

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.

Case No. 5:19-cv-00263

Judge John Preston Bailey

CLASS ACTION

JURY TRIAL DEMANDED

DECLARATION OF JASON E. CAUSEY

JASON E. CAUSEY, deposes and states upon his oath and under the penalty of perjury that he is competent to testify and makes this Declaration based upon personal knowledge and, if called upon to testify, would testify as follows:

1. From August 2003 to the present, I have been employed by the law firm of Bordas & Bordas, PLLC, Wheeling, West Virginia, engaging in a practice encompassing primarily consumer credit litigation and, to a lesser extent, other complex civil litigation on behalf of plaintiffs.
2. I have been a member of the West Virginia Bar since 2003. I am admitted to practice before the Northern and Southern Districts of West Virginia, the Fourth Circuit Court of Appeals, the Southern District of Ohio, the courts of the State of Ohio and the United States Supreme Court.
3. Cases filed pursuant to fee shifting statutes are typically taken on a contingent fee

basis because clients are unable to pay reasonable hourly fees for this type of work. Often, the amount in controversy in such cases is significantly less than the costs of litigation. Therefore, even with the potential for a contingency recovery, many attorneys will hesitate to take such cases. Consequently, it is often difficult for clients to find and obtain representation. It is therefore extremely important that attorneys who do take these cases on a contingent fee basis are awarded full and fair hourly rates. If not, attorneys willing to represent plaintiffs in such cases will become increasingly rare.

4. There are a small number of law firms in West Virginia that accept cases involving the sorts of claims at issue in this case. These cases require specialized and technical knowledge. For that reason, it is particularly important that attorneys receive adequate fee awards.

5. Although my work primarily involves cases where my employer is compensated on a contingency fee basis, there are occasions where my employer charges an hourly rate for my legal services.

6. For many years, my employer was compensated at a rate of \$350.00 per hour for my legal services. My rate was increased to \$425.00 per hour effective July 1, 2022.

7. I have no financial interest in this case, and I am not being paid to submit this declaration.

8. I have personal knowledge of the reputations, skills, and training of the attorneys at Mountain State Justice. The attorneys seeking to recover compensable fees in this matter are attorneys who have received the admiration of lawyers throughout West Virginia and nationally. The legal services provided to low-income West Virginians by these attorneys is of a high caliber and the favorable outcomes these attorneys are able to obtain are well above-average and in many instances-remarkable.

9. I understand that Mr. Hedges is seeking an hourly rate of \$495.00; Mr. Pomponio, \$425.00; Ms. Wagner, \$360.00; Mr. Nisam-Sabat \$300.00; and Ms. Sparks and Ms. Davidson, \$250.00. Given the credentials of these attorneys and their reputation for producing quality work and obtaining favorable results for their clients, I believe their requested hourly rates are reasonable and well within the range of prevailing market rates for similar legal services in West Virginia.

10. For these reasons and others, I believe the requested hourly rates for this matter are reasonable.

Executed this 11th day of October, 2022.

FURTHER THIS AFFIANT SAITH NOT.

/s/ Jason E. Causey

JASON E. CAUSEY

DECLARATION OF LONNIE C. SIMMONS

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO-WIT:

I, Lonnie C. Simmons, declare under penalty of perjury that the following facts are true and correct:

1. I have been a lawyer licensed to practice law in the State of West Virginia since 1982.
2. Presently, I am a member of the law firm of DiPiero Simmons McGinley & Bastress, PLLC, in Charleston, West Virginia.
3. I have been asked to assist Plaintiffs' counsel in developing a record on what hourly rates for attorneys' fees would be appropriate for attorneys' fees in this case successfully litigated on behalf of the Plaintiffs.
4. All statements and opinions made herein are based upon my personal knowledge.
5. If I were asked to testify, my testimony would be the same as my statements in this Declaration.
6. As part of my law practice, I have handled numerous cases involving claims filed pursuant to fee-shifting statutes, usually pursuant to the West Virginia Human Rights Act, the Wage Payment and Collection Act, 42 U.S.C. §1988, etc.

7. I also have been an active member of the West Virginia Employment Lawyers Association (WVELA).
8. Through the WVELA, I have had an opportunity from attending meetings and seminars as well as from observing comments on the WVELA listserv to know most of the lawyers from Mountain State Justice, who worked on this case.
9. Generally speaking, lawyers who handle fee shifting cases keep abreast of the attorneys' fees awarded by trial courts in these cases and I have made an effort to monitor the types of awards granted throughout the State.
10. Litigation over employment discrimination issues is a specialized area of the law that many lawyers will not pursue. Plaintiffs in these cases, many of whom have been fired and have lost their regular income, normally cannot pay an hourly fee, so these cases are pursued without the clients paying any money up front and the lawyers are dependent upon an award of attorneys' fees in the event the litigation is successful. Finding a lawyer competent in this area of the law can be challenging because the plaintiff's employment discrimination bar is relatively small. Due to the risks involved in employment litigation, it is extremely important that lawyers who take these cases be awarded full and fair hourly rates.
11. I also am familiar generally with some of the many challenging cases Mountain State Justice has litigated through the years.

12. Through the years, Mountain State Justice has an enviable and outstanding record of helping West Virginians, who need legal help, but cannot afford to hire a lawyer.
13. The cases litigated by Mountain State Justice are filed to obtain relief, consistent with established public policy, for individuals who otherwise would have a very difficult time trying to find counsel to represent them, absent the up front payment of a retainer or the regular payment of hourly fees.
14. Representing multiple employees in a WARN Act case is something very few lawyers would have the ability to litigate and would not be a desirable case for most lawyers.
15. Based upon my knowledge of the high caliber of lawyers employed by Mountain State Justice, their unending efforts to assist people who otherwise would be left without a lawyer, and their many successes, including the present case, in my opinion, the following requested hourly rates are reasonable and fully justified under these facts:
 - A. Dan Hedges \$495 an hour;
 - B. John Stember \$495 an hour;
 - C. Tim Cogan \$450 an hour;
 - D. Bren Pomponio \$425 an hour;
 - E. Vincent J. Mersich \$400 an hour;
 - F. Maureen Davidson-Welling \$400 an hour;

- G. Jennifer Wagner \$360 an hour;
- H. Michael Nisam-Sabat \$300 an hour;
- I. F. Alex Risovich \$300 an hour;
- J. Laura Davidson \$250 an hour;
- K. Aubrey Sparks \$250 an hour.

16. If the Court determined it wanted additional information from me, I would be willing to provide additional information.

/s/ Lonnie C. Simmons

Lonnie C. Simmons
West Virginia State Bar Number 3406

Executed on **October 10, 2022**

Lonnie C. Simmons
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Lonnie.simmons@dbdlawfirm.com

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**AFFIDAVIT OF AMY C. CROSSAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND EXPENSES**

I, Amy C. Crossan, do hereby state and declare as follows:

1. I am an attorney at Bouchillon, Crossan & Colburn, L.C., located in Huntington, West Virginia. I make this Affidavit in support of Plaintiffs' Motion for Attorneys' Fees and Costs in the above-captioned lawsuit.

My Background and Experience

2. I graduated from Marshall University in Huntington, West Virginia with a Bachelor of Arts in Political Science in 1988. I then attended West Virginia University College of Law in Morgantown, West Virginia and graduated in 1996.

3. I am currently a partner of Bouchillon, Crossan & Colburn, L.C., where I have practiced since November of 1998. My practice focuses on employment law. Specifically, I primarily engage in plaintiff-side employment work, including but not

limited to sexual harassment, wrongful discharge, and discrimination cases.

4. I am admitted to practice in the Southern and Northern District, the 4th Circuit Court of Appeals and before the Supreme Court of Appeals of West Virginia. I have considerable experience litigating on behalf of plaintiffs in the Southern District of West Virginia, and limited experience in the Northern District simply due to my practice being located in the Southern District.

5. I have filed employment cases of about every conceivable type, and I represent employees in civil courts, including West Virginia circuit courts and the Southern and Northern United States District Courts, and in administrative courts such as the Human Rights Commission, the Equal Opportunity Employment Commission, the State Public Employees Grievance Board, the federal Merit Systems Protection Board, the United State Department of Labor Office of Worker's Compensation Program and the Consolidated Public Retirement Board. I also represent professionals before state licensing boards.

6. I am involved in numerous professional organizations. I am a member of the West Virginia Association for Justice, West Virginia Employment Lawyers Association, and the National Employment Lawyers Association. I just finished a six-year term on the West Virginia University College of Law Visiting Committee. I also just completed six years on the West Virginia State Bar's Lawyer Disciplinary Board, the last two serving as the Chairperson. I was previously the Chair of the West Virginia State Bar Association's Continuing Legal Education Committee, President of the Cabell County Bar Association, a member of the Advisory Committee for the Study of the Local Rules in the Southern District of West Virginia and a member of the Committee for the Re-appointment of Magistrate Judge Eifert.

7. I have been selected to speak on employment-related issues to the state judiciary, law clerks and plaintiffs' lawyers. I was selected to speak to the West Virginia Judiciary and presented "Topics & Trends in State & Federal Employment Law" at the West Virginia Judicial Conference, presented "Employment Law Update" for the West Virginia Association of Justice, and presented "State and Federal Employment Law" at the West Virginia Law Clerks Conference.

8. My hourly rate for cases that I litigate in West Virginia federal courts is \$375.

9. I accept a large number of employment related cases on a contingency fee basis. This requires that I advance significant time and money with no guarantee of a decision, settlement or verdict in my client's favor that will permit me to recover my fees and costs.

Plaintiffs' Counsel's Work in this Matter

10. I understand that the Complaint was filed in September of 2019 for violations of the WARN Act, and sought class certification. As a plaintiff's lawyer, I know that the work of originating, investigating, and preparing a case for filing is incredibly important and requires both diligence and skill. I have found that the work that happens before a case is filed is critical to a successful result. I understand Plaintiffs' counsel to have engaged in this work.

11. I understand Plaintiffs' Counsel undertook significant risk with this litigation, expending time and incurring expenses with the understanding that there was no guarantee of compensation or reimbursement.

12. I also understand that once filed, this case required Plaintiffs' counsel to engage in the full spectrum of trial court litigation, including full written discovery, and

motions for summary judgment and class certification. I believe that Plaintiffs' counsel secured significant relief that will benefit the Plaintiffs.

13. In my experience, such litigation and results require a great expenditure of attorneys' time and resources, as well as those of their staff. I have reviewed the docket sheet, which substantiates a significant amount of work performed in a relatively short time period considering the nature and difficulty of the case. Plaintiffs' counsel undoubtedly had to devote a significant amount of their daily practice to this case.

14. In light of this, I find the work Plaintiffs' counsel have expended on the case to be reasonable and efficient. It appears that Plaintiffs' counsel spent a considerable amount of time over the course of more than 3 years investigating and litigating this case, without compensation and with the risk of no compensation. Given the complexity of the matter, the defendants' vigorous defense of their position, and the length of the litigation, those hours on behalf of Plaintiffs and the Class are eminently reasonable.

15. For these reasons and those discussed below, I believe Plaintiffs' counsel's requested fees to be fair, reasonable, and well deserved.

Plaintiffs' Counsel's Rates, Fees, and Costs

16. I am familiar with the "lodestar" method used to determine attorneys' fees in civil litigation. The lodestar method involves calculating the number of hours reasonably expended in litigation multiplied by a reasonable hourly rate.

17. I have knowledge of the rates that Plaintiffs' counsel is seeking for participating attorneys and staff;

18. I am also generally familiar with the hourly rates charged by law firms in this region for complex litigation, which can exceed \$400 an hour for attorneys with more than 20 years of experience. I believe that the highest billable rate Plaintiffs' counsel is

basing its lodestar on in this matter—\$495.00 for the senior most attorney on the case – is fair and reasonable.

19. Similarly, I believe that the \$250.00/hour rate Plaintiffs' counsel is requesting for an attorney with the least years of civil rights litigation experience is fair and reasonable.

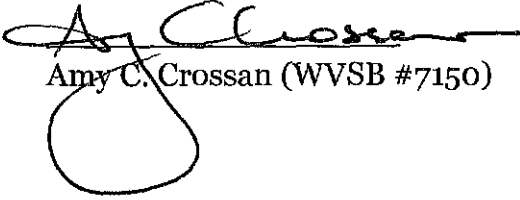
20. These rates are comparable to my rates and the hourly rates for lawyers of similar experience doing similar work. In fact, some firms charge higher rates for comparable services.

21. I also understand that Plaintiffs' counsel has advanced out-of-pocket litigation costs without reimbursement to date. In my opinion, the types of costs incurred are normally incurred in complex civil rights litigation such as this, routinely charged to clients.

22. Finally, I believe that granting Plaintiffs' counsel's request for fees and costs would serve the important public policy to make the judicial system available to plaintiffs who are indigent or who would not otherwise be able to obtain counsel to pursue claims on a fixed-fee basis. This was also the type of undesirable case that fee-shifting is important for.

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

Dated: October 10th, 2022

By: 
Amy C. Crossan (WVSB #7150)

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AFFIDAVIT OF SAMUEL BROWN PETSONK

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF FAYETTE, to-wit:

I, Samuel Brown Petsonk, hereby state the following facts are true to the best of my
knowledge and belief:

1. I am an attorney practicing law in Fayette County, West Virginia, and am a past
president of the West Virginia Employment Lawyers' Association. In 2013, I founded the Miner
Safety and Health Project at the non-profit legal services office Mountain State Justice, Inc.
(MSJ). I served as a practicing attorney at MSJ from April 2014 through June 2019. Since that
time, I have operated a private law practice, Petsonk PLLC.

2. I have personal knowledge of the reputations, skills, and training of the attorneys
at Mountain State Justice. The attorneys seeking to recover compensable fees in this matter are

attorneys who have received the admiration of lawyers throughout West Virginia and nationally. The legal services provided to low-income West Virginians by these attorneys is of a high caliber and the favorable outcomes these attorneys have obtained are well above-average and, in many instances, remarkable.

3. Both during my time at MSJ and subsequently, my law practice has focused on labor and employment law, including employee benefits, federal black lung benefits, and a variety of general civil employment disputes.

4. In 2021, in an order granting my Motion for Attorney Fees, Judge Aboulhosn characterized the average attorney fees in the Southern District of West Virginia:

In the opinion of the undersigned, the average fees in this jurisdiction are in the neighborhood of \$350-\$500 per hour, although the Court has seen hourly rates well in excess of the average as well. The fees being requested here in are considerably less than the average in this jurisdiction.

Jules Gautier v. Tams Management, Inc., et al., Case 5:20-cv-00165 (Order Awarding Fees – ECF 38 at 7) (S.D.W. Va., Jan. 11, 2021) (awarding, in a WARN Act matter, the requested rates of \$450/hour for Attorney Bren J. Pomponio, \$300/hour for Attorney Petsonk, and \$130/hour for paralegals).

5. In 2020-2021, I was routinely awarded \$300-315 for my administrative legal work before the U.S. Department of Labor's Office of Administrative Law Judges. *See e.g. Jack Roles v. Kingston Mining, Inc.*, ALJ No. 2020-BLA-05886 (ALJ Nov. 30, 2021) (\$315/hr for Petsonk); *Charles Lilly v. Youngs Branch Coal Co.*, ALJ No. 2019-BLA-05487 (ALJ Oct. 29, 2021) (\$315/hour for Petsonk, \$312.50/hour for Laura Davidson); *James Cruely v. Four Corners Corp.*, OWCP Case ID No. B7MQ3-2016239 (OWCP Sept. 9, 2021) (\$300/hour for Petsonk and Jennifer Wagner); *Mark Scott v. XMV Coal*, OWCP Case ID No. 2BF5Y-2017355 (OWCP Sept.

9, 2021) (\$300/hour for Petsonk and Wagner); *Wilbert Crislip v. BMJ Coal*, OWCP Case ID No. BXLNC-2019269 (OWCP Aug. 27, 2021) (\$300/hour for Petsonk and Wagner); *James Kirk v. Panther Branch Coal Co.*, OWCP Case ID No. 2B2CQ-2018242 (OWCP Aug. 25, 2021) (\$300/hour for Petsonk); *James M. Layman v. Marion County Coal Co.*, ALJ No. 2019-BLA-6331 (ALJ Aug. 25, 2021) (awarding \$300/hour for Petsonk and Wagner, and \$250/hour for Davidson); *Edgar Burgess v. Eastern Associated Coal Co.*, OWCP Case ID No. 2BDJ8-2017069 (OWCP April 17, 2020) (\$300/hour for Petsonk and Wagner); *Dathen Brown v. Terry Eagle Coal Co. LLC*, OWCP Case ID No. BLLT4-2018019 (\$300/hour for Petsonk).

6. I have been appointed as class counsel along with Bren J. Pomponio and others in numerous employment-related class action matters. *See e.g. Jules Gautier v. Tams Management, Inc., et al.*, Case 5:20-cv-00165 (Order Certifying Class – ECF 59) (S.D.W. Va., Sept. 27, 2021) (lead counsel); *Shawn Abner, et al. v. Blackjewel, L.L.C., et al.*, Case 3:19-ap-03003, slip op. at 13 (Order Approving Class Settlement – ECF 100) (S.Bankr.W. Va. March 5, 2021); *Dougie Lester v. Pay Car Mining, Inc., et al.*, Case 5:17-cv-00740, slip op. at 17 (Order Certifying Class – ECF 40) (S.D.W. Va., June 6, 2018) (lead counsel); *Frank G. Treadway v. Bluestone Coal Corp, et al.*, Case 5:16-cv-12149, slip op. at 16 (Order Certifying Class - ECF 25) (S.D.W. Va., May 5, 2018) (lead counsel); *David Jordan v. Dynamic Energy, Inc., et al.*, case 5: 160-04413, slip op. at 5 (Order Certifying Class - ECF 43) (S.D.W. Va., May 29, 2018) (lead counsel); *Michael Ray v. Double Bonus Coal Co., et al.*, Case 5:15-cv03014, slip op. at 21 (Order Certifying Class - ECF 42) (S.D.W. Va., May 3, 2016) (lead counsel).

4. I am admitted to practice before the West Virginia Supreme Court of Appeals, the United States District Courts for the Northern and Southern Districts of West Virginia, and the United States Court of Appeals for the Fourth Circuit.

5. I understand that Mr. Hedges is seeking an hourly rate of \$495.00; Mr. Pomponio, \$425.00; Ms. Wagner, \$360.00; Mr. Nissim-Sabat, \$300.00; and Ms. Sparks and Ms. Davidson, \$250.00. Given the credentials of these attorneys and their reputation for producing quality work and obtaining favorable results for their clients, I believe their requested hourly rates are reasonable and well within the range of prevailing market rates for similar legal services in West Virginia.

6. I believe that the requested rates are reasonable and within the range of hourly rates earned by and awarded to attorneys of comparable experience and background in this community.

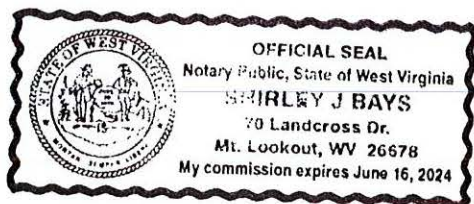
Taken, sworn to, and subscribed before me this 10th day of October, 2022.


SAMUEL B. PETSONK

Taken, sworn to, and subscribed before me this 10 day of October, 2022.

My commission expires: June 16, 2024


NOTARY PUBLIC



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AFFIDAVIT OF WALT AUVIL

I Walt Auvil, hereby state the following facts are true to the best of my knowledge and belief:

1. From 1989 to the present, I have been owner of the Employment Law Center, PLLC, and its predecessors in interest in Parkersburg, West Virginia, engaging in a practice encompassing primarily employment law litigation on behalf of plaintiffs in West Virginia state and federal courts.

2. I have been a member of the West Virginia Bar since 1981 and am admitted to practice before the Northern and Southern Districts of West Virginia, and the Fourth Circuit Court of Appeals.

3. Although my practice primarily involves cases where I am compensated on a contingency fee basis, there are many occasions where I am retained on an hourly basis in employment matters.

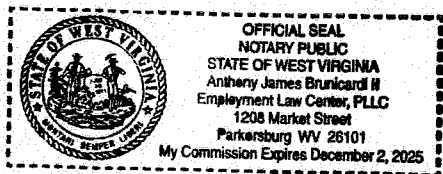
4. Since 2020 my hourly rate for all work, contingent and non-contingent, has been \$500 per hour. An Associate in our firm with 6 years of experience has an hourly rate of \$300 per hour. An Associate in our firm with 3 years of experience has an hourly rate of \$250 per hour. These hourly rates are all routinely charged and collected by this firm for hourly retained employment litigation services.

5. I have personal knowledge of the reputations, skills, and training of the attorneys at Mountain State Justice. The attorneys seeking to recover compensable fees in this matter are attorneys who have received the admiration of lawyers throughout West Virginia and nationally. The legal services provided to low-income West Virginians by these attorneys is of a high caliber and the favorable outcomes these attorneys are often able to obtain are remarkable.

6. I understand that Mr. Hedges is seeking an hourly rate of \$495.00; Mr. Pomponio, \$425.00; Ms. Wagner, \$360.00; Mr. Nisam-Sabat \$300.00; and Ms. Sparks and Ms. Davidson, \$250.00. Given the credentials of these attorneys and their reputation for producing quality work and obtaining favorable results for their clients, I believe their requested hourly rates are reasonable and well within the range of prevailing market rates for similar legal services in West Virginia.

7. For these reasons and others, I believe the requested hourly rates for this matter are reasonable.

FURTHER THIS AFFIANT SAITH NOT.



Walt Auvil
WALT AUVIL

Taken, sworn to, and subscribed before me this 10th day of October, 2022.

My commission expires: 12/2/2025.

Anthony Bruniard