

S E R V E D
January 9, 2007
FEDERAL MARITIME COMMISSION

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

DOCKET NO. 04-08

QIN'S, INCORPORATED

v.

SUPERIOR LINK INTERNATIONAL, INC.

MEMORANDUM AND ORDER ON ATTORNEY FEES

On July 18, 2006, my predecessor as administrative law judge for the Commission issued an Initial Decision awarding reparations to complainant Qin's, Incorporated (Qin's) pursuant to the Shipping Act of 1984. 46 U.S.C. § 40101, *et seq.* On August 22, 2006, the Commission issued an order stating that it had decided not to review the Initial Decision; therefore, the Initial Decision is administratively final. 46 C.F.R. § 502.227. On August 28, 2006, Qin's filed a petition for attorney fees. Qin's and respondent Superior Link International, Inc. (Superior) have had ample opportunity to brief this issue and it is now ripe for decision. As discussed more fully below, I have determined that Qin's is entitled to an award of attorney fees pursuant to the Shipping Act of 1984. 46 U.S.C.

§ 41305(b). I have determined that the reasonable hourly rate for services performed by lead counsel Peter S. Herrick is \$250.00, and the reasonable hourly rate for services performed by his associate Roy Leon is \$200.00. I have determined that Qin's should receive attorney fees for 33.75 hours of services performed by Mr. Herrick and 62.40 hours of services performed by Mr. Leon. Therefore, Qin's is entitled to an award of attorney fees in the amount of \$20,917.50.

I. FACTS AND PROCEDURAL BACKGROUND.¹

The underlying case involves the liability for demurrage that accrued from the delay in delivery of two containers shipped by Qin's from China to Charlotte, North Carolina.

Qin's contracted with Superior to ship two containers containing tableware from China to a customer in Charlotte, North Carolina. Superior is a non-vessel operating common carrier subject to the jurisdiction of the Commission. Superior arranged shipment on the President Grant, a vessel operated by American President Lines, Ltd (APL). Qin's was the shipper under Superior's bill of lading and Superior was the shipper under APL's bill of lading. APL did not have a contractual relationship with Qin's in connection with the shipment.

On January 30, 2003, Superior sent an arrival notice to Qin's setting forth the anticipated arrival date, freight charges, and requirements for release of the containers. The arrival notice included a statement that "we can only release the freight to you upon receipt of charges shown below and properly endorsed original house bill of lading." Qin's maintained that on February 4, 2003, it sent by Federal Express an endorsed original bill of lading and a check for the freight

¹ The facts are summarized from the Initial Decision and the other papers filed in this case. The procedural background is taken from the record before the Commission and from the record in the parallel proceeding in the United States District Court for the Western District of North Carolina. *Qin's, Inc. v. American President Lines, Ltd. and Superior Link International, Inc.*, No. 03:03 CV 193 (W.D.N.C.) (April 29, 2003) (filed). See 46 C.F.R. § 502.226 (official notice of public documents).

charges stated in the arrival notice to Superior's office in Walnut, California. Although Qin's used an incorrect street address, the package was correctly delivered because Superior negotiated the enclosed check. The check cleared on February 6, 2003. In the proceedings before the FMC and before the district court, however, Superior contended that it did not receive the bill of lading with the check for the freight charges.

The containers arrived in Charlotte on February 24, 2003. APL provided seven free days of storage, after which demurrage would begin to accrue. On February 25, 2003, Superior sent Qin's a second arrival notice identical to the first reiterating the conditions necessary for release of the cargo. Although by this date Superior had received and negotiated the check Qin's sent for the freight charges, this second arrival notice reiterated that "we can only release the freight to you upon receipt of charges shown below and properly endorsed original house bill of lading."

Superior did not pay the freight charge to APL before the free period ended, and the containers were not released to the consignee. Consequently, on March 4, 2003, APL began charging demurrage at the rate of \$100.00 per container per day for the first five days and at the rate of \$120.00 per container per day thereafter.

By April, APL was contemplating selling the cargo at auction to satisfy the demurrage. On April 17, 2003, Qin's attorney sent an endorsed original bill of lading to Superior. In the proceedings before the FMC and before the district court, Qin's contended that this was the second tender of the bill of lading, while Superior contended that it was the first.

Qin's contacted APL seeking release of the containers, but APL would not negotiate with it since APL and Qin's did not have a contractual relationship. On April 29, 2003, Qin's filed a civil action in the United States District Court for the Western District of North Carolina, *see* footnote 1, *supra*, seeking relief against APL and Superior. On May 2, 2003, three months after

receiving the payment from Qin's, Superior forwarded the ocean freight charges to APL, but did not pay the accrued demurrage. By this time substantial demurrage had accrued and APL would not release the cargo until the demurrage was paid.

By August 6, 2003, the demurrage charge had risen to \$37,240.00. Qin's paid \$7,250.00 to APL toward the demurrage leaving a balance due of \$29,990.00. In consideration of this payment, APL released the containers. This resolved the dispute between Qin's and APL, but left each of them with a claim against Superior. APL proceeded with its claim for the remaining demurrage in the district court action. Superior filed a counterclaim in the district court against Qin's for indemnification in the event it was required to reimburse APL for the remaining demurrage.

On April 2, 2004, the district court granted APL's motion for summary judgment on its cross-claim against Superior and on May 18, 2004, entered judgment against Superior in favor of APL in the amount of \$29,990.00 plus pre-judgment interest. *Qin's, Inc. v. American President Lines, Ltd. and Superior Link International, Inc.*, No. 03:03 CV 193 (W.D.N.C.) (May 18, 2004) (Order). In addition, the court dismissed the claims brought by Qin's against Superior alleging fraud and breach of fiduciary duty. Superior's counterclaim seeking indemnification against Qin's for APL's judgment against Superior remained pending.

On July 29, 2004, Qin's commenced this matter with the Commission. Its complaint alleged that Superior failed to establish and observe just and reasonable regulations and practices relating to the receipt, handling, storing, or delivering the containers in violation of section 10(d)(1) of the Shipping Act of 1984. 46 U.S.C. § 41102(c). Qin's sought "damages in the sum of \$23,626.40 which includes the monies paid to APL to negotiate the release of the two containers, attorney's fees and court costs as of April 28, 2004." (FMC Complaint).

On September 27, 2004, relying on the district court's dismissal of Qin's complaint against it, Superior filed with the Commission a motion to dismiss Qin's FMC complaint on the grounds of *res judicata*. On November 9, 2004, the administrative law judge then assigned to this case denied the motion to dismiss. He noted that while both actions involved the same transaction, the specific claim of violation of the Shipping Act had not been involved in the district court lawsuit. He held that limitations on the district court's jurisdiction to decide Shipping Act issues or to award reparations for violations of the Shipping Act constituted an exception to the doctrine of *res judicata*. On December 15, 2004, the district court took note of this order and stayed the civil action pending a decision by the Commission on Qin's FMC complaint.

Qin's and Superior filed cross-motions for summary judgment on the FMC complaint. The resolution of one question resolved the issue of liability for the demurrage: Did Qin's include a bill of lading in the Federal Express envelope when it sent its check for payment of the freight to Superior on February 4, 2003, as Qin's contended, or had Qin's failed to include the bill of lading with the check as Superior contended? Based on the facts as presented in the affidavits and other papers submitted by the parties, the administrative law judge found that Qin's had included the bill of lading with the check. On or before February 6, 2003 (the date the check cleared the bank), Qin's had fulfilled all of the obligations imposed on it to permit release of the containers to the consignee. Superior failed to secure the release of the containers before the end of free time. Therefore, Superior was liable for the demurrage and Qin's was entitled to reparations in the amount of \$7,250.00, the portion of the demurrage Qin's paid APL to secure release of the containers.

Qin's filed the FMC Initial Decision and notice that the Commission would not review the Initial Decision with the district court. On September 5, 2006, the court issued an order allowing Superior fourteen days to respond. I take official notice of the fact that Superior did not respond to the district court's order when, and that the district court case (that is, Superior's counterclaim) has now been dismissed with prejudice. *Qin's, Inc. v. American President Lines, Ltd. and Superior Link International, Inc.*, No. 03:03 CV 193 (W.D.N.C.) (December 11, 2006) (Order).

II. PETITION FOR ATTORNEY FEES.

On August 28, 2006, Qin's filed Complainant's Petition for Attorney Fees (Qin's Petition). Qin's Petition requests \$36,207.98 in attorney fees and costs based on 211.35 hours Qin's claimed its attorneys spent on this matter "from its inception at the FMC." (Qin's Petition at 1). Qin's attached four exhibits to the Petition, including Exhibit B, a statement dated August 23, 2006, claimed to set forth its attorneys' services and charges from March 21, 2003, to August 22, 2006 (Interim Fee Statement). (See Qin's Petition at 2 ("On the enclosed time sheets 'PSH' represents Peter S. Herrick who has been admitted to practice since 1968. 'RL' represents Roy Leon, an associate with the law firm, Peter S. Herrick, P.A. Mr. Leon was admitted to practice in 2001."); Qin's Petition, Exhibit B). The Interim Fee Statement sets forth the date on which each service was rendered, identifies the attorney who rendered the service (Mr. Herrick or Mr. Leon, identified by Mr. Herrick's letterhead as being "of counsel," but also described by Mr. Herrick as "my employee and/or associate" (Qin's Response to the Order for Supplemental Briefing (Qin's Supplemental Brief), Exhibit A at ¶ 11)), a brief description of the service, the hours spent, and the charge for that service. The Interim Fee Statement totals the number of hours expended (211.35) and the total charge (\$33,742.50). The Interim Fee Statement does not set forth

separate subtotals of the number of hours charged for each attorney, and Qin's Petition does not provide these subtotals. See 46 C.F.R. § 502.254(b) ("Petitions for attorney's fees under this section shall specify the number of hours claimed by each person representing the complainant at each identifiable stage of the proceeding.").

In its Petition, Qin's claims that reasonable hourly rates are \$400.00 for Mr. Herrick and \$250.00 for Mr. Leon. It argues that these hourly rates are justified by developments in the law on attorney fees in the District of Columbia that began in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). The updated Laffey Matrix, prepared by the United States Attorney's Office for the District of Columbia as evidence of prevailing market rates in the Washington, D.C., area, sets forth hourly rates for attorneys based on their years of experience. (See Qin's Petition, Exhibit D). Throughout the Interim Fee Statement, however, Mr. Herrick's time is billed at \$250.00 per hour. Mr. Leon's time is billed at \$200.00 per hour for the period prior to July 18, 2006, and \$250.00 per hour after that date. Curiously, when the total charge of \$33,742.50 is divided by the total number of hours claimed of 211.35, the average hourly rate is \$159.65, well below the hourly rate claimed either for Mr. Herrick or Mr. Leon. Therefore, the hourly rates requested in the Petition seem to bear no relationship to the attorney fees sought.

On September 13, 2006, respondent Superior filed Respondent's Reply to Complainant's Petition for Attorney Fees (Superior Reply). First, Superior argues that the attorney fees and costs are wholly disproportionate to the reparations award of \$7,250.00. Superior claims that the complaint sought a total of \$23,626.40 in reparations and that the Commission only awarded 30% of that figure. Superior argues that given this disparity between the reparations sought by

the complaint and the reparations actually awarded, Qin's "reasonable attorneys' fees are zero." (Superior Reply at 2). Second, Superior argues that attorney fees are limited to those services "directly related to obtaining a reparations award," 46 C.F.R. § 502.254(a), and claims that many of the entries on the Interim Fee Statement "have nothing to do with the claim before the Federal Maritime Commission." (*Id.*). Superior attached a copy of the Interim Fee Statement on which it "highlighted"² each service that it contends "is either not related to this action or that is ambiguous and not identifiable with a stage of this proceeding." (*Id.* at 4). It argues that awarding fees for those services would reduce the claim to \$20,367.50. (*Id.*)

On September 21, 2006, Qin's filed Complainant's Response to Respondent's Reply to Complainant's Petition for Attorney Fees (Qin's Response).³ First, it argues that the reparation award of \$7,250.00 is not disproportionate to the reparations sought. The complaint sought a payment of \$7,250.00 in reparations for the demurrage Qin's paid to APL to secure release of the containers. The balance of the \$23,626.40 stated in the complaint is for attorney fees and costs. (Qin's Response at 1). Second, Qin's Response states that the fee statement had been revised to remove all entries prior to April 12, 2004, the date on which the attorneys undertook representation of Qin's on the FMC claim, and other entries that were confusing as not reflecting work on the FMC case. (Qin's Response at 3). Qin's attached two exhibits to the Response, including Exhibit A, a revised statement dated September 8, 2006, claimed to set forth its attorneys' services and charges from April 12, 2004, to September 15, 2006 (Revised Fee Statement). (Qin's Response, Exhibit A). The Revised Fee Statement sets forth the same

² A number of the services are underlined on the copy Superior filed with the Commission. I assume that this is what Superior means by "highlighted."

³ On November 2, 2006, I granted the motion for leave to file this Response.

information for each service as the Interim Fee Statement and totals the number of hours expended (140.05) and the total charge (\$29,742.50). Relying again on the Laffey Matrix, Qin's claims that reasonable hourly rates are \$400.00 for Mr. Herrick and \$250.00 for Mr. Leon. The hourly rates on the Revised Fee Statement have been changed from the hourly rates on the Interim Fee Statement to indicate that Mr. Herrick's time was billed at \$400.00 per hour and Mr. Leon's time was billed at \$250.00 per hour, the rates at which Qin's Petition and Qin's Response argue they should be compensated. The Revised Fee Statement again fails to set forth separate subtotals of the number of hours charged for each attorney, and Qin's Response does not provide these subtotals. The Revised Fee Statement has an inconsistency similar to the Interim Fee Statement: When the total charge of \$29,742.50 is divided by the total number of hours claimed of 140.05, the average hourly rate is \$212.37, well below the hourly rate claimed for either Mr. Herrick or Mr. Leon. Again, the hourly rates requested seem to bear no relationship to the attorney fees sought. Qin's Response also sets forth information regarding the attorneys' experience that it argues support compensation at the requested hourly rates.

On reviewing the information and arguments regarding the attorney fees petition and reviewing the case law, I determined that further briefing would be necessary. Accordingly, on November 2, 2006, I issued an Order for Supplemental Briefing asking Qin's to set forth the hourly rates at which it agreed to compensate Mr. Herrick and Mr. Leon when they undertook their representation of Qin's on this case, including as an exhibit any written fee agreement setting forth these rates. I also instructed Qin's to address the factors set forth by the court in *Covington v. District of Columbia*, 57 F.3d 1101, 1103 (D.C. Cir. 1995),

including information about the rates that Mr. Herrick and Mr. Leon customarily charge; information about whether they customarily charge reduced rates reflecting non-economic, public-spirited goals; information about whether the

rates they charged Qin's were reduced to reflect non-economic, public-spirited goals; and any information (in addition to that already submitted) about Mr. Herrick and Mr. Leon's skill, experience, and reputation (this may include the hourly rates at which any court or administrative agency has awarded attorney fees to Mr. Herrick and Mr. Leon).

Qin's, Incorporated v. Superior Link International, Inc., FMC Docket No. 04-08 (Nov. 2, 2006) (Order for Supplemental Briefing). I ordered that Qin's supplemental brief be filed on or before November 17, 2006, and instructed Superior to file its reply on or before December 4, 2006.

On November 16, 2006, I received Qin's Supplemental Brief. Exhibit B attached to Qin's Supplemental Brief is a retainer letter dated March 24, 2003, from Mr. Herrick to Qin's stating that Mr. Herrick's time would be billed at \$250.00 per hour. No hourly rate for Mr. Leon is set forth in that letter. Attached to the letter is a Consent and Agreement signed by a representative of Qin's retaining Mr. Herrick. Qin's suggests that I

should take into consideration the fact that this was the initial fee agreement established forty-four months ago. . . . Undersigned counsel's office and Qin orally agreed to the increase in fees based on the hours devoted, the complexity of the matter, rising inflation costs and the length of time to achieve complete success before the FMC. Qin's has already paid the balance for all attorney fees due to [Mr. Herrick's] office.

(Qin's Supplemental Brief at 2-3). Qin's states that

[a]t the inception of representing Qin [*sic*] in this matter, Herrick was charging \$250.00 per hour and Leon \$200 per hour. Since then the rates have been raised incrementally and Herrick is now charging \$400.00 per hour and Leon \$250.00 per hour. Herrick and Leon do not customarily charge reduced rates reflecting non-economic, public spirited goals (except in pro bon cases) which is also applicable to representing Qin [*sic*]. Herrick has been awarded lump sum settlement fees in Freedom of Information Act cases but no hourly awards.

(Qin's Supplemental Brief at 5). Qin's attached a declaration by Mr. Herrick summarizing his experience as a lawyer. In this declaration, Mr. Herrick states that he "reviewed and submitted" the Revised Fee Statement reducing the hours from 211.35 to 140.05 and the attorney fees from

\$36,207.89 to \$29,742.50. He states that based on his legal background and years of experience, he began charging \$400.00 per hour in 2004. He states that he employs Mr. Leon, who has been a member of the Florida Bar since 2001, and that his firm required that Mr. Leon charge \$250.00 per hour. (Qin's Supplemental Brief, Exhibit A). Qin's Supplemental Brief does not discuss the Laffey Matrix on which its Petition and Response relied.

On December 4, 2006, Superior filed Respondent's Reply to Complainant's Response to Order for Supplemental Briefing (Superior Supplemental Brief). First, Superior reiterates its argument that the attorney fees requested by Qin's are disproportionate to the reparations award. Superior argues that the reparations award of \$7,250.00 is only 30% of Qin's original claim and that this demonstrates lack of success, not complete success as claimed by Qin's, pointing out that even with the reduction from the initial Qin's Petition, the reduced attorney fees request is more than four times the reparations award. Superior asserts that Qin's "lack of success and its concession (by not appealing its award) that it was not justified in seeking reparations in the amount of \$23,625.40, is grounds, under *Hensley v. Eckerhart*, 461 U.S. 424 (1983), to adjust downward any attorneys' fee award." (Superior Supplemental Brief at 2). Superior argues that this lack of success also demonstrates that it was reasonably justified in contesting the action. *Id.* Second, Superior argues that the hourly rates of \$400.00 for Mr. Herrick and \$250.00 for Mr. Leon claimed by Qin's are not justified, pointing out that there is no documentation demonstrating that Qin's actually was charged or paid these amounts. Third, Superior argues that not all of the "fat" has been eliminated from the itemized bill. (*Id.* at 3.) In its Supplemental

Brief, Superior fails to identify any particular items that it believes are not justified, but seems to rely on the copy of the Interim Fee Statement that it “highlighted” and attached to its Reply.⁴

III. DISCUSSION.

A party who is awarded reparations under the Shipping Act may also receive “reasonable attorney fees.” 46 U.S.C. § 41305(b). A complainant is a prevailing party if he “has succeeded on ‘any significant issue in litigation which achieve[d] some of the benefit the parties sought in bringing suit.’” *Texas State Teachers Assoc. v. Garland Indep. School District*, 489 U.S. 782, 791-92 (1989).

Fees should be calculated using the lodestar analysis. “The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). *See Transworld Shipping (USA), Inc. v. FMI Forwarding (San Francisco), Inc.*, 29 S.R.R. 876, 878 and n.3 (2002). The applicant for an award of attorney fees bears the burden of establishing entitlement to an award, documenting the appropriate hours, and justifying the reasonableness of the rates. *See Blum v. Stenson*, 465 U.S. 889, 896 n.11 (1984) (“[C]ourts properly have required prevailing attorneys to justify the reasonableness of the requested rate or rates.”); *Hensley v. Eckerhart*, 461 U.S. at 437 (“[T]he fee applicant bears the

⁴ Qin’s Petition asks for “36,207.89 in attorney fees and costs.” Qin’s Petition at 1. The Interim Fees Statement claims \$33,742.50 in attorney fees, leaving a balance of \$2,465.39, presumably for costs. Qin’s did not submit any documentation regarding what these costs might be. Qin’s Reply requested \$29,742.50, the total fee claimed by the Revised Fee Statement, and did not identify any costs. Even if Qin’s had documented costs, costs may not be awarded by the Commission under the Shipping Act. *Global Transporte Oceanico S.A. v. Coler Independent Lines Co.*, Docket No. 99-14, slip op. at 4 n.5 (November 9, 1999) (Award of Attorney’s Fees).

burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.”).

A. Qin’s is Entitled to an Award of Attorney Fees.

Qin’s is a prevailing party. Qin’s filed a complaint seeking reparations in the amount of \$7,250.00, the sum it paid to APL to secure release of the containers, plus attorney fees and costs to the date of filing. The Initial Decision awarded reparations in the amount of \$7,250.00 to Qin’s; therefore, it is a prevailing party as it has received the benefit it sought in bringing suit. *Texas State Teachers Assoc. v. Garland Indep. School District, supra.*

I address first Superior’s contention that Qin’s is not entitled to an award of attorney fees at all because the reparations award of \$7,250.00 is minimal in comparison to the reparations sought by in the complaint (\$23,626.40) and the attorney fees sought by Qin’s Reply (\$29,742.00). (Superior Supplemental Brief at 1-3; *see also* Superior Reply at 1-2). Superior’s contention is wrong.

First, Superior mis-characterizes Qin’s FMC complaint. The complaint avers that Qin’s “paid APL the sum of \$7,250.00 on July 29, 2004, against the outstanding demurrage balance of \$29,990.00 [*sic*] that was owed to APL, to obtain the release of the goods to its customer.” (Complaint at 4).⁵ Qin’s then describes its injury to be “damages in the sum of \$23,626.40 which includes monies paid to APL to negotiate the release of the two containers, *attorney’s fees and court costs as of April 28, 2004.*” (*Id.* at 5) (emphasis added). While Qin’s complaint would have been clearer if the “damages” figure had not included the attorney’s fees and costs, the Initial Decision awarded to Qin’s as reparations the full amount sought by the complaint:

⁵ The outstanding demurrage on that date before Qin’s made its payment was \$37,240.00. When Qin’s made this payment, the *remaining balance* was \$29,990.00.

\$7,250.00. It is now before me for consideration of the rest of the claim for “reasonable attorney’s fees and court costs” asked for in the complaint. Therefore, the reparations award is not “minimal.”

Second, to the extent Superior’s argument can be construed as an objection to the fact that the attorney’s fees sought and the size of the reparations award, the argument is without merit.

The Supreme Court has held that:

[in] some circumstances, even a plaintiff who formally “prevails” under [42 U.S.C. § 1988] should receive no attorney’s fees at all. A plaintiff who seeks compensatory damages but receives no more than nominal damages is often such a prevailing party. . . . When a plaintiff recovers only nominal damages because of his failure to prove an essential element of his claim for monetary relief, . . . the only reasonable fee is usually no fee at all.

Farrar v. Hobby, 506 U.S. 103, 115 (1992). The reparations award in this case was not “nominal.” Qin’s sought and received as reparations the full amount it paid APL in order to secure release of the containers. The fact that the attorney fees expended to secure the reparations award exceed the award is not grounds for reducing the fees. *See* 2 Derfner and Wolf, *Court Awarded Attorney Fees* § 16.04[3] n.81 (2006 Rev.).

Accordingly, I find that Qin’s was a prevailing party and is entitled to an award of reasonable attorney fees under 46 U.S.C. § 41305(b). Superior’s arguments regarding specific services for which an award of attorney fees is sought are addressed in Section III.C. below.

B. Hourly Rate.

Determination of reasonable attorney fees by the lodestar analysis requires a finding of a reasonable hourly rate for the attorneys’ time.

1. Hourly Rate Charged.

One would think that it would be a simple matter to determine the hourly rate that was actually charged by an attorney and paid by a client. Qin's has submitted contradictory information, however, so my first task is to determine this rate based on the information in the record.

Qin's Petition asserts that Mr. Herrick "was billing at the rate of \$400.00 per hour and [Mr. Leon] at the rate of \$250.00." (Qin's Petition at 3). This assertion, however, is contradicted by the Interim Fee Statement dated August 23, 2006. (Qin's Petition, Exhibit B). The Interim Fee Statement indicates that all of Mr. Herrick's services were billed at an hourly rate of \$250.00. For every service performed during the period from March 21, 2003, to July 17, 2005, Mr. Leon's services were billed at an hourly rate of \$200.00. The first service for which Mr. Leon's time was billed at an hourly rate of \$250.00 occurred on July 18, 2006, *after* issuance of the Initial Decision. (Qin's Petition, Exhibit B).

Whoever prepared⁶ the Revised Fee Statement changed the hourly rate for each attorney. For example, on the Interim Fee Statement, the entry for April 12, 2004, indicates that Mr. Leon (RL) spent 0.50 hour analyzing FMC jurisdiction and researching the filing of the complaint, a service for which the law firm charged \$100.00. On the Revised Fee Statement, the information is identical except the Statement indicates that the firm charged \$125.00 for this service. On the Interim Fee Statement, the entry for June 25, 2004, states that Mr. Herrick (PSH) spent 1.00 hour

⁶ In his declaration submitted with Qin's Supplemental Brief, Mr. Herrick states that he reviewed the Revised Fee Statement, (Qin's Supplemental Brief, Exhibit A at ¶ 9), but he does not identify who prepared it. The September 15, 2006, entry on the Revised Fee Statement indicates that he reviewed the time sheets and removed all ambiguous non FMC entries. (Qin's Response, Exhibit A)

revising the FMC complaint, a service for which the law firm charged \$250.00. On the Revised Fee Statement, the information is identical except the Statement indicates that the firm charged \$400.00 for this service. The entries on the Interim Fee Statement and the Revised Fee Statement are identical for each service between April 12, 2004, and July 17, 2005, except that on the Revised Fee Statement, the charges were calculated at the higher hourly rates.⁷

As noted above, my predecessor issued the Initial Decision on July 18, 2006. Beginning on that date with Mr. Leon's review of the Initial Decision, the Interim Fee Statement indicates that the attorneys billed his services at an hourly rate of \$250.00. While the Interim Fee Statement indicates that Mr. Herrick spent some time on this case on July 18, 2006, and August 22, 2006, it does not indicate that the attorneys charged Qin's for this time. The last services indicated on the Interim Fee Statement occurred August 22, 2006. The Revised Fee Statement begins with services rendered on April 12, 2004, and ends with services rendered September 15, 2006. All charges from April 12, 2004, through September 15, 2006, were calculated at an hourly rate of \$400.00 for Mr. Herrick and \$250.00 for Mr. Leon.

The letter establishing the attorney-client relationship signed by Mr. Herrick to which a representative agreed established an hourly rate of \$250.00 for Mr. Herrick. It does not set forth an hourly rate for Mr. Leon. This letter also establishes that "[s]tatements for time billed will be sent at the end of each month and are due and payable upon receipt and after the retainer is exhausted." (Qin's Supplemental Brief, Exhibit B). The brief states that Qin orally agreed to an

⁷ It is noted that no charge is indicated on the Revised Fee Statement for three services for which charges are indicated on the Interim Fee Statement, one "PSH" service on September 9, 2004, and one "PSH" service and one "RL" service on December 20, 2004. It appears that these charges were removed because Qin's determined the services concerned the district court case, not the FMC case. (See Qin's Response at 3).

increase in fees (Qin's Supplemental Brief at 3) and in his declaration, Mr. Herrick states that he has "been charging \$400.00 an hour beginning in 2004 based on [his] legal background and years of experience" (Qin's Supplemental Brief, Exhibit A at ¶ 10) and his firm "required that Roy Leon . . . , my employee and/or associate, charge \$250.00 an hour," (*id.* at ¶ 11).

The Interim Fee Statement prepared on August 23, 2006, does not support Qin's contention and Mr. Herrick's declaration that the attorneys charged and Qin's paid \$400.00 per hour for Mr. Herrick's services and \$250.00 per hour for Mr. Leon's services for the period from April 12, 2004, to July 17, 2006. For this to be true, the "billing invoice" (Qin's Petition at 1) sent to Qin's would have been different from the fee statement maintained by the attorneys' office. Nothing in the record suggests that this occurred.

Therefore, based on the information submitted in support of Qin's request for attorney fees, I find that the hourly rates actually charged by the attorneys for their services representing Qin's in this matter for the period April 12, 2004, to July 17, 2006, were \$250.00 per hour for Mr. Herrick and \$200.00 per hour for Mr. Leon, and for the period July 18, 2006, to September 15, 2006, \$400.00 per hour for Mr. Herrick and \$250.00 per hour for Mr. Leon.

2. Hourly Rate Requested.

Qin's has requested that its attorneys be compensated for their services at hourly rates of \$400.00 for Mr. Herrick and \$250.00 for Mr. Leon. As noted *supra*, p.7, Qin's relies heavily on the Laffey Matrix as support for these rates in its Petition and Reply. In its Supplemental Brief, it relies on its claim that its attorneys' hourly rates were increased from the initial fee agreement by the time the attorneys began to represent them on the FMC claim.

One can begin with the premise that, in the ordinary case, a fee based on the actual rates an attorney charges would be *prima facie* reasonable. There is no better indication of what the market will bear than what the lawyer in fact charges

for his services and what his clients pay. In an efficient market, a “reasonable” rate set by the court should mirror the attorney’s actual rate because no attorney will charge less than that rate if he can get it and no client will pay more. The “Laffey” matrix was derived, after all, from a survey of data of the rates lawyers actually charged their clients. Thus, if the market is working correctly and the “Laffey” rates are accurate, lawyers should be getting the “Laffey” rates from their clients.

Griffin v. Washington Convention Center, 172 F. Supp. 2d 193, 197 (D.D.C. 2001). *See also Kattan by Thomas v. District of Columbia*, 995 F.2d 274, 278 (D.C. Cir. 1993) (“[a]n attorney’s usual billing rate is presumptively the reasonable rate, provided that this rate is ‘in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.’” (quoting *Blum v. Stenson*, 465 U.S. at 895-896 n.11)).

As the case law makes clear, an award of attorney fees is not necessarily limited to the hourly rate that a party agreed to pay its attorney.

In [42 U.S.C. § 1988] attorneys’ fee cases, attorneys who customarily charge reduced fees reflecting non-economic, public-spirited goals may seek fees based on the prevailing market rates if the prevailing party demonstrates the reasonableness of the requested hourly rates. That burden entails the following: first, if the attorney customarily charges clients lower rates than plaintiff has requested under section 1988, the attorney must demonstrate that the customarily reduced rates are charged for non-economic reasons; second, the attorney must offer information documenting his or her skill, experience, and reputation; and third, the attorney must produce evidence of the prevailing market rates in the relevant community for attorneys of comparable skill, experience, and reputation.

Covington v. District of Columbia, 57 F.3d 1101, 1103 (D.C. Cir. 1995). As noted *supra*, p.9, I asked Qin’s to address these factors in its Supplemental Brief. Qin’s stated that the fees that its attorneys charged were not reduced for non-economic reasons. The only evidence regarding prevailing market rates consists of the Laffey Matrix and a magazine article describing attorney fees in the Miami area. (Qin’s Reply, Exhibit B). Neither Qin’s nor Superior submitted any information regarding prevailing market rates for representation on Shipping Act matters.

I found above that the hourly rates actually charged by the attorneys for their services representing Qin's in this matter for the period April 12, 2004, to July 17, 2006, were \$250.00 per hour for Mr. Herrick and \$200.00 per hour for Mr. Leon. See Section III.B.1. I find that Qin's has not met its burden of demonstrating that these hourly rates should be increased. First, this was a relatively simple case. Its resolution turned on the answer to one question: Did Qin's include the bill of lading in the Federal Express envelope when it sent its check for the ocean freight charges? Second, the hourly rates the attorneys normally charge were not reduced for non-economic reasons. Third, regarding Qin's suggestion that I "should take into consideration the fact that this was the initial fee agreement established forty-four months ago," although authority exists to permit use of current market rates to determine an attorney fee award rather than the market rate in effect at the time the services were rendered when there has been a delay between the rendering of services and the payment of fees, *see 2 Derfner and Wolf, Court Awarded Attorney Fees* § 16.04[5], in this case, the fee agreement required Qin's to pay its fees monthly (*see Qin's Supplemental Brief, Exhibit B*). Nothing in the record suggests Qin's did not make these payments as required. (*See Qin's Supplemental Brief at 3 ("Qin has already paid the balance for all attorney fees due")*). Fourth, nothing in the record establishes that the market rate for representation on Shipping Act matters is higher or lower than the hourly rates set forth in the Interim Fee Statement. Furthermore, Superior has not suggested that the hourly rates established by the agreement of Qin's and its attorneys and paid by Qin's for this period are unreasonably high. Therefore, I find that for the period April 12, 2004, through July 17, 2006, Mr. Herrick's reasonable hourly rate was \$250.00 and Mr. Leon's reasonable hourly rate was \$200.00.

The Revised Billing Statement indicates that after the issuance of the Initial Decision, Mr. Herrick increased his hourly rate to \$400.00 and Mr. Leon increased his hourly rate to \$250.00.

While this indicates that these became the hourly rates actually charged, I find that it is not reasonable to permit a party to increase the hourly rate when the only services to be provided involve the preparation of the petition for attorney fees and other “house-keeping” matters such as notifying the district court of the Initial Decision and the Commission’s decision not to review the Initial Decision. Therefore, I find that the reasonable hourly rates for services performed after the Initial Decision are \$250.00 for Mr. Herrick and \$200.00 for Mr. Leon.

C. Hours Reasonably Expended.

When Qin’s submitted its petition for attorney fees, it attached the Interim Fee Statement setting forth the services for which it sought an award and the charge for each of those services. Superior attached to its Reply a copy of the Interim Fee Statement on which its counsel “highlighted each entry that is either clearly not related to this action or that is ambiguous and not identifiable with a stage of this proceeding.” (Superior Reply at 4; Superior Reply, Exhibit 1). Superior objected to most of the services rendered prior to April 12, 2004, and many of the services rendered after April 12, 2004. When Qin’s submitted its Response to Superior’s Reply, it attached the Revised Fee Statement (Qin’s Response, Exhibit B) setting forth the services for which it seeks reasonable attorney fees.

As noted above, for both the Interim Fee Statement and the Revised Fee Statement, when the total charges are divided by the total number of hours claimed, the average hourly rate is below the hourly rate that Qin’s requests for its attorneys. This is explained by the fact that the statements included in the “hours” total services for which the statements do not reflect a charge. (See, e.g., Qin’s Petition, Exhibit B, 7/26/04 (PSH entry - “Complete complaint and fedex to FMC,” 0.20 hours, no charge indicated; RL entry - “Discussions with the Office of the Secretary and Docket Clerk to confirm filing requirements for complaint. Prepare copies of complaint and

exhibits. Travel time to Fed Ex Drop off,” 1.00 hours, no charge indicated); Qin’s Response, Exhibit A (identical entries with no charge indicated)). Qin’s states in its Response that when it prepared the Revised Fee Statement, “[w]here the entries are confusing as not reflecting work on the FMC case no time has been billed.” (Qin’s Response at 3).

I conclude, therefore, that Qin’s is seeking attorney fees for each service for which a charge is reflected on the Revised Fee Statement, and is not making a claim for attorney fees for those services for which no charge is indicated. Appendix 1 includes each service for which Qin’s indicated an attorney fee is sought on the Revised Fee Statement. The information in the “Date,” “Services Rendered,” “Attorney Hours,” and “Attorney Fees Sought” columns on Appendix 1 is extracted from the Revised Fee Statement. The services that are underlined are those to which Superior noted an objection by “highlighting” a service. (See Superior Reply, Exhibit 1). I have indicated the number of hours for each claimed service that I find to be reasonable in the two “Hours Awarded” columns, and the attorney fee, if any, that I award for that service in the two “Attorney Fees Awarded” columns. I find for each service for which I made an award at the hourly rates of \$250.00 for Mr. Herrick and \$200.00 for Mr. Leon, Qin’s has met its burden of demonstrating that the service was reasonably related to this case.

For each of the following services for which no fee was awarded, a fee was awarded, but I reduced the hours, or a fee was awarded despite Superior’s objection to the award, my reasons for the award are set forth below.

4/28/04	Review client's time sheets and costs breakdowns. Complete rough draft FMC complaint.	RL 0.50 hr	Awarded \$100.00
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Superior objected to an award for “review client's time sheets and costs breakdowns.” While it is not clear whether the time sheets to which the indicated service refers are related to work by

employees of Qin's related to the shipment of the containers or the attorneys' time sheets for their representation of Qin's, I find in either situation, the fee for this service is reasonably related to the FMC proceeding.

8/17/04	Review motion for summary judgment.	PSH 0.20 hr	Awarded \$0.00
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Superior objected to an award for this service, but did not state a particular reason. The only motion for summary judgment pending at this point was in the district court case. This work was not reasonably related to the FMC proceeding. Therefore, no fee is awarded.

9/2/04	Advise client on status of matters.	PSH 0.20 hr	Awarded \$50.00
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Superior objected to an award for this service, but did not state a particular reason. I find that it is reasonably related to the FMC proceeding.

10/11/04	Review status of cases with client	PSH 0.10 hr	awarded \$25.00
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Superior objected to an award for this service, but did not state a particular reason. I find that it is reasonably related to the FMC proceeding.

11/11/04	Prepare letter to judge with FMC decision.	PSH 0.70 hr	awarded \$175.00
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Superior objected to an award for this service, but did not state a particular reason. In its Response, Superior cited Commission Rule 254 for the proposition that attorney fees are limited to those services “directly related to obtaining a reparations award. 46 C.F.R. § 502.254(a).” (Superior Reply at 2). While Superior quoted this rule correctly, it did not quote the rule completely. Commission Rule 254 continues to state that the award “may include compensation for services rendered the complainant *in a related proceeding in Federal court that is useful and necessary to the determination of a reparations award in the complaint proceeding.*” *Id.* (emphasis added). I find that notifying the judge in the related district court proceeding is reasonably related, useful, and necessary to the FMC proceeding.

4/8/05	Discussions with Ron Murphy to schedule follow-up discussions with PSH.	RL 0.10 hr	awarded \$20.00
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Superior objected to an award for this service, but did not state a particular reason. Ron Murphy is the head of the FMC Office of Consumer Affairs and Dispute Resolution Services, the office that conducted the mediation of this case. I find that it is reasonably related to the FMC proceeding.

4/25/05	Receive and review deposition fees. Fax to client for fees.	RL 0.10 hr	awarded \$20.00
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Superior objected to an award for this service, but did not state a particular reason. I find that it is reasonably related to the FMC proceeding.

4/27/05	Discussions with client on upcoming mediation conference.	RL 0.10 hr	awarded \$20.00
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Superior objected to an award for this service, but did not state a particular reason. I find that it is reasonably related to the FMC proceeding.

5/31/05	Review respondent's interrogatory responses for cases cited. Download appropriate cases of psh. Travel time to drop off PSH at Miami International Airport for tomorrow's mediation.	RL 1.50 hr	awarded \$150.00
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Mr. Leon acted as a taxi driver on the service of “[t]ravel time to drop off PSH at Miami International Airport for tomorrow's mediation.” This is not properly compensated as an attorney service. A search for directions on Google maps (<http://www.google.com/maps> (visited January 8, 2007)) indicates the distance from the attorneys’ office at 3520 Crystal View Ct., Miami, FL 33133-4025, to Miami International Airport is 9.5 miles and driving time alone is thirteen minutes. The same search on MapQuest (<http://www.mapquest.com/directions/> (visited January 8, 2007)) indicates the distance is 10.25 miles and driving time alone is sixteen minutes. Therefore, I deducted 0.75 hour from the time claimed on the Revised Fee Statement for a round trip to the airport and awarded \$150.00 for the 0.75 hour remaining.

6/1/05	Multiple discussions with PSH during mediation conference in Long Beach. Review client file for pending issues. Discussions with APL attorney on lawsuit and settlement issues with Hartford insurance.	RL 0.50 hr	awarded \$100.00
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Superior objected to an award for the discussions with the APL attorney and the representative of Hartford insurance, but did not state a particular reason. In its Response, it cited Commission

Rule 254 for the proposition that attorneys' fees are limited to those "directly related to obtaining a reparations award. 46 C.F.R. § 502.254(a)." (Superior Reply at 2). While Superior quoted this rule correctly, it did not quote the rule completely. Commission Rule 254 continues to state that the award "may include compensation for services rendered the complainant *in a related proceeding in Federal court that is useful and necessary to the determination of a reparations award in the complaint proceeding.* *Id.* (emphasis added). I find that the discussions with the APL attorney and the representative of Hartford insurance are reasonably related, useful, and necessary to the FMC proceeding.

7/28/05	Discussions with Judge Krantz's Office and the Office of the Secretary for copy requirements and filing requirements for motion for summary judgment. Prepare and sort copies of motion. Travel time to purchase shipping box. Travel time to Fed Ex and Post Office.	RL 4.00 hr	awarded \$600.00
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Superior objected to an award for travel time to purchase shipping box and travel time to Fed Ex and Post Office, but did not state a particular reason. Travel time to purchase a shipping box and to go to a Fed Ex and Post Office is not properly compensated as an attorney service. Unlike the travel time to Miami International Airport, I do not have a means to calculate this time. Mindful that the burden is on Qin's to establish the appropriate hours, I have deducted one hour from the time claimed on the Revised Fee Statement for this group of services and awarded \$600.00 for the three hours remaining.

7/29/05	Track and confirm delivery of motion for summary judgment at the FMC. Calculate printing and shipping costs.	RL 0.25 hr	awarded \$50.00
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Superior objected to an award for this service, but did not state a particular reason. Given the potential repercussions if a motion is not served and filed as required, it is not unreasonable to award attorney fees for the brief time it takes to confirm delivery.

9/6/05	Receive and review hard copies of Respondent's opposition and statement of facts. Scan and email to client.	RL 0.25 hr	awarded \$50.00
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Superior objected to an award for scanning and emailing to the client, but did not state a particular reason. Given that an attorney has an obligation to keep his client informed about the progress of the case, this service is reasonably related to this matter.

10/6/05	Review FMC rules for copies. Prepare copies of opposition to motion for summary judgment and undisputed facts. Prepare and mail courtesy copy to FMC judge and opposing counsel. Travel time to fed ex.	RL 1.00 hr	awarded \$100.00
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Superior objected to an award for travel time to Federal Express, but did not state a particular reason. Travel time to go to a Federal Express office and a Post Office is not properly compensated as an attorney service. Unlike the travel time to Miami International Airport, I do not have a means to calculate this time. Mindful that the burden is on Qin's to establish the appropriate hours, I have deducted one-half hour from the time claimed for this group of services and awarded \$100.00 for the one-half hour remaining.

10/7/05	Track and confirm delivery of Complaint's Opposition to Respondent's Summary Judgment by FED.Com. Save and scan receipt in client's file.	RL 0.10 hr	awarded \$20.00
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Superior objected to an award for these services, but did not state a particular reason. Given the potential repercussions if a motion is not served and filed as required, it is not unreasonable to award attorney fees for the brief time it takes to confirm delivery. Given that an attorney has an obligation to keep his client informed about the progress of the case, this service is reasonably related to this matter.

7/18/06	Receive and review initial decision from FMC. Research rules for attorney fees. Research case law on FMC attorney Fees. Review client file on notifying Western District Court. Preparing petition for attorney fees.	RL 2.00 hr	awarded \$400.00
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Superior objected to an award for reviewing the client file on notifying Western District Court, but did not state a particular reason. In its Response, it cited Commission Rule 254 for the proposition that attorneys' fees are limited to those "directly related to obtaining a reparations award. 46 C.F.R. § 502.254(a)." (Superior Reply at 2). While Superior quoted this rule correctly, it did not quote the rule completely. Commission Rule 254 continues to state that the award "may include compensation for services rendered the complainant *in a related proceeding in Federal court that is useful and necessary to the determination of a reparations award in the complaint proceeding.* *Id.* (emphasis added). I find that notifying the district court of Initial Decision in this case is reasonably related, useful, and necessary to the FMC proceeding.

8/18/06	Review appeal timeline with phs.	RL 0.10 hr	awarded \$20.00
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Superior objected to an award for these services, but did not state a particular reason. Reviewing the time limits for appeal imposed by Commission regulations is reasonably related to this matter.

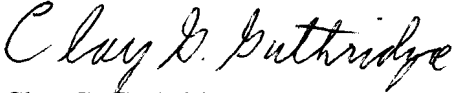
IV. CONCLUSION.

Based on the foregoing and as set forth in Appendix 1, I find that Qin's should receive an award of attorney fees for 33.75 hours of Mr. Herrick's services at an hourly rate of \$250.00, a total of \$8,437.50, and for 62.40 hours of Mr. Leon's services at an hourly rate of \$200.00, a total of \$12,480.00. Therefore, Superior Link International, Inc., shall pay complainant Qin's, Incorporated, \$20,917.50 in attorney fees.

O R D E R

Upon consideration of Complainant's Petition for Attorney Fees and respondent's opposition thereto, it is hereby

ORDERED that respondent Superior Link International, Inc., pay complainant Qin's, Incorporated, \$20,917.50 in attorney fees. This payment shall be made within fifteen days of the date this decision becomes final. 46 C.F.R. §§ 502.227 and 502.254.


 Clay G. Guthridge
 Administrative Law Judge

Qin's Inc. v. Superior Link Int'l, Inc., Docket No. 04-08

MEMORANDUM AND ORDER ON ATTORNEY FEES

APPENDIX 1 – Services for Which Attorney Fees Requested and Awarded

Date	Services Rendered	Atty hours		Attorney Fees Sought		Hours Awarded		Attorney Fees Awarded	
		Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement
		RL	PSH	RL \$250/hr	PSH \$400/hr	RL	PSH	RL \$200/hr	PSH \$250/hr
4/12/04	Analyze FMC jurisdiction and research filing complaint.	0.50		\$125.00		0.50		\$100.00	
4/12/04	Research FMC law and case law for upcoming filings.	1.00		\$250.00		1.00		\$200.00	
4/14/04	Review FMC webpage for filing complaint and Shipping Act with PSH.	0.40		\$100.00		0.40		\$80.00	
4/15/04	Review FMC cases for potential administrative hearing and complaint.	0.30		\$75.00		0.30		\$60.00	
4/19/04	Research federal regulations and FMC webpage for filing formal complaints.	0.50		\$125.00		0.50		\$100.00	
4/20/04	Discussions with the FMC's Office of the Secretary on filing formal complaints.	0.20		\$50.00		0.20		\$40.00	
4/27/04	Receive and review FMC complaint packet. Preparing formal complaint.	2.50		\$625.00		2.50		\$500.00	
4/28/04	Review client's time sheets and costs breakdowns. Complete rough draft FMC complaint.	0.50		\$125.00		0.50		\$100.00	
5/5/04	Amend complaint. Review FMC and federal regulations for attorney admissions.	1.25		\$312.50		1.25		\$250.00	
5/6/04	Amend FMC complaint. Prepare exhibits.	1.50		\$375.00		1.50		\$300.00	
6/25/04	Revising FMC complaint.		1.00		\$400.00		1.00		\$250.00
6/25/04	Amending FMC complaint. Preparing exhibits.	1.00		\$250.00		1.00		\$200.00	
6/28/04	Continue preparing FMC complaint.	1.00		\$250.00		1.00		\$200.00	
6/29/04	Complete rough draft complaint with exhibits.	0.50		\$125.00		0.50		\$100.00	
7/8/04	Complete FMC complaint.		1.00		\$400.00		1.00		\$250.00

Qin's Inc. v. Superior Link Int'l, Inc. , Docket No. 04-08

MEMORANDUM AND ORDER ON ATTORNEY FEES

APPENDIX 1 – Services for Which Attorney Fees Requested and Awarded

Date	Services Rendered	Atty hours		Attorney Fees Sought		Hours Awarded		Attorney Fees Awarded	
		Revised Fee Statement		Revised Fee Statement		RL	PSH	RL \$200/hr	PSH \$250/hr
		RL	PSH	RL \$250/hr	PSH \$400/hr				
8/2/04	Receive and review voice message from FMC. Inform PSH.	0.10		\$25.00		0.10		\$20.00	
8/4/04	Discussions with FMC on sufficiency of complaint and service of process.		0.25		\$100.00		0.25		\$62.50
8/17/04	Review motion for summary judgment.		0.20		\$80.00		0.00		\$0.00
9/2/04	Advise client on status of matters.		0.20		\$80.00		0.20		\$50.00
10/11/04	Review status of cases with client.		0.10		\$40.00		0.10		\$25.00
10/18/04	Analyze superior's motion to dismiss fmc complaint, review file; research; prepare opposition to motion.		2.00		\$800.00		2.00		\$500.00
10/19/04	Continued research and analysis of FMC motion to dismiss and research; continued preparation of opposition.		2.00		\$800.00		2.00		\$500.00
10/20/04	Complete research and preparation of opposition to motion to dismiss and file with FMC.		4.00		\$1,600.00		4.00		\$1,000.00
11/11/04	Prepare letter to judge with FMC decision.		0.70		\$280.00		0.70		\$175.00
11/22/04	Receive and review procedural clarification from Judge Kline. Review FMC administrative case law. Review scheduling request.	1.00		\$250.00		1.00		\$200.00	
11/23/04	Review procedural order with PSH for proposed discovery order. Review FMC case analysis with psh.	0.50		\$125.00		0.50		\$100.00	
11/24/04	Discussions with opposing counsel to check on status of proposed discovery order. Refax to opposing counsel.	0.20		\$50.00		0.20		\$40.00	
11/29/04	Discussions with opposing counsel on discovery schedule and revise schedule for FMC.		0.50		\$200.00		0.50		\$125.00

Qin's Inc. v. Superior Link Int'l, Inc., Docket No. 04-08

MEMORANDUM AND ORDER ON ATTORNEY FEES

APPENDIX 1 – Services for Which Attorney Fees Requested and Awarded

Date	Services Rendered	Atty hours		Attorney Fees Sought		Hours Awarded		Attorney Fees Awarded	
		Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement
		RL	PSH	RL \$250/hr	PSH \$400/hr	RL	PSH	RL \$200/hr	PSH \$250/hr
11/29/04	Discussions with Ted Frank on joint discovery schedule. Fax to Ted Frank. Receive and review approval signatures. Prepare fax cover sheet and fax to FMC judge.	0.25		\$62.50		0.25		\$50.00	
11/30/04	Receive approved order from FMC.	0.10		\$25.00		0.10		\$20.00	
12/7/04	Review client file. Preparing discovery requests for FMC case.	2.00		\$500.00		2.00		\$400.00	
12/8/04	Review client's files and complete rough draft interrogatories and request for production. Discussions with client on case status.	1.00		\$250.00		1.00		\$200.00	
12/9/04	Review client's files and prepare rough draft requests for admissions.	1.00		\$250.00		1.00		\$200.00	
12/10/04	Complete rough draft discovery requests.	0.50		\$125.00		0.50		\$100.00	
12/14/04	Amend and correct discovery requests. Fax and mail to opposing counsel. Fax copies to client.	0.25		\$62.50		0.25		\$50.00	
1/5/05	Review interrogatory response time frame with psh. Discussions with client on administrative procedure.	0.25		\$62.50		0.25		\$50.00	
1/6/05	Review latest procedural order for time deadlines.	0.25		\$62.50		0.25		\$50.00	
1/7/05	Review the lack of interrogatories directed to complainant with PSH and time deadline for respondent's response for discovery responses.	0.25		\$62.50		0.25		\$50.00	
1/10/05	Discussed extension with Superior counsel.		0.10		\$40.00		0.10		\$25.00

MEMORANDUM AND ORDER ON ATTORNEY FEES

APPENDIX 1 – Services for Which Attorney Fees Requested and Awarded

Date	Services Rendered	Atty hours		Attorney Fees Sought		Hours Awarded		Attorney Fees Awarded	
		Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement
		RL	PSH	RL \$250/hr	PSH \$400/hr	RL	PSH	RL \$200/hr	PSH \$250/hr
1/21/05	Review client file on discovery response time deadline. Review matter with psh. Prepare and fax status to respondent. Receive and review extension request from respondent. Review request with psh. Prepare and fax approval letter with conditions to respondent. Fax copies to client. Scan all copies.	1.00		\$250.00		1.00		\$200.00	
1/24/05	Receive and review discovery response from respondents.	2.00		\$500.00		2.00		\$400.00	
1/26/05	Review discovery responses with psh. Scan and email copies to client. Discussions with client. Prepare and fax letter to opposing attorney for deposition dates.	1.50		\$375.00		1.50		\$300.00	
1/26/05	Begin preparation of motion for summary judgment.		0.50		\$200.00		0.50		\$125.00
2/1/05	Prepare and fax deposition date letter to Chang. Receive and review reply.	0.25		\$62.50		0.25		\$50.00	
2/7/05	Receive and review discovery requests from Superior.	1.00		\$250.00		1.00		\$200.00	
2/11/05	Review interrogatories and requests for production along with client file. Remail discovery requests to client.	1.00		\$250.00		1.00		\$200.00	
2/14/05	Receive, review and respond email questions from client.	0.25		\$62.50		0.25		\$50.00	
2/16/05	Receive and review letter from Frank on possible deposition locations and time frame. Email client. Discussions with client. Prepare and fax confirmation letter to Frank on Los Angeles site and possible dates.	0.50		\$125.00		0.50		\$100.00	

MEMORANDUM AND ORDER ON ATTORNEY FEES

APPENDIX 1 – Services for Which Attorney Fees Requested and Awarded

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		Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement
		RL	PSH	RL \$250/hr	PSH \$400/hr	RL	PSH	RL \$200/hr	PSH \$250/hr
2/17/05	Discussions with client and opposing attorney on appropriate deposition dates. Preparing discovery responses. Prepare and fax deposition notice letter to client.	3.00		\$750.00		3.00		\$600.00	
2/25/05	Preparing clients for deposition; research; review file; prepare deposition questions and documents.		2.00		\$800.00		2.00		\$500.00
2/25/05	Email client information regarding depositions. Review client file with psh in preparation of upcoming depositions.	1.00		\$250.00		1.00		\$200.00	
2/28/05	Attend deposition of Lisa Wong and Marcia Chin.		3.00		\$1,200.00		3.00		\$750.00
3/3/05	Discussions with client on interrogatory responses. Receive and review fax from client with answers.	0.50		\$125.00		0.50		\$100.00	
3/4/05	Receive and review copies from client by Fed Ex. Review interrogatory time frame with psh.	0.50		\$125.00		0.50		\$100.00	
3/8/05	Complete rough draft discovery responses.	2.00		\$500.00		2.00		\$400.00	
3/9/05	Amend and complete discovery responses.	0.25		\$62.50		0.25		\$50.00	
3/10/05	Complete mail and fax discovery responses to opposing counsel. Discussions with FMC on status deadline. Receive and review new procedural orders.	0.50		\$125.00		0.50		\$100.00	
3/14/05	Receive and review deposition materials from Court Reporter.	0.25		\$62.50		0.25		\$50.00	
3/22/05	Discussions with judge to set mediation & email opposing counsel.		0.25		\$100.00		0.25		\$62.50
3/25/05	Review judge's referral to ADR.		0.10		\$40.00		0.10		\$25.00

Qin's Inc. v. Superior Link Int'l, Inc. , Docket No. 04-08

MEMORANDUM AND ORDER ON ATTORNEY FEES

APPENDIX 1 – Services for Which Attorney Fees Requested and Awarded

Date	Services Rendered	Atty hours		Attorney Fees Sought		Hours Awarded		Attorney Fees Awarded	
		Revised Fee Statement		Revised Fee Statement		RL	PSH	RL \$200/hr	PSH \$250/hr
		RL	PSH	RL \$250/hr	PSH \$400/hr				
4/8/05	<u>Discussions with Ron Murphy to schedule follow-up discussions with PSH.</u>	0.10		\$25.00		0.10		\$20.00	
4/25/05	<u>Receive and review deposition fees. Fax to client for fees.</u>	0.10		\$25.00		0.10		\$20.00	
4/27/05	<u>Discussions with client on upcoming mediation conference.</u>	0.10		\$25.00		0.10		\$20.00	
5/2/05	Discussions with mediator for June 1 date; and email client and attorney.		0.20		\$80.00		0.20		\$50.00
5/2/05	Discussions with FMC mediator's office. Review with psh.	0.10		\$25.00		0.10		\$20.00	
5/24/05	Receive and review email from FMC Mediator. Prepare case summary for mediator. Preparing PSH file for next week's mediation.	1.50		\$375.00		1.50		\$300.00	
5/25/05	Review client files and prepare copies for psh file for upcoming mediation hearing.	1.00		\$250.00		1.00		\$200.00	
5/26/05	Review factual summary with psh. Amend and email to FMC mediator. Email copy to client.	0.25		\$62.50		0.25		\$50.00	
5/31/05	Prepare for mediation.		1.00		\$400.00		1.00		\$250.00
5/31/05	Review respondent's interrogatory responses for cases cited. Download appropriate cases of psh. Travel time to drop off PSH at Miami International Airport for tomorrow's mediation.	1.50		\$375.00		0.75		\$150.00	
6/1/05	Mediation in Long Beach with FMC.		2.50		\$1,000.00		2.50		\$625.00

Qin's Inc. v. Superior Link Int'l, Inc. , Docket No. 04-08

MEMORANDUM AND ORDER ON ATTORNEY FEES

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		Revised Fee Statement		Revised Fee Statement		RL	PSH	RL	PSH
		RL	PSH	RL	PSH				
				\$250/hr	\$400/hr			\$200/hr	\$250/hr
6/1/05	Multiple discussions with PSH during mediation conference in Long Beach. Review client file for pending issues. <u>Discussions with APL attorney on lawsuit and settlement issues with Hartford insurance.</u>	0.50		\$125.00		0.50		\$100.00	
6/9/05	Receive and review new procedural orders from FMC.	0.25		\$62.50		0.25		\$50.00	
6/16/05	Letter to opposing counsel for file and to go to trial.		0.20		\$80.00		0.20		\$50.00
6/16/05	Receive and review correspondence from client.	0.10		\$25.00		0.10		\$20.00	
6/17/05	Fax correspondence to Chang and client.	0.10		\$25.00		0.10		\$20.00	
6/20/05	Letter to Superior counsel to make response to judge's order.		0.20		\$80.00		0.20		\$50.00
6/26/05	Attorney Frank called to say file being mailed.		0.10		\$40.00		0.10		\$25.00
7/1/05	Review fmc website for new judge fax machine. Fax documents to FMC Judge.	0.20		\$50.00		0.20		\$40.00	
7/20/05	Review respondent's discovery materials and responses. Review client's files. Preparing documents for summary judgment.	2.00		\$500.00		2.00		\$400.00	
7/21/05	Preparing rough draft motion for summary judgment. Research federal and FMC rules of procedure. Review federal reference files.	4.00		\$1,000.00		4.00		\$800.00	
7/26/05	Preparing motion for summary judgment and exhibits.	3.00		\$750.00		3.00		\$600.00	
7/27/05	Bill of lading research; make additional changes to summary judgment motion.		2.00		\$800.00		2.00		\$500.00

MEMORANDUM AND ORDER ON ATTORNEY FEES

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		Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement
		RL	PSH	RL \$250/hr	PSH \$400/hr	RL	PSH	RL \$200/hr	PSH \$250/hr
7/27/05	Amend motion for summary judgment with new items. Prepare new list of exhibits.	1.50		\$375.00		1.50		\$300.00	
7/28/05	Discussions with Judge Krantz's Office and the Office of the Secretary for copy requirements and filing requirements for motion for summary judgment. Prepare and sort copies of motion. <u>Travel time to purchase shipping box. Travel time to Fed Ex and Post Office.</u>	4.00		\$1,000.00		3.00		\$600.00	
7/29/05	<u>Track and confirm delivery of motion for summary judgment at the FMC. Calculate printing and shipping costs.</u>	0.25		\$62.50		0.25		\$50.00	
8/3/05	Receive and review notice of extension from FMC. Fax copy to client.	0.10		\$25.00		0.10		\$20.00	
9/1/05	Review Superior Link's opposition to Qin's motion for summary judgment.	0.50		\$125.00		0.50		\$100.00	
9/6/05	Receive and review hard copies of Respondent's opposition and statement of facts. <u>Scan and email to client.</u>	0.25		\$62.50		0.25		\$50.00	
9/7/05	Discussions with client and review client email on Superior filing.		0.25		\$100.00		0.25		\$62.50
9/16/05	Receive and review latest motion from respondent. Review with psh.	0.50		\$125.00		0.50		\$100.00	
9/19/05	Receive respondent's motion for summary judgment (hard copy by fed ex.) Email copy to client.	0.25		\$62.50		0.25		\$50.00	
10/4/05	Preparing opposition to Superior motion for summary judgment.		1.00		\$400.00		1.00		\$250.00

Qin's Inc. v. Superior Link Int'l, Inc. , Docket No. 04-08

MEMORANDUM AND ORDER ON ATTORNEY FEES

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		Revised Fee Statement		Revised Fee Statement		RL	PSH	RL \$200/hr	PSH \$250/hr
		RL	PSH	RL \$250/hr	PSH \$400/hr				
10/5/05	Continued preparation of opposition to Superiors motion.		1.00		\$400.00		1.00		\$250.00
10/6/05	Review FMC rules for copies. Prepare copies of opposition to motion for summary judgment and undisputed facts. Prepare and mail courtesy copy to FMC judge and opposing counsel. <u>Travel time to fed ex.</u>	1.00		\$250.00		0.50		\$100.00	
10/6/05	Complete and file with the FMC Qin's opposition to motion for summary judgment and disputed facts.		3.00		\$1,200.00		3.00		\$750.00
10/7/05	<u>Track and confirm delivery of Complaint's Opposition to Respondent's Summary Judgment by FED.Com.</u> <u>Save and scan receipt in client's file.</u>	0.10		\$25.00		0.10		\$20.00	
11/2/05	Receive and review email from Judge Krantz on possible pre trail hearings. Left voice message for PSH absence. Receive and review voice message from Judge Krantz and forwarded email.	0.25		\$62.50		0.25		\$50.00	
7/18/06	Receive and review initial decision from FMC. Research rules for attorney fees. Research case law on FMC attorney Fees. <u>Review client file on notifying Western District Court.</u> Preparing petition for attorney fees.	2.00		\$500.00		2.00		\$400.00	
7/20/06	Preparing petition for attorney fees. Research FMC decisions.	1.00		\$250.00		1.00		\$200.00	
8/18/06	<u>Review appeal timeline with phs.</u>	0.10		\$25.00		0.10		\$20.00	
8/24/06	Prepare rough draft FMC Attorney fee application and exhibits.	1.00		\$250.00		1.00		\$200.00	

MEMORANDUM AND ORDER ON ATTORNEY FEES

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		Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement	Revised Fee Statement
		RL	PSH	RL \$250/hr	PSH \$400/hr	RL	PSH	RL \$200/hr	PSH \$250/hr
8/28/06	Discussions with the Office of the Secretary on filing application for attorney fees. Prepare copies. Receive and review email from Judge's office. Email copy to ALJ. Travel time to purchase shipping box and federal express.	1.00		\$250.00		1.00		\$200.00	
8/29/06	Receive additional email from the Office of the Secretary. Confirm with psh of email and fed ex delivery.	0.10		\$25.00		0.10		\$20.00	
8/30/06	Receive and review electronic confirmation receipt from Western District of North Carolina.	0.10		\$25.00		0.10		\$20.00	
8/31/06	Track and confirm petition for attorney fees by federal express.	0.10		\$25.00		0.10		\$20.00	
9/6/06	Review payment period with psh. Locate Superior's attorney's email.	0.20		\$50.00		0.20		\$40.00	
9/6/06	Advise Superior attorney of Qin address.		0.10		\$40.00		0.10		\$25.00
9/7/06	Review lack of reparation payment with psh. Review original fma and Hartford claims in files. Prepare rough draft claim on bond for Hartford.	1.00		\$250.00		1.00		\$200.00	
9/8/06	Fax claim on surety to Hartford, defendant's counsel and client. Mail to surety.	0.25		\$62.50		0.25		\$50.00	
9/13/06	Analyze Superior's opposition to attorney fees.		0.75		\$300.00		0.75		\$187.50
9/14/06	Research Lexis for reported cases wherein Peter S Herrick was the attorney of record.		0.75		\$300.00		0.75		\$187.50
9/15/06	Review time sheets and remove all ambiguous non FMC entries.		1.00		\$400.00		1.00		\$250.00

Qin's Inc. v. Superior Link Int'l, Inc. , Docket No. 04-08

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		RL	PSH	RL \$250/hr	PSH \$400/hr	RL	PSH	RL \$200/hr	PSH \$250/hr
9/15/06	Research case law on payment of attorney fees.		1.00		\$400.00		1.00		\$250.00
9/15/06	Continued preparation of responses to objections to petition for attorney fees.		1.00		\$400.00		1.00		\$250.00
	TOTALS:	64.65	33.95	\$16,162.50	\$13,580.00	62.40	33.75	\$12,480.00	\$8,437.50

TOTAL FEE AWARDED – PSH	\$8,437.50
TOTAL FEE AWARDED – RL	\$12,480.00
TOTAL FEE AWARDED	\$20,917.50