, including the following findings:

- “[Cogan] is quite experienced in labor ....and employment matters” Ex. B ¶ 5.
- “An hourly rate of \$350... for an attorney with Mr. Cogan’s skill and experience is more than reasonable.” Ex. B ¶ 6.
- “fee scales reflect an experience differential, with the more experienced attorneys receiving larger compensation.” Ex. A ¶ 19.
- “the rate [Cogan] seeks... is less than a reasonable market rate for such work as he performed here... Ex. A ¶ 18.
- “fee scales reflect an experience differential; more experienced attorneys receive a higher per hour compensation.” Ex. C ¶ 22.

- “The rate Mr. Cogan seeks... is likely, in 2021, less than appropriate for such work done by an attorney of his experience and qualifications.” Ex. C ¶ 23.

The experience differential leads to greater hourly rates, *see* Payne and Fusco declarations attached hereto as Exhibits A and B, respectively, awards to other lawyers with less experience in similar cases, where this Court awarded the following:

- *Rodgers v. Abbster Enterprises LLC*, 3:16-CV-00106-GMG, 2017 WL 4453555, at \*2 (N.D.W. Va. Oct. 4, 2017): Judge Groh awarded David Hammer \$400 per hour in a FLSA case. Hammer’s filing for a circuit judge vacancy indicates 30 years of experience.
- *Gen. Motors LLC v. Bill Kelley, Inc.*, 2:12-CV-51, 2013 WL 5504445, at \*8 (N.D.W. Va. Oct. 1, 2013): Over seven years ago, Mag. Judge Seibert awarded \$400 per hour for Jones and \$350 per hour for Kennard, two lawyers described as having 20 years experience.

As to awards in the Southern District:

--Judge Chambers noted that “[i]n a recent litigation before Judge Faber addressing CWA permit violations of a West Virginia coal mine, Mr. Hecker was approved an hourly rate of \$475,” *W. Virginia Highlands Conservancy v. Lexington Coal Co., LLC*, 2022 WL 1414492, \*2 (S.D. W.Va. May 4, 2022), and approved the same rate, citing *W. Va. Highlands Conservancy v. Bluestone Coal Corp.*, No. 1:19-00576, 2021 WL 4480995, at \*2 (S.D.W. Va. Sept. 29, 2021)

Local rule rules application in the Fourth Circuit:

--Loc. R. App. B. (D. Md. 2021) states that, “For attorneys admitted to the bar for twenty years or more, the guidelines range is \$300 to \$475 per hour.” *Trustees of*

*Natl. Electrical Benefit Fund v. Loga Holding, LLC*, 2022 WL 3100759, \*4  
(D.Md. August 4, 2022)(unpaid contributions case under ERISA)

Reimbursement For Time Spent Seeking Fees

Cogan seeks a reimbursement for time pursuing such fees. The amount Cogan seeks for such work is markedly less than in *Daly v. Hill*, 790 F.2d 1071, 1080 (4th Cir.1986). There the attorneys requested compensation for a total of 37.9 hours spent in preparing and arguing the petition for fees. “Time spent defending entitlement to attorney’s fees is properly compensable in a § 1988 fee award.” Such fees are customary, 790 F.2d at 1080.

Respectfully submitted,

/s/ Timothy F. Cogan, Esq.  
Timothy F. Cogan, Esq. (WVSB# 764)  
CASSIDY, COGAN, SHAPELL  
& VOEGELIN, L.C.  
1413 Eoff Street  
Wheeling, WV 26003  
T: 304-232-8100  
F: 304-232-8200  
[tfc@walslaw.com](mailto:tfc@walslaw.com)