

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710
TELEPHONE: 202-434-9958 / FAX: 202-434-9949

FEB 04 2016

ELLIS & EASTERN COMPANY,
Applicant,

v.

SECRETARY OF LABOR, MINE
SAFETY AND HEALTH
ADMINISTRATION,
Respondent.

EQUAL ACCESS TO JUSTICE
PROCEEDING

Docket No. EAJA 2015-0003
Formerly CENT 2015-0451-M
A.C. No. 39-00008-351487 Z272

Mine: Sioux Falls Quarry

ORDER AWARDING ATTORNEY FEES AND EXPENSES FOR THE EAJA APPLICATION

On December 21, 2015, I granted Ellis & Eastern Company's ("E&E") Application for attorney fees and expenses under the Equal Access to Justice Act ("EAJA") in the amount of \$21,450.96, at a rate of \$200.00 per hour, for litigation expenses for the original action. E&E now requests an award in the amount of \$5,248.49 for attorney fees and expenses incurred while litigating the EAJA application itself. For the reasons stated below, E&E's application is **GRANTED**.

The Supreme Court found in *Comm'r, I.N.S. v. Jean* that "Congress intended the EAJA to cover the cost of all phases of successful civil litigation addressed by the statute." 496 U.S. 154, 166 (1990). Indeed, the Court reasoned that "[a]ny given civil action can have numerous phases. While the parties' postures on individual matters may be more or less justified, the EAJA—like other fee-shifting statutes—favors treating a case as an inclusive whole, rather than as atomized line-items." *Id.* at 161-62; *See, e.g., Sullivan v. Hudson*, 490 U.S. 877, 888, 109 S.Ct. 2248, 2256, 104 L.Ed.2d 941 (1989) (where administrative proceedings are "necessary to the attainment of the results Congress sought to promote by providing for fees, they should be considered part and parcel of the action for which fees may be awarded"). Cf. *Gagne v. Maher*, 594 F.2d 336, 344 (CA2 1979) ("[D]enying attorneys' fees for time spent in obtaining them would 'dilute the value of a fees award by forcing attorneys into extensive, uncompensated litigation in order to gain any fees'" under 42 U.S.C. § 1988), *aff'd* on other grounds, 448 U.S. 122 (1980). Therefore, in addition to awarding attorney fees and expenses for the original action, it is appropriate to also award attorney fees and expenses for litigating the EAJA application itself.

I reviewed the Affidavit of Jeffrey Sar and Exhibit A attached to the Application, which itemizes the time Attorney Sar spent litigating the EAJA Application, and I find that the time spent was reasonable given the issues before the court, and I find that the accompanying expenses reasonable as well. The rate of \$200.00 per hour was approved in the EAJA decision published on December 21, 2015, and is therefore justified. As such, E&E is entitled to a total of \$5,248.49 in attorney fees and expenses, as requested.

WHEREFORE, it is **ORDERED** that the Secretary of Labor pay a total of \$5,248.49 in attorney fees and expenses to E&E within 30 days of this order.

A handwritten signature in black ink, appearing to read "L. Zane Gill". The signature is fluid and cursive, with the first name "L." and last name "Gill" clearly legible.

L. Zane Gill
Administrative Law Judge

Distribution:

Daniel McIntyre, Esq., U.S. Dept. of Labor, Office of the Solicitor, 1244 Speer Blvd., Suite 216,
Denver, CO 80204

Jeffrey Sar, Esq., Baron, Sar, Goodwin, Gill & Lohr, 750 Pierce Street, P.O. Box 717, Sioux
City, IA 51102