

Expert Report of David Paige

I. Introduction

I am the Managing Director of Legal Fee Advisors ["LFA"], a legal fee advising firm. I have several decades of experience both as a practicing attorney and as in-house counsel. I have also acted as an advisor to many large corporations concerning prevailing legal billing standards and practices. Further, I am fully familiar with the combination of ethical and legal standards governing billing practices, serve as a member of the Professional Responsibility Committee of the Association of the Bar of the City of New York, and have testified extensively on the subject of legal fee billing [a copy of my *curriculum vitae* is attached as Exhibit 1].

I have been retained by Company [Client] as an expert regarding reasonable billing practices. Company is currently engaged in arbitration with Company 2. Company produced copies of legal bills from these litigations [the "Analyzed Bills"], as well as certain supporting materials. These materials have been reviewed to identify unreasonable charges. We have adjusted those charges in accordance with specified criteria and have arrived at a total sum of deductions that should be applied to the Analyzed Bills. There are also certain areas identified that will need further study and analysis.

II. Background

REDACTED

We have applied well-accepted legal and commercial standards to this analysis to reach certain conclusions.

III. Analysis and Methodology

The Analyzed Bills ranged in date from January 2006 through January 2014, and totaled \$41,000,000.00 (\$40,000,000.00 in fees and \$1,000,000.00 in disbursements).

Legal Fee Advisors was asked by Company to perform the following analyses:

- a. Review the Analyzed Bills for compliance with the following:
 1. Compliance with agreed Billing guidelines; [the "Billing Guidelines" set forth as Exhibit 2]
 2. Compliance with applicable legal and ethical billing standards; and
 3. Compliance with generally accepted, customary commercial billing standards and practices.
- b. Compile a summary of the results of LFA's examination of the invoices following a line-by-line examination of the bills.
- c. Formulate conclusions from the above review and analysis, as well as areas for additional study.

Legal Fee Advisors' methodology for analyzing the Analyzed Bills is set forth in Exhibit 3.

IV. Summary of Objections and Issues

As a result of our review, LFA has identified the following objectionable billing practices:

- a. Block Billing Pg. 2
- b. Quarter Hour Billing Pg. 5
- c. Clerical/Administrative Overhead Work Billed by Timekeepers Pg. 7
- d. Pattern Billing Pg. 10
- e. Apparently Excessive time Spent on Legal Research Pg. 11
- f. Apparently Excessive Staffing Pg. 12
- g. Apparently Overqualified for Task Pg. 14
- h. Excessively Long Days Charged Pg. 15
- i. Vague and/or Inadequately Described Time Entries Pg. 16
- j. Attorney Time Charged for Pure Travel Pg. 18
- k. Non-Billable Overhead Disbursements and/or Disbursements Charged at a Profit Pg. 19
- l. Areas of Additional Concern Pg. 21

For the purposes of this report, we will provide an explanation and/or examples of each objection identified, as well as the following Relevant Authorities:

- [1] the source of the objection in the Billing Guidelines;
- [2] samples of relevant legal precedent, entitled "Violation of Legal/Ethical Standards"; and
- [3] samples of relevant commercial standards as expressed in corporate legal billing guidelines, entitled "Violation of Generally Accepted Commercial Standards.";

Our report first reviews violations of billing guidelines as they pertain to legal fees. It then reviews violations of billing guidelines as they pertain to disbursements, followed by summary conclusions.

V. Explanation of Objections to Billing Entries and Results by Category

a. **Description Error: BLOCK BILLING:**

Block billing is generally recognized as when a time entry lumps all of the activities performed by a timekeeper on a given day into a single entry, instead of allocating the time spent on each discrete task. This is addressed in the Billing Guidelines as set forth below. A substantial number of the time entries submitted for review contained entries that were stripped of value per task detail so that a reasonable client could not have understood the value delivered by the attorney or other timekeeper for the task described.

Examples of Block Billed Entries are set forth at Exhibit 4 to this report.

LFA’s review has identified a total of \$22,000,000.00 in entries that contain potentially objectionable charges for block billed narratives. Based upon commercially recognized standards, as well as legal precedent, such charges should be reduced by 10% to 15%.

Block Billed



Objection	Amount	Total Fees
Block Billed	\$22,000,000.00	\$40,000,000.00

The following authorities are applicable to LFA’s conclusion that block billed entries are objectionable in this case:

[1] Violation of Billing Guidelines: The Billing Guidelines do not allow for Block Billing. They state that each task should be separately described with the time spent for that task. They state that each task must be accompanied by a narrative and must be identified as a subtotal, such that the total time for any entry is the sum of the individual tasks.

[2] Violation of Legal/Ethical Standards: Following are examples of case law that support a reduction of fees for block billing:

- **RMP Capital, Corp. v. Victory Jet, LLC, 40 Misc. 3d 1243(A), 977 N.Y.S.2d 670 (Sup. Ct. 2013)** (directing an across-the-board percentage reduction in the hours expended by 25% where the billing statements included a substantial and repeated use of block-billed entries resulting in difficulty in gauging the reasonableness of time expended on each activity.).

- **Wise v. Kelly, 620 F.Supp.2d 435, 450-52 (S.D.N.Y.2008)** (billing entries which either identified a single task or more than one task related to a single general task did not constitute improper block billing so as to warrant a reduction of attorney fees awarded in civil rights case; however, entries which contained multiple discrete tasks in the same entry warranted a 20% reduction of time for improper block-billing, noting “[a]lthough not prohibited, block-billing makes it exceedingly difficult for courts to assess the reasonableness of the hours billed”). (quotations omitted).
- **Sea Spray Holdings, Ltd. v Pali Fin. Group, Inc., 277 F. Supp. 2d 323, 325-26 (S.D.N.Y. 2003)** (On maker's motion for attorney fees under loan agreement's attorney fee provision, the Court held that flat 15% reduction in requested award was warranted given apparently excessive billing for motion to dismiss and given use of “block billing”).
- **Bank v. Ho Seo, 2009 WL 5341672 at *5 (S.D.N.Y. Dec 16, 2009)** (“Examples of block billing . . . include: 'Review Complaint; Office Conference; Research; Draft Report-2.00hrs.'...Such block entries make it impossible for this Court to determine the reasonableness of the time allocated to each of these activities. This Court holds that such block billing warrants a fee reduction.”).

[3] Violation of Generally Accepted Commercial Customary Billing Standards and Practices: Following are examples of legal billing guidelines representing generally accepted commercial standards:

[REDACTED]

b. **Description Error: QUARTER HOUR BILLING:**

A substantial amount of the time billed by the Company 2’s firms was billed in minimum increments of at least 15 minutes (.25/hour). At all times relevant to this report, it was generally accepted that rounding up to quarter hour or half hour increments inflates billing and does not reflect actual time spent. Accordingly, a substantial amount of the fees reviewed by LFA are objectionable.

There are numerous activities performed by attorneys and paralegals that take substantially less than 15 (or 30) minutes to perform. As noted by Professor William Kennedy Ross in his book, *The Honest Hour*, “[t]here is a serious ethical question about how to properly bill clients for tasks that have taken less time than the smallest unit of time in which the attorney records his time.” Further, as Professor Ross notes, “As in other aspects of billing, client consent is crucial. Whatever method of ‘rounding’ an attorney uses, that method should be explained to the client at the outset of the representation.”

Examples of entries in this category are set forth at Exhibit 5 to this report.

As a result of Legal Fee Advisors' analysis, we have identified objectionable charges for this issue in the amount of \$30,000,000.00. Based upon commercially recognized standards, as well as legal precedent, such charges should be reduced by 15% to 25%.

Quarter Hour Billing



Objection	Amount	Total Fees
Billed in Quarter Hour Increments	\$30,000,000.00	\$40,000,000.00

The following authorities are applicable to LFA's conclusion that entries billed in quarter hour increments are objectionable in this case:

[1] Violation of Billing Guidelines: The Billing Guidelines explicitly state that the bills may not include time increments of more than 6 minutes. Specifically, they state fees must be billed in increments of one tenth of an hour and rounded down. The Company expects not to be billed at all in cases of a short phone call, email correspondence, etc.

[2] Violation of Legal/Ethical Standards: Following are examples of case law that support a reduction of fees for block billing:

- **Townes v. City of New York, 12 Civ 3201 BMC, 2013 WL 153726 at * 3 (E.D.N.Y. Jan 15, 2013)** ("Moreover, had Mr. Harvis kept time in increments of one-quarter of an hour, instead of in increments of one-tenth of an hour, the issue of rounding might be more important. See e.g., Cowan v. Ernest Codelia, P.C. [citation omitted] (recommending an across the board reduction in compensable hours where lawyer billed one-quarter hour, or \$62.50 at lawyer's requested rate of \$250 per hour, for "even the briefest phone call or review of the most succinct letter"). Mr. Harvis' practice of billing in one-

tenth of an hour increments was appropriate and therefore, his various six-minute entries are reasonable.")

- **Trustees of Local 813 Ins. Trust Fund v. Bradley Funeral Serv., Inc., 11-CV-2885 ARR RLM, 2012 WL 3871759 (E.D.N.Y. Aug. 10, 2012) report and recommendation adopted sub nom. Trustees of Local 813 Ins. Trust Fund v. Bradley Funeral Servs., Inc., 11-CV-2885 ARR RLM, 2012 WL 3871755 (E.D.N.Y. Sept. 4, 2012)** (reducing billable hours due in part to practice of quarter hour billing).
- **MZH, Ag v. State Indus.-Trade Unitary Enter. "Belaya Russ", 03CIV. 3774RMBAJP, 2003 WL 22852895 at *1 (SDNY Nov. 10, 2003)** ("Following its independent examination of the billing records and of the record and legal authorities, this Court agrees with Judge Peck that the attorneys fees should have been lower, and, e.g., that the use of four attorneys to research, draft, and review the motion for damages resulted in duplication of effort . . . Moreover, while relatively detailed billing records have been provided, they tend to group multiple tasks in one entry and use only quarter-hour billing increments (instead of tenth-of-an-hour). The fees are not excessive in every regard, but it was appropriate to reduce the amount sought by one-third.").
- **Cowan v. Ernest Codelia, P.C., 98 CIV. 5548 (JGK)(J, 2001 WL 30501 at *8 (S.D.N.Y. Jan. 12, 2001) aff'd sub nom. Cowan v. Codelia, 50 F. App'x 36 (2d Cir. 2002)** ("The excessiveness of counsel's charges is compounded by their billing practices. Each attorney recorded time in increments no smaller than one-quarter hour. Consequently, even the briefest phone call or review of the most succinct letter resulted in billing of one-quarter hour, or \$62.50 at Mr. Lebron's requested rate of \$250 per hour. The use of such large billing increments is inappropriate. . . . In light of this widespread overbilling, an across-the-board reduction in compensable hours is warranted. . . . Accordingly, otherwise reimbursable hours shall be reduced by fifty percent to account for excessive charges.") (internal citation omitted)

[3] Violation of Generally Accepted Commercial Customary Billing Standards and Practices: Following are examples of generally accepted commercial standards with regard to billing in quarter or half hour versus tenth of an hour (.1/hour), or even twentieth of an hour (.05/hour) increments.

[REDACTED]

c. **Questionable Billing Judgment: Charges for CLERICAL and ADMINISTRATIVE TASKS:**

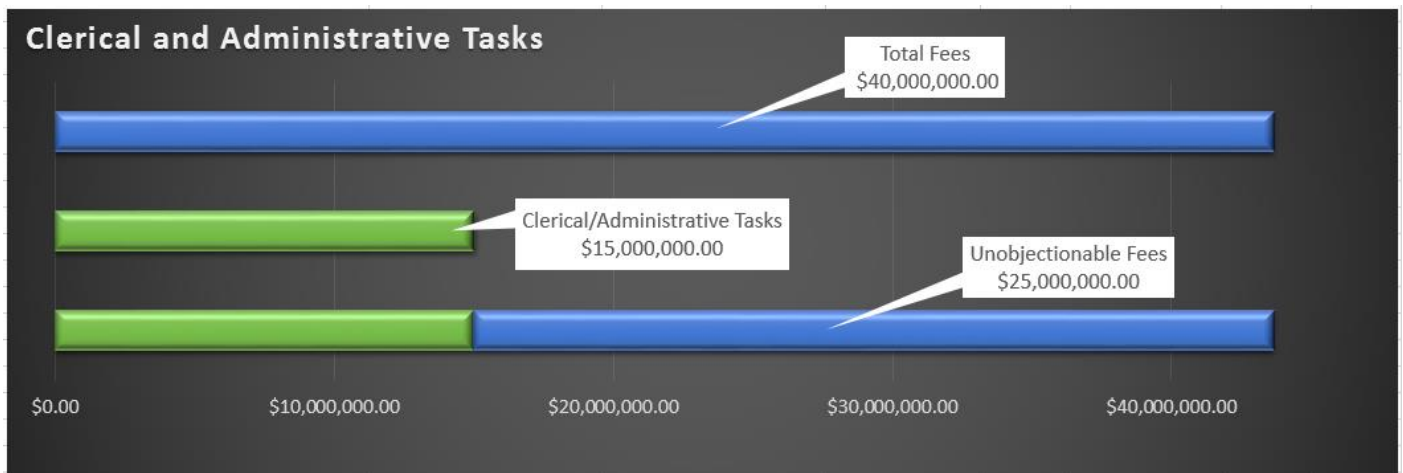
A substantial portion of the billing entries submitted for review contained entries that appear to incorporate charges for clerical and/or administrative tasks. Most authorities agree that attorneys are obligated to absorb the cost of the performance of clerical and administrative tasks as a part of the cost of their doing business, and not as a chargeable task to firm clients.

This is primarily because, as a general principle, law firms are not permitted to earn “profit” on overhead items or non-skilled work. This includes traditionally clerical tasks such as scheduling, document assembly, and the converting or scanning of documents. The segregation of clerical tasks from skilled work is generally regarded as a fair billing principle, given that such tasks do not generally require the exercise of legal judgment. It should also be noted that such clerical work may nonetheless have importance to the handling of a case – the result of this analysis is only to note that the cost of such work [although important] nonetheless should be part of the firm’s overhead, and not charged on a separate, profit-bearing basis.

Examples of Clerical and/or Administrative Entries are set forth at Exhibit 6 to this report.

LFA’s review has identified a total of \$15,000,000 in entries that contain potentially objectionable charges for entries that contain clerical or administrative tasks. Based upon commercially recognized standards, as well as legal precedent, such charges should be reduced by 15% to 25%.

Clerical/Administrative Work



Objection	Amount	Total Fees
Clerical/Administrative tasks	\$15,000,000.00	\$40,000,000.00

The following authorities are applicable to LFA’s conclusion that such entries are objectionable in this case:

[1] Violation of Billing Guidelines: The Billing Guidelines state that an invoice may not include administrative, clerical, secretarial, or work performed by attorneys, paralegals, and legal assistants.

[2] Violation of Legal/Ethical Standards: The following relevant authorities are applicable to Legal Fee Advisors’ conclusion that such entries are objectionable in this case:

- Agudelo v. E & D LLC, 12 CV 960 HB, 2013 WL 1401887 at *3 (S.D.N.Y. Apr. 4, 2013) (holding that clerical tasks are non-compensable and reducing all attorney time charges by 50 percent due to excessive hours billed and practice of billing clerical tasks).

[REDACTED]

[3] Violation of accepted commercial customary billing standards: The following relevant commercial standards are applicable to Legal Fee Advisors' conclusion that such entries are objectionable in this case:

[REDACTED]

- d. Description Error: Pattern Billing: ...

REDACTED

VI. Compilation of Billing Analysis and Conclusions

- a. Summary Report by Description Error Objections¹:

Objection Description	Objection Amount	Total Fees	Objection %
Block Billing	\$22,000,000.00	\$40,000,000	55%
Quarter Hour Billing	\$30,000,000.00	\$40,000,000	75%
Pattern			
Total Description Errors			

Conclusion and Recommendation: The description errors noted in our review were pervasive throughout the billings. The firm did not exercise proper billing judgment by requiring that timekeepers give clear, concise and understandable descriptions of their time.

¹ For clarity, a "Description Error" objection, is an objection to the lack of reasonable description in the text submitted by the firm.

As a result of such pervasive description errors, Legal Fee Advisors advises that all charges should, as a first step, be reduced by 5% to 10%, or by \$750,000 to \$1,500,000.

b. Summary Report by Substantive Error² Objections:

Substantive Error: Objection	Objection Amount	Total Fees/Disbursements	Objection %	Recommended range of reduction ³
Clerical and/or Admin Work	\$15,000,000.00	\$41,000,000.00	36.59%	\$750,000.00 - 1,500,000.00
Total				

REDACTED

² For clarity, a “Substantive Error” objection, is an objection to the substance, rather than to the description of a charge.

³ The recommended reduction gives the firm the benefit of the doubt on several respects: [1] it assumes that some portion of the recorded time could be defensible; and [2] it leaves room for unanticipated elements of the firm’s work to be accounted for. It should be emphasized that this review attempts to draw inferences from the billing entries, and does not include interviews of the assigned attorneys and other timekeepers, and limited reference to actual work product. Such an in-depth review would sharpen our conclusions, yielding more specificity.

Conclusion and Recommendation: The substantive errors noted in our review were pervasive throughout the billings.

As a result of such pervasive substantive errors, Legal Fee Advisors advises that all charges should, as a first step, be reduced by 5% to 10%, or by \$_____ to \$_____.

c. Summary of Recommended Bill Reductions:

Objection Category	Fees Reviewed [by category]	Recommended Reduction
Description Errors	REDACTED	
Substantive Errors		
Additional areas of objection [5%]		
	Total Recommended Reduction	

I retain the right to supplement and amend this Report.

Signed under the pains and penalties of perjury,

David Paige, Esq.
Managing Director
Legal Fee Advisors