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FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR BENTON COUNTY

SCOTT BRUNDRIDGE, et al.,

Case No.: 99-2-01250-7

Plaintiffs,

Hon. Carrie L. Runge

vs.

**JUDGMENT ON ATTORNEY FEES  
AND COSTS**

FLUOR FEDERAL SERVICES, INC., a  
Washington corporation;

Defendant.

**JUDGMENT SUMMARY**

Scott Brundridge, Donald Hodgins, Jessie  
Jaymes, Clyde Killen, Pedro Nicacio, Shane  
O'Leary, Raymond Richardson, James Stull,  
Randall Walli, David Faubion,  
and Chuck Cable

Judgment Creditors:

Law Office of John P. Sheridan, P.S.

Judgment Creditor's Attorney:

Flour Federal Services, Inc.

Judgment Debtor:

Judgment Amount:

\$ 1,451,516.20

Prejudgment Interest:

\$ N/A

Total of Taxable Costs and Attorneys Fees:

\$ 0

JUDGMENT ON ATTORNEY FEES AND  
COSTS - 1

**THE LAW OFFICE OF JOHN P. SHERIDAN, P.S.**  
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SEATTLE, WA 98104  
TEL: 206-381-5949 FAX: 206-447-9206

ORIGINAL

1 This matter was tried by a jury of twelve from August 18, 2005- September 2, 2005, the  
2 Honorable Carrie L. Runge presiding. Plaintiffs Scott Brundridge, Donald Hodgin, Jessie  
3 Jaymes, Clyde Killen, Pedro Nicacio, Shane O'Leary, Raymond Richardson, James Stull,  
4 Randall Walli, David Faubion, and Chuck Cable appeared personally and through their attorney  
5 of record, John P. Sheridan, The Law Office of John P. Sheridan, P.S. Defendant appeared  
6 through its designated corporate representative and through William R. Squires III, the Summit  
7 Law Group, PLLC.

9 The parties presented evidence and testimony to the jury, and on September 2, 2005, the  
10 jury returned a verdict in favor of plaintiffs on their wrongful discharge claims as follows:

<b>Plaintiff</b>	<b>Back Pay</b>	<b>Front Pay</b>	<b>Emotional Harm</b>	<b>Total</b>
Killen	175,000	160,000	218,000	553,000
Nicacio	31,700	58,000*	0	89,700
O'Leary	120,600	109,200	260,300	490,100
Stull	152,000	182,750	173,800	508,550
Walli	92,700	112,000	252,200	456,900
Brundridge	79,700	80,000	195,000	354,700
Hodgin	91,250	89,250	236,700	495,000
Jaymes	129,300	91,200	242,700	463,200
Richardson	204,700	189,350	160,000	554,050
Faubion	89,000	93,700	237,500	420,200
Cable	135,000	230,000	130,000	495,000
<b>Total</b>				<b>\$4,880,400.00</b>

19 \*Plaintiff Nicacio entered Partial Satisfaction of Judgment in which he repudiated his  
20 front pay award.

22 A copy of the Court's findings of fact and conclusions of law is attached.

23 This judgment is presented in open court following the jury's verdict while opposing  
24 counsel is present pursuant to CR 54 (f)(2)(C).

1 Consistent with the jury's verdict in this action, the Court enters judgment for attorneys  
 2 fees as follows:

<u>Attorney</u>	<u>Rate</u>	<u>Hours worked</u>	<u>Requested</u>	<u>Awarded</u>
Sheridan at GAP	350	561.42	\$196,497.00	1007280.40 <del>1512694</del>
Gold at GAP	250	930.9	\$232,725.00	
Sherman at GAP	90	155.37	\$13,983.30	
		GAP Fee:		\$443,205.30
			Multiplier: x 5/11 x .5	
			<b>Total:</b>	<del>543933.77</del>

CLR

Sheridan	350	1121.2	\$392,420.00	<del>302,527.50</del>
Baker	350	347.50	\$121,625.00	
Luppert	125	449.80	\$56,225.00	
Wolk	225	154.60	\$34,785.00	
	<b>Total Sheridan Fee:</b>			\$605,055.00
			Multiplier: x .5	
			<b>Total:</b>	<del>907,582.50</del>

20 Consistent with the jury's verdict in this action, the Court enters judgment for costs as  
 21 follows:

	<u>Awarded</u>
Requested by GAP:	\$127,149.11
Requested by Sheridan:	\$25,345.03
Requested by Hodgins:	\$1,192.80

CLR

**Awarded**

Total: ~~\$153,686.94~~ *CTR*

Dated this 5 day of May, 2006.

*Carrie Runge*  
Hon. Carrie L. Runge  
Judge, Benton County Superior Court

Presented by:

THE LAW OFFICE OF  
JOHN P. SHERIDAN, P.S.

By: *JPS*  
John P. Sheridan, WSBA # 21473  
Greg Wolk, WSBA #28946  
Attorneys for Plaintiffs

Approved as to form:

SUMMIT LAW GROUP, PLLC

By: \_\_\_\_\_  
William R. Squires, WSBA # 4976  
Lawrence Locker, WSBA # 15819  
Denise Ashbaugh, WSBA # 28512  
Attorneys for Defendant

COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR BENTON COUNTY

SCOTT BRUNDRIDGE, et al.,

Plaintiffs,

vs.

FLUOR FEDERAL SERVICES, INC., a  
Washington corporation;

Defendant.

Case No.: 99-2-01250-7

**Hon. Carrie L. Runge**

**~~(PROPOSED)~~ FINDINGS OF FACT AND  
CONCLUSIONS OF LAW REGARDING  
PLAINTIFFS' PETITION FOR  
ATTORNEY FEES AND COSTS**

**Hearing Noted: May 5, 2005, 1:30 p.m.**

THIS MATTER came on regularly before this Court on Plaintiffs' Petition for Attorney Fees and Costs. The Court considered the following:

Plaintiffs' Petition for Attorney Fees and Costs;

The declaration of John P. Sheridan in support of Plaintiffs' Petition for Attorney Fees and Costs with attached exhibits;

The Defendant's response in opposition to Plaintiff's Petition for Attorney Fees and Costs;

FINDINGS OF FACT AND CONCLUSIONS OF  
LAW REGARDING PLAINTIFFS' PETITION  
FOR ATTORNEY FEES AND COSTS- 1

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1 The declaration(s) of counsel in opposition to Plaintiff's Petition for Attorney Fees and  
2 Costs with attached exhibits;

3 Plaintiff's Reply and supporting declaration with attached exhibits; and,

4 The record of these proceedings.

5 Having been fully advised, the Court makes the following findings of fact and  
6 conclusions of law.  
7

8 1. These findings of fact and conclusions of law are issued in connection with  
9 Plaintiffs' petition for attorney fees. Our Supreme Court requires the entry of findings of fact  
10 in fee award decisions. *Mahler v. Szucs*, 135 Wn.2d 398, 435; 957 P.2d 632 (1998).

11 **Background**

12 2. This case was filed on August 4, 1999 in Benton County Superior Court alleging  
13 wrongful discharge in violation of public policy.<sup>1</sup> This case underwent extensive pretrial  
14 activity including removal to federal court, remand back to state court, dismissal at the trial  
15 court, and appeal. A summary of the claims and procedural delays are set forth in *Brundridge*  
16 *v. Fluor Fed. Servs.*, 109 Wn.App. 347, 351, 353, 35 P.3d 389 (2001).  
17

18 3. On December 4, 2001 the Court of Appeals reversed and remanded the case to  
19 the Superior Court for trial.<sup>2</sup> *Id.* at 361-362.

20 4. Defendant filed a petition for review in the Washington Supreme Court, which  
21 was denied on August 7, 2002. *Brundridge v. Fluor Fed. Servs.*, 146 Wn.2d 1022, 53 P.3d 520  
22

23  
24 <sup>1</sup> The complaint also alleged civil conspiracy against Defendant Fluor Daniels and individually named defendants;  
25 Defendants' motion for summary judgment as to that claim was granted in September 2000. *Brundridge*, 109 Wn.  
App. at 353. All defendants other than Fluor were then dismissed from the case. *Id.* at 353 n.4.

<sup>2</sup> On January 4, 2002 this Court denied Defendant's motion for reconsideration.

1 (2002). A mandate issued returning the case to the Benton County Superior Court on August  
2 13, 2002. Further delay resulted in the case being set for trial the following year, on June 9,  
3 2003. Record of these proceedings.

4 5. On December 4, 2002 Defendant petitioned for certiorari in the U.S. Supreme  
5 Court. The petition was denied on March 10, 2003. *Fluor Hanford Inc. v. Brundridge*, 123 S.  
6 Ct. 1484, 155 L.Ed.2d 226, 71 U.S.L.W. 3577 (2003).

7 6. The case was returned to the trial court and on May 2, 2003, Judge Brown  
8 granted Defendant's in limine motions, *inter alia*, to exclude various evidence. Record of these  
9 proceedings. The plaintiffs appealed and although review was initially granted, the case was  
10 returned to the trial court without opinion. *Brundridge v. Fluor Hanford Inc.*, 121 Wash.App.  
11 1024, 2004 WL 898279 (2004).

12 7. After several judge changes, this case was brought to trial on July 18, 2005.  
13 Record of these proceedings. On September 1, 2005, the jury returned a verdict in favor of all  
14 the plaintiffs totaling more then <sup>4.8 MS</sup> \$2.7 million. Judgments were entered for the plaintiffs on their  
15 claims which included claims for back pay, front pay, and compensatory damages.<sup>3</sup>

16 8. Plaintiffs now seek attorney fees, costs, and a multiplier owing to the risk in  
17 bringing this case to trial.

18 9. The legal basis for plaintiffs' fee claims is RCW 49.48.030, which provides:

19 In any action in which any person is successful in recovering judgment for  
20 wages or salary owed to him, reasonable attorney's fees, in an amount to be  
21 determined by the court, shall be assessed against said employer or former  
22 employer: PROVIDED, HOWEVER, That this section shall not apply if the  
23  
24

25 <sup>3</sup> Following judgment, Plaintiff Pedro Nicacio repudiated his front pay award and filed a satisfaction of judgment for that amount. However, his back pay award remains.

1 amount of recovery is less than or equal to the amount admitted by the employer  
2 to be owing for said wages or salary.

3 “Statutory attorney fees under this provision must be construed liberally in favor of the  
4 employee as a remedial statute to protect employee wages and assure payment.” *Flower v.*  
5 *TRA Industries, Inc.*, 127 Wash.App. 13, 35, 111 P.3d 1192 (2005), *citing*, *Bates v. City of*  
6 *Richland*, 112 Wash.App. 919, 939, 51 P.3d 816 (2002). This statute applies to front and back  
7 pay in wrongful discharge in violation of public policy cases. *Hayes, v. Trulock*, 51 Wash.App.  
8 795, 755 P.2d 830 (1988).

9  
10 10. The plaintiffs prevailed in this case, and with combined multi-million dollar  
11 verdicts, achieved excellent results. *See, e.g., Blair v. Wash. State University*, 108 Wn.2d 558,  
12 572 (1987); *Steele v. Lundgren, Steele v. Lundgren*, 96 Wn.App. 773, 783 (2000). Thus, they  
13 are entitled to an award of reasonable attorney fees.

14 11. The Washington State Supreme Court has determined that the calculation of an  
15 award of a reasonable attorney fee involves several determinations, the first of which is the  
16 calculation of a “lodestar figure.” *Bowers v. Transamerica Title Insurance Co.*, 100 Wn.2d  
17 581, 597 (1983). The lodestar figure is the product of the attorney’s reasonable rate of hourly  
18 compensation multiplied by the number of attorney hours reasonably expended in the litigation.  
19 *Id.* An attorney’s established rate for billing clients is usually the reasonable hourly rate for  
20 calculation of the lodestar. *Id.* at 596-598. “Where the attorneys in question have an  
21 established rate for billing clients, that rate will likely be a reasonable rate.” *Bowers v.*  
22 *Transamerica Title Insurance Co.*, 100 Wn.2d 581, 597 (1983).  
23  
24  
25



1 **Plaintiffs' Hourly Compensation**

2 12. In determining the reasonable hourly rate of counsel, I have the discretion to  
3 apply historical rates (adjusted for inflation) or current rates to the calculation. *Steele v.*  
4 *Lundgren*, 96 Wn.App. 773, 776-777, 982 P.2d 619 (2000). Plaintiffs ask the Court to use  
5 current rates. Neither party has proposed a formula to account for the inflationary adjustment  
6 of historical rates. Defendant has not argued in its brief for one method or the other. Instead,  
7 defendant has directly challenged the hourly rates of plaintiffs' counsel as too high. I adopt the  
8 reasoning in *Copeland v. Marshall*, 641 F.2d 880, 893 (D.C. Cir. 1980),<sup>4</sup> that the hourly rates  
9 used in the lodestar represent the prevailing rate for clients who typically pay their bills  
10 promptly. To encourage attorneys to represent public interest clients, and to compensate those  
11 attorneys when they have to wait for several years for payment, the use of current rates is  
12 appropriate. I find that it is appropriate to use current rates in this case since the case dates  
13 back to 1997, and plaintiffs' counsel have expended several hundred hours working on this  
14 case, mostly without compensation.  
15

17 13. In assessing the reasonableness of the hourly rates of counsel, I have  
18 independently reviewed the billing records submitted by the parties and the declarations of their  
19 attorneys and staff.

20 14. John P. Sheridan—Mr. Sheridan requests an hourly rate of \$350 per hour. I find  
21 that rate is Mr. Sheridan's established hourly rate, which "will likely be a reasonable rate."  
22 *Bowers v. Transamerica Title Insurance Co.*, 100 Wn.2d 581, 597 (1983). I find Mr.  
23

24  
25 <sup>4</sup> The *Bowers* court discusses *Copeland* extensively in its opinion and cites it favorably regarding calculation of the lodestar; however, *Bowers* does not specifically address current versus historical rates. *Bowers* at 100 Wn.2d 581, 598.

1 Sheridan's rate to be reasonable for attorneys with his level of experience and expertise. I find  
2 that Mr. Sheridan has been an attorney since 1984 and that he has extensive experience as a  
3 trial attorney having conducted numerous jury trials in his career both in the military and in  
4 private and public practice. I also find that Mr. Sheridan has focused his practice on civil rights  
5 and public interest law since 1994, and that some of his cases have helped shape the  
6 development of Washington law. *See e.g., Pham v. City of Seattle*, 124 Wash.App. 716, 103  
7 P.3d 827 (2004), *review granted*, September 7, 2005, No. 76595-2.; *Martini v. Boeing*, 137 Wn.  
8 2d 357 (1999); 88 Wash. App. 442 (Div. I, 1997); *Brundridge v. Fluor Fed. Serv.*, 109 Wn.  
9 App. 347 (Div. III 2001), *review denied*, 2002 Wash. LEXIS 511 (Wash. Aug. 7, 2002). In  
10 support of the hourly rate I note that Steve Frank, the attorney expert retained by the plaintiffs,  
11 found that Mr. Sheridan's rate is reasonable. Finally, I observed Mr. Sheridan throughout the  
12 trial and in several other court proceedings. My observations also support his hourly rate.

15 15. Randy Baker— Mr. Baker requests an hourly rate of \$350 per hour. I find that  
16 rate to be reasonable for attorneys with his level of experience and that \$350 per hour is the rate  
17 he currently charges clients who retain his services on an hourly basis. I find that Mr. Baker  
18 has been an attorney since 1985 and that he has extensive experience as an appellate attorney  
19 and significant experience in civil litigation. I also find that Mr. Baker has focused his practice  
20 on civil rights and public interest law since 1985, and that some of his cases have helped shape  
21 the development of California law. *See, e.g., People v. Collins* 26 Cal.4<sup>th</sup> 297, 27 P.3d 726  
22 (2001); *Fadaie v. Alaska Airlines, Inc.*, 293 F.Supp.2d 1210 (W.D. Wash. 2003). In support of  
23 the hourly rate I note that Steve Frank, the attorney expert hired by the plaintiffs, has found that  
24 Mr. Baker's rate is reasonable.  
25

1           16.     Dana Gold—Ms. Gold requests an hourly rate of \$250 per hour. I have  
2 reviewed her declaration and billing records. I find that rate to be reasonable for attorneys with  
3 her level of experience. I find that Ms. Gold has been an attorney since 1993 and that she has  
4 several years experience in litigation, academia, and as a member of the Hanford Concerns  
5 Council. In support of the hourly rate I note that Steve Frank, the attorney expert retained by  
6 the plaintiffs, has found that Ms. Gold's rate is reasonable. Mr. Sheridan has also expressed his  
7 opinion that if Ms. Gold were employed with his firm today, he would bill her time at \$250 per  
8 hour.  
9

10           17.     Greg Wolk—Mr. Wolk graduated from the University of Washington School of  
11 Law in 1999, and while there, he was an editor for and contributor to the Pacific Rim Law &  
12 Policy Journal. Prior to attending law school, he obtained a post-graduate degree with Honors  
13 from the London School of Economics and Political Science in 1994. He has worked for  
14 various law firms and for the Government Accountability Project. Mr. Wolk has been involved  
15 in litigation for several years and has argued at the Fifth Circuit. He has worked for Mr.  
16 Sheridan since February 2005. Mr. Sheridan bills his time at \$225 per hour and has opined that  
17 that rate is reasonable. I find Mr. Wolk's rate to be reasonable.  
18

19           18.     Staff fees—Aileen Luppert requests an hourly rate of \$125 per hour. Ms.  
20 Luppert worked as Mr. Sheridan's paralegal throughout this trial and was present with him at  
21 counsel table. She has worked as a paralegal since 1998 and performs duties consistent with  
22 the title. Ms. Luppert's hourly rate has been deemed reasonable by Mr. Sheridan. I find Ms.  
23 Sherman's hours to be reasonable at the hourly rate of \$90 per hour based upon Mr. Sheridan's  
24 declaration.  
25

1 19. I find that the hourly rates requested are appropriate even though, for a period of  
2 time, Mr. Sheridan, Ms. Gold, and Ms. Sherman worked at the Government Accountability  
3 Project, a non-profit organization. Reasonable fees in civil rights actions are calculated by  
4 prevailing market rates regardless of whether the attorney is a private or non-private counsel.  
5 *Blair v. Wash. State University*, 108 Wn.2d 558, 570-1 (1987); *Blum v. Stenson*, 465 U.S. 886  
6 (1984). The same reasoning should apply to public interest litigation such as this.  
7

8 20. Defendant objects to the hourly rates of plaintiffs' attorneys and staff as being  
9 too high for work performed in the Tri-Cities or Seattle (the latter being the location of  
10 plaintiffs' attorneys and staff). Defendant asserts that RCW 49.48.030 "authorizes an award of  
11 'reasonable attorneys' fees' to be 'assessed against said employer or former employer' where a  
12 judgment is rendered in favor of employees for disputed 'wages or salary.'" Defendant's  
13 Response at 3. The defendant offers no guiding precedent for this assertion.  
14

15 21. Defendant seeks to offer an unpublished trial court ruling from Snohomish  
16 County as precedent to guide this Court. The Court hereby disregards this improper reference.  
17 In *Johnson v. Allstate*, 126 Wash.App. 510, 519, 108 P.3d 1273 (2005), the defendant  
18 convinced a trial court to rely on an unpublished decisions. The Court of Appeals held:

19 We agree that Allstate improperly relied on our unpublished opinion and that the  
20 trial court also erred in relying on it. . . . Allstate's self-serving comment that it  
21 did not submit the opinion as controlling authority under RCW 2.06.040 does  
not remove the taint from its inappropriate action.

22 But Allstate did not cite an unpublished opinion to us, thus we are unable to  
23 impose appropriate sanctions. Nevertheless, we note with displeasure that  
24 Allstate ignored our longstanding prohibition against citing unpublished  
25 opinions, and we strongly admonish Allstate to cease this practice of submitting  
unpublished opinions to the trial court in the guise of "noncontrolling authority."  
We long ago held that unpublished opinions are not part of Washington's

1 common law. **We do not consider unpublished opinions in the Court of**  
2 **Appeals, and they should not be considered in the trial court.**

3 *Id.* at 519. Thus, this Court will not consider defendant's unpublished citation.

4 22. Citing *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 156, 859 P.2d 1210 (1993),  
5 defendant asserts that "[t]he ethical considerations codified in RPC 1.5 which apply in the  
6 exercise of judgment when billing time to a client apply equally when the time is billed to an  
7 opposing party." Response at 3. The defendant uses this citation as a spring board for arguing  
8 that RPC 1.5 requires the Court to assess "reasonable fees" in the "locality" of the trial.

9 However, neither *Fetzer* nor RPC 1.5 supports defendant's argument.

10 23. *Fetzer* pertains to awarding attorney fees to a prevailing defendant who  
11 challenged jurisdiction under the long arm statute. There, the Court found that the total hours  
12 billed were unreasonable owing to the narrow construction of the long arm statute, which seeks  
13 to limit fees. *Fetzer* at 152-153. In contrast, the wage statute relied upon by the plaintiffs  
14 "must be construed liberally in favor of the employee as a remedial statute to protect employee  
15 wages and assure payment." *Flowers v. T.R.A. Industries*, 127 Wash.App. 13, 35, 111 P.3d  
16 1192 (2005). Thus, *Fetzer* does not support defendant's position.

17 24. RPC 1.5 provides:

18 a) A lawyer's fee shall be reasonable. The factors to be considered in  
19 determining the reasonableness of a fee include the following:

- 20 (1) The time and labor required, the novelty and difficulty of the questions  
21 involved, the skill requisite to perform the legal service properly and the terms  
22 of the fee agreement between the lawyer and client;  
23 (2) The likelihood, if apparent to the client, that the acceptance of the particular  
24 employment will preclude other employment by the lawyer;  
25 (3) The fee customarily charged in the locality for similar legal services;  
(4) The amount involved in the matter on which legal services are rendered and  
the results obtained;  
(5) The time limitations imposed by the client or by the circumstances;

- 1 (6) The nature and length of the professional relationship with the client;  
2 (7) The experience, reputation, and ability of the lawyer or lawyers performing  
the services; and  
3 (8) Whether the fee agreement or confirming writing demonstrates that the client  
4 had received a reasonable and fair disclosure of material elements of the fee  
agreement and of the lawyer's billing practices.

5 RPC 1.5. The "locality" factor identified by the defendant is simply one of many factors, and  
6 one cannot reasonably read "locality" to mean the locality of the action, because in any bar  
7 complaint brought under RPC 1.5, a client would be complaining about the attorney he or she  
8 retained at the attorney's place of business, and the attorney would undoubtedly charge the  
9 usual fee to the client based on local considerations regardless of the client's place of origin.  
10 Accordingly, I reject defendant's claim that the proper measure of reasonableness is the fees  
11 charged in the locality of the action.  
12

13 25. Even if I assume that defendant's argument is correct and the locality of the  
14 action controls, I still find the hourly rates of the plaintiffs' legal team are reasonable.  
15 Defendant's Yakima expert opines that Mr. Sheridan should only bill \$225 per hour for his  
16 services in Tri-Cities. He bases that opinion on his informal survey of Tri-City law firms and  
17 "two judges." However, Janet Taylor, an attorney admitted in 2000, and who practices in the  
18 Tri-Cities, with solid experience, but significantly less experience than Mr. Sheridan, bills at  
19 \$250 per hour. I also note that Mr. Squires, counsel for the defendant, bills at \$350 per hour  
20 although his declaration indicates he billed Fluor at a lower rate because he did not think the  
21 Tri-Cities market would support a higher rate. None of these facts is dispositive. Given Ms.  
22 Taylor's established hourly rate, I find Mr. Sheridan's hourly rate, as well as the rates of his  
23 team, are reasonable in Tri-Cities.  
24  
25

1           26.     I take judicial notice of the Tri-Cities Regional Phone Book and the Seattle  
2 Yellow Pages. I note that very few attorneys advertise in the employment law section of the  
3 Tri-Cities Yellow pages and that significantly more attorneys advertise in that area in Seattle.  
4 There is certainly a need to permit victims of wrongful termination to hire attorneys well versed  
5 in that area of the law. This is one more factor supporting plaintiffs' fee request.  
6

7           27.     I note that another public interest case dating back to before 2001 reflect partner  
8 billings of \$350 per hour for Seattle attorneys. *See, Vizcaino v. Microsoft Corp*, 142 F.Supp. 2d  
9 1299, 1305 (W.D.Wash. 2001). This is one more factor supporting plaintiffs' fee request.

10 **Total Hours Worked**

11           28.     Attorneys must document their work. I have reviewed the extensive billing  
12 records submitted by the plaintiffs. "This documentation need not be exhaustive or in minute  
13 detail, but must inform the court, in addition to the number of hours worked, of the type of  
14 work performed and the category of attorney who performed the work (*i.e.*, senior partner,  
15 associate, etc.)." *Bowers* at 597. I find that the records submitted by plaintiffs' counsel contain  
16 sufficient detail under the standard set forth in *Bowers*.  
17

18           29.     The defendant has agreed not to challenge total hours worked, and I find that the  
19 total hours worked are reasonable based on my review of the records, defendant acquiesces to  
20 the total hours claimed, the hours spent in extensive pre trial litigation in this matter, and the  
21 fact that plaintiffs' counsel successfully brought eleven separate wrongful discharge claims to  
22 trial over a period of several weeks.  
23  
24  
25

1 **Lodestar**

2 30. Pursuant to *Bowers*, once the hourly rates and total hours worked have been  
3 determined, “[t]he total number of hours reasonably expended is multiplied by the reasonable  
4 hourly rate of compensation.” *Bowers* at 597. That figure becomes the lodestar. The  
5 calculation is as follows:  
6

<u>Attorney</u>	<u>Rate</u>	<u>Hours worked</u>	<u>Total</u>
Sheridan at GAP	350	561.42	\$196,497.00
Gold at GAP	250	930.9	\$232,725.00
Sherman at GAP	90	155.37	\$13,983.30
		<b>GAP Fee:</b>	<b>\$443,205.30</b>
<u>Attorney</u>	<u>Rate</u>	<u>Hours worked</u>	<u>Total</u>
Sheridan at Sheridan	350	1121.2	\$392,420.00
Baker at Sheridan	350	347.50	\$121,625.00
Luppert at Sheridan	125	449.80	\$56,225.00
Wolk at Sheridan	225	154.60	\$34,785.00
		<b>Total Sheridan Fee:</b>	<b>\$605,055.00</b>

14  
15 31. I find that the lodestar in this case is the sum of the two calculations set forth  
16 above: \$1,048,260.30.

17 **Multiplier**

18 32. Adjustments to the lodestar are appropriate to reflect “the contingent nature of  
19 success, and the quality of work performed.” *Bowers v. Transamerica Title Insurance Co.*, 100  
20 Wn.2d at 598. “In adjusting the lodestar to account for this risk factor, the trial court must  
21 assess the likelihood of success at the outset of the litigation.” *Id.* In *Bowers*, the Supreme  
22 Court held that a 50% multiplier was reasonable, because 1) counsel would not have been  
23 compensated, unless the plaintiff prevailed, 2) plaintiff’s cause of action arguably was legally  
24 unsupported, and 3) the law arguably did not authorize an award of attorneys fees to the  
25



1 prevailing party.<sup>5</sup> *Id.* at 600-601; *see also*, *Washington State Physicians Ins. Exchange &*  
2 *Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 335-336 (1993)(50% multiplier; only a **portion** of the  
3 case was contingent); *Herring v. Department of Social & Health Servs.*, 84 Wn.App. 1, 34-35  
4 (1996)( 50% multiplier because initial view high-risk); *Guam Soc'y Obstetricians &*  
5 *Gynecologists v. Ada*, 100 F.3d 691 697-698 (9<sup>th</sup> Cir. 1996) (2.0 multiplier for controversial  
6 nature of case); *Oberfelder v. City of Petaluma*, 2002 U.S. Dist. Lexis 8635, pp. 31-33 (N.D.  
7 Cal. 2002) (1.5 multiplier for unusually demanding and costly case).

9 33. The legislature wants to encourage attorneys to take public interest cases,  
10 especially where wages are improperly withheld as here. In adjusting the lodestar to account  
11 for this risk factor, the trial court must evaluate the likelihood of success at the outset of the  
12 litigation. *Bower* at 598. Most important, "the contingency adjustment is designed solely to  
13 compensate for the possibility . . . that the litigation would be unsuccessful and that no fee  
14 would be obtained". *Id.* at 598-9 *citing*, *Copeland v. Marshall*, 641 F.2d 880, 893 (D.C. Cir.  
15 1980). "The risk factor should apply only where there is no fee agreement that assures the  
16 attorney of fees regardless of the outcome of the case." *Id.* at 599. Mr. Sheridan's contract  
17 with the plaintiffs provided for only a modest hourly amount and full recovery only if the  
18 plaintiffs succeeded. Sheridan Declaration. GAP would not be paid if the litigation did not  
19 succeed.  
20

21  
22 34. Defendant argues that the Court should not rely on *Bowers* because subsequent  
23 federal caselaw eliminated multipliers. Response at 5-6. However, defendant offers no state  
24

25 <sup>5</sup> The trial court also relied on evidence concerning the percentage of plaintiff's counsel's practice that was devoted to contingent fee representation. *Id.* The *Bowers* court held that this reliance was mistaken, but nonetheless found the 50% adjustment for contingency arrived at to be proper. *Id.* at 601.

1 case law to support its argument. In fact, in *Martini v. Boeing*, 137 Wn. 2d 357, 971 P.2d 45  
2 (1999), the Supreme Court rejected federal precedent in favor of its own state jurisprudence.  
3 There is no reason to believe that *Bowers* has been overruled. Additionally, in *Pham v. City of*  
4 *Seattle*, 124 Wash.App. 716, 103 P.3d 827 (2004), *review granted*, September 7, 2005, No.  
5 76595-2, the Court of Appeals found that a multiplier must be awarded once the court finds  
6 risk. *Id.* Until such time as the Supreme Court overrules *Bowers*, a multiplier must be  
7 considered in cases such as this.

9 35. At the outset of each representation, this was a high-risk case. The posture and  
10 legal issues pertaining to Pipe fitter II made the case problematic for GAP. Thus, plaintiffs  
11 suggest a multiplier of .5 apportioned to address the risks of taking Brundridge, Hodgin,  
12 Jaymes, Richardson and Faubion as clients. Additionally, plaintiffs suggest that a .5 multiplier  
13 should be applied to all the fees earned by Mr. Sheridan's law firm since at the time the case  
14 was taken, it had been delayed twice, dismissed once, was about to be appealed to the U.S.  
15 Supreme Court, and much time had passed making the entire case risky.

17 36. Defendant has offered no facts to counter plaintiffs' assertion that at the outset  
18 of GAP's representation in the case, certain plaintiffs' claims were high risk. Defendant also  
19 fails to offer any evidence to contradict plaintiffs' evidence that at the time the case was taken  
20 by Sheridan & Baker, P.S. the entire case was high risk owing to the posture of the case and the  
21 difficulties of bringing it to trial. I find that the case was high risk.

23 37. Defendant argues that plaintiffs will receive a windfall if a multiplier is awarded  
24 because they will receive one-third of the verdict amount plus their attorney fees. The  
25 defendant's argument may not be relevant, but I need not address that because the argument is

1 based on a factual error. A review of the evidence, including the contracts between the  
2 plaintiffs and Mr. Sheridan's firm, indicates that Mr. Sheridan and his firm will only receive  
3 attorney fees if awarded—they will not receive a percentage of the verdict amount.

4 38. Defendant also argues that because a small portion of the fees were hourly, the  
5 multiplier should not be awarded. However, a multiplier was awarded in *Washington State*  
6 *Physicians Ins. Exchange & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 335-336 (1993). There the  
7 plaintiff also engaged counsel under a mixed hourly-contingent fee agreement. Thus, the  
8 hourly portion of the contract is not fatal to plaintiffs' claim for a multiplier.  
9

10 39. I find that a multiplier is warranted here to encourage attorneys to take these  
11 high risk cases that further important public policies. I award a .5 multiplier as follows:

12 GAP: \$443,205.30 x 5/11 x .5 = \$100,728.47.

13 Sheridan: \$605,055.00 x .5 = \$302,527.50  
14

15 **Costs**

16 ~~40.~~ Plaintiffs seek \$153,686.94 in costs (\$127,149.11 to Government Accountability  
17 Project, \$25,345.03 to Law Firm of John P. Sheridan, P.S., and \$1,192.80 to Don Hodgin).  
18 Defendant does not challenge the reasonableness of the costs, only whether costs are available  
19 under the statute.

20 ~~41.~~ The issue of costs is a more difficult question because *Hume v. American*  
21 *Disposal Co.*, 124 Wash. 2d 656, 665-6; 880 P.2d 988 (1994) holds:  
22

23 Before the federal and state civil rights statutes were amended to make expanded  
24 costs available to prevailing plaintiffs, this state, in *Blair v. Washington State*  
25 *Univ.*, supra, joined the growing trend to allow prevailing civil rights plaintiffs  
to recover reasonable expenses in addition to the limited costs defined under  
RCW 4.84.010. Blair, 108 Wn.2d at 572-73. Our goal was to enable vigorous  
enforcement of modern civil rights litigation and to make it financially feasible

1 for individuals to litigate civil rights violations. *Blair*, 108 Wn.2d at 573. **We**  
2 **refuse now, however, to extend our reasoning in *Blair* to make expanded**  
3 **costs available outside the civil rights context.** Plaintiffs who prevail under the  
4 narrow tort of retaliatory discharge in violation of public policy based on RCW  
49.46.100 are limited to recovering the narrow statutory costs authorized in  
RCW 4.84.010.

5 *Id.* at 675.<sup>6</sup> Then in 2001, the Supreme Court decided *Panorama Village Condominium*  
6 *Owners Ass'n Bd. of Directors v. Allstate Ins. Co.*, 144 Wash.2d 130, 26 P.3d 910 (2001).

7 ~~42.~~ In *Panorama Village*, the Court awarded costs in a case "outside the civil rights  
8 context." The Court found:

9  
10 It is the purpose of the *Olympic Steamship* exception to make an insured whole  
11 when he is forced to bring a lawsuit to obtain the benefit of his bargain with an  
12 insurer. To make such plaintiffs whole, "reasonable attorney fees" must, by  
13 necessity, contemplate expenses other than merely the hours billed by an  
14 attorney. The insured must therefore be compensated for all of the expenses  
necessary to establish coverage as part of those attorney fees which are  
reasonable. "Failure to reimburse expenses would often eat up whatever benefits  
the litigation might produce and additionally impose a backbreaking burden  
upon the small, but justified, litigants."

15 *Id.* at 144. The same rationale applies here. Owing to the litigious nature of these proceedings,  
16 which included two pre-trial appeals, one seeking U.S. Supreme Court review, and the long  
17 delays, plaintiffs have expended more the \$100,000 in costs. If courts do not award such costs  
18 when fees are awarded in important cases such as this, then plaintiffs may not be able to take  
19 such cases forward.

20  
21 ~~43.~~ I find that *Panorama Village* controls and that plaintiffs' cost request is  
22 reasonable and will be awarded.

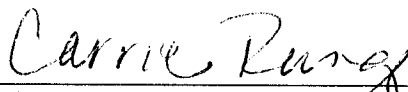
23 44. In summary, plaintiffs are awarded: fees of \$1,048,260.30;  
24  
25

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<sup>6</sup> *Blair v. Washington State Univ.*, 108 Wn.2d 558, 740 P.2d 1379 (1987).

1 a multiplier as follows: GAP: \$100,728.47, Sheridan:\$ 302,527.50; and costs of ~~\$153,686.94~~.

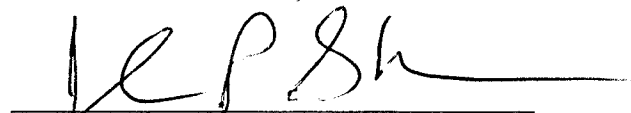
2  
3 DATED this 5 day of May, 2006.

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7 \_\_\_\_\_  
8 Carrie L. Runge  
9 Judge  
10 Benton County Superior Court

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17  
18 Presented by:

19 THE LAW OFFICE OF  
20 JOHN P. SHERIDAN, P.S.

21 By:

22   
23 \_\_\_\_\_  
24 John P. Sheridan, WSBA # 21473  
25 Greg Wolk, WSBA #28946  
Attorneys for Plaintiffs

FINDINGS OF FACT AND CONCLUSIONS OF  
LAW REGARDING PLAINTIFFS' PETITION  
FOR ATTORNEY FEES AND COSTS- 17

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