UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15

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THE GULFPORT STEVEDORING ASSOCIATION-INTERNATIONAL LONGSHOREMEN'S ASSOCIATION CONTAINER ROYALTY PLAN	*	
and	*	**Cases 15-CA-096939**
TOMMY EVANS, an Individual	*	
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1303	*	
and	*	**15-CB-096934**
TOMMY EVANS, an Individual	*	

RESPONSE TO GENERAL COUNSEL'S MOTION TO DISMISS THE APPLICATION FOR ATTORNEY'S FEES AND COSTS

COMES NOW, Respondent, the Gulfport Stevedoring Association-International Longshoremen's Association, Container Royalty Plan (hereinafter the "Plan"), by and through its undersigned counsel, Dummer, Lowery & Savarese, PLLC, and files this its Response to the General Counsel's Motion to Dismiss the Application for an Award of Attorney's Fees and Expenses Under the Equal Access to Justice Act and support thereof would state the following, to wit:

I. PROCEDURAL BACKGROUND

In January 2013, the General Counsel filed the original charges against the GSA-ILA Container Royalty Plan.[1] After receiving the Plans' letter, the General Counsel amended the

[1] The Respondent Plan, along with the GSC-ILA Plans, through its counsel sent correspondence in response to the charges filed against all Plans on February 26, 2013. In that letter to the General Counsel, the Plan's counsel answered questions to the best of its current information and without having the benefit of discovery. The Plan's counsel noted in that letter that much of the information was held by third parties which it did not have access to at

charges to include the Respondent Union, correctly identified the Container Royalty Plan, and dropped the charges filed by Glen Evans. The case then entered the investigative stage. During the investigative stage, the General Counsel obtained an affidavit from the Charging Party Tommy Kirk Evans (hereinafter "T.K. Evans") wherein he admitted under oath that he did NOT campaign on behalf of his son for the Union President position.[2] The General Counsel proceeded in the investigative stage and interviewed the Plan's Trustees (Greg Schruff, Kendall Lamb, Donald Evans and Darius Johnson) as well as the Plan Administrator (Vic Walsh), each unequivocally confirmed that T.K. Evans had been a problematic employee whose behavior in 2011 into 2012 had become intolerable.[3]

None of the five individuals stated that they were even aware that T.K. Evans was publically supporting Glenn Evan's run against his uncle Donald Evans. Several of these Trustees made reference to key individuals in and around the port who would have first-hand knowledge to support their opinions that T.K. Evans had serious performance issues. Victor Walsh also explained the long time conflict he had with T.K. Evans and Donald Evan's protection of his brother over the years. Despite these statements and the Plan counsel's recommendation to the General Counsel to investigate these additional key witness, the General

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that time. The letter was replete with statements such as "upon information and belief" that the information was provided to the best of counsel's knowledge but admittedly without the ability to obtain much of the information requested. Moreover, in the letter the Plans reserved all rights to amend and modify its information as provided by the applicable rules. The letter was not written or signed by the Plan and did not constitute "positive evidence" despite the General Counsel's attempts at trial and on appeal to deem it as such. The General Counsels attempt to take a pre-investigative comment and apply it post-appeal as positive evidence. This strained argument reflects that the General Counsel had no substantial justification to file the Complaint because its own charging party had admitted a key fact which should have prevent the complaint from being filed.

[2] (T.R. 500-501)("I did not actively campaign on behalf of my son Glen Evans. I did not pass out flyers or petitions."); *see also* (T.R. 741, 743-44, 783). The General Counsel declined to release the T.K. Evan's affidavit before the hearing despite multiple requests. *See e.g, Jencks v. U.S.*, 353 U.S. 657, 662 (1957). After the testimony of T.K. Evans, his *Jencks* affidavit was released wherein he was impeached with his own affidavit. The ALJ found the affidavit more credible and rejected Evan's testimony that he publically supported his son Glenn Evans.

[3] *See* Lamb Affidavit, March 13, 2013; Schruff Affidavit, March 14, 2013; D. Evans Affidavit, March 13, 2013; Johnson Affidavit, March 7, 2013; and Walsh Affidavit, March 7, 2013.

Counsel refused to observe its duty to investigate the charge fully.[4] The General Counsel, ignoring the charging party's own affidavit, and the corresponding affidavits of the four Trustees and the Plan administrator, proceeded with the Complaint despite knowing it had no evidence to prove the elements of a Section 8(a) violation against the Container Royalty Plan.

After the complaint was filed, the Plan filed its first Motion to Dismiss on May 13, 2013. Following receipt of the General Counsel's overly broad and unduly burdensome subpoenae issued to the Respondent Plan and the three non-party GSC-ILA Benefit Plans, the plans filed their respective Petitions to Revoke on or about July 5, 2013. On July 8, 2013, a status conference with Judge Ringler took place wherein the jurisdiction issue was discussed and Judge Ringler agreed with the GSC/GSA Plans that the scope of the subpoenae were excessive and held that certain limitations must be applied and instructed the parties to reach an agreement toward that end. Judge Ringler also noted that due to scheduling conflicts it was likely that the hearing date would be broken into two settings or continued to a later date.[5]

Following the status conference with Judge Ringler on July 12, 2013, the General Counsel conditionally withdrew its overly broad subpoenae issued to the GSC-ILA Plans so long as the Plans would provide a few narrowly curtailed financial reports. On July 16, 2013, following the instructions of Judge Ringler, the General Counsel conceded to a large portion of the Respondent Plan's objections and the parties agreed to an acceptable scope of production.[6]

On August 13, 2013, the parties had a conference with Judge Michael Marcionese who stated that the Motion to Dismiss regarding jurisdiction had still not been resolved by the Board

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[4] The Plan proposed that the General Counsel should interview several foremen who could speak to the work performance of T.K. Evans and his worsening attitude in 2012. The Plan assumed that the General Counsel would desire a clear picture of the evidence but the General Counsel refused.

[5] General Counsel infers in its response that the Respondent Plan protracted the litigation whereas the fact remains that all delays were outside of the control of the Respondent Plan.

[6] The parred down production still required the Respondent Plan to produce, with redacting, nearly 26,000 pages of historical documents. The cost to produce these documents as demanded by the General Counsel was significant.

and that the Respondent Plan should plan on moving forward with the hearing on the merits on September 9, 2013. Thus, despite the Respondent Plan's good faith efforts to have that issue resolved in advance of the hearing, it was required to prepare for the hearing while still preserving its objection to jurisdiction. During this conference, the Respondent Plan informed the judge that a trustee and key witness had received some very difficult news regarding a newly diagnosed life threatening condition which could very likely limit or preclude his ability to participate at the hearing.[7] Judge Marcionese recommended that if the General Counsel would not take the trial deposition of the trustee it could also elect to leave its case open following the hearing and call the trustee at a later date after his treatment was completed.

Despite the Respondent Plan producing over 26,000 pages of documents following Judge Ringler's prior rulings which granted, in large part, the Plans' Petitions to Revoke, the General Counsel argued that even more documents must be produced. Judge Marcionese commented that if the General Counsel was still unable to find any evidence to support jurisdiction in the two years of documents already produced that the General Counsel should consider dismissing their case. Judge Marcionese overruled the General Counsel's *ore tenus* arguments to further burden the Respondent Plan with additional productions.

Following the conference call on August 13, 2013, the General Counsel demanded that the Respondent Plan agree that all parties using the Port of Gulfport (GSA-ILA, SSA Gulf, Ports America, Dole, Chiquita and Crowley) were Employers under the Act. The Respondent Plan stated that, while those entities likely were Employers under the Act, it could not declare them so

[7] In the General Counsel's version of the facts, the General Counsel implies that this trustee's life threatening medical condition was the Plan's attempt to delay the hearing to permit the Plan to file additional pleadings. General Counsel fails in its duty of candor to the court that the Respondent Plan proposed and offered a trial deposition of the affected trustee so as to *not* delay the hearing. Surprising to all parties, including Judge Marcionese, the General Counsel stated that it absolutely would not agree to an accommodation and moreover demanded medical proof of the trustee's serious health condition.

without their respective consent. In retaliation, the General Counsel issued far reaching, overly broad and abusive subpoenae to each of the non-party entities. The message was telegraphed clearly, either the Respondent Plan agree to its demands or the General Counsel would discipline the Plan through by overly-broad subpoenae issued to parties using the Port of Gulfport.

Despite the Plan explaining to the General Counsel " .we are denying that [they are Employers under the Act] in an abundance of caution. We still stipulate that POA (Ports of America) and SSA (SSA Gulf) are employers under the act because we have been given that authority for purposes of this trial from those entities," the General Counsel forced the production issue with all the listed non-parties.[8] In an effort to avoid forcing unnecessary costs on the non-parties, each entity was contacted to determine if the Plan could take the position, on their behalf, that they "were Employers under the Act."[9] This required the Respondent Plan to contact and work through multiple sets of counsel across the country to obtain consent to take a position on the respective non-parties behalf.

On September 5, 2013, a final conference call took place with Judge Marcionese wherein the Judge rejected the General Counsel's position and found that the Respondent Plan had provided sufficient support for the potential unavailability of the trustee in the event his medical treatments were not completed. Next, the Plan requested that the hearing be bi-furcated because the Motion to Dismiss regarding jurisdiction had not yet been ruled upon by the Board. Judge Marcionese stated that he understood the need to preserve the issue for appeal and that the Plan should proceed by filing its Motion to Bifurcate. Judge Marcionese stated that he expected to

[8] Correspondence to General Counsel, Sept. 4, 2013.
[9] Upon information and belief, several of the entities filed their own Petitions to Revoke citing the far reaching and unduly burdensome requests made by the General Counsel. *See e.g.,* Petition to Revoke Subpoena Duces Tecum to Non-Party SSA Gulf, Sept. 9, 2013.

take the request under advisement as it would be in the interest of judicial economy to put on all evidence in the record so that all issues could be appealed at the same time if necessary.[10]

Following the conference with Judge Marcionese, the General Counsel inspected the unredacted financial documents held by the Plan. Following the inspection, the General Counsel took the position, despite the prior orders from Judge Ringler and Judge Marcionese, that the GSC-ILA Benefit Plans must now appear at the hearing on September 9, 2013, with all originally requested documentation. The General Counsel further demanded, despite Judge Marcionese's ruling, the Respondent Plan must produce the 25,000 pages in unredacted form in three days at the hearing.[11]

At the commencement of the hearing, the Respondent Plan's Motion to Bifurcate was denied however, the ALJ acknowledged the merits of the motion but explained that having all issues on the record would allow for a smoother decision and appeal if necessary. (T.R. 10 - 12). The General Counsel then sought to compel production of additional unredacted documents from the GSC Plans and the GSA Container Royalty Plan. Judge Marcionese questioned the General Counsel's need for such information and the requests were denied due to Judge Ringler's prior order on the issue. (T.R. 27).

Following the hearing, on February 27, 2014, the ALJ issued an opinion in the case finding that the General Counsel had failed to present any evidence on the requisite elements for the alleged Section 8(a) charges against the Plan. Moreover, the ALJ determined that the Plan's evidence was more credible in many areas and dismissing all charges. While, the ALJ ruled against the Plan on the lone issue jurisdiction, the ALJ acknowledged that it was a question of

[10] Other miscellaneous house-keeping matters were discussed which can be related upon request of the Court.
[11] Correspondence to Bergo/Mcclue, September 5, 2013, Exhibit D to Application for Legal Fees.

first impression thereby acknowledging the unsettled aspect of application of the Act to the Respondent Plan.

Despite the multiple rulings against its many positions, stretching from the discovery phase forward, the General Counsel filed exceptions and its Brief in Support on May 9, 2014. Once the exceptions were filed, it was necessary for the Plan to preserve its rights on appeal as well and the Plan answered and filed Cross-Exception on the issue of jurisdiction. On September 25, 2015, the NLRB issued a decision affirming the ALJ on the jurisdiction issue and the ALJ's decision to dismiss the case against the Respondent Plan and Union. Decision and Order, 15-CA-096939 (Sept. 25, 2015) (hereinafter "Final Order").

On October 22, 2015, the Plan filed its Application for Legal Fees and Expenses under the EAJA. The Plan moved within the application for legal fees at the contract rate which exceeded the statutorily prescribed rate. The Plan contemporaneously filed its proprietary financial information, as required by the EAJA, under seal as well as its detailed legal fee descriptions and corresponding motion for the same. The General Counsel responded to the Application with its Motion to Dismiss.[12]

As will demonstrated in the following analysis, the General Counsel does nothing more than attempt to nitpick and re-litigate a few particulars which were rejected as non-credible, first by the ALJ, and then by the Board. When viewed independently or in *toto*, the General Counsel's attempts to muddy the water, by re-trying the case, is largely immaterial to the Plan's Application for Fees and Expenses and the applicable standards of the EAJA. At all times under

[12] The General Counsel has, as of this date, not filed a response in opposition to the Plan's Motions to Withhold from Public Disclosure regarding the Plan's confidential financial data and legal fee descriptions which were filed under seal. As such, the Plan assumes that the General Counsel does not object to the same. In the event the General Counsel would object the Respondent Plan will file an appropriate response at that time and herein reserves the right to take such action.

the EAJA the question is not "what was presented at trial," but what did the General Counsel "know" when it filed the complaint. The fact that the General Counsel's evidence was rejected at the hearing by the ALJ merely advances the Plan's point that this has been, and always was, a case where the General Counsel should have withdrawn the charges because they were based exclusively on disgruntled, poorly performing, charging party's vendetta against his brother who had previously shielded him from termination throughout his career.

II. ANALYSIS

The General Counsel makes five assertions in its Motion to Dismiss the Plan's Application for an Award of Attorney's Fees and Expenses. First, the General Counsel asserts that the Plan has misrepresented the facts of the case in its Application for Fees. Second, the General Counsel asserts that the Charging Party was substantially justified in bringing the Section 8(a)(3) claims against the Plan. Third, the General Counsel asserts that the Plan's Application for fees was deficient. Fourth, the General Counsel asserts that the Plan unduly or unreasonably protracted the litigation by asserting its jurisdiction defense. Finally, the General Counsel asserts that the Plan's requested fees are unreasonable and/or excessive. As will be demonstrated in the following sub-sections, each of the General Counsel's assertions are without merit and the Plan should be awarded the fees and expenses sought after in its application in full or in part.[13]

A. THE FACTS OF THIS CASE ARE NOW SETTLED AND THE GOVERNMENT'S POSITION WAS CLEARLY NOT SUBSTANTIALLY JUSTIFIED

In Sections III and IV of the Motion to Dismiss, the General Counsel asserts that the Plan misrepresented certain facts of the case and that certain facts provided the substantial

[13] Respond Plan requests legal fees in the amount of $185,713.87 and expenses in the amount of $3,063.21 for an aggregate total of $188,777.08. *See* Second Walsh Affidavit, March 18, 2016, attached hereto as "Exhibit F"(legal fees incurred in responding to General Counsel's response); *see also* Walsh Affidavit Oct. 20, 2015, EX2.

justification the General Counsel needed to file the Complaint.[14] These assertions are without merit and the General Counsel has failed to meet its burden to "establish that its position was 'substantially justified' in issuing the Complaint in this case." *David Allen Co.*, 335 NLRB 783, 784 (2001) (citing *Blaylock Electric*, 319 NLRB 928, 929 (1995)).

The General Counsel's strategy to nitpick the facts presented by the Plan, despite the ALJ finding the Plan's position and facts credible, is a red herring designed to distract this Court from the issue at hand which is whether the General Counsel was substantially justified in *issuing* a Complaint in this case.[15] *Id.* In order to be considered substantially justified in issuing a complaint the General Counsel must have had, at the time, a reasonable basis in law and fact at the time the Complaint was filed. *Id.* at 784-85 (citing *Barrett's Contemporary & Scandinavian Interiors*, 272 NLRB 527 (1984)). This reasonableness test requires the General Counsel to find evidence in the investigative stage which would be subject to a later credibility determination by the ALJ and, if found credible, would constitute a *prima facie* case.[16] *Id.* ("Accordingly, where the General Counsel is compelled by the existence of a substantial credibility issue to pursue the litigation, and thereafter presents evidence which, if credited, would constitute a prima facie

[14] General Counsel's Section I (Procedural History) and Section II (Summary of Facts) need not be addressed in the Plan's separate sections, however, the Respondent Plan incorporates by references its Section I (Background) to address certain discrepancies of fact as asserted by the General Counsel.

[15] The Plan takes issue with the General Counsel's attempts to claim impropriety while purposefully cherry picking facts which were largely rejected first by the ALJ at trial, then in the ALJ's Statement of the Case and then again by the Board on Appeal. The General Counsel seeks to re-litigate the facts and impugn the Plan, or its Counsel, rather than acknowledge the effect and cost it has had on the Plan for terminating an at will employee who essentially refused to do any work or show up to work for approximately ten months.

[16] The General Counsel emphasized the reasonableness test in the Motion to Dismiss and implies that the Court should not determine that legal fees and expenses are appropriate simply because they did not prevail at trial. However, it is not the Plan's position that fees and expenses are appropriate simply because the General Counsel lost at trial. It is the Plan's position that fees and expenses are appropriate because the General Counsel decided to issue a Complaint without having the evidence to support a *prima facie* case for a Section 8 suit against the Plan. The General Counsel fails to even mention in the Motion to Dismiss that it was *required* to have such evidence in the investigative stage in order to meet the reasonableness test that must be met to have substantial justification for issuing a Complaint.

case, the General Counsel's case has a reasonable basis in law and fact and is substantially justified.").

Based on T.K. Evan's allegations in the Complaint the General Counsel was required to have in its possession such evidence to make a prima facie case that 1) that the Plan violated Section 8(a)(3) of the Act, and 2) the Union violated Section 8(b)(2) of the Act.[17] As will be shown below, the General Counsel in fact had evidence in its possession, which should have prevented the General Counsel from ever filing the Complaint. As will be explained in greater detail *infra* the Plan is eligible to recover its legal fees and expenses, because the General Counsel failed to meet its burden proof to avoid the award of such fees and expenses in this case. 29 C.F.R. § 102.144(a) ("The burden of proof that an award should not be made to an eligible applicant is on the General Counsel, who may avoid an award by showing that the General Counsel's position in the proceeding was substantially justified.").

i. The General Counsel was Not Substantially Justified to File its Complaint Against the Plan for Violations of Section 8(a)(3)

The General Counsel was not substantially justified in issuing the Complaint against the Plan because it did not possess evidence to support the required elements of the *Wright Line* test to make a *prima facie* case for the Section 8(a)(3) allegations made in the Complaint.[18] *The Gulfport Stevedoring Association-International Longshoremen's Association Container Royalty Plan*, 2014 NLRB 158, 12 (2014) (hereinafter "Statement of the Case"). Under the *Wright Line*

[17] The purpose of this Reply is not to argue on behalf of the Local 1303 Union who was a co-respondent in the underlying litigation.

[18] If the General Counsel did not present evidence at trial to support their theory of the case, the General Counsel certainly did not possess any such evidence during the investigative stage. Without such evidence a reasonable person would not have issued a Complaint according to established law. *David Allen Co.*, 335 NLRB at 784-85 (noting that the reasonableness test requires the General Counsel to find some evidence in the investigative stage which would be subject to a credibility determination by the administrative law judge and, if found credible, would constitute a *prima facie* case). Because the General Counsel does not meet the reasonable person test, it was not *substantially justified* in issuing the Complaint in this case. *Id.*

test, the General Counsel has the burden, by a preponderance of the evidence to prove that, 1) the employee (T.K. Evans) engaged in activity protected by the Act, 2) that the employer was *aware* of the employee's protected activity, and 3) that the employer was motivated by animus against the protected activity in taking adverse action against the employee. *Id.* (citing *Wright Line*, 251 NLRB 1083 (1980)). During trial it was revealed that the General Counsel had no colorable evidence to support its position sufficient to meet the *Wright Line* test.

First, the only evidence that the General Counsel possessed during the investigative stage, prior to issuing the Complaint pertaining to the *Wright Line* test, actually supported the fact that T.K. Evans did *not* engage in activity protected by the Act as alleged in the Complaint. T.K. Evans Affidavit, February 1, 2013; (T.R. 500-502). The Charging Party, T.K. Evans, signed an affidavit on February 1, 2013, during the investigative period, unequivocally stating that "he did *not* actively campaign on behalf of Glen Evans" (his son's attempt to run for Union President in 2012 *Id.*). All five of the other affidavits from the Respondent Plan confirmed this same fact. *See* Lamb Affidavit, March 13, 2013; Schruff Affidavit, March 14, 2013; D Evans Affidavit, March 13, 2013; Johnson Affidavit, March 7, 2013; and Walsh Affidavit, March 7, 2013. Upon receipt and review of this evidence the Charges should have been withdrawn.

However, the General Counsel ignored the evidence and filed the Complaint. Once the case proceeded to trial the only evidence presented by the General Counsel to support the allegation that T.K. Evans actively supported his son in the election was T.K. Evans' own testimony. This new testimony by T.K. Evans however, was rejected by the ALJ. *Statement of the Case*, 2014 NLRB Lexis at 17 ("The charging party provided *no credible* explanation for this glaring inconsistency when he testified at the hearing.") (emphasis added). The Board rejected

the General Counsel's arguments, and adopted the ALJ's findings largely without exception. *Final Order*, Sept. 25, 2015.

The General Counsel's only evidence at tiral was in direct conflict with the foundational sworn affidavit of the key witness and Charging Party. Because there was no inconsistency at the charge phase the alleged evidence (T.K. Evans later testimony) does not rise to the level of evidence that would be subject to a "credibility determination" by the ALJ because there was no conflicting evidence in existence at the time of filing the complaint. *David Allen Co.*, 335 NLRB at 784-85. The General Counsel's key piece of evidence, the Charging Party's Affidavit, eliminated a key element of *Wright Line* that the General Counsel had to have to file the Complaint. The General Counsel however, ignored their own evidence and filed the Complaint despite five other collaborative affidavits taken by the General Counsel as produced by the Respondent Plan. Moreover, the General Counsel refused to take the affidavits of numerous other individuals the Plan recommended to support its position at the investigative stage.

Next, the General Counsel did not have any evidence from the investigative stage that the Plan was "aware" of the alleged activity protected by the Act. The General Counsel interviewed all four of the Plan's trustees and the Plan Administrator during the investigative stage of this case. Not one of the affidavits indicated that any of these individuals were aware to any degree that T.K. Evans was actively involved in his son's campaign or that it would have had any effect on their decision to terminate T.K. Evans. At trial the ALJ found "[t]he Respondent Plan's trustees all testified at the hearing that they were unaware of any campaign activity engaged in by the Charging Party. The General Counsel offered *no evidence* to contradict this testimony." *Statement of the Case*, 2014 NLRB Lexis at 17-18 (emphasis added). Because the General Counsel did not possess any evidence on this point, other than exculpatory evidence, it was not

possible for the General Counsel to establish a *prima facie* case for a Section 8(s) Complaint against the Respondent Plan. Thus, the General Counsel was not "substantially justified within the meaning of the EAJA" to file the Complaint but did so anyway. *David Allen Co.*, 335 NLRB at 784 (citing *SME Cement, Inc.*, 267 NLRB 763).

In its Motion to Dismiss, the General Counsel relies solely on an alleged position statement drafted by the Respondent Plan's attorney. *See* GC's Motion to Dismiss at 31. The General Counsel relies on the Plan's letter to the Region dated February 26, 2013, to claim it was substantially justified in filing the Complaint. However, the ALJ rejected this proposed evidence at the first hearing. Later, the Board makes clear in its Decision that even at the hearing the General Counsel only attempted to introduce the statement to support that T.K. Evans' position as CID "was not supervisory." *Decision*, fn. 1 ¶ 4. The Board writes, "Counsel for the General Counsel stated at trial that the positive statement was not being offered for any other purpose." *Id.* Thus, even at the hearing the General Counsel did not know or believe that the letter supported the allegations that T.K. Evans was engaged in a protected act by publically supporting his son's candidacy. General Counsel seeks to muddy the water with this clever twist post appeal. However, this twist does not address the salient fact that any such letter did not create an issue of fact to the General Counsel which would have been subject to a credibility determination by the ALJ because it did not exist subjectively to the General Counsel until the Appeal phase.[19]

In order to be substantially justified in filing the Complaint, the General Counsel must have had some evidence at the investigative stage which it believed would be 1) subject to a credibility determination by the ALJ, and 2) if found credible would constitute a *prima facie* case

[19] The General Counsel attempted to place the Correspondence dated February 26, 2013, into evidence at trial which the ALJ correctly denied the Request.

of the Section 8(a)(3) violations alleged in the Complaint against the Plan. *David Allen Co.*, 335 NLRB at 784-85. The General Counsel failed to meet this requirement and, only now, three years later, creates the clever position that the letter from 2013 functions in an evidentiary capacity. This fabrication however, was rejected by the ALJ and the Board. Thus, according to the clear language of the EAJA, the Plan is entitled to legal fees and expenses. *Id.*

ii. The Section 8(b)(2) Allegations in the Complaint are Not Relevant to Whether the General Counsel was Substantially Justified in Filing its Complaint Against the Plan for Section 8(a)(3) Violations

In Section IV(b) of its Motion to Dismiss the General Counsel asserts that it meets the substantial justification standard because of the "duty-of-fair-representation" framework. However, the "duty-of-fair-representation" framework is relevant only to a cause of action against a Respondent Union for Section 8(b)(2) violations. *See* 29 USCS § 158(b)(2) ("It shall be an unfair labor practice for a *labor organization* or its agents to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) ") (emphasis added); *see* Decision, 3-4 (2015) (Member Miscimarra concurring) (noting that only Wright Line applies to the Section 8(a)(3) violation of the employer while both Wright Line *and the duty-of-fair-representation* framework apply to Section 8(b)(2) violations by a Union). Thus, the General Counsel's attempt to muddy the water with this red herring should be rejected as being without merit.

The General Counsel next argues that if the ALJ would have determined that the Union violated Section 8(b)(2) under the duty-of-fair-representation framework, that the ALJ would have automatically found that the Plan violated Section 8(a)(3) by acceding to the demands of the Union to discharge T.K. Evans. However, the General Counsel errantly relies on an unrelated and distinguishable case in making this argument. *See GC Motion to Dismiss* at 32

(citing *USF Red Star, Inc.*, 330 NLRB 53, 65 (1999)). Although the ALJ in *USF Red Star*, did conclude that "the company violated Section 8(a)(3) by acceding to the demand of the Union to have [the employee] discharged because of his internal union activity," such conclusion was NOT determined to be automatic because of a Union's violation of Section 8(b)(2). *USF Red Star*, 330 NLRB at 65. The ALJ's conclusion in *USF Red Star* was based on evidence that the employer terminated the employee to accommodate the Union's demands for discharge while using subsequent employee activity as a pretext to cover up the actual reason for termination. *Id.* ("it is my opinion that the evidence shows that the reason for that decision was to accommodate the Union's demands for his discharge, the subsequent discovery of the minor accident was, to my mind, a pretext used to justify the earlier decision."). However, in the matter *sub judice*, the ALJ found that the General Counsel failed to present *any evidence* that the Plan was aware of *any activity* protected by the Act.[20] On the one sole material fact (the Charging Party's testimony) the ALJ stated that the Charging Party "provided no credible explanation for this glaring inconsistency when he testified at the hearing." *Statement of Case*, 17. With this distinction from *USF Red Star*, the General Counsel cannot reasonably argue that it is held to the lower "duty of fair representation" because that lower standard only applies to Section 8(b)(2) claims. The General Counsel has failed to meet its burden of proof that it was substantially justified in filing the Complaint. 29 C.F.R. § 102.144(a). Thus, the Plan is entitled to receive

[20] Assuming arguendo that the General Counsel was substantially justified to file a Complaint against the Union for Section 8(b)(2) violations, that does not mean that the General Counsel was substantially justified in including allegations against the Respondent Plan for a violation of Section 8(a)(3) because it did not have evidence to support a prima facie case under the *Wright Line* Test. Substantial justification requires the General Counsel to find evidence in the investigative stage which would be subject to a later determination by the ALJ and, if found credible, would constitute a *prima facie* case. *David Allen Co.*, 335 NLRB at 784-85. Because the General Counsel did not find any such evidence during the investigative stage of these proceedings, it was not substantially justified in bringing a Section 8(a)(3) claim against the Plan regardless of any Section 8(b)(2) claim it may have had against the Union.

legal fees and expenses pursuant to its Application under the EAJA. *David Allen Co.*, 335 NLRB at 784-85.

iii. General Counsel's Attempt to Re-litigate Facts and Summaries with Post Trial Attachments Should be Rejected [21]

While not germane to the Application for Legal Fees, the Respondent Plan will address certain concerns raised by the General Counsel spanning numerous pages of its Motion regarding the Plan's Rule 1006 summaries used at the hearing. The General Counsel takes great effort, as it did in the Appeal, to again attempt to attack the summaries of 18(a) and 19.[22] This effort is misguided and inappropriate by virtue that the General Counsel attempts to utilize Post Trial Summaries created by it for the Appeal.[23] The General Counsel's contorted attempt to attack the

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[21] The Plan is well aware that the General Counsel does not agree with the facts presented by the Plan in this matter. However, the Plan has not distorted any facts as alleged by the General Counsel. The Plan set forth the facts in its Application in the same manner that it has set them forth throughout the proceedings, and ultimately the ALJ sided with the Plan. At the end of the day, the facts have been settled, and the only issue at hand is that 1) the Plan was the prevailing party, 2) the General Counsel was not substantially justified in filing a Section 8(a)(3) complaint against the Plan, 3) there are no special circumstances making the award unjust, and 4) the Plan timely filed its Application for Fees. *Broaddus v. U.S. Army Corps of Engineers*, 380 F.3d 162, 166 (4th Cir. 2004); *see also* 29 C.F.R. § 102.144. Any assertions or disputes regarding facts of the case are not relevant to these four issues and would be a red herring designed to distract from the central issue at hand, which is whether the Plan is entitled to its requested award of fees.

[22] The General Counsel once again attempts to interject evidence that was neither in the record at the hearing by attaching and referencing Post-Trial Attachments 1, 2, 3, and 4 because T. Evans failed to introduce the same at trial. The Plan did not have the opportunity then or now to present rebuttal to these post trial documents created by the General Counsel. The General Counsel's attempt to circumvent the rules of evidence by attaching this evidence should be rejected as it has no bearing on what the General Counsel knew at the time it filed the Complaint. However, assuming arguendo, the General Counsel's Post-Trial Brief attachments have no effect on the outcome because they speak to the weight of the evidence and the ALJ's determination of credibility. Huey Cuevas credibly testified that he prepared the summaries by revisiting the source material in RPX-18 and 19. This is then supported by virtue that the Plan's counsel assisted Cuevas in typing his information into a table format for ease of reading and review. Cuevas testified that in helping prepare the summaries he noted the individual's name as "present" if he: 1) saw them there, 2) saw their hand writing on supporting documents, or 3) saw their name/initials on any of the forms. (T.R. 610). Cuevas further testified that if he was not present at the shapeup, and presumably no one else created the report, he would not have that information on the summary. *Id.* at 614-616. For the General Counsel to suggest that Mr. Cuevas' testimony was "false" or anything less than credible is specious and the ALJ correctly credited the Plan's witnesses. ALJD at 9, 21-25. General Counsel's failure to acknowledge that T.K. Evans, as part of his job was to keep written records of all shape-ups, reports and activities (which he could not do because he was not there) is salient. This record keeping requirement is absolute especially for all shape-ups due to the possible ramifications of an error. Despite these facts, T.K. Evans provided no such evidence to the Plan or at trial. (T.R. 264, 492-94; see also GCX-19, RPX-2, RPX-10). Had T. Evans come to work, participated in his job, or kept records as he was required to do, the evidence would have been easily proven. The General Counsel attempts to attack the summaries post-appeal reflects that it had no credible evidence to the contrary.

[23] The fact that the General Counsel is still, after the Appeal, trying to prove T.K. Evans' attendance by inferring a negative (because T.K. Evans did not fill out the required paperwork for his job) speaks volumes as to T.K. Evans'

summaries as well as other Plan evidence does not remove the fact that T.K. Evans admitted at trial that RPX-18(a) consisted of the entire years' worth of records, for the CID shapeups for 2012.[24] T.K. Evans also admitted at trial that no other records existed to support his argument of attendance.[25] The Plan put on the credible testimony evidence of Larry Holleman and Gary Thomas, who testified that when Huey Cuevas did not attend the shape-ups they frequently had to shape up their own gangs.[26]

The General Counsel's argument was rejected by the ALJ, when it wrote "the General Counsel made a strong showing that the Charging Party performed his dispatch functions far more often than the Respondent's witnesses claimed. However, her efforts in this regard *were undermined* by the testimony of the Charging Party." *Statement of the Case*, 2014 NLRB Lexis at 6 (emphasis added). General Counsel's attempts to attack the summaries as well as other trial evidence in its Motion, do nothing to justify its actions in filing the Complaint when it lacked the evidence to make a *prima facia* case according to its own charging party's affidavit. The General

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work performance. This fact also illustrates why the ALJ did not credit his testimony. The Post Hearing Attachments contain multiple errors. For example, Attachment 2 line 52, reflects an incorrect date of the shapeup because the shipper called back and changed the delivery date to November 25, 2012, which moved the actual work date to Sunday, November 26, 2012, listed on the summary. *See* GSA Plans 000168-000169; *see also* RPX-18a p3. Next, DuPont/Ore Barges (Attachments 3-4), would never had been part of a shapeup because the foremen, James Beavers and Henry Spears, only have gangs of ten to twelve men and have alternates in place to fill openings. Both Beavers and Spears have historically filled their own gangs by contacting each other rather than going through dispatch. As such, none of the barges implied by the General Counsel could have been filled by T. Evans. Moreover, James Beavers and Henry Spears each deny that T. Evans ever assisted with a shapeup for their gangs in 2011 to 2012. Next, (Attachment 4) line 35, is incorrect as Cuevas' log sheet reflects carry over date between record books. *See* RPX-18a, Bates Number 26145-26146. Additionally, on other dates not listed on the summary, it is more likely that Glen Evans, rather than T. Evans, fulfilled the dispatch duties. (T.R. 621) ("Q: Do you know how many times [Glen] helped out in 2012? A: Quite a bit, I would assume, even from what I was told by the longshoremen that he was there when I wasn't."). As such, even assuming *arguendo*, that T. Evans may have shown up to work on "some dates" that were not noted on the summary or supporting shape-ups, he nevertheless failed to produce any such proof (ergo the General Counsel obviously did not have any such proof) or that he could that he testify as to any particular date he worked.

[24] (T.R. 540) ("Q: Would you agree with me that constitutes an entire year's worth of shape-ups then? A: Okay.").

[25] (T.R. 554) (Q: Did you return any property to Mr. Walsh or any trustee for the Container Royalty after you were terminated? A: No. Q: Why? A: *Because I didn't have any.*").

[26] (T.R. 697) ("Q: When Tommy Kirk didn't show up, how did the gangs get filled? A: If we don't have a dispatcher, we'll do it. We'll hire our own men sometimes."); (T.R. 710) ("Q: Have you ever had to shape up men yourself? A: Once or twice. Q: Was [Evans] the dispatcher that was supposed to be there when you had to shape up those men? A: Yes --.").

Counsel has failed to prove by a preponderance of evidence that it was substantially justified in filing the Section 8(a) Complaint against the Respondent Plan.

B. RESPONDENT'S APPLICATION FOR LEGAL FEES AND EXPENSES IS NOT DEFICIENT

In Section V of its Motion to Dismiss, the General Counsel asserts that the Plan's Application for Fees was deficient because the Union and the Benefits Plan are affiliates of the Plan and that the Plan should have aggregated the net worth and number of employees of the Plan, the Union and the multiple Benefit Plans. This argument is specious and unsupported in fact. Neither the Union nor the Benefit Plans (GSC-ILA Pension, GSC-ILA Welfare, GSC-ILA Vacation) are affiliates of the Respondent Plan. The Plan was therefore not required to aggregate with separate distinct legal entities, and the Application for Fees and Expenses was therefore not deficient as will be discussed herein.

When filing an application for legal fees and expenses the applicant is required to show the net worth of any of its affiliates in its application. 29 C.F.R. 102.143(g). However,

> mere affiliation, without more, would not require the aggregation of net worth contemplated in Section 102.143(g) of the Board's Rules. As there explained, affiliation is found and aggregation is appropriate where one entity 'directly or indirectly controls' another entity, or where the entity is itself 'directly or indirectly controlled' by the other.

Teamsters Local Union No. 741, 321 NLRB 886, 889 (1996). The intent of the aggregation requirement is to prevent parties that have access to large pools of resources from affiliated companies from being a beneficiary under the EAJA. *Id.* (citing *Noel Produce*, 273 NLRB 769, 769 (1984)). The Respondent Plan is neither directly nor indirectly controlled by the Union or the Benefit Plans (i.e., the Plan has no controlling vote or interest in either the Union or the Benefit Plans). Nor does the Respondent Plan have access to the "pools of resources" belonging to the Union or the Benefit Plans.

The Respondent Plan in this case was created by the Collective Bargaining Agreement between the Union and the Gulfport Stevedoring Association. It is controlled entirely by a Board of four trustees which includes a representative of each of the stevedores (including one of SSA and one of Ports America) and an equal number of representatives from the Union. However, when individual trustees come into a Plan board meeting "under law and the trust documents [they] are required to act as fiduciaries for the benefit of the Plan and its participants rather than in the interest of the parties who appointed them." *Statement of the Case*, 2014 NLRB Lexis at 6 (citing *NLRB v. Amax Coal Co.*, 453 U.S. 322 (1981)). The trustees are also prohibited by law from using their authority to control the Respondent Plan on behalf of the Union and/or the Stevedores. The trustees are prohibited by law, and their fiduciary duty as trustees of the Benefit Plans, when conducting the business of the Respondent Plan and vice versa. Neither the Union nor the Benefit Plans are affiliates of the Respondent Container Royalty Plan, and therefore the Respondent Plan is not required to aggregate the number of employees and net worth of these entities to make proper application for legal fees and expenses under the EAJA. *Teamsters Local Union No. 741*, 321 NLRB at 889.[27]

The General Counsel also asserts that the GSC Benefit Plans are an affiliate of the Respondent Plan because 1) the Respondent Plan has distributed some of its contributions over to the Benefit Plans in the past, and 2) the Respondent Plan has paid legal fees on behalf of the Benefit Plans in this matter. Both of these assertions are without merit.

[27] Even if the GSC Benefit Plans were included it would not meet the threshold because the GSC-ILA only has one employee and aggregate funds available which are less than the statutory cap. All pension funds are held with third party vendors who facilitate the benefits and could never be used to fund the Plan without violating numerous other laws. *See e.g. Labor Management Relations Act of 1947*, 29 U.S.C. § 401-531. The Pension Plan expressly deemed all funds irrevocable, not subject to diversion. GSC-ILA Pension Plan and Trust, Rev'd Feb. 1, 2011, § 10.02 (Irrevocability of Employer Contributions); *see also* ERISA § 406(a)(1)(C) & 406(b)(2).

First, the General Counsel argues that the Benefit Plans are an affiliate because the Respondent Plan transferred funds to the GSC-ILA Welfare Plan in a preceding fiscal year. However, the fact that the Respondent Plan distributed some left over funds into the GSC-ILA Welfare Plan does not mean that the Respondent Plan has "access to" Benefit Plan's pool of resources. In fact, the Respondent Plan has never received any funds from the Benefit Plans nor is it allowed by law to receive any funds from the Benefit Plans for any reason.[28] The Respondent Plan is a Container Royalty Plan which provides benefits to qualifying members in the form of a bonus check at the end of the year. It would constitute a breach of fiduciary duty for a trustee to vote to underfund the Welfare, Vacation or Pension plans to fund a Container Royalty check for qualifying members. Because neither the Benefit Plans nor the Respondent Plan has direct or indirect control over the other, or vice versa, the GSC Benefit Plans are not an affiliate of the Respondent Plan.

Second, the General Counsel's next assertion is that the Benefit Plans are automatically an affiliate of the Respondent Plan because a portion of the requested fees are alleged to be for the GSC-ILA Plans. This allegation is false. The undersigned counsel is General Counsel for the GSA-ILA Container Royalty Plan, GSC-ILA Pension, GSC-ILA Vacation, and GSC-ILA Welfare Plans. In that role the undersigned has performed legal services for the GSC Benefit Plans. However, it is the policy of both of the Plans that any services provided to the Plans are always billed separately and paid separately by the respective Plan.[29] That policy was strictly adhered to in this case. *See* Third Victor Walsh Affidavit, March 18, 2016, attached hereto as

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[28] 29 U.S.C. § 1106 (prohibited transactions); *see also* OPINION LETTER, US DEP'T OF LABOR, NO. 85-40A, 1985 WL 32828 (Nov. 27, 1985) (generally stating that fund to fund transfers are prohibited under ERISA Section 406(a)(1)(C) and 406(B)(2) unless a statutory or administrative exemption exists).

[29] Occasionally, the issues are germane to both GSA and GSC plans wherein time is divided between the GSA and GSC files accordingly. After the legal invoices are sent the Plan administration pays the invoices out of the respective funds.

Exhibit G (unredacted copy filed under seal). Upon information and belief, none of the legal bills submitted as support for the requested fees and expenses in this matter were billed for work performed for the GSC Benefit Plans.[30] Any insinuation to the contrary is nothing more than a misguided assumption refuted by the Third Walsh Affidavit. Assuming arguendo, that the General Counsel has identified fees associated with the GSC Benefit Plan which are more than short hand comments contained within the legal fee descriptions, any such fees would be oversight, and the Respondent Plan would stipulate that a correction should be accordingly made to reduce the amount requested.

For the reasons stated herein, the Benefit Plans are not affiliates of the Respondent Plan and aggregation is not required. *Teamsters Local Union No. 741*, 321 NLRB at 889 (ruling that affiliation is found and aggregation is appropriate where one entity 'directly or indirectly controls' another entity, or where the entity is itself 'directly or indirectly controlled' by the other and that the intent of the aggregation requirement is to prevent parties that have access to large pools of resources from affiliated companies from being a beneficiary under the EAJA). The Respondent Plan has only one source of funds as prescribed by the Collective Bargaining Agreement. Any funding from the GSC-ILA Plans to the Respondent Plan would violate the trustees' fiduciary duties and likely implicate violations of ERISA. 29 U.S.C. § 1106 (prohibited transactions); *see also* OPINION LETTER, US DEP'T OF LABOR, NO. 85-40A, 1985 WL 32828 (Nov. 27, 1985) (generally stating that fund to fund transfers are prohibited under ERISA Section 406(a)(1)(C) and 406(B)(2) unless a statutory or administrative exemption exists). Thus, the

[30] General Counsel claims that the GSA paid for fees to respond to its subpoena to the GSC. This is false as reflected in the Invoice 359256 sent to the GSC-ILA on September 16, 2103. *See* Third Walsh Affidavit, March 18, 2016, attached hereto as Exhibit G (non-related time entries redacted); *see also* Correspondence, July 18, 2013, attached hereto as Exhibit D.

Respondent Plan was not required to aggregate that number of employees and net worth of the non-related Union or the GSC Benefit Plans.

C. The Issue of Jurisdiction Over the Respondent in this Case was a Case of First Impression

In Section VI of its Motion to Dismiss the General Counsel asserts that the Plan should not be awarded fees and expenses because the Plan substantially protracted the litigation by contesting jurisdiction at every stage of the proceedings. The Respondent Plan incorporated by reference the Section I herein (procedural background) in this Reply which directly refutes any allegation that the Plan protracted the litigation. The Plan's jurisdiction challenges were only a small portion of issues at each stage of the proceedings. Furthermore, the Plan did not act unreasonable or unduly by challenging jurisdiction in this matter. For these reasons, the award of fees and expenses should not be reduced or denied.

According to the Board rules and regulations an eligible applicant of legal fees and expenses should only have such award reduced or denied if the applicant has unduly or unreasonably protracted the litigation. 29 C.F.R. § 102.144(b) ("An award will be reduced or denied *if* the applicant has unduly or unreasonably protracted the adversary adjudication or if special circumstances make the award sought unjust.") (emphasis added). If an applicant is found eligible for an award, it is presumed that the award shall cover all aspects of the litigation unless the applicant has pursued an issue to unduly or unreasonably cause delay whereby the fees might be denied for the portion of work related to that issue. *Comm'r v. Jean*, 496 U.S. 154, 161 (1990) ("absent unreasonably dilatory conduct by the prevailing party in 'any portion' of the litigation, which would justify denying fees for that portion, a fee award presumptively encompasses all aspects of the civil action."). No such delay or protraction occurred in the matter *sub judice*.

The Plan filed its Motion to Dismiss Asserting Lack of Jurisdiction immediately after the Complaint was filed. Regrettably, the Motion to Dismiss was not ruled on by the Board until the day of the hearing, thereby necessitating the Plan's continuing duty to preserve its rights throughout the litigation phase. The General Counsel however, took great issue with the objection and took action to force upon the Plan punitive discovery requests which were routinely denied by the ALJ after objection. The acts by the General Counsel substantially increased the litigation costs to the Plan. As reflected in Section I (Factual Background) herein, the Plan did not engage in any dilatory conduct by pursuing its jurisdiction defense at any stage of this proceeding.

The General Counsel asserts that that Plan's attempt to fight jurisdiction in this case was frivolous because the Plan filed pleadings from the outset of the case all the way through appeal despite the Plan's knowledge of a certain list of facts the General Counsel lists in its Motion to Dismiss. *See* GC Motion to Dismiss at 41-43 (noting a list of alleged facts that the Plan was aware of and should have prevented the Plan from fighting jurisdiction). The General Counsel fails to acknowledge that while some facts supported jurisdiction there was NO case law on the point. The Board's decision to deny the Plan's Motion to Dismiss reads, "This denial is without prejudice to the Respondent's right to renew its jurisdictional arguments, and any request to bifurcate the hearing, to the administrative law judge and to raise the jurisdictional issue before the Board on any exceptions that may be filed to the judge's decision, if appropriate." Order, Sept. 9, 2013. In fact, the ALJ wrote in his Statement of the Case that, "there are no reported cases in which the Board has addressed the issue here, i.e. whether a longshoremen's container royalty plan is an employer engaged in commerce within the meaning of the Act." *Statement of the Case*, 2014 NLRB Lexis at 8. Thus, the Board's jurisdiction over the Respondent Plan was

not as crystal clear as the General Counsel paints it to be. Because of the lack of clarity on the issue and by virtue that the Board did not rule on the Plan's Motion to Dismiss until the day of the hearing, the Plan had a duty to raise and preserve the jurisdiction issue and it is a compulsory defense. FED. R. CIV. P. 12(b).

The General Counsel places heavy emphasis on the number of pleadings filed by the Plan regarding jurisdiction throughout the proceedings in order to imply that the Plan's decision to fight jurisdiction was frivolous. However, the Federal Rules of Civil Procedure clearly state that a party shall raise any jurisdiction defense in the responsive pleading or by motion served before the responsive pleading is due. FED. R. CIV. P. 12(b). The Plan filed its Motion to Dismiss to avoid any further litigation cost. In the event the Board would have agreed with the Plan's position, that jurisdiction was not proper, or stayed the action pending a ruling on the matter, a large part of the legal fees and costs may have been avoided. However, because the Board did not rule on the Motion to Dismiss until the day of the hearing, ALJ had every right to allow discovery and even the trial commence prior to addressing the jurisdiction issue. *Valentin v. Hosp. Bella Vista*, 254 F.3d 358, 364 (1st Cir. 2001). Regardless, the undersigned counsel had a duty of loyalty to the Plan, and the Plan had an absolute right and compulsory duty, to assert its applicable defenses under Rule 12(b), especially considering that this was a case of first impression.[31] Because the Plan did not engage in any dilatory conduct, the award of fees and expenses should encompass the entire proceeding. *Comm'r v. Jean*, 496 U.S. 154, 161 (1990) ("absent unreasonably dilatory conduct by the prevailing party in 'any portion' of the litigation,

[31] Assuming arguendo that the General Counsel's assertions were true that the Plan unduly or unreasonably protracted the proceedings by fighting jurisdiction, the appropriate remedy would be to reduce the amount of fees and expenses associated with the lone issue of jurisdiction. The jurisdiction issue in this case was only a small part of the litigation and thus it would be inappropriate to deny fees in *toto* where the prevailing party lost on only one small issue. Owing to the detailed legal descriptions, it would not be difficult to identify any time entries dealing only with jurisdiction and remove the same from the award.

which would justify denying fees for that portion, a fee award presumptively encompasses all aspects of the civil action.").

D. The Requested Legal Fees and Expenses are Not Unreasonable or Excessive

Finally, the General Counsel asserts that the Respondent Plan should not be awarded any legal fees or expenses because 1) it did not prevail on the issue of jurisdiction, 2) it did not adequately identify and document its requested fees and expenses, and 3) it has requested fees at an hourly rate above the limit provided under the Act. Each of these assertions are without merit.

According to the Board Rules, "an eligible applicant may receive an award for fees and expenses incurred in connection with an adversary adjudication or in connection with a significant and discrete substantive portion of that proceeding, unless the position of the General Counsel over which the applicant has prevailed was substantially justified." 29 C.F.R. § 102.144(a). A party does not need to prevail on "all issues" to be considered a prevailing party under the EAJA. *City of Carmel-by-the-Sea v. United State DOT*, 123 F.3d 1142, 1167 (9th Cir. 1997) ("To be the 'prevailing party' under the Equal Access to Justice Act, a party need not prevail on all issues."). One Court explained that there may be a limitation of fees and expenses awarded to an applicant under the Act to an applicant who has filed multiple claims against a party but does not prevail on all of the asserted claims. *Pigford v. Vilsack*, 613 F. Supp. 2d 78, 81 (D.C. Dist. Ct. 2009) (noting that in certain instances a party may only recover fees and expenses associated with claims for which the party prevailed) (citing *Hensley v. Eckerhart*, 461 U.S. 424 (1983), superseded by statute, *Laube v. Allen*, 506 F. Supp. 2d 969 (11th Cir. 2007)). The United States Supreme court held that, a party who has won substantial relief should not have his attorney's fee reduced simply because the court does not adopt each contention raised.

Hensley v. Eckerhart, 461 U.S. at 440. Each of these cases stand for the proposition that not succeeding on "one issue" will not affect recovery of legal fees on all other issues. These cases stand in stark contrast to the arguments raised by the General Counsel.

Frist, the General Counsel argues that the Respondent Plan should not be awarded legal fees and expenses because the Plan was not the prevailing party with respect to the lone issue of jurisdiction. This argument is misguided and the General Counsel inappropriately quotes one small portion of *Hensley* in an attempt to twist the purpose of the doctrine established by the Supreme Court in *Hensley*. The General Counsel does not even mention the two-part test set forth in *Hensley*. The first prong is whether the plaintiff failed "to prevail on claims that were unrelated to the claims on which succeeded." *Id.* at 434. Here, the Plan did not "make" any claims against the Charging Party in this case. Rather the Charging Party, through the General Counsel, forced the Plan into litigation without substantial justification. As discussed *supra,* when claims are brought against a party, the charged party has a duty to assert any and all defenses, especially jurisdiction under Rule 12(b). As discussed *supra,* this was a case of first impression and the facts were not clear regarding the outcome of the issue on the applicability of the Act to the Respondent Plan. Contrary to the General Counsel's argument, at the end of the day the Plan prevailed, not in part, but *in toto* in this case even after the appeal. Because the Plan won substantial relief in the form of a dismissal of all claims raised by the General Counsel, the Plan should not have its attorney's fee reduced simply because the ALJ did not rule in the Plan's favor on the jurisdiction defense. *Id.* at 440.

Second, the General Counsel asserts that the Plan does not clearly separate hours spent on the jurisdiction defense which it claims are not compensable. This argument is without merit. First, the work description detail portions of the itemized invoices that were submitted with the

Application were blanked out for attorney-client privilege reasons. An unredacted copy was filed with the ALJ. Therefore, the General Counsel makes this assertion without any basis in fact. A review of the legal fee descriptions will readily identify the subject of work provided. Furthermore, it is the Plan's position that fees spent on this defense are entirely compensable, and therefore, the Plan was entitled to leave such fees in its supporting documents.

Third, the General Counsel asserts that the maximum statutory rate for legal fees is $75 per hour, and that the Plan has not filed the appropriate petition to increase such fees. According to a plain reading of the statute a separate pleading is not required so long as a written request is made and served upon the correct parties. The Plan incorporated into its Application for Legal Fees a request for fees in excess of the statutory amount. *See* Application for Attorney's Fees and Costs, 12-13. The Respondent Plan can find no requirement that such a request must be filed as a separate petition. However, in an abundance of caution, the Respondent Plan has filed a separate Petition for Increased Attorney's Fees contemporaneously herewith.

As for the maximum statutory rate, Congress made it clear that,

> The amount of fees awarded under this section *shall* be based upon prevailing market rates for the kind and quality of the services furnished, except that (ii) attorney or agent fees shall not be awarded in excess of $125 per hour *unless the agency determines by regulation that an increase in the cost of living or a special factor . justifies a higher fee.*

5 U.S.C. § 504(b)(1)(A) (emphasis added). Both the Plan's Application for Fees and Expenses and Petition for Increased Fees set forth the foundation and support to have the fees increased above the statutory maximum amount. Thus, each of the General Counsel's arguments are either rendered moot or without merit.

The Plan respectfully suggests that it is entitled to the increased legal fee rates because it has met its burden as required by the Code. The only issue is whether the increase multiplier

should be applied to the $125 per hour rate set forth under the Act or the $75 per hour set forth under Section 102.145(b).[32] The Plan suggests that according to the plain language of the statute, Congress gives the Board the authority to increase the rate to the statutory maximum which would make the Plan's full amount, as set forth in the First and Second Walsh Affidavits, the appropriate award for fees.

III. CONCLUSION

The Gulfport Stevedoring Association-International Longshoremen's Association Container Royalty Plan (the Plan) respectfully submits that it is entitled to recover attorney's fees, costs, and expenses incurred in defending this action since it is an eligible prevailing party. When the facts are viewed in toto, or in any insular fashion, the General Counsel was not substantially justified in pursuing this action against the Plan. General Counsel's decision to proceed despite the "wall of evidence" which demanded the withdrawal of the charges goes against common legal standards of duty of candor.

At the core of this case is the General Counsel's attempt to paint a decision to terminate an employee, who largely did not show up or work for eight months except to pick up his check, as a violation of the National Labor Relations Act. The General Counsel knew from the beginning, and was reminded on numerous occasions, that this was a dispute between two brothers and the General Counsel ignored the facts and took the position that it had to "comply" with T. Evans' demands for vendetta. The General Counsel's position cost the Respondent Plan a

[32] The Plan's Petition for Increase Fees lays out the appropriate foundation for the increase multiplier and applies the multiplier to both the $125 per hour rate and the $75 per hour rate. If this Court should find the $125 per hour rate to be the appropriate rate then the undersigned's charged rate would be appropriate and there would be no reduction in fees. However, if this Court finds the $75 per hour rate to be the appropriate rate then the Plan's requested fees may need a slight reduction.

significant amount in legal fees and expenses. Respectfully, the Plan deserves to be made whole as provided by the EAJA.

For the foregoing reasons the Plan respectfully requests that the Board grant the Plan's motion and application for attorney's fees and costs at the rate by which they were incurred. The Plan requests any other remedy the Court finds appropriate under the circumstances.

RESPECTFULLY SUBMITTED, this the 18th day of March, 2016.

THE GULFPORT STEVEDORING
ASSOCIATION-INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION
CONTAINER ROYALTY PLAN,
Respondent,

DUMMER, LOWRY & SAVARESE, PLLC

BY: _____
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CERTIFICATE OF SERVICE

I, the undersigned attorney at law, do swear under oath that the information contained in the foregoing application is true and correct and do hereby certify that I have this date forwarded a true and correct copy of the above and foregoing document via electronic filing, United States Postal Service Postage Prepaid, e-mail and/or facsimile to:

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Administrative Law Judge:
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Division of Judges
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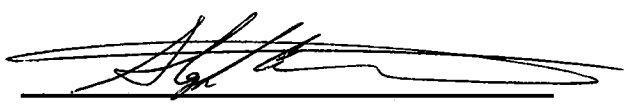
Atlanta, GA 30308-3510

National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-1000

SO CERTIFIED this the 18th day of March, 2016.



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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15

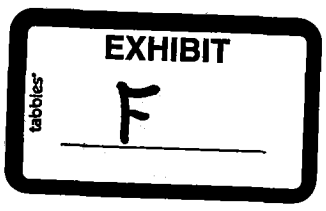
THE GULFPORT STEVEDORING ASSOCIATION-INTERNATIONAL LONGSHOREMEN'S ASSOCIATION CONTAINER ROYALTY PLAN	*	
and	*	**Cases 15-CA-096939**
TOMMY EVANS, an Individual	*	
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1303	*	
and	*	**15-CB-096934**
TOMMY EVANS, an Individual	*	

SECOND AFFIDAVIT OF VICTOR J. WALSH

STATE OF MISSISSIPPI
COUNTY OF HARRISON

PERSONALLY CAME BEFORE ME, the undersigned Victor J. Walsh, who, being duly sworn, states the following based on his personal knowledge, information, and belief:

1. I am an adult resident of the State of Mississippi, under no disability or impairment that would prevent me from making this affidavit.
2. I am the Contract Administrator for the Gulfport Stevedoring Association-International Longshoremen's Association Container Royalty Plan (hereinafter "Plan") and GSC-ILA Vacation, GSC-ILA Welfare and GSC-ILA Pension Plans.



3. As the Contract Administrator for the Plan, I oversee and am aware of all financial situations and decisions of the Plan including receipt and payment of legal fees incurred on behalf of the Plan.
4. I am familiar with attorney's fees, expenses and costs incurred by the Plan as a result of defending the actions brought by the NLRB.
5. Since November 1, 2015, the Plan has incurred $21,480.95 in attorney's fees, and $379.21 in expenses and costs as a result of the action brought by the NLRB. These fees and costs are truthfully and accurately depicted in Exhibit "1" which is attached hereto in a redacted form.
6. Further, the affiant sayeth not.

WITNESS MY SIGNATURE, this the 18th day of March, 2016.

VICTOR J. WALSH

SWORN TO AND SUBSCRIBED BEFORE ME, this the 18th day of March, 2016.

NOTARY PUBLIC

(Seal)

STATE OF MISSISSIPPI
NOTARY PUBLIC
ID # 112082
NATHANIEL PERRY JR.
Commission Expires
April 15, 2019
HARRISON COUNTY

INVOICE

Invoice # 1369
Date: 11/01/2015
Due On: 11/16/2015

Dummer, Lowery & Savarese, PLLC

322 Courthouse Road
Gulfport, MS 39507
www.dl-pllc.com

Gulfport Stevedoring Association - International Longshoreman's Association
4619 Main Street
Moss Point, MS 39563

24-01000-GSA Corporate

Gulfport Stevedoring Association - International Longshoreman's Association

Date	Attorney	Description	Quantity	Rate	Total
09/28/2015	SH		1.10	$155.00	$170.50
10/01/2015	SWD		0.40	$185.00	$74.00
10/01/2015	SWD		1.30	$185.00	$240.50
10/01/2015	SWD		0.60	$185.00	$111.00
10/05/2015	SWD		0.30	$185.00	$55.50
10/05/2015	SWD		0.30	$185.00	$55.50

Time Keeper	Quantity	Rate	Total
Stephen Dummer	2.9	$185.00	$536.50
Scott Hillery	1.1	$155.00	$170.50
		Subtotal	$707.00

EXHIBIT
1

24-01001-GSA Evans

NLRB v. GSA-ILA Container Royalty Plan, ILA 1303

Services

Date	Attorney	Description	Quantity	Rate	Total
10/01/2015	SH		0.60	$155.00	$93.00
10/02/2015	SH		1.40	$155.00	$217.00
10/06/2015	SH		2.80	$155.00	$434.00
10/07/2015	SH		1.60	$155.00	$248.00
10/07/2015	SH		2.60	$155.00	$403.00
10/07/2015	SH		1.10	$155.00	$170.50
10/07/2015	SH		0.30	$155.00	$46.50
10/07/2015	SH		0.70	$155.00	$108.50
10/08/2015	SH		2.20	$155.00	$341.00
10/08/2015	SH		1.70	$155.00	$263.50
10/09/2015	SH		1.30	$155.00	$201.50
10/09/2015	SH		1.20	$155.00	$186.00
10/09/2015	SWD		2.60	$185.00	$481.00
10/09/2015	SWD		2.10	$185.00	$388.50
10/12/2015	SH		0.80	$155.00	$124.00

10/12/2015	SWD	0.30	$185.00	$55.50
10/13/2015	SWD	0.30	$185.00	$55.50
10/13/2015	SP	1.00	$110.00	$110.00
10/14/2015	SWD	0.20	$185.00	$37.00
10/14/2015	SP	0.50	$110.00	$55.00
10/15/2015	SWD	1.10	$185.00	$203.50
10/16/2015	SWD	2.20	$185.00	$407.00
10/16/2015	SH	0.70	$155.00	$108.50
10/16/2015	SH	0.30	$155.00	$46.50
10/16/2015	SWD	0.40	$185.00	$74.00
10/17/2015	SH	1.10	$155.00	$170.50
10/18/2015	SH	1.90	$155.00	$294.50
10/18/2015	SH	2.10	$155.00	$325.50
10/19/2015	SH	2.10	$155.00	$325.50
10/19/2015	SH	2.90	$155.00	$449.50
10/19/2015	SH	0.60	$155.00	$93.00

10/19/2015	SWD	2.90	$185.00	$536.50
10/19/2015	SWD	2.60	$185.00	$481.00
10/19/2015	SWD	2.40	$185.00	$444.00
10/19/2015	SP	0.40	$110.00	$44.00
10/20/2015	SH	3.40	$155.00	$527.00
10/20/2015	SH	0.70	$155.00	$108.50
10/20/2015	SH	0.90	$155.00	$139.50
10/20/2015	SWD	2.60	$185.00	$481.00
10/20/2015	SWD	2.10	$185.00	$388.50
10/20/2015	SWD	1.70	$185.00	$314.50
10/21/2015	SH	0.80	$155.00	$124.00
10/21/2015	SH	1.10	$155.00	$170.50
10/21/2015	SWD	2.10	$185.00	$388.45
10/21/2015	SWD	1.90	$185.00	$351.50
10/21/2015	SH	2.10	$155.00	$325.50
10/21/2015	SWD	2.80	$185.00	$518.00

10/21/2015	SWD	0.60	$185.00	$111.00
10/21/2015	SP	2.50	$110.00	$275.00
10/22/2015	SH	3.10	$155.00	$480.50
10/22/2015	SWD	0.90	$185.00	$166.50
10/23/2015	SP	4.00	$110.00	$440.00
10/23/2015	SWD	1.60	$185.00	$296.00
10/28/2015	SWD	0.10	$185.00	$18.50
10/30/2015	SWD	0.10	$185.00	$18.50
		Services Subtotal		**$13,665.45**

Expenses

Type	Date	Description	Rate	Total
Expense	10/02/2015	K. Benjaman: Copies x19 @ $.10 p/page.	$1.90	$1.90
Expense	10/02/2015	K. Benjaman: Copies x45 @ $.10 p/page.	$4.50	$4.50
Expense	10/06/2015	K. Benjaman: Copies x76 @ $.10 p/page.	$7.60	$7.60
Expense	10/09/2015	K. Benjaman: Copies x24 @ $.10 p/page.	$2.40	$2.40
Expense	10/13/2015	K. Benjaman: Copies x67 @ $.10 p/page.	$6.70	$6.70
Expense	10/13/2015	K. Benjaman: Copies x81 @ $.10 p/page.	$8.10	$8.10
Expense	10/13/2015	N. Perry - 112 Copies @ $.10/page	$11.20	$11.20
Expense	10/14/2015	N. Perry - Copies @ $.10/page	$0.80	$0.80
Expense	10/21/2015	K. Benjaman: Copies x83 @ $.10 p/page.	$8.30	$8.30
Expense	10/21/2015	K. Benjaman: Copies x374 @ $.10 p/page.	$37.40	$37.40
Expense	10/22/2015	N. Perry - Copies @ $.10/page	$79.90	$79.90

Expense	10/22/2015	N. Perry - USPS 2-day Flat Rate Postage	$5.75	$5.75
Expense	10/22/2015	N. Perry - USPS Flat Rate Postage	$5.75	$5.75
Expense	10/22/2015	N. Perry - USPS 2-day Flat Rate Postage	$12.65	$12.65
Expense	10/22/2015	N. Perry - UPS Guaranteed Overnight Delivery	$56.76	$56.76
			Expenses Subtotal	**$249.71**

Time Keeper	Quantity	Rate	Total
Stephen Dummer	33.6	$185.00	$6,215.95
Scott Hillery	42.1	$155.00	$6,525.50
Staff Paralegal	8.4	$110.00	$924.00
		Subtotal	**$13,915.16**
		Subtotal	**$14,622.16**
		Total	**$14,622.16**
		Payment (11/18/2015)	**-$707.00**
		Payment (11/18/2015)	**-$13,915.16**
		Balance Owing	**$0.00**

Detailed Statement of Account

Other Invoices

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
1614	03/16/2016	$2,977.00	$0.00	$2,977.00

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
1369	11/16/2015	$14,622.16	$14,622.16	$0.00
			Outstanding Balance	**$2,977.00**
			Amount in Trust	**$0.00**
			Total Amount Outstanding	**$2,977.00**

Please make all amounts payable to: Dummer, Lowery & Savarese, PLLC

INVOICE

Invoice # 1415
Date: 11/30/2015
Due On: 12/15/2015

Dummer, Lowery & Savarese, PLLC

322 Courthouse Road
Gulfport, MS 39507
www.dl-pllc.com

Gulfport Stevedoring Association - International Longshoreman's Association
4619 Main Street
Moss Point, MS 39563

24-01000-GSA Corporate

Gulfport Stevedoring Association - International Longshoreman's Association

Date	Attorney	Description	Quantity	Rate	Total
11/10/2015	SWD		0.50	$185.00	$92.50
11/12/2015	SWD		2.30	$185.00	$425.50
11/12/2015	SWD		0.60	$185.00	$111.00
11/12/2015	SWD		0.60	$200.00	$120.00
11/12/2015	SWD		0.60	$185.00	$111.00
11/13/2015	SWD		0.20	$185.00	$37.00
11/13/2015	SWD		1.10	$185.00	$203.50
11/16/2015	SWD		0.60	$185.00	$111.00

11/17/2015	SWD	0.70	$185.00	$129.50
11/17/2015	SWD	0.20	$185.00	$37.00
11/18/2015	SWD	1.30	$185.00	$240.50
11/18/2015	SWD	1.40	$185.00	$259.00

Time Keeper	Quantity	Rate	Total
Stephen Dummer	0.6	$200.00	$120.00
Stephen Dummer	9.5	$185.00	$1,757.50
		Subtotal	**$1,877.50**

24-01001-GSA Evans

NLRB v. GSA-ILA Container Royalty Plan, ILA 1303

Date	Attorney	Description	Quantity	Rate	Total
11/04/2015	SWD		0.30	$185.00	$55.50
11/05/2015	SWD		0.40	$185.00	$74.00

Time Keeper	Quantity	Rate	Total
Stephen Dummer	0.7	$185.00	$129.50
		Subtotal	**$129.50**

24-01002-Gulfport Stevedoring Association

Date	Attorney	Description	Quantity	Rate	Total

Time Keeper	Quantity	Rate	Total
		Subtotal	$0.00
		Subtotal	$2,007.00
		Total	$2,007.00
		Payment (12/29/2015)	-$1,877.50
		Payment (12/29/2015)	-$129.50
		Balance Owing	$0.00

Detailed Statement of Account

Other Invoices

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
1614	03/16/2016	$2,977.00	$0.00	$2,977.00

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
1415	12/15/2015	$2,007.00	$2,007.00	$0.00
			Outstanding Balance	$2,977.00
			Amount in Trust	$0.00
			Total Amount Outstanding	$2,977.00

Please make all amounts payable to: Dummer, Lowery & Savarese, PLLC

INVOICE

Invoice # 1567
Date: 02/01/2016
Due On: 02/16/2016

Dummer, Lowery & Savarese, PLLC

322 Courthouse Road
Gulfport, MS 39507
www.dl-pllc.com

Gulfport Stevedoring Association - International Longshoreman's Association
4619 Main Street
Moss Point, MS 39563

24-01000-GSA Corporate

Gulfport Stevedoring Association - International Longshoreman's Association

Services

Date	Attorney	Description	Quantity	Rate	Total
01/06/2016	SWD		0.20	$185.00	$37.00
01/12/2016	SWD		0.30	$185.00	$55.50
01/14/2016	SWD		0.40	$185.00	$74.00
			Services Subtotal		**$166.50**

Expenses

Type	Date	Description	Rate	Total
Expense	01/24/2016	Correction from billing Error from 12/12/15	-$9.00	-$9.00
			Expenses Subtotal	**-$9.00**

Time Keeper	Quantity	Rate	Total
Stephen Dummer	0.9	$185.00	$166.50
		Subtotal	**$157.50**

24-01001-GSA Evans

NLRB v. GSA-ILA Container Royalty Plan, ILA 1303

Date	Attorney	Description	Quantity	Rate	Total
01/15/2016	SH		1.70	$175.00	$297.50
01/21/2016	SWD		1.60	$185.00	$296.00
01/22/2016	SWD		0.80	$185.00	$148.00
01/28/2016	SWD		1.10	$185.00	$203.50
01/28/2016	SWD		0.50	$185.00	$92.50
01/29/2016	SWD		0.80	$185.00	$148.00

Time Keeper	Quantity	Rate	Total
Stephen Dummer	4.8	$185.00	$888.00
Scott Hillery	1.7	$175.00	$297.50
		Subtotal	**$1,185.50**
		Subtotal	**$1,343.00**
		Total	**$1,343.00**
		Payment (02/23/2016)	**-$157.50**
		Payment (02/23/2016)	**-$1,185.50**
		Balance Owing	**$0.00**

Detailed Statement of Account

Other Invoices

Invoice Number	Due On	Amount Due	Payments Received	Balance Due

1614	03/16/2016	$2,977.00	$0.00	$2,977.00

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
1567	02/16/2016	$1,343.00	$1,343.00	$0.00
			Outstanding Balance	**$2,977.00**
			Amount in Trust	**$0.00**
			Total Amount Outstanding	**$2,977.00**

Please make all amounts payable to: Dummer, Lowery & Savarese, PLLC

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15

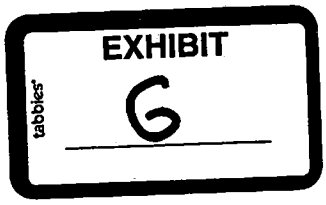
THE GULFPORT STEVEDORING ASSOCIATION-INTERNATIONAL LONGSHOREMEN'S ASSOCIATION CONTAINER ROYALTY PLAN	*	
and	*	**Cases 15-CA-096939**
TOMMY EVANS, an Individual	*	
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1303	*	
and	*	**15-CB-096934**
TOMMY EVANS, an Individual	*	

THIRD AFFIDAVIT OF VICTOR J. WALSH

STATE OF MISSISSIPPI
COUNTY OF HARRISON

PERSONALLY CAME BEFORE ME, the undersigned Victor J. Walsh, who, being duly sworn, states the following based on his personal knowledge, information, and belief:

1. I am an adult resident of the State of Mississippi, under no disability or impairment that would prevent me from making this affidavit.
2. I am the Contract Administrator for the Gulfport Stevedoring Companies-International Longshoremen's Association Vacation Plan, Gulfport Stevedoring Companies-International Longshoremen's Association Welfare Plan and Gulfport Stevedoring Companies-International Longshoremen's Association Pension Plan (hereinafter "the Plans").



3. As the Contract Administrator for the Plan, I oversee and am aware of all financial situations and decisions of the Plan including receipt and payment of legal fees incurred on behalf of the Plan.
4. I am familiar with attorney's fees, expenses and costs incurred by the Plans as a result of responding to discovery request made by the NLRB in Case No. 15-CA-096939.
5. On July 18 2013, the GSC-ILA Plan incurred 4.4 hours for a total of $858.00 in attorney's fees as a result of the subpoena issued by the NLRB. The attached correspondence and invoice reflect that the Plans were billed separately from the GSA-ILA Container Royalty Plan, and the Plans paid those invoices out of GSC-ILA Plan funds only. These fees and costs are truthfully and accurately depicted in Exhibit "1" which is attached hereto in a redacted form.
6. Further, the affiant sayeth not.

WITNESS MY SIGNATURE, this the 18th day of March, 2016.

VICTOR J. WALSH

SWORN TO AND SUBSCRIBED BEFORE ME, this the 18th day of March, 2016.

NOTARY PUBLIC

(Seal)

STATE OF MISSISSIPPI
NOTARY PUBLIC
ID # 112082
NATHANIEL PERRY JR.
Commission Expires
April 15, 2019
HARRISON COUNTY

DK&S
DEUTSCH, KERRIGAN & STILES

2510 14th Street, Suite 1001
Gulfport, MS 39501
Direct (228) 265-6995
Main (228) 864-0161
Fax (228) 863-5278
SDummer@dkslaw.com
www.dkslaw.com

STEPHEN W. DUMMER
Counselor at Law

July 18, 2013
CONFIDENTIAL
ATTORNEY CLIENT PRIVILEGE

Victor Walsh
GSC-ILA c/o Millette Administrators
4619 Main Street, Suite A
Moss Point, MS 39563-3939

Re: ***Monthly Invoicing***
General Corporate: GSC-ILA Board of Trustees
Our File No: 01828-00001

GSU

Dear Vic:

Enclosed please find our firm's interim invoice for professional services and costs incurred in connection with the handling of the GSC-ILA matter. Please note that I have included work which our office conducted on behalf of the GSC-ILA for the Tommy Evans matter. As this work was specific to the GSC-ILA, I have broken it out of the standard Tommy Kirk Evans file found in 01824-00002. As you will note from the billing, the only items of the Evans matter included in this bill was responding to the GSC specific subpoena requests and correspondence therein.

I trust that you will find the statement in order and ask that you please place it in line for payment at your earliest convenience. Please forward your payment to:

Deutsch, Kerrigan & Stiles, LLP
c/o Iberia Bank
Post Office 53078
Lafayette, LA 70505-3078

If you have any questions or concerns regarding the invoice, please do not hesitate to call me at your convenience. With kind regards, I am

Sincerely yours,

Stephen W. Dummer

EXHIBIT
1

SWD/rsk
Enclosure

Deutsch, Kerrigan & Stiles, L.L.P.
(A partnership including professional law corporations)

P.O. Box 53078
Lafayette, LA 70505-3078

COUNSELLORS AT LAW
(504) 581-5141 - fax (504) 566-1201

New Orleans, LA
Gulfport, MS
Monroe, LA

VIC WALSH
GSC - ILA
4619 MAIN STREET
SUITE A
MOSS POINT, MS 39563

September 16, 2013

Invoice Number: 359256

RE GSC - ILA BOARD OF TRUSTEES
OUR REF - 01828-00001

Fees for Professional Services Through 08/31/13	$1,813.50
Expenses Advances Through 08/31/13	$0.00
Current Bill	$1,813.50
Less Credits	$0.00
Current Invoice Total	$1,813.50
Previous Balance Due	$0.00
Balance Due	**$1,813.50**

SERVICES SUMMARY

Timekeeper	Rates	Hours	Fees
STEPHEN W. DUMMER	195.00	9.30	1813.50

Date	Timekeeper		Hours
7/3/2013	SWD	Begin legal research, obtain petition forms and begin structure drafting for GSC-ILA petition to revoke	0.90
7/5/2013	SWD	Drafting of petition to revoke, addition of non-party law, recraft for both Welfare and Vacation, forward to Walsh for review, receipt and review of Walsh recommendations, incorporation of Walsh changes, final editing and filing of same	2.90
7/17/2013	SWD		0.10
7/17/2013	SWD		0.40

Deutsch, Kerrigan & Stiles, L.L.P.

(A partnership including professional law corporations)

P.O. Box 53078
Lafayette, LA 70505-3078

COUNSELLORS AT LAW
(504) 581-5141 - fax (504) 566-1201

New Orleans, LA
Gulfport, MS
Monroe, LA

RE: GSC - ILA BOARD OF TRUSTEES Ref. Number 01828-00001

Date	Timekeeper		Hours
7/18/2013	SWD		0.10
7/23/2013	SWD		0.20
8/1/2013	SWD		0.60
8/8/2013	SWD		2.90
8/9/2013	SWD	Drafting of subpoena compliance letter with reservation of rights to NLRB Region	0.60
8/12/2013	SWD		0.20
8/14/2013	SWD		0.10
8/14/2013	SWD		0.10
8/16/2013	SWD		0.20

Total Hours 9.30
Total Fees $1,813.50

EXPENSES

Date	Description	Quantity	Rate	Amount
	Subtotal			0.00

Total Expenses $0.00

P 816.07 #3246 3

W 816.07 #8039

V 181.36 #2231

Pd - Sept 26, 2013