Corporate clients are entitled to choose counsel of their choice to represent them.

As full and equal members of the bar, in-house counsel provide vital legal services for their clients. Many corporate clients choose to hire in-house counsel rather than retain outside counsel because they prefer to assign certain kinds of legal work to lawyers who have the closest proximity to the client's work environment, thus insuring that intricate or vitally important matters are entrusted to lawyers with a more thorough understand of the client and its business enterprises. Underlying these conclusions is an important premise: namely, that corporate clients are entitled to their choice of counsel based on their ability to pay for these services.

Presumably, as sophisticated consumers of legal services, corporate clients choose the most effective counsel they can find. In the corporate legal arena, effective counsel include both those who provide a specific service at a minimal cost, and those who provide the best possible service overall, even if such services are provided at a higher cost. It is not unusual for a corporate client to find greater value for any number of reasons in a counsel whose hourly fee or salary is higher or lower than the fee or salary of another attorney. The market provides corporate clients with an almost unlimited number of choices in counsel; corporate clients who choose to avail themselves of the services of in-house counsel do so with the full knowledge that any number of other and sometimes cheaper options for retention are open to them. These corporate consumers of legal services are obviously making their choice of counsel for good reason, and such reasons relate to a desire for a certain kind of service and known results, and are not limited to cost considerations.

The cost of legal services rendered by in-house counsel to a corporate client are real.

A. The corporate client's decision process to "make or buy" legal services is illustrative.

In considering whether to purchase the services of an outside or in-house counsel, clients who choose in-house counsel do so in order to avail themselves of a number of benefits provided more readily by lawyers in an in-house environment. In-house counsel enter every representation knowing the details of the industry, the client's business and its employees; after years of working side by side with clients, they

earn a greater degree of comfort, trust and confidence from their clients; they inherently understand the client's level of aversion to risk, their foibles and their strengths, and other kinds of intimate knowledge that an outsider must either learn at great expense or proceed without.

Only rarely does a corporate employer staff its legal department with sufficient employed counsel to provide 100% of the legal services required by the client. It is presumed that outside legal services will be purchased for not only "surge" or overflow work, but also for a variety of matters that are too time-consuming or routine to justify in-house staffing, as well as cases presenting issues that in-house counsel are not expert to undertake. Thus, when Respondent's in-house counsel was forced to spend time pursuing the collection of the deductible owed by the Appellant, it was at the expense of her client who either had to go without her services for planned projects or retain other outside counsel to undertake them. This principle was recognized by the Seventh Circuit in *Textor v. Board of Regents of Northern Illinois University*, 711 F.2d 1387, 1397 (7th Cir. 1983), wherein the Court stated:

> . . . for every hour in-house counsel spent on this case defendants lost an hour of legal services that could have been spent on other matters. The value to defendants of this lost time is, of course, the amount it would require to hire additional counsel to do the neglected work. Whether defendants actually hired additional counsel or went without legal advice on some matters is irrelevant as the value of the loss is the same. An award of reasonable [attorneys'] fees will compensate defendants for this loss.

Other courts have echoed this principle, as well. *See, e.g., Tesoro Petroleum Corp. v. Coastal Refining & Marketing, Inc.*, 754 S.W.2d 764 (Tex. App. 1988); *Procter & Gamble Co. v. Weyerhaeuser Co.*, 711 F. Supp. 904 (N.D. Ill. 1989); *Revlon, Inc. v. Carson Prods. Co.*, 622 F. Supp. 362 (S.D.N.Y 1985), *aff'd in part, rev'd in part on other grounds*, 803 F.2d 676 (Fed. Cir. 1986), *cert. denied*, 479 U.S. 1018 (1986).

Further to the "make or buy" decision process is the fact that many clients prefer in-house counsel because they find them happily lacking any incentive to work a case longer or harder than is necessary. Since the in-house lawyer is judged on her efficiency, her judgment, and the results she brings, and not on the number of hours she bills or the number of cases she farms out to others, there is no temptation to over-bill or overwork a matter, or to promote litigation as the first alternative in the resolution of conflicts. Indeed, many in-house counsel are the pioneers of such concepts as alternative or pre-dispute resolution, compliance, and preventive law, since in-house practitioners spend much of their time focused on the prevention, rather than on the remedial resolution, of potential legal problems.

B. Corporate legal departments and in-house attorneys are expense centers and not revenue generators for their

clients.

Despite their efficiencies, law departments and the individual in-house counsel who staff them are nonetheless cost and not revenue centers for the corporation. Corporations using in-house counsel do not lease their services to others for use. In those corporations where in-house counsel keep records of their hours in an effort to track the legal services used by different divisions, the object is to better understand and plan for the needs of the organization, or to better understand the patterns of consuming legal services in corporate divisions; it is not to provide a profit to the legal department or the client/parent company.

Indeed, if one should try to track the cost to the client of hiring an in-house counsel and establishing a legal department, one will find the costs include more than just salaries. Consider the following expenses (which are just some of the costs considered by the major consulting firms such as Altman Weil, Ernst & Young, Price Waterhouse Coopers, and others in the statistical surveys they compile to assess corporate legal department performance and provide benchmarks for in-house cost managers to consider):

- share of rent for office space;
- secretarial, administrative, paralegal and staff attorney support;
- share of utilities, furnishings, and other office hard goods and supplies;
- copiers, computers, desktop software, scanners, network hardware and software, telephones, fax machines, and other office equipment;
- legal research facilities and services;
- bar and professional affiliations, as well as continuing legal educational costs;
- travel and other business expenses;
- corporate training and education provided to all employees;
- malpractice, general liability, and other forms of insurance not a part of the compensation package;
- a share of accounting, human resources, MIS, and other "corporate" services used by the in-house department and its employees; and, of course,
- salaries, benefits, vacation and sick leave, disability and life insurance policies, and other corporate perqs (golden parachutes, stock options, etc.)

Altman Weil Pensa: *Law Department/Law Firm Functions and Expenditures Report* (published annually); Price Waterhouse Coopers: *Law Department/Law Firm Spending Survey* (published annually): Ernst & Young's *Law Department Compensation and Expenditures Survey* (last published in 1994).

These costs are descriptive of only some of the direct expenses incurred in staffing an internal corporate legal function, and do not even begin to place a price tag on the more difficult to quantify value of hiring the

counsel who has the best experience, requires the least time to learn the curve, gets the best results, and has the complete confidence of the client. They also do not quantify the variety of legal and business risks assumed by an employer upon hiring (rather than retaining) a counsel. Combining the long list of possible tangible costs with the difficultto-quantify intangibles associated with maintaining an in-house legal staff is a long and tedious calculation, the results of which are not only open to constant question, but also varying interpretations. Their compilation and evaluation are not simple tasks.

It is further worth noting that the Appellant makes an inherent presumption that the fully-loaded cost of an in-house counsel is less than the market value of an hourly fee for a similarly talented and experienced outside counsel. After reviewing the above list of the direct and indirect costs of maintaining a legal department, it might be advisable not to presume that in-house counsel are always cheaper than equivalently experienced outside counsel. Sometimes they are; sometimes they aren't. As stated earlier, it is not always a cost decision which drives a client to prefer the use of an in-house lawyer.

III. Expenses incurred by corporations for their in-house legal services are not only significant, but are compensable by a court.

Courts recognized that services provided by in-house counsel are compensable when awarding fees as early as 1960, when the Third Circuit awarded a corporate client inside counsel costs, stating:

> . . . [T]here is no reason in law or equity why [the party against whom the fees are assessed] should benefit from [the prevailing party's] choice to proceed with some of the work through its own legal department.

Pittsburgh Plate Glass Co. v. Fidelity and Casualty Co., 281 F.2d 538, 542 (3d Cir. 1960). Any number of other cases in the federal circuits echo this decision and are cited in more recent cases as the prevailing and relevant caselaw. *See, e.g., United States v. Meyers*, 363 F.2d 615 (5th Cir. 1966) (affirming the award of attorneys fees to the government even though it was represented by its employee/salaried lawyers); *United States v. State Farm Mutual Automobile Association Insurance, Inc.*, 245 F. Supp. 58 (D. Ore. 1965) (*dictum* to the effect that fees for in-house legal services are entitled to an award); *In re International Systems & Controls Corporation Securities Litigation*, 94 F.R.D. 640 (S.D. Tex. 1982) (inside counsel fees awarded on sanction motion); *Scott Paper Co. v. Moore Business Forms, Inc.*, 604 F. Supp. 835 (D. De. 1984) (court acknowledged value of awarding in-house counsel fees); *Textor v. Board of Regents of Northern Illinois University, supra* (rejecting distinction between in-house attorneys and outside counsel for the purpose of awarding fees); *Tesoro Petroleum Corp. v. Coastal Refining & Marketing, Inc.*, 754 S.W.2d 764 (Tex.App. 1988) (awarding a reasonable fee for in-house counsel because the corporation should be compensated for time that such counsel could have spent on other corporate matters); *Dale Electronics, Inc. v. Federal Ins. Co.*, 205 Neb. 115, 286 N.W.2d 437 (Neb. 1979) (holding that a successful litigant is entitled to receive a reasonable attorney's fee for in-house counsel who engaged in the preparation and trial of the litigation to the same extent as outside counsel); *Holmes v. NBC/GE,* 168 F.R.D. 481 (S.D.N.Y. 1996) (stating "it is well settled that attorney's fees may be awarded for in-house attorneys" and citing additional cases in support); *Grace v. Center for Auto Safety,* 155 F.R.D. 591 (E.D. Mich. 1994), *rev'd on other grounds*, 72 F.3d 1236 (6th Cir, 1996) (finding that "[n]othing suggests GM's in-house counsel are working for free or that GM should not be compensated for their expense").

This court has held, in *Garfield Bank v. Folb*, 25 Cal.App.4th 1804 (1994), that in-house counsel fees are recoverable in California where counsel was actively engaged in the preparation of a case for trial under California Code Section 1717 (which permits the court to award of fees pursuant to contractual provisions). [Note that the *Garfield* decision was overturned by this court as to whether a *pro se* attorney would also be permitted to collect fees under Section 1717 (in *Trope v. Katz*, 11 Cal.4th 274 (1995)), but the *Trope* court explicitly limited its decision to *pro se* representations and specifically noted that awards for other counsel including in-house counsel authorized under *Garfield* were not affected by *Trope's* holding.]

Criteria for the award of reasonable, "market-value" fees has been defined by courts to include consideration of the following factors: the quality of the work performed; the expertise and experience of the counsel involved, the success of the representation and the benefits conferred upon the case and client by the lawyer. *Rodrigues v. Taylor*, 569 F.2d 1231 (3rd Cir. 1977). This court has considered the definition of compensability to be intimately related to whether the client has "incurred"costs or is/would be obligated to incur costs based on the representation. *Stafford v. Sipper*, 65 Cal.App.4th 748 (1998); *San Dieguito Partnership v. San Dieguito River Valley Regional Etc. Authority*, 61 Cal.App.4th 910 (1998).

In determining what costs a corporation has "incurred" for use of its in-house counsel under the theories espoused in *Stafford* and *San Dieguito*, it is dispositive to consider the finding of this court in *Shaffer v. Superior Court*, 33 Cal.App.4th 993 (1995). In Shaffer, this court held that the compensable cost incurred by a client should be argued on grounds other than 1.) an attorney's salary, pro rated to an hourly fee, or 2.) the fully loaded costs of a representation, which the court found inappropriate for them to try to determine (citing *Copeland v. Marshall,* 641 F.2d 880, 896 (D.C. Cir. 1980)). Are *Stafford, Shaffer*, and *San Dieguito* reconcilable? ACCA believes they are.

Both *Stafford* and *San Dieguito* involved a party seeking an award <u>in excess</u> of its costs, where the costs were known and definable in advance of the onset of the representation, and which costs had been agreed to by the clients. This court held that it did not wish to compensate the client for an amount greater than that which the client actually incurred.

In the case of the in-house counsel seeking fees on behalf of the Respondent, there was no pre-determined quantification of the value of her time to the company, nor would such a figure be easily ascertained. The Respondent made no prior agreement that the price tag for the in-house lawyer's services would be set at a level less than what the Respondent would seek in an award for her services, as happened in *Stafford* and *San Dieguito*. And so, taken together, *Stafford, San Dieguito*, and *Shaffer* are not inconsistent; they can be interpreted to allow for "incurred" costs calculated on a standard that compensates a

prevailing party for the value to the client of its lawyer's time and effort: no more, no less.

IV. It is appropriate to award fees to in-house counsel by the same standard that outside counsel fee awards are compensated.

If the court agrees that: 1.) the decision to employ in-house counsel is a cost to the client, and 2.) a client using in-house counsel to pursue a matter subject to Code § 1717 is entitled to reimbursement of costs incurred (defined to mean no more/no less than the value to the client of their lawyer's time), then the question becomes how to determine the appropriate amount of compensation. ACCA argues that the same standards which are applied to determine the value of an outside counsel's representation should be considered and applied to in-house counsel. This assertion is based on four basic principles.

A. Equal pay for equal work is an equitable and reasonable standard.

First, since in principle, both inside and outside counsel are "equally" licensed, 'equally' qualified, and 'equally' obligated officers of the court 'equal' in all respects except for how their clients retain and pay them this court should consider awarding equal pay for equal worth. Absent any showing that Respondent is seeking more compensation for this counsel's time than it is worth or that her time cost Respondent, to lower the award below the market rate is inequitable. This Respondent is not seeking a windfall; it is seeking "reasonable" compensation for costs incurred.

If one considered this issue from the perspective of the objective bystander, the analysis applied might run as follows: The exact same representation of Respondent's interests in this case, performed by an outside counsel who billed the market rate sought by Respondent, would give this court no hesitation or discomfort in the award of fees. Indeed, the bystander might even consider the Appellant lucky to get off with such a reasonable bill. The market rate fees sought by Respondent for its counsel's services, since they are consistent with market value for such litigation services, do not raise any question of unconscionable costs; rather they are the definition of reasonable, equitable costs. Further, since the Respondent's counsel was intimately familiar with the Respondent's case and business, she did not waste any time on the learning curve, which benefits both the Respondent (whose case is resolved more efficiently) and the Appellant (who is not left holding a bill that includes a greater number of hours for an attorney less

experienced or educated about the proper performance of this client's work).

Indeed, many courts have endorsed the award of attorneys' fees to in-house counsel by computing the value of their services in the same manner as reasonable fees are computed for outside counsel: namely, fair market value for similar services from a comparably experienced outside lawyer. *See, e.g., Rodrigues v. Taylor, supra; Sierra Club v. Gorsush*, 684 F.2d 972 (D.C. Cir. 1982), *rev'd. on other grounds, Ruckelshaus v. Sierra Club*, 463 U.S. 680, 103 S.Ct. 3274, 77 L. Ed. 2d 938 (1983); *Environmental Defense Fund v. EPA*, 672 F.2d 42 (D.C. Cir. 1982); *Mid-Hudson Legal Services, Inc. v. G &U, Inc.*, 465 F.Supp. 261 (S.D.N.Y. 1987); *National Trust for Historic Preservation v. Corps of Engineers*, 570 F. Supp. 465 (S.D. Ohio 1983); *Delaware Valley Citizens Counsel v. Commonwealth of Pennsylvania*, 762 F.2d 272 (3rd Cir. 1985); *Cottman Transmission Sys. v. Martino*, Nos. CIV.A.92-7245, CIV.A.92-2131, CIV.A.92-2253, 1993 W.L. 541680 (E.D. Pa. 1993), *vacated on other grounds*, 36 F.3d 291 (3rd. Cir. 1994); *Central States, Southeast and Southwest Areas Pension Fund v. Central Cartage Company*, 76 F.3d 114 (7th Cir. 1996), *cert. denied*, 136 L. Ed.2d 19 (1996).

B. Opportunity costs: the value to the client of the cost incurred.

Second, as the *Textor* court so ably argued (*supra*), the cost to Respondent could be considered not only in terms of the in-house counsel's actual cost of "maintenance," but also in terms of the client's opportunity costs: namely, the value to the client of the attorney's lost time due to her forced attention to the matter at hand. As stated by the court in Textor:

> The value to defendants of this lost time is, of course, the amount it would require to hire additional counsel to do the neglected work. Whether defendants actually hired additional counsel or went without legal advice on some matters is irrelevant as the value of the loss is the same.

711 F.2d at 1397. *See also, Tesoro Petroleum Corp. v. Coastal Refining & Marketing, Inc., (supra); Procter & Gamble Co. v. Weyerhaeuser Co., (supra); Revlon, Inc. v. Carson Prods. Co., (supra).*

C. Law firm costs and law department costs are not very different; in fact, they only differ in that former bills/profits from its costs and the latter absorbs/expenses its costs.

Third, it is notable that the very same consulting firms that which analyze the costs borne by the corporate client in staffing and maintaining an in-house legal department assess costs for law firms who wish to calculate the fully loaded cost of each of their attorneys.

Not surprisingly, these consultants use the same basic listing of cost factors used in the legal department assessments. [*See, e.g.*, Altman Weil Pensa: *Law Department/Law Firm Functions and Expenditures Report* (published annually); *Ernst & Young's Law Department Compensation and Expenditures Survey* (last published in 1994); Price Waterhouse Coopers: *Law Department/Law Firm Spending Survey* (published annually).]

While their cost factors may be similar to those of a legal department, the line of business of law firms involves establishing and charging a standard fee to clients to capture the average cost or value of doing business on any particular matter with the services of any given associate or partner in the firm. Set hourly or transactional fees are comprehensible to clients; they also allow clients to more accurately predict the costs of a representation, allowing clients shop the options between in-house hires, law firms, lawyers and fees. The scope of these fees determines reasonable market rates at their median point.

The Appellant would have the court consider the salary paid to the Respondent's in-house counsel as the sole determining denominator in an equation to measure her actual cost to the client. But in addition to ignoring all the other costs incurred by the Respondent in employing its in-house counsel, ACCA would ask the court to consider whether it would ever ask a law firm lawyer to provide similar information as dispositive to a firm's cost for a representation. ACCA cannot find any cases in which a court asked how much money an individual law firm lawyer makes per year, divided that by the number of workable hours, and suggested that such is the appropriate calculation to determine actual costs incurred by the prevailing party. On the contrary, this court has held that such is not an appropriate or meaningful inquiry in *Shaffer, supra*.

Nor can ACCA find a case in which a court has made a laundry list of the law firm's actual costs, divided it onto an average hourly cost, and suggested that any fees awarded should be reduced (or increased) to that amount. Indeed, as articulated by this court in *Shaffer*, when awarding fees to clients for the work of outside counsel, we should not focus on the accumulated total cost of a long list of complex cost factors.

Indeed, this court found the latter assessment so difficult to make, so variable between firms (and, therefore, inequitable and unpredictable for the non-prevailing), and such an intrusive process, that this court found that the market value for comparable services is a far better indicator of the reasonableness of a fee. This court correctly described the problem of trying to calculate the exact costs incurred by a client absent a clearly defined fee as one creating the "specter of a monumental inquiry on an issue wholly ancillary to the substance of the lawsuit." *Shaffer*, citing *Copeland v. Marshall, 641 F.2d 880, 896 (D.C. Cir. 1980)*. The process necessary to calculate an in-house counsel's costs in each case in which fees should be awarded would rarely justify the distraction and intrusion caused in divining the difference. This is especially true if one stops to

consider that the point of the award was to compensate the client for the unnecessary inconvenience it has already suffered in the pursuit of the matter from which the decision to grant an award springs.

Courts award market fees to law firm practitioners without any hesitation: they correctly presume that these fees represent the reasonable cost of legal services in the marketplace of comparably experienced counsel. So why if these fees are reasonable should a different standard apply to corporate counsel costs?

Perhaps there is an underlying (but misplaced) apprehension that to award fees to an in-house lawyer at an outside counsel's rate would result in awarding the profit an outside counsel builds into his fees to the company, therefore creating a windfall for the corporate client. But as shown above, the cost to the corporation *is* the market value of replacing the client's in-house counsel's time with a lawyer retained in the market. There are also situations where it is clear that the fully-loaded costs of maintaining the in-house lawyer can be *more expensive* than the market rate of the outside counsel.

D. A reasonable market rate is a reasonable standard for everyone.

Fourth, and finally, the market value approach equitably ensures that all assessed fees regardless of size, who is providing the services, and who is paying the bill are measured against an objective and universally applicable standard of reasonableness. The local market rate can be easily calculated anywhere in country, for any kind of work. It promotes predictability, prevents awards from becoming a windfall to either party, and preserves the objectivity of the court in assessing the particulars of case by case award requests.

Given all of this, why would a court still determine that fair market value of legal services is appropriate as compensation to the client of a law firm, but not to the client of an in-house counsel? The only conceivable reasons remaining would relate to the court's concern that the award of such fees would provide an inappropriate windfall to a corporate client, violate some professional obligation, or run afoul of some cannon of ethics.

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V. The award of reasonable, market-price fees to a client using in-house counsel is not barratry, fee-sharing, unauthorized practice, or the inappropriate practice of law by a corporation.

ACCA has established that courts in this jurisdiction, as well as courts across the country, have agreed that the fact that a client uses an in-house counsel for a representation, rather than an outside counsel, is not grounds to invalidate the client's right to compensation of its costs if an award is otherwise justified. This general principle has been confirmed by number California opinions cited in this and the Respondent's brief which award fees to the clients of government attorneys, non-profit or public interest counsel, and in-house corporate counsel.

It is, however, also well-established that lawyers' professional and ethical cannons prohibit a lawyer from "splitting" fees with non-lawyers; it has been suggested in this case that the payment of an award based on a market value of attorneys fees which is possibly greater than the calculation of the laundry list of actual costs incurred by the Respondent would constitute fee-splitting between the Respondent and the Respondent's in-house counsel under Model Rule of Ethics 5.4. The concern raised by 5.4 is that the non-legal party (who is not a client) might take control of the direction of a lawyer's work in such a way as to begin to influence the judgment and independence of the attorney in order to maximize a profit. *Emmons, Williams, Mires & Leech v. State Bar*, 6 Cal. App. 3d 565, 86 Cal.Rptr. 367 (1970).

But the Respondent in this action, who would be accused of being the non-lawyer influencing the work of the in-house counsel, is the *client*, and therefore not analogous to the non-legal partner 5.4 seeks to outlaw. Further, in order to split a fee with her client or another non-lawyer, the counsel herself must take a portion of the fee personally. Surely, it is too far a stretch to assume that a lawyer who draws a yearly salary in a unit of a company that is a cost (not revenue) center of the client, is somehow "sharing" in a fee that goes directly into the coffers of the client company and does not alter the salary she is paid. A salaried in-house counsel cannot split a fee with her client so long as her services are paid by salary and not by a portion or contingency of the fee awarded.

Appellant has also argued that Respondent's in-house counsel collecting fees on behalf of her non-lawyer employer constitutes barratry. Alternatively, Appellant argues that since corporations can only act

through the actions of their employees, Respondent is involved in the inappropriate practice of law by a corporation. None of these claims have merit. The legal profession has fiercely fought the invasion of any business venture peopled by non-lawyers whose mission is to profit as purveyors of the services of lawyers. While certain exceptions might exist, it is clear in this situation that Respondent's in-house counsel has not committed barratry, nor has she practiced law inappropriately as a corporation.

In-house counsel have only one client; they do not do work for other clients (with the exception of those involved in pro bono representations). Corporate clients do not hire in-house counsel so that they can sell their services to others for a profit and collect their fees. Nor do corporate clients hire in-house counsel to perform legal services for the client company "for profit." Thus, an in-house counsel representing a client who happens to be her employer is not in any way enabling her employer to conduct business as a lawyer, or to sell or market her services to others. It is therefore nonsensical to reason that the award of a fee to a prevailing party by a court for the cost of an in-house counsel's representation is anything other than reflective of the court's determination that the client should be made whole for having to devote resources to an unnecessary representation.

Similarly, even though a corporation can only act through its agent/ employees, an in-house counsel who represents a corporation is not a corporation practicing law. The prohibition against a corporation practicing law is premised on the principle that it is wrong for a business entity controlled by non-legal personnel to offer legal services on the market place or for that entity to provide them to others absent the required independence of judgment and professional certification that an individual attorney is obligated to bring to each representation. As shown above, such is not the reality of practice in an in-house legal department or for an individual in-house attorney representing her client company.

CONCLUSION

In-house counsel and outside counsel both provide valuable services. In-house counsel costs are not clearly or easily defined by courts, nor do they lend themselves to a system that allows both sides to a dispute to plan for the risks they assume when they enter the litigation arena. It follows, therefore, that the most reasonable and equitable method of defining the cost of their services should be to price them based on comparably valued services on the marketplace. Considerations in this equation should include the counsel's expertise, specialty, the type of services rendered, and the costs defined to calculate the in-house counsel's value and opportunity costs incurred by their clients.

The Respondent has met its burden of showing that absent an established billing rate, the fees Respondent requested and which were awarded by the lower court were consistent with the market value of the

services she provided. There is no justifiable basis to presume that assigning a market value for those services provides a windfall to the client or an inappropriate hardship to the Appellant. Further, such costs are exactly what the Appellant assumed as a risk that would come owing should the action he brought be decided against him. He is not deserving of a windfall because the Respondent used in-house counsel any more than the Respondent should be awarded fees that are not commensurate and comparable to the value of the services the Appellant forced the Respondent to supply. The decision of the Superior Court was correct and should be affirmed.

Dated: October 9, 1998 Respectfully Submitted:

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