

S E R V I C E
October 15, 2015
FEDERAL MARITIME COMMISSION

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DOCKET NO. 14-04

EDAF ANTILLAS, INC.

v.

**CROWLEY CARIBBEAN LOGISTICS, LLC;
IFS INTERNATIONAL FORWARDING, S.L.; and
IFS NEUTRAL MARITIME SERVICES**

ORDER GRANTING PETITIONS FOR ATTORNEY FEES¹

I. BACKGROUND.

On April 28, 2014, complainant Edaf Antillas, Inc., filed a Complaint with the Commission alleging that respondents IFS Neutral Maritime Service (Neutral) and IFS International Forwarding, S.L. (IFS), two affiliated corporations represented by the same counsel, and respondent Crowley Caribbean Logistics, LLC (CCL) violated sections 41104(3) and (8) and section 41102(c) of the Shipping Act of 1984 (the Act). 46 U.S.C. §§ 41104(3) and (8); 46 U.S.C. § 41102(c). On November 6, 2014, the undersigned dismissed all claims against IFS, dismissed all section 41104(3) and (8) claims against Neutral and CCL, and dismissed the section 41102(c) claims against CCL for the transportation of the shipment from Spain to Puerto Rico. *Edaf Antillas, Inc. v. Crowley Caribbean Logistics, LLC; IFS International Forwarding, S.L.; and IFS Neutral Maritime Services*, FMC No. 14-04 (ALJ Nov. 6, 2014) (Order on Motions to Dismiss). On December 8, 2014, the Commission issued a Notice Not to Review the decision. *Edaf Antillas, Inc. v. Crowley Caribbean Logistics, LLC; IFS International Forwarding, S.L.; and IFS Neutral Maritime Services*, FMC No. 14-04 (FMC Dec. 8, 2014) (Notice Not to Review).

¹ This Order will become the decision of the Commission in the absence of review by the Commission. Any party may file exceptions to this decision within twenty-two days of the date of service. 46 C.F.R. § 502.227; 46 C.F.R. § 502.254(f).

The Briefing Schedule required Edaf Antillas to file its proposed findings of fact, brief, and appendix on or before February 23, 2015. *Edaf Antillas, Inc. v. Crowley Caribbean Logistics, LLC; IFS International Forwarding, S.L.; and IFS Neutral Maritime Services*, FMC No. 14-04 (ALJ Jan. 14, 2015) (January 14, 2015, Briefing Schedule). Edaf Antillas did not file the proposed findings of fact, brief, and appendix as required. On February 24 and 25, 2015, Respondents filed motions to dismiss based on the contention that by failing to comply with the January 14, 2015, Briefing Schedule, Edaf Antillas failed to prosecute its claim. Respondents asserted that if the motions were granted, they would be prevailing parties entitled to awards of attorney fees pursuant to section 402 of the Howard Coble Coast Guard and Maritime Transportation Act of 2014, Pub. L. No. 113-281, § 402, 128 Stat. 3022, 3056 (Dec. 18, 2014) (Coble Act). This amendment deleted the phrase “plus reasonable attorney fees” from section 41305(b) of the Act and added a new section 41305(e): “*Attorney Fees.* – In any action brought under section 41301, the prevailing party may be awarded reasonable attorney fees.” 46 U.S.C. § 41305(e).

Edaf Antillas was ordered to show cause before March 12, 2015, why its Complaint should not be dismissed for failure to prosecute. Respondents were ordered to file supplemental briefs addressing the issue of whether and why the new attorney fee provision applied in this proceeding. Edaf Antillas was permitted to reply to the supplemental briefs. *Edaf Antillas, Inc. v. Crowley Caribbean Logistics, LLC; IFS International Forwarding, S.L.; and IFS Neutral Maritime Services*, FMC No. 14-04 (ALJ Mar. 2, 2015) (Order for Complainant to File Papers and to Show Cause; Order for Respondents to File Supplemental Briefs). Respondents filed their supplemental briefs, but Edaf Antillas did not file the papers required by the Briefing Schedule or respond to the show cause order or the supplemental briefs.

On April 15, 2015, I entered an Initial Decision dismissing the Complaint with prejudice for failure to prosecute. The Initial Decision held that as prevailing parties, Respondents may be awarded reasonable attorney fees for work done after enactment of the Coble Act, but that the amount of the attorney fee awards, if any, would be determined after the Commission issued its final decision in this proceeding. *Edaf Antillas, Inc. v. Crowley Caribbean Logistics, LLC; IFS International Forwarding, S.L.; and IFS Neutral Maritime Services*, FMC No. 14-04 (ALJ Apr. 15, 2015) (Initial Decision Dismissing Proceeding for Failure to Prosecute). Edaf Antillas did not file exceptions to the Initial Decision. On May 18, 2015, the Commission issued a Notice Not to Review and the Initial Decision became final.

On June 9, 2015 (Neutral)² and June 16, 2015 (CCL), Respondents filed petitions for awards of attorney fees. Edaf Antillas has not responded to the petitions. The petitions are ripe for decision.

² All claims against IFS were dismissed before December 18, 2014, and the petition seeks fees for services on or after that date. Therefore, the services for which an attorney fee award is sought were performed for Neutral.

II. COMMISSION ATTORNEY FEE AWARDS.

The applicant for an award of attorney fees bears the burden of establishing entitlement to an award, documenting the appropriate hours, and justifying the reasonableness of the rates. *See Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984) (“[C]ourts properly have required prevailing attorneys to justify the reasonableness of the requested rate or rates.”); *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (“[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.”).

Blum v. Stenson addressed the calculation of an attorney fee award when a nonprofit organization represents the prevailing party.

Title 42 U. S. C. § 1988 (1976 ed., Supp. V) provides that in federal civil rights actions “the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs.” The initial estimate of a reasonable attorney’s fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U. S. 424 (1983). Adjustments to that fee then may be made as necessary in the particular case. The two issues in this case are whether Congress intended fee awards to nonprofit legal service organizations to be calculated according to cost or to prevailing market rates

Id. at 888-889. The Court concluded: “The statute and legislative history establish that ‘reasonable fees’ under § 1988 are to be calculated according to the prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private or non-profit counsel.” *Id.* at 895.

Prior to the Coble Act, the Commission could only grant an award of attorney fees to a prevailing complainant who obtained a reparation award. 46 U.S.C. § 41305(b) (repealed Dec. 18, 2014). *See Edaf Antillas, Inc. v. Crowley Caribbean Logistics, LLC; IFS International Forwarding, S.L.; and IFS Neutral Maritime Services*, FMC No. 14-04, Decision at 6-20 (ALJ Apr. 15, 2015) (Initial Decision Dismissing Proceeding for Failure to Prosecute). As prevailing parties in this proceeding, Respondents may be awarded attorney fees pursuant to the amended Act. On July 2, 2015, the Commission published a Notice of Proposed Rulemaking regarding revisions in its Rules of Practice and Procedure that would implement section 41305(e), *see* Organization and Functions; Rules of Practice and Procedure; Attorney Fees, 80 Fed. Reg. 38153 (July 2, 2015), but has not yet adopted new rules. I will apply the principals that have been used in determining attorney fees under section 41305(b) and current Rule 254 to determine awards for Respondents. 46 C.F.R. § 502.254.

The Commission has used the Laffey Matrix to determine the reasonableness of attorney rates when awarding fees pursuant to repealed section 41305(b). *Petra Pet, Inc. v. Panda Logistics Ltd., Panda Logistics Co. Ltd., and RDM Solutions, Inc.*, 33 S.R.R. 336, 338 (FMC 2014). The Laffey Matrix developed as a device to be used when calculating attorney fee awards in cases in which a

prevailing party was represented by a nonprofit legal organization or private law firm providing representation *pro bono* or at a reduced fee.

The Laffey Matrix, which takes its name from the case in which it was first employed, *Laffey v. Northwest Airlines*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd*, 746 F.2d 4 (D.C. Cir. 1984), *overruled in part on other grounds by Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (*en banc*) (“SOCM”), provides billing rates for attorneys in the Washington, DC market with various degrees of experience.

Interfaith Community Organization v. Honeywell International, Inc., 426 F.3d 694, 708 (3d Cir. 2005). The attorneys representing the prevailing party in *Laffey* “scale[d] their rates [charged] according to their clients’ ability to pay. . . .” *Laffey v. Northwest Airlines*, 572 F. Supp. at 373.

The Court of Appeals noted specifically in [*Copeland v. Marshall*, 641 F.2d 880 (D.C. Cir. 1980)] that computing fees “differently depending on the identity of the successful plaintiffs’ attorney” i.e., whether counsel was a public interest firm or a private attorney would produce results that are inconsistent with the legislative scheme of the Civil Rights Act of 1964:

The incentive to employers not to discriminate is reduced if diminished fee awards are assessed when discrimination is established. Moreover, where a public interest law firm serves as plaintiff’s counsel (*a law firm that . . . will not obtain the full value of its services from the losing defendant*) the defendant will be subject to a lesser incentive to settle a suit without litigation than would be the case if a high-priced private firm undertook plaintiff’s representation.

641 F.2d at 899 (emphasis added).

Laffey v. Northwest Airlines, 572 F. Supp. at 373.

Blum v. Stenson recognized a distinction between cases in which the attorney “reduced rates for non-economic reasons,” *SOCM*, 857 F.2d at 1518, or provided *pro bono* representation on a “‘private attorney general’ theory,” *Blum v. Stenson*, 465 U.S. at 894 n.10, from cases where the attorney does not reduce his or her normal rates for non-economic reasons.

We recognize, of course, that determining an appropriate “market rate” for the services of a lawyer is inherently difficult. Market prices of commodities and most services are determined by supply and demand. In this traditional sense there is no such thing as a prevailing market rate for the service of lawyers in a particular community. The type of services rendered by lawyers, as well as their experience,

skill, and reputation, varies extensively – even within a law firm. Accordingly, the hourly rates of lawyers in private practice also vary widely. The fees charged often are based on the product of hours devoted to the representation multiplied by the lawyer’s customary rate. But the fee usually is discussed with the client, may be negotiated, and it is the client who pays whether he wins or loses. The § 1988 fee determination is made by the court in an entirely different setting: there is no negotiation or even discussion with the prevailing client, as the fee – found to be reasonable by the court – is paid by the losing party. Nevertheless, as shown in the text above, the critical inquiry in determining reasonableness is now generally recognized as the appropriate hourly rate. And the rates charged in private representations may afford relevant comparisons.

Blum v. Stenson, 465 U.S. at 895 n.11. The prevailing view that has evolved in the federal courts is that in a case in which the attorney did not reduce rates for non-economic reasons or represent a client *pro bono* on a private attorney general theory, the rate on which the award is based should be what the attorney actually charged.

The fee movant bears the burden of establishing this prevailing market rate, and must present satisfactory evidence “that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.” When the fee movant’s counsel is in private practice, the most convincing evidence of the prevailing market rate is the rate that counsel charges a client in similar actions. Therefore, as a practical matter, an attorney who has an established normal billing rate should ordinarily be assigned that rate in the lodestar and recover fees based on that rate, unless the litigation is outside the attorney’s field of expertise. Accordingly, an affidavit of the fee movant’s attorney should state the attorney’s established billing rate for like cases.

Derfner, M.F. & Wolf, A.D., *Court Awarded Attorney Fees*, § 16.03[2][a] (2012) (footnotes omitted).

One can begin with the premise that, in the ordinary case, a fee based on the actual rates an attorney charges would be *prima facie* reasonable. There is no better indication of what the market will bear than what the lawyer in fact charges for his services and what his clients pay. In an efficient market, a “reasonable” rate set by the court should mirror the attorney’s actual rate because no attorney will charge less than that rate if he can get it and no client will pay more. The “Laffey” matrix was derived, after all, from a survey of data of the rates lawyers actually charged their clients. Thus, if the market is working correctly and the “Laffey” rates are accurate, lawyers should be getting the “Laffey” rates from their clients.

Griffin v. Washington Convention Center, 172 F. Supp. 2d 193, 197 (D.D.C. 2001). See also *Kattan by Thomas v. District of Columbia*, 995 F.2d 274, 278 (D.C. Cir. 1993) (“[a]n attorney’s usual

billing rate is presumptively the reasonable rate, provided that this rate is ‘in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.’” (quoting *Blum v. Stenson*, 465 U.S. at 895-896 n.11)).

In *Petra Pet*, however, the Commission reduced the hourly fee of the award for paralegal services to the Laffey Matrix amount, indicating that when calculating an attorney fee award in a Commission proceeding, the Laffey Matrix rate is the maximum rate that may be used.

The rate charged by the paralegal, Ms. McBrayer, exceeds what the submitted Laffey Matrices set as reasonable for the District of Columbia, during the applicable time period of June 1, 2012, through May 31, 2013. A reasonable rate under the “adjusted” Laffey Matrix for Ms. McBrayer is \$170 per hour. Therefore, the 36.8 hours Ms. McBrayer worked should result in \$6,256.00 in compensable fees, rather than the \$9,016.00 fee amount requested.

Petra Pet v. Panda Logistics, 33 S.R.R. at 339. Therefore, I have applied this principal in this proceeding and reduced hourly rates to the Laffey Matrix amount when a higher rate is sought.

III. NEUTRAL PETITION FOR ATTORNEY FEES.

Neutral supports its petition with a declaration by Todd P. Kenyon, one of the attorneys who represented Neutral throughout this proceeding. The petition seeks fees for attorney services performed by Kenyon and attorney Joshua S. Parks on and after December 18, 2014, the effective date of the Coble Act. Neutral attached four exhibits to its motion: A copy of the Laffey Matrix downloaded on 5/26/2015 at 3:45 PM from <http://www.laffeymatrix.com/see.html> (Kenyon Exhibit 1) and invoices from Betancourt, Van Hemmen, Greco & Jebyib LLC, Kenyon’s law firm, to Neutral dated April 14, 2015, May 15, 2015, and June 09, 2015, for attorney services in this proceeding. (Kenyon exhibits 2, 3, and 4).

Kenyon states that he graduated from Syracuse University College of Law in 1983 and has been a member of the New York bar since 1984. (Kenyon Declaration ¶ 5.) Neutral seeks a fee of \$250 per hour for Kenyon’s services. The Laffey Matrix rate for the year 6/01/14 through 5/31/15 for an attorney more than twenty years out of law school is \$789 per hour. The rate sought for Kenyon’s services is well below this amount. Therefore, I find that Kenyon’s rate of \$250 per hour is reasonable.

The three invoices indicate that Betancourt, Van Hemmen, Greco & Jebyib LLC billed Neutral for 37.3 hours of Kenyon’s attorney services on this proceeding for work on or after December 18, 2014. The services described in the invoices indicate that the hours claimed were reasonably expended on this litigation. Therefore, Neutral is awarded \$9325.00 for Kenyon’s attorney fees.

Parks graduated from Tulane University Law School in 2012 and has been a member of the New Jersey bar since 2012. (Kenyon Declaration ¶ 5.) Neutral seeks a fee of \$175 per hour for Parks's services. The Laffey Matrix rate for the year 6/01/14 through 5/31/15 for an attorney one to three years out of law school is \$328 per hour. The rate sought for Parks's services is well below this amount. Therefore, I find that Parks's rate of \$175 per hour is reasonable.

The three invoices indicate that Betancourt, Van Hemmen, Greco & Jebyib LLC billed Neutral for 52.85 hours of Parks's attorney services on this proceeding for work on or after December 18, 2014. The services described in the invoices indicate that the hours claimed were reasonably expended on this litigation. Therefore, Neutral is awarded \$9248.75 for Parks's attorney fees.

Edaf Antillas is ordered to pay Neutral \$18,573.75 for attorney fees incurred in this proceeding on or after December 18, 2014. 46 U.S.C. § 41305(e).

IV. CCL PETITION FOR ATTORNEY FEES.

CCL supports its petition with a declaration by Eric Jeffrey, CCL's lead attorney for this proceeding. The petition seeks an attorney award for services performed by Jeffrey and attorneys Lindsey Nelson and Angela Buckner. CCL attached a copy of the Laffey Matrix and invoices from Nixon Peabody, CCL's law firm, dated January 8, 2015, February 4, 2015, March 9, 2015, April 8, 2015, May 7, 2015, 2015, June 4, 2015, and June 15, 2015.

Jeffrey states that he is the lead attorney for CCL and performed the majority of the work. Jeffrey states:

I am a 1978 graduate of the University of Pennsylvania Law school and a well-recognized expert in the field of maritime law. I have practiced maritime law for over 28 years, representing ocean carriers, NVOCCs, MTOs, and other regulated entities. . . . The hourly rate that I charged CCL was \$585, well below my customary rate of \$650 per hour, and the lowest rate that I charge any of my clients.

(Jeffrey Declaration ¶ 5.) The Laffey Matrix rate for the year 6/01/14 through 5/31/15 for an attorney more than twenty years out of law school is \$789 per hour. The rate sought for Jeffrey's services is well under this amount. Therefore, I find that Jeffrey's rate of \$585 per hour is reasonable.³

³ Although Jeffrey states that he reduced his rate below his customary rate, there is no suggestion in the record that he "adjusted fee schedules downward from pro bono or quasi public interest motives to reflect the reduced ability of the client to pay or what the attorney saw as the importance and justice of the client's cause." *SOCM*, 857 F.2d at 1519. CCL (apparently) paid the invoices at Jeffrey's reduced rate. Therefore, I find that CCL would not be entitled to request compensation for Jeffrey's time at his customary rate in a petition for attorney fees after CCL became the prevailing party, a request that I acknowledge CCL did not make.

The invoices indicate that Nixon Peabody billed CCL for 30.6 hours of Jeffrey's attorney services on this proceeding for work on or after December 18, 2014. The services described in the invoices indicate that the hours claimed were reasonably expended on this litigation. Therefore, CCL is awarded \$17,901.00 for Jeffrey's attorney fees.

Nelson graduated from the George Washington Law School in 2009 and has been a member of the Virginia bar since 2009 and the District of Columbia bar since 2010. CCL seeks a rate of \$420 per hour for Nelson's services, "her customary rate for time charged to clients." (Jeffrey Declaration ¶ 6.) The requested rate exceeds the Laffey Matrix rate for the year 6/01/14 through 5/31/15 for an attorney four to seven years out of law school, which is \$402 per hour.

Because the Commission has indicated that rates are limited to the Laffey Matrix rate, *see* Part II above, I find that Nelson's services should be compensated at \$402 per hour.

The invoices indicate that Nixon Peabody billed CCL for 2.7 hours of Nelson's attorney services on this proceeding for work on or after December 18, 2014. The services described in the invoices indicate that the hours claimed were reasonably expended on this litigation. Therefore, CCL is awarded \$1085.40 for Nelson's attorney fees.

Buckner graduated from the George Washington Law School in 2013 and has been a member of the Virginia bar since 2013 and the Maryland and District of Columbia bars since 2014. CCL seeks a fee of \$385 per hour for Buckner's services, "her customary rate for time charged to clients." (Jeffrey Declaration ¶ 6.) The requested rate exceeds the Laffey Matrix rate for the year 6/01/14 through 5/31/15 for an attorney one to three years out of law school, which is \$328 per hour.

Because the Commission has indicated that rates are limited to the Laffey Matrix rate, *see* Part II above, I find that Buckner's services should be compensated at \$328 per hour.

The invoices indicate that Nixon Peabody billed CCL for 15.1 hours of Buckner's attorney services on this proceeding for work on or after December 18, 2014. The services described in the invoices indicate that the hours claimed were reasonably expended on this litigation. Therefore, CCL is awarded \$4952.80 for Buckner's attorney fees.

Edaf Antillas is ordered to pay CCL \$23,939.20 for attorney fees incurred in this proceeding on or after December 18, 2014. 46 U.S.C. § 41305(e).

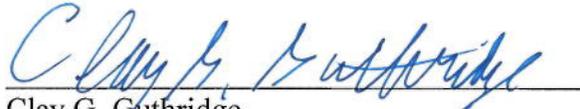
ORDER

Upon consideration of the Verified Petition Regarding Attorney Fees filed by IFS Neutral Maritime Service, and the record herein, and for the reasons stated above, it is hereby

ORDERED that the Petition be **GRANTED**. Complainant Edaf Antillas, Inc., is ordered to pay respondent IFS Neutral Maritime Service \$18,573.75 for attorney fees incurred in this proceeding on or after December 18, 2014, based on 37.3 hours of attorney work time at a rate of \$250 per hour and 52.85 hours of attorney work time at a rate of \$175 per hour.

Upon consideration of Respondent CCL's Supplemental Petition for Attorney Fees and the record herein, and for the reasons stated above, it is hereby

ORDERED that the Petition be **GRANTED**. Complainant Edaf Antillas, Inc., is ordered to pay respondent Crowley Caribbean Logistics, LLC, \$23,939.20 for attorney fees incurred in this proceeding on or after December 18, 2014, based on 30.6 hours of attorney work time at a rate of \$585 per hour, 2.7 hours of attorney work time at a rate of \$402 per hour, and 15.1 hours of attorney work time at a rate of \$328 per hour.


Clay G. Guthridge
Administrative Law Judge