

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

TS MEDIA, INC., TAVIS SMILEY  
PRESENTS, INC., and THE SMILEY  
GROUP, INC.,

Plaintiffs,

v.

PUBLIC BROADCASTING SERVICE, a  
District of Columbia nonprofit corporation,

Defendant.

Case No. 2018 CA 001247 B

Hon. Anthony Epstein

**DEFENDANT PUBLIC BROADCASTING SERVICE'S MEMORANDUM OF LAW  
IN SUPPORT OF ITS MOTION FOR ATTORNEYS' FEES UNDER THE  
DISTRICT OF COLUMBIA ANTI-SLAPP ACT**

Defendant Public Broadcasting Service ("PBS") submits this memorandum of law in support of its motion for an award of costs of litigation, including reasonable attorneys' fees, from Plaintiffs TS Media, Inc., Tavis Smiley Presents, Inc., and The Smiley Group, Inc., pursuant to D.C. Code § 16-5504(a). On May 15, 2018, the Court granted in full PBS's Special Motion to Dismiss, which sought dismissal with prejudice of Counts III and IV of Plaintiffs' Complaint under the D.C. Anti-SLAPP Act. Accordingly, PBS is statutorily entitled to the costs of litigation, including reasonable attorneys' fees, in the amount of \$114,517.30 that PBS incurred in defending against Plaintiffs' tort claims.

**I. RELEVANT PROCEDURAL BACKGROUND**

On February 20, 2018, Plaintiffs filed a four-count Complaint against PBS, including two tort claims. Count III of the Complaint asserted a claim for intentional interference with contract, and Count IV of the Complaint asserted a claim for tortious interference with business expectancies. Plaintiffs' tort claims were based on PBS's public statements in December 2017

that an investigation had uncovered multiple credible allegations of misconduct against Tavis Smiley, PBS's late night weekday half-hour television host. On April 16, 2018, PBS filed a special motion to dismiss Plaintiffs' tort claims (Counts III and IV) pursuant to the D.C. Anti-SLAPP Act, D.C. Code § 16-5501 *et seq.* because Plaintiffs' tort claims arose from PBS's constitutionally protected speech to the public about matters of public interest involving a public figure. Plaintiffs filed an Opposition to PBS's Special Motion to Dismiss on April 30, 2018, and PBS filed a reply on May 7, 2018.

On May 15, 2018, the Court granted PBS's Special Motion to Dismiss in full and dismissed Counts III and IV of Plaintiffs' Complaint with prejudice. During the May 25, 2018 Status Conference, the Court directed the parties to meet and confer concerning a reasonable amount of recoverable attorneys' fees and costs under D.C. Code § 16-5504. Pursuant to the Court's request that the parties meet and confer regarding PBS's attorneys' fees petition under the D.C. Anti-SLAPP Act, counsel for PBS contacted counsel for Plaintiffs via email and telephone, requesting Plaintiffs' position on PBS's request for attorneys' fees. Counsel for Plaintiffs did not respond to PBS's attempts to meet and confer regarding the amount of fees.

## **II. ARGUMENT**

### **A. As a Successful Movant Under the D.C. Anti-SLAPP Act, PBS Is Presumptively Entitled to the Costs of Litigation, Including Reasonable Attorneys' Fees.**

Under D.C. Code § 16-5504(a), "[t]he court may award a moving party who prevails, in whole or in part, on a motion brought under § 16-5502 or § 16-5503 the costs of litigation, including reasonable attorney fees." In construing this provision, the D.C. Court of Appeals has held that reasonable attorneys' fees should be "presumptively" awarded to a party that has prevailed on a motion brought under §16-5502 "unless special circumstances would render such an award unjust." *Doe v. Burke*, 133 A.3d 569, 575-78 (D.C. 2016) ("[I]t is plain to us that D.C.

Code § 16-5504(a) contemplates a presumptive award of attorney's fees to the moving party who prevails on a special motion" under the D.C. Anti-SLAPP Act).<sup>1</sup> In other words, a moving party prevailing on a special motion to dismiss under the D.C. Anti-SLAPP Act need not show that Plaintiffs' claims were made in bad faith or completely lacked merit to recover its reasonable attorneys' fees. *Id.* at 575.

Here, PBS is entitled to its reasonable attorneys' fees in defending against Plaintiffs' tort claims because it prevailed on its Special Motion to Dismiss under § 16-5502, and there are no special circumstances that would render such an award unjust.

**B. PBS's Attorneys' Fees Are Reasonable**

Determining the amount of reasonable attorneys' fees to which a party is entitled is left to the sound discretion of the trial judge. *F.W. Bolgiano & Co. v. Brown*, 333 A.2d 674, 675 (D.C. 1975). In making this determination, District of Columbia courts apply the lodestar method of determining the reasonable number of hours spent on a matter multiplied by an attorney's reasonable hourly rate. *See Campbell Crane & Assocs., Inc. v. Stamenknovic*, 44 A.3d 924, 947 (D.C. 2012) ("We have held that the appropriate means to determine reasonable attorney's fees is for the trial court to determine . . . the so-called lodestar – the number of hours reasonably expended by counsel multiplied by a reasonable hourly rate."). Moreover, time reasonably devoted to obtaining attorneys' fees is itself subject to an award of fees. *See Burke*, 133 A.3d at 579.

Although the party seeking attorneys' fees bears the burden of demonstrating the reasonableness of its fees, "[a] request for attorneys' fees should not result in a second major

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<sup>1</sup> In *Burke*, the Court analyzed the entitlement to reasonable attorneys' fees for a moving party who prevails on a special motion *to quash* under D.C. Code § 16-5503, but it expressly noted that its analysis applied to a special motion *to dismiss* under D.C. Code § 16-5502 as well. *See Burke*, 133 A.3d at 572 n.2.

litigation.” *Tenants of 710 Jefferson St. v. D.C. Rental Housing Comm’n*, 123 A.3d 170, 186 (D.C. 2015). Accordingly, courts are “not required to perform an in-depth analysis of the billing records,” *Lively v. Flexible Packaging Ass’n*, 930 A.2d 984, 993 (D.C. 2007), and “trial courts need not, and indeed should not, become green-eyeshade accountants.” *Fox v. Vice*, 563 U.S. 826, 838 (2011). Simply put, “[t]he essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection.” *Id.*

**1. The Hours That PBS’s Attorneys’ Spent Defending Against Plaintiffs’ Tort Claims Are Reasonable**

The hours that PBS’s attorneys dedicated to defending against Plaintiffs’ tort claims for which PBS seeks to recover attorneys’ fees can be grouped in four primary categories: (1) conducting a factual investigation into Plaintiffs’ allegations related to their tort claims; (2) preparing PBS’s Answer to Plaintiffs’ Complaint; (3) research, analysis, and developing strategy related to PBS’s Special Motion to Dismiss; and (4) preparing PBS’s Special Motion to Dismiss, analyzing Plaintiffs’ Opposition, and preparing PBS’s reply. *See* Declaration of Grace E. Speights (“Speights Decl.”) at ¶ 16. Each of these areas of work was necessary for PBS to defend against Plaintiffs’ tort claims, and the hours that PBS’s counsel spent on each were reasonable. A summary of the total number of hours incurred in these areas is attached as Exhibit E to the Speights Declaration, and redacted copies of contemporaneous and detailed billing records, which are being filed under seal, are Exhibit F to the Speights Declaration. PBS is not seeking costs and fees for other tasks related to defending against Plaintiffs’ tort claims, including responding to Plaintiff TSM’s discovery requests related to Plaintiffs’ tort claims. *See* Speights Decl. ¶ 17. PBS is also not seeking fees associated with paralegal time. *Id.*

PBS's attorneys incurred a total of 57.93 hours in answering Plaintiffs' Complaint, not including time dedicated to preparing PBS's Counterclaims. *See* Speights Decl. ¶ 24.<sup>2</sup> PBS is seeking to recover fees for only half of these hours (28.97 hours) to account for the fact that only two of Plaintiffs' four counts were subject to PBS's Special Motion to Dismiss. *Id.* These hours were reasonably incurred to develop PBS's strategy for its Answer, and to prepare PBS's Answer, which included a substantial level of detail in response to all of Plaintiffs' allegations.

PBS's attorneys spent a total of 36.35 hours conducting factual investigation into Plaintiffs' allegations. *See* Speights Decl. ¶ 25, Ex. E. PBS is seeking to recover attorneys' fees for only half of this time (18.18 hours) as well to account for the fact that only two of Plaintiffs' four claims were subject to PBS's Special Motion to Dismiss. *See* Speights Decl. ¶ 25. The time spent on factual investigation was reasonable and necessary to analyze the merits of Plaintiffs' tort claims and develop a defense strategy. *Id.* Moreover, the 18.18 hours spent on factual investigation were reasonable and necessary for PBS to comply with its obligations under the D.C. Superior Court Rules in preparing its Answer and to defend against Plaintiffs' tort claims in the event the Court did not grant PBS's Special Motion to Dismiss. *Id.*

The 58.97 hours that PBS's attorneys spent researching, analyzing, and developing strategy related to PBS's Special Motion to Dismiss were also reasonably incurred. *Id.* ¶ 26; Ex. E. To prepare PBS's Special Motion to Dismiss, PBS's attorneys had to research and analyze authority under the D.C. Anti-SLAPP Act and analogous state laws, including California. *Id.* In addition, PBS's attorneys analyzed First Amendment jurisprudence, including the application of constitutional defamation principles to tortious interference claims. This time was both

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<sup>2</sup> To the extent that Morgan Lewis's billing records for this matter did not separately list time spent on preparing PBS's Answer from time spent on preparing PBS's Counterclaims, PBS has included only half of the amount of hours listed. *See* Speights Decl. ¶ 24.

reasonable and necessary to inform PBS's strategy with respect to its Special Motion to Dismiss. *Id.*

Finally, the 115.23 hours that PBS's attorneys dedicated to preparing its Special Motion to Dismiss and Memorandum in Support, analyzing Plaintiffs' Opposition, and preparing PBS's reply were reasonably incurred. *See* Speights Decl. ¶ 27.

PBS is also seeking reasonable attorneys' fees incurred in preparing the instant motion. In May 2018, PBS's attorneys spent 7.6 hours preparing its motion for attorneys' fees. *See* Speights Decl. ¶ 28. PBS also anticipates incurring fees to review and respond to Plaintiffs' Opposition, if any. PBS will supplement the amount of attorneys' fees incurred with respect to this motion and provide its final fee request in reply.

## **2. PBS's Attorneys' Hourly Rates Are Reasonable**

Reasonable hourly rates are calculated according to the prevailing rates for attorneys of similar experience in the relevant market. *See District of Columbia v. Patterson*, 667 A.2d 1338, 1343 (D.C. 1995); *Henderson v. District of Columbia*, 493 A.2d 982, 999 (D.C. 1985). In determining the prevailing market rate in the District of Columbia, District of Columbia courts routinely rely on the "well-established *Laffey* matrix." *Thanos v. District of Columbia*, 109 A.3d 1084, 1091 (D.C. 2014); *Tenants of 710 Jefferson St.*, 123 A.3d at 184 ("[T]he *Laffey* Matrix is a very good place to start, and, we would add, in most cases will be the best place to end lest litigation over attorney's fees overshadow the underlying case."). In particular, D.C. courts rely on the LSI-Adjusted *Laffey* Matrix to reflect inflationary changes in the cost of legal services. *See Salazar v. District of Columbia*, 809 F.3d 58, 62 (D.C. Cir. 2015). In sum, the LSI-Adjusted *Laffey* Matrix establishes an appropriate benchmark against which to measure reasonable hourly rates in the District of Columbia. A copy of the LSI *Laffey* Matrix is attached as Exhibit G to the Speights Declaration.

As explained in the attached declaration, PBS's attorneys have differing hourly rates based on their respective experience, all of which are reasonable based on their experience, particularly in light of the 20% discount that Morgan Lewis provided to PBS for its services through the Special Motion to Dismiss. *See* Speights Decl. ¶ 22.

Grace E. Speights has over 30 years of experience practicing law. She is the Global Leader of Morgan Lewis' Labor & Employment Practice Group and is responsible for managing more than 330 lawyers and other professional around the world and is also the Chair of Morgan Lewis' Systemic Employment Litigation Practice Group. *Id.* ¶¶ 5-6. Her practice focuses on internal investigations, counseling and defending clients in connection with employment discrimination claims, and she has handled high profile and high stakes matters for many clients and she is often called upon by clients for crisis management assistance. *Id.* ¶ 8. Ms. Speights has received numerous recognitions as a practicing lawyer. *Id.* ¶¶ 9-10. Ms. Speights's effective hourly rate in this matter (i.e., the rate PBS was billed for her services) is \$780 per hour. *See* Speights Decl. ¶ 22. Ms. Speights's hourly rate is well justified and reasonable in light of her substantial experience, expertise, and accolades. Moreover, it is well within the rates established under the LSI Laffey Matrix, which provides that a reasonable hourly rate for an attorney with 20+ years of experience is \$864. *See* Ex. G to Speights Decl.

W. Brad Nes has over eleven years of experience practicing law, with a particular focus on complex commercial disputes at both the trial and appellate levels. Mr. Nes has experience litigating complex business disputes involving a wide range of claims, including breach of contract, consumer fraud and unfair business practices, class actions, and civil RICO violations. In 2014 and 2015, Mr. Nes was named a "Rising Star" in the area of business litigation by *Super Lawyers (Washington, DC)*. In 2016, Mr. Nes was listed in *The Legal 500 US*. *See* Speights

Decl. ¶ 13. Mr. Nes’s effective hourly rate in this matter (i.e., the rate PBS was billed for his services) is \$584 per hour, which is less than the \$717 hourly rate under the LSI Laffey Matrix for attorneys with 11-19 years of experience. *Id.* ¶ 22; Ex. G to Speights Decl. Accordingly, Mr. Nes’s hourly rate is also reasonable in light of his experience.

Amanda Robinson has approximately seven years of experience practicing law and P. David Larson has over five years of experience practicing law. *See* Speights Decl. ¶¶ 14-15. Ms. Robinson’s effective hourly rate in this matter (i.e., the rate PBS was billed for her services) is \$520 per hour, and Mr. Larson’s effective hourly rate in this matter (i.e., the rate PBS was billed for his services) is \$400 per hour. *See id.* Under the LSI Laffey Matrix, a reasonable rate for attorneys with 4-7 years of experience is \$440. *See* Ex. G to Speights Decl. PBS acknowledges that Ms. Robinson’s effective hourly rate in this matter exceeds the LSI Laffey Matrix rates. Although PBS believes that Ms. Robinson’s hourly rate is reasonable, for purposes of this motion, it requests that the Court award fees for her services at the rate of \$440 per hour.

Based on the foregoing (and as demonstrated in the summary chart and detailed billing records attached as Exhibits E and F to the Speights Declaration), the lodestar for work performed defending PBS against Plaintiffs’ tort claims is as follows:

<b>Attorney</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total Fees</b>
Grace E. Speights	9.65	\$780	\$7,527.00
W. Brad Nes	100.95	\$584	\$58,954.80
Amanda B. Robinson	17.51	\$440	\$7,705.50
P. David Larson	100.83	\$400	\$40,330.00
<b>Total</b>	<b>228.94</b>		<b>\$114,517.30</b>

### **III. CONCLUSION**

For the foregoing reasons, PBS respectfully requests that this Court enter an Order awarding PBS its costs of litigation, including reasonable attorneys’ fees, in the amount of \$114,517.30.

Dated: June 29, 2018

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Grace E. Speights  
Grace E. Speights (DC Bar No. 392091)  
W. Brad Nes (DC Bar No. 975502)  
Amanda B. Robinson (DC Bar No. 1017689)  
P. David Larson (DC Bar No. 1015203)

1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
Telephone: +1.202.739.3000  
Facsimile: +1.202.739.3001  
E-mail: [grace.speights@morganlewis.com](mailto:grace.speights@morganlewis.com)  
E-mail: [brad.nes@morganlewis.com](mailto:brad.nes@morganlewis.com)  
E-mail: [amanda.robinson@morganlewis.com](mailto:amanda.robinson@morganlewis.com)  
E-mail: [david.larson@morganlewis.com](mailto:david.larson@morganlewis.com)

*Attorneys for PBS*