

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CENTRAL CIVIL WEST

IN RE: TV WRITERS CASES,

[Assigned to Hon. Emilie H. Elias for all purposes]

Case No. BC 268 836

THIS DOCUMENT RELATES TO:

Alch, et al., v. Time Warner Entertainment,
Company, et al., Case No. BC 268 836;
Neal, et al., v. Viacom Inc. and United Paramount,
Network, et al., Case No. BC 268 837;
Young, et al., v. DreamWorks SKG TV LLC ,
Case No. BC 268 838;
Bast, et al., v. Fox, Broadcasting Company, et al.,
Case No. BC 268 839;
Levy, et al., v. The Gersh Agency, Inc., Case No. BC
268 840;
Edwards, et al., v. The Carsey-Werner, Company,
et al., Case No. BC 268 841;
Wynn, et al., v. National Broadcasting Company,
Inc., et al., Case No. BC 268 842;
Brooks, et al., v. William Morris Agency,
Case No. BC 268 843;
Brett, et al., v. The Walt Disney Company, et al.,
Case No. BC 268 844;
DiStefano, et al., v. Columbia TriStar Television,
Inc., Case No. BC 268 845;
Eisenson, et al., v. Lucy Stille & Associates, Inc.,
d/b/a Paradigm Talent & Literary Agency, et
al., Case No. BC 268 847;
Lang, et al., v. Shapiro-Lichtman, Inc., d/b/a
Shapiro-Lichtman-Stein, Case No. BC 268
848;
Neal, et al., v. The Endeavor Agency, Inc., Case No.
BC 268 849;
Kinghorn, et al., v. Universal Studios, Inc., et al.,
Case No. BC 268 877;
Moriarty, et al., v. Viacom Inc., and Paramount,
Studios, Inc., et al., Case No. BC 268 878;
Yanok, et al., v. Agency for the Performing Arts,

Inc., Case No. BC 268 880;
Schwartz, et al., v. United Talent Agency, Inc., Case
No. BC 268 881;
Shayne, et al., v. Viacom Inc. and CBS
Broadcasting, Inc., Case No. BC 268 882,
Kalish, et al., v. Viacom Inc., et al., Case No. BC
268 883.

DECLARATION OF ROGER E. WARIN

BACKGROUND AND EXPERIENCE

1. I am a partner in the law firm of Steptoe & Johnson LLP ("Steptoe"), with my offices at 1330 Connecticut Avenue, N.W., Washington, D.C. 20036. I have practiced law at Steptoe since 1971. My practice consists of a wide range of litigation matters, including securities fraud, the RICO, libel, trademark, products liability, directors' and officers' liability, voting rights, employment discrimination, attorneys' fees, First Amendment, legal malpractice and other professional liability, negligence, real estate, surety, construction, environmental, toxic tort, and insurance coverage claims. I have taken the lead in numerous major nationwide insurance coverage and reinsurance disputes involving hurricane, pharmaceutical and medical device claims, professional liability, asbestos, toxic substances, and environmental claims. Throughout my career, a significant portion of my practice has included cases involving attorneys' fees disputes. In my thirty years of practice I have handled cases in state and federal courts throughout the United States.

2. I received my undergraduate degree in 1967 from Creighton University and my J.D. from Georgetown University in 1970. I have been a member of the Bar of the State of Nebraska since 1970 and the District of Columbia Bar since 1971. I am also admitted to practice before many federal trial and appellate courts, including the United

States District Court for the District of Maryland, the United States Supreme Court and the United States Court of Appeals for the Second, Third, Fourth, Seventh, Eighth, Eleventh, District of Columbia, and Federal Circuits. I am a member in good standing of each bar to which I have been admitted. During the 1970-71 term, I was a law clerk to the honorable Oliver Gasch of the United States District Court for the District of Columbia.

3. Since 1975, I have served as fee counsel or been consulted on attorneys' fee disputes in more than forty cases. I have briefed and/or argued attorneys' fee cases before the United States Supreme Court and before numerous federal district courts and appellate courts, as well as state trial courts. Among the cases in which I have been involved are *Burlington v. Dague*, 505 U.S. 557 (1992); *Covington v. District of Columbia*, 57 F.3d 1101 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996); *Clark v. Sims*, 28 F.3d 420 (4th Cir. 1994); *Johnson v. Shalala*, 991 F.2d 126 (4th Cir. 1993) (fee issue rendered moot by decision on other grounds), *cert. denied*, 513 U.S. 806 (1994); *Heller, Ehrmon, White & MacAuliffe v. Babbitt*, 992 F.2d 360 (D.C. Cir. 1992); *King v. Palmer*, 950 F.2d 771 (D.C. Cir. 1991) (*en banc*), *cert. denied*, 503 U.S. 918 (1992); *McKenzie v. Kennickell*, 875 F.2d 330 (D.C. Cir. 1989); *Thompson v. Kennickell*, 836 F.2d 616 (D.C. Cir. 1988); *Neal v. Moore*, 1994 U.S. Dist. LEXIS 21339, Civil Action No. 92-2420 (RCL) (D.D.C. 1994); *Ragin v. Harty Macklowe Real Estate Co.*, 870 F. Supp. 510 S.D.N.Y. 1994); *Mitchell v. Secretary of Commerce*, 1992 U.S. Dist. LEXIS 147, Civil Action No. 82-3020 (D.D.C. 1992); and *Backman v. Miller*, 567 F. Supp. 317 (D.D.C. 1983). Currently I serve as fee counsel to the plaintiffs in a large class action against the federal government in which the District Court for the

District of Columbia has awarded substantial attorneys' fees, *Hartman v. Clinton*, Civil Action No. 77-2019 (JR) (D.D.C.). Since we began our representation of the plaintiff class in May 1992, Steptoe & Johnson has secured over \$22 million in fees, presented in nineteen interim fee petitions. Over \$1.2 million of that amount has been attributed to fees on fees, including over \$1,000,000 for Steptoe & Johnson.

4. Virtually all of these cases involved challenges to the reasonableness of the attorneys' fees and expenses incurred on behalf of a prevailing plaintiff. As a result, I have reviewed the time descriptions, expenses, and hourly rates sought by more than fifty law firms and literally hundreds of lawyers in connection with those cases.

5. Most of the cases in which I have served as fee counsel have arisen in the Washington, D.C. metropolitan area although I have represented prevailing plaintiffs in successful Title IX cases in federal district courts in Rhode Island and Michigan. Often I have represented prevailing plaintiffs and their counsel seeking attorneys' fees and expenses under civil rights laws or other fee-shifting statutes. I have also represented parties opposing an award of fees, and I have served as an expert witness on attorneys' fee issues. I have been a frequent lecturer at continuing education seminars on the topic of attorneys' fees under fee-shifting statutes.

6. I have also represented numerous clients in attorney malpractice, legal ethics, and professional liability matters. These disputes generally require detailed analysis of billing records, time sheets, and expense reports. As a result, I have extensive knowledge of the billing practices and procedures in a great many law firms in the

Washington metropolitan area.

7. Additionally, I have substantial personal experience in billing clients of Steptoe & Johnson, including those involved in large-scale commercial litigation. My clients include individuals, insurance companies, public charities, and commercial businesses. The overwhelming majority of my clients (and those of Steptoe as a firm) are billed on a non-contingent hourly-rate basis. I have had billing responsibilities in hundreds of matters and I have sent thousands of bills to paying clients. During the last ten years, I have sent bills to clients in an aggregate amount well into the tens of millions of dollars.

8. As a result of the activities described in paragraphs 3 through 7 above, I have reviewed hourly rates and billing practices of scores of law firms in all manner of cases. In particular, I have significant knowledge of the hourly rates typically charged by firms involved in large commercial litigation, including the rates of firms which practice before state and federal courts in Maryland, Virginia, and the District of Columbia. It is also part of my practice to keep current on reported attorneys' fees decisions, so that I can be aware of legal developments in the field and the type, nature, and amount of fees and expenses courts approve as reasonable, including the hourly rates that firms charge and courts approve.

9. During my years at Steptoe, I have had a wide variety of firm management responsibilities. For example, I have served as a member of our Executive Committee -- an elected group that manages the firm's affairs and sets policy; the Professional Advancement Committee -- an elected group that makes recommendations to the firm's partnership on the professional advancement of the firm's attorneys, including on advancement to partner; the

Compensation Committee, and the Strategic Planning Committee. I am currently the Chair of Steptoe's Executive Committee, recently elected for my fourth two year term. My sustained involvement in the management of a large law firm has given me a depth of experience with all of the issues facing a provider of legal services -- issues both internal to the firm itself and inherent in the lawyer-client relationship.

10. Most of my client-service experience at Steptoe & Johnson has been as a civil litigator. I have appeared in federal courts, state courts and before various arbitral bodies, in matters covering a wide variety of subjects.

11. In most of these large matters over the years I have been not only the lead partner in providing services to the client, I have also been the partner responsible for billing. I have reviewed many hundreds of invoices and submitted them to clients, and I have dealt with any client questions that arose about those billings. In addition, I have consulted with a number of my partners over the years about billing questions involving clients for whom they were responsible. I have also been responsible for negotiating rates with clients on matters based here in D.C. and throughout the world. As a result, I have become familiar with the applicable rates lawyers charge for a variety of civil cases.

COMPENSATION FOR EXPERT SERVICE

12. I am being compensated for my services as an expert witness on the basis of charging my standard hourly rate. My hourly rate is \$755.00 per hour. One associate with an hourly rate of \$475.00 supports me in locating materials and reviewing the pleadings and other documents provided to us for my use in forming my expert opinion.

13. I will now turn to the specific issue that I have been asked to address – the reasonableness of the rates charged by Paul Sprenger, Jane Lang, Steven Sprenger, and Michael Lieder. In forming my opinion on the reasonableness of the rates requested, I have reviewed materials on the web site for the TV Writers Case, <http://www.tvwriterscounsel.com/>, including review of the settlement documents, the recitation of the ten-year history of this case, all of which document the complexity of the case and the obstacles that had to be overcome by counsel to achieve their proposed settlement, as well as the declarations of counsel attesting to their educational and professional accomplishments that put them in the top tier of practicing attorneys.

REASONABLENESS OF RATES IN GENERAL

14. The ethics rules and opinions require that rates charged be reasonable. They do not impose any limits on either rates or rate increases, so long as the resulting rate is reasonable. I have looked at the rates sought by Ms. Lang (\$675/hour), Paul Sprenger (\$750/hour), Steven M. Sprenger (\$650/hour), and Michael Lieder (\$650/hour). Taking into account their experience and background, in my opinion, these rates appear to be well within the range of rates that specialized, highly-regarded law firms with the capability to handle major class action litigation charge their clients.

15. My years of experience in the management of my own firm in setting rates puts me in a position to be aware of rates generally in the market. In my judgment, the rates charged by these individuals in this case are well within the reasonable range of rates for individuals of the depth of experience of Ms. Lang and Mr. Sprenger undertaking matters of the magnitude and complexity of those involved here. I have reviewed the qualifications of

Ms. Lang, Messrs. Sprenger, and Mr. Lieder and find them to be among an elite group of highly qualified, singularly successful counsel in bringing favorable results to large classes in complex employment litigation. I have had the privilege of practicing law with Jane Lang during her tenure at Steptoe & Johnson LLP and know from personal experience her high level of skill, legal acumen, and litigation judgment. I am aware that for at least the last twenty years Mr. Paul Sprenger and Ms. Lang and their law firm Sprenger and Lang PLLC have been recognized as leaders in plaintiffs' employment litigation nationwide.

16. The rates sought in this case are within the bounds of what is customary in the Washington, D.C marketplace. While information on rates charged by other large Washington law firms is not readily available to the public, there are some sources of information on both rates generally and specific rates charged by some firms on specific matters. I have consulted the available sources of information in reaching my conclusion that the rates charged by Jane Lang, Paul Sprenger, Steven Sprenger and Michael Lieder are reasonable and consistent with the customary market rates for the District of Columbia metropolitan area.

17. One source for information on market rates generally is local and national publications that survey firms on rates. For example, The National Law Journal publishes an annual survey of billing rates. The results of the 2009 survey were released in December 2009. I reviewed this published survey. The rates charged by the individuals noted above are well within the range reported for other firms with offices in the District of Columbia. A copy of the survey is attached hereto as Exhibit A.

18. The attorneys involved in this litigation are all highly experienced class action

counsel with extensive recognition of their skill from the legal community. They have the reputation and skill to command rates at the high end of the rates charged by their peers. The 2009 NLJ survey documents high end billing rates for partners in Washington, DC law firms at an average of \$992/hour. Paul Sprenger's requested rate of \$750 is significantly below the high end rates of his Washington, DC peers who responded to the survey. The national average for the highest billing partners is \$686/hour. This national average rate is higher than the rates sought by Ms. Lang, Mr. Steven Sprenger and Mr. Lieder. Within the District of Columbia market, the average partner rate is reported at \$629/hour. The extensive experience and high regard afforded Ms. Lang, Mr. Steven Sprenger and Mr. Lieder fully justify their slightly higher than average rates.

19. As Chairman of the Executive Committee at Steptoe & Johnson LLP, I also have access to non-public surveys of billing rates. The confidentiality of these sources precludes specific reference, but I attest that the rates sought by these four individuals are consistent with prevailing market rates for attorneys of their skill and experience within the District of Columbia market.

20. A second source for information on rates is the court filings and judicial opinions awarding fees to counsel involved in litigation before the courts in cases that offer a contractual, statutory or discretionary shifting of the attorneys' fees to the other party. A recent and very thorough examination of the District of Columbia legal market was undertaken by Chief Judge Royce Lamberth in *Miller v. Holzman*, 575 F. Supp. 2d 2 (D.D.C 2008). In that case, rates were awarded for highly skilled and experienced partners with credentials similar to those of Mr. Paul Sprenger, Ms. Lang, Mr. Steven Sprenger and Mr. Lieder at rates

ranging from \$625/hour to \$750/hour. The *Miller* decision gives judicial imprimatur to the rates sought here as reasonable market rates.

21. A third source of information on rates that I consulted to assess the reasonableness of the Sprenger, Lang and Lieder rates is the widely used *Laffey* matrix, as updated using the nation-wide legal services component of the Consumer Price Index produced by the Bureau of Labor Statistics of the Department of Labor.¹ In using the *Laffey* matrix to form my opinion of the reasonableness of the rates at issue here, I used the matrix as updated by the methodology approved by the Court in *Salazar*. This matrix presents a rate of \$686/hour for all counsel with twenty or more years of experience. Paul Sprenger has over 40 years of experience and the additional \$65/hour sought is, given his critical role in leading this highly complex and vigorously defended litigation to its successful conclusion, in my professional opinion, thoroughly justified. The updated *Laffey* rate is higher than the rate sought by Ms. Lang, Mr. Steven Sprenger, and Mr. Lieder, all of whom have more than the requisite twenty years of experience to command that rate.

22. The reasonableness of the rates currently sought is supported by the award of rates by Judge Kennedy in *Rosen et al v. American Express Financial Advisors*. In approving the settlement, the Court found that \$520 was a reasonable rate for Paul Sprenger in 2002 and

¹ The *Laffey* matrix consists of a chart delineating "reasonable market rates for the DC market" established by the U.S. District Court for the District of Columbia in *Laffey v. Northwest Airlines, Inc.*, 746 F. 2d 4 (D.C. Cir. 1984) after an extensive survey of rates in Washington, D.C. The matrix, established in 1982 and updated annually, has been accepted as evidence of reasonable market rates for complex litigation in the District of Columbia by D.C. courts, avoiding repetitive and wasteful litigation over market rates. See e.g., *Blackman v. District of Columbia*, 59 F. Supp. 2d 37, 43 (D.D.C. 1999). In *Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 14 (D.D.C. 2000), the United States District Court for the District of Columbia performed a thorough examination of the matrix and the methodology employed for adjusting the 1982 rates to account for inflation. The *Salazar* Court found that use of the nationwide legal services component of the Consumer Price Index is the best indicator of the effect of inflation on rates for legal services in the District of Columbia.

that \$470 was a reasonable 2002 rate for Ms. Lang. Using the adjustment factor used by the *Salazar* methodology in updating the *Laffey* matrix (increasing rates each year by the increase in the nationwide legal services component of the Consumer Price Index), the current rate for Mr. Sprenger would be \$730 and the rate for Ms. Lang would be \$661.

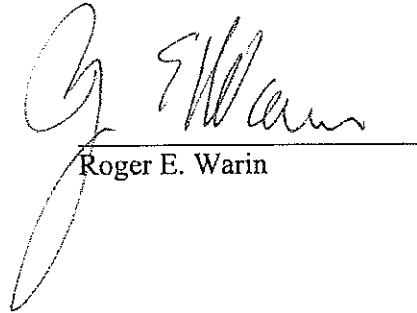
23. The rates sought by Mr. Paul Sprenger and Ms. Lang are very close to the rates that would be determined by adjusting their 2002 rates by the *Salazar* methodology, and are much closer than the adjustment of the same rates using the prime rate, as approved by the courts when using historic rates plus interest to compensate for delay rather than using current rates for all work.

24. I conclude that the rates sought by Paul Sprenger, Jane Lang, Steven Sprenger and Michael Lieder for this representation are reasonable and appropriate for counsel with their high level of skill and reputation and are comparable to the rates commanded by Washington, DC firms offering the same kinds of capabilities for comparable types of work. I see no reason why they should not be awarded.

CONCLUSION

25. All of the conclusions and opinions stated above are based on my over 40 years of experience in private practice -- a litigation practice predominantly involving sizeable matters requiring the management of teams of professionals and support staff. During my years of practice, I have litigated with counsel for other parties that were from a wide variety law firms as my adversaries and as my co-counsel. These collective experiences have, I believe, given me a sound basis for the opinions stated in this Declaration.

26. All opinions expressed by me in this Declaration have been stated within a reasonable degree of professional certainty.



Roger E. Warin

Washington, D.C.

Date: March 30, 2010