Pawa Law Group, P.C. V. Sher Leff, LLP, Docket No. 1:14-cv-10001 (D. Mass. Jan 01, 2014), Court Docket

Multiple Documents

Part	Description
1	6 pages
2	Exhibit Exhibit A
3	Exhibit Exhibit B
4	Civil Cover Sheet Civil Cover Sheet
5	JS45 Category Form

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PAWA LAW GROUP, P.C.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	Civil Action No. _____
	)	
SHER LEFF, LLP, also known as SHER LEFF PC,	)	
	)	
	)	
Defendant.	)	
	)	
_____	)	

COMPLAINT TO CONFIRM ARBITRATION AWARD

NATURE OF ACTION

This matter is an application by the plaintiff, Pawa Law Group, P.C., pursuant to 9 U.S.C. § 9, Federal Arbitration Act ("FAA"), for the entry of an order confirming the award in its favor made by a panel of three arbitrators in a JAMS administered arbitration entitled: *Pawa Law Group, P.C. v. Sher Leff, LLP*, Reference No. 1400014271 (the "Arbitration"), and for the entry of a final judgment in accordance with the order confirming the award.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Pawa Law Group, P.C. ("PLG"), is a professional corporation duly organized and existing under Massachusetts law with its principal place of business at 1280 Centre Street, Suite 230, Newton Centre, Massachusetts 02459.

2. Upon information and belief, Sher Leff, LLP is a law firm organized under California law as a limited liability partnership that also has held itself out in a filing with the California Secretary of State's Office as Sher Leff PC (collectively, "Sher Leff" or "defendant"). Sher Leff

has offices at 450 Mission Street, Suite 400, San Francisco, California. Upon information and belief, Alexander Leff is the principal and sole owner of Sher Leff and a resident of California.

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because the parties are citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs.

4. This Court has personal jurisdiction over Sher Leff because: (1) the claims at issue in the arbitration arose out of Sher Leff's contacts and transaction of business within Massachusetts in connection with valid and binding contracts, including an Agreement to Arbitrate (the "Arbitration Agreement"), with PLG; (2) numerous activities relating to the arbitration, including a six-day hearing and oral depositions, that took place in Boston, Massachusetts, and; (3) Sher Leff purposefully availed itself of the privilege of conducting business and other activities in Massachusetts.

5. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions relating to this matter occurred in this district. Venue also is proper under 9 U.S.C. § 9, which provides that an application for an order confirming the award may be made to the United States court in and for the district within which such award was made. The six-day arbitration hearing was held in Boston and the award was made in this district.

FIRST CAUSE OF ACTION

REQUEST FOR CONFIRMATION

6. PLG repeats and realleges the allegations set forth above in ¶¶ 1-5.

7. In or about 2012 and 2013 a dispute arose between PLG and Sher Leff relating to the division of attorneys' fees between them under a Legal Services Agreement (the "2010 LSA")

with their mutual client, the State of New Hampshire (the "State"), which had retained them to represent the State in groundwater contamination litigation against numerous large oil companies in a case known as *State v. Hess*, No. 03-CV-0550 (N.H. Superior Court, Merrimack Co.) ("*Hess*"). The 2010 LSA was signed by the State, PLG and Sher Leff.

8. On February 4, 2013, PLG and Sher Leff entered into the Arbitration Agreement in which they agreed to submit to binding arbitration administered by JAMS any controversy or claim between them arising out of or relating to their fee division dispute, including attorneys' fees attributable to *Hess* recoveries that had already occurred from settling defendants as well as *Hess* recoveries that may occur in the future, i.e., as a result of recoveries from *Hess* defendants who had not yet settled, i.e., CITGO Petroleum Corporation and ExxonMobil. Arbitration Agreement at ¶ 1.1. A copy of the Arbitration Agreement is attached as Exhibit A.

9. The parties further agreed in the Arbitration Agreement to abide by and perform any award rendered by the arbitrators and that any award so rendered could be confirmed by any court of competent jurisdiction. Arbitration Agreement at ¶ 1.8; *see also* Rule 25 of JAMS Comprehensive Arbitration Rules & Procedures (Oct. 1, 2010) ("The Parties to an Arbitration under these Rules shall be deemed to have consented that judgment upon the Award may be entered in any court having jurisdiction thereof.").

10. An arbitration hearing was held in Boston, Massachusetts on July 31, August 1-2, and August 5-7, 2013 before a panel of three arbitrators (the "Panel") at the JAMS offices, pursuant to and in accordance with the Arbitration Agreement and the JAMS Comprehensive Arbitration Rules and Procedures.

11. The Panel issued a Final Award on December 18, 2013, after the submission of numerous post-hearing briefs, finally resolving all claims between the parties. A copy of the Final Award

is attached as Exhibit B (the "Final Award"). The Panel found, concluded and awarded, *inter alia*:

(a) $5,621,803 to PLG on PLG's claim for breach of the 2010 LSA;

(b) 22% to PLG of any contingency fees arising from the ExxonMobil verdict, judgment or settlement, in accordance with the 2010 LSA;

(c) control of the "Revolving Fund" under the 2010 LSA to PLG, subject to the State's consent;

(d) attorneys' fees to PLG in the amount of $1,126,277;

(e) accrued interest to PLG in the amount of $94,122.84; and

(f) arbitration costs to PLG.

12. Sher Leff has failed and refused to comply with the Final Award, including payment of the amounts awarded by the Panel to PLG, even while Sher Leff has pocketed over $27 million in attorneys' fees from the *Hess* case.

13. Sher Leff also has failed and refused to pay the final invoice submitted by JAMS for the fee and costs of the arbitrators in the amount of $51,079.28 in breach of the Arbitration Agreement and in violation of the Final Award. As a result of Sher Leff's failure to honor its contractual and legal obligation to pay all JAMS invoices, PLG was compelled to pay this amount in order for JAMS to release the Final Award.

14. There are no grounds, pursuant to 9 U.S.C. §§ 10-11, to vacate, modify or correct the Final Award.

WHEREFORE, Plaintiff, Pawa Law Group, P.C., respectfully requests the following:

(a) Entry of an order confirming the Final Award and a final judgment against Sher Leff in connection therewith as follows:

1. $5,621,803 to PLG on PLG's claim for breach of the 2010 LSA;

2. 22% to PLG of any contingency fees arising from the ExxonMobil verdict, judgment or settlement in accordance with the 2010 LSA;

3. equitable relief in the form of an order requiring Sher Leff to immediately take whatever action is necessary to remove itself from control of the Revolving Fund under the 2010 LSA that it presently controls and to take whatever action is necessary to place PLG in control of the Revolving Fund;

4. attorneys' fees to PLG in the amount of $1,126,277;

5. interest to PLG in the amount of $94,122.84;

6. arbitration fees and costs to PLG, including the amount of $51,079.28 that PLG was compelled to pay when Sher Leff breached the Arbitration Agreement and violated the Final Award by failing and refusing to pay the final invoice submitted by JAMS in the amount of $51,079.28;

7. dismissal of Sher Leff's counter-claim with prejudice;

8. dismissal of Sher Leff's claims with prejudice pursuant to the New Hampshire Rules of Professional Conduct;

9. dismissal of Sher Leff's claim for attorney fees with prejudice; and

10. dismissal of Sher Leff's claim for arbitration costs with prejudice.

(b) Entry of an order requiring defendant to pay costs, including attorneys' fees, incurred in prosecuting this action, together with pre- and post-judgment interest, to the full extent permitted by law; and

(c) Such other further relief as the Court deems just and proper.

Dated: January 1, 2014

Respectfully submitted,

PAWA LAW GROUP, P.C.

By its attorneys,

/s/ Robert D. Cultice

Robert D. Cultice (BBO# 108200)
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
Robert.Cultice@wilmerhale.com

EXHIBIT A

AGREEMENT TO ARBITRATE

1.1. The undersigned parties hereby agree to submit to binding arbitration administered by JAMS any controversy or claim between Sher Leff LLP ("Sher Leff") and Pawa Law Group, P.C. f/k/a Law Offices of Matthew F. Pawa, P.C. ("PLG") (collectively, the "parties") arising out of or relating to the dispute regarding the division of attorneys' fees in *State v. Hess*, No. 03-CV-0550 (N.H. Superior Court, Merrimack Co.) ("*Hess*"), including attorneys' fees attributable to *Hess* recoveries that have already occurred as well as *Hess* recoveries that may occur in the future, *e.g.*, as a result of recoveries from *Hess* defendants CITGO and/or ExxonMobil. The parties enter into this agreement without prejudice to or waiver of their existing claims and defenses, including that the choice of JAMS does not constitute an admission by PLG concerning the validity or applicability of an unsigned, alleged 2003 "Agreement for Joint Representation."

Sher Leff will place MP OM

1.2. The disputed funds ~~will remain~~ in a interest-bearing account having Sher Leff and PLG as joint signatories, such that any withdrawal from that account will require the signature of both parties. In the event that additional attorneys' fees are recovered from any *Hess* defendants before the arbitration contemplated by this Agreement is completed, Sher Leff shall deposit 22 percent of these additional funds in the same interest-bearing account with the Disputed Balance and all such funds shall be subject to the terms of this paragraph 2. See attached accounting of $5,091,737.8

1.3. Within 7 calendar days after the Agreement Date (the "Filing Date") PLG shall initiate the arbitration process by filing this agreement with JAMS in its Chicago office and paying the filing fee subject to the provisions of paragraph 7.

MP OM

1.4. Claims shall be heard by a panel of three arbitrators selected under JAMS Rule 15 as herein modified. Subject to JAMS ability to accommodate, one arbitrator shall be from San Francisco, one shall be from Boston and one shall be from Chicago. Parties shall have three rounds of rank and strike to complete the panel before JAMS shall use Rule 15(d).

1.5. The arbitration hearing shall take place in a location to be determined by the arbitrators. Depositions shall be limited to a maximum of 5 per party and each side is obligated to cooperate such that each deposition is taken no more than two weeks after a request for that deposition and in the city of convenience to the witness to be deposed. Additional depositions may be scheduled only with the authorization of the arbitrators, and for good cause shown. Each deposition shall be limited to a maximum of 6 hours duration. Within 15 calendar days of the Filing Date, each party may serve one request for the production of documents consisting of no more than ten requests; response shall be due no later than 15 calendar days after service. Additional document requests will be permitted only with the authorization of the arbitrators, and for good cause shown. There shall be no other discovery. The parties shall simultaneously exchange witness lists and exhibits 10 calendar days before the hearing. If a document or witness is not disclosed or produced at least 10 calendar days before the arbitration hearing begins, it may not be used in the arbitration.

1.6. Time is of the essence for any arbitration under this agreement. The arbitration hearing shall take place within 120 calendar days of the date the arbitrators are empanelled, the record shall close within 10 business days of the close of the hearing and an award shall be rendered within 30 calendar days after closing of the record. Consent to these limitations is a condition to the appointment of any arbitrator. The parties agree that they will make best efforts to expedite matters so that the hearing may occur during the week of April 22-26, 2013, subject to the availability of witnesses and to the extent this setting will not interfere with the best work of the lawyers on the *Hess* matter. There will be no appeal from the arbitrators' decision other than as allowed by law.

The arbitration hearing will be completed in all events by no later than 6/14/13. MP

1.7. The parties will bear their own attorney's fees and case costs (travel, discovery, etc) except to the extent that attorneys fees are awarded by the arbitrators. Costs of the arbitration proceeding, including the fees of the arbitrators, shall be shared equally between the parties; Sher Leff will advance all such costs of the arbitration proceeding and arbitrators' fees. The final award will account for this advance and cost sharing agreement except to the extent that costs of arbitration are awarded by the arbitrators. The arbitrators' power to grant interim measures under Rule 24(e) shall include the power to compel Sher Leff to advance these costs, to make the PLG Payment, and to deposit the Disputed Balance in the joint account described in paragraph 2.

1.8. The parties will faithfully observe this agreement and the rules, and will abide by and perform any award rendered by the arbitrators. The award issued by the arbitrators may be confirmed by any court of competent jurisdiction and judgment may be entered on the award.

2/4/13

Pawa Law Group, P.C. Date

1280 Centre Street, Suite 230

Newton, MA 02459

Rhodes for Leff

2/4/13

Sher Leff LLP Date

450 Mission Street

San Francisco, CA

130514515v1 0942749

Fees Paid to Law Offices of Matthew Pawa

	Defendant	Value	NPV	Cumulative Total	Attorneys Fees %	Attorneys Fees $		
6/8/2010	Flint Hills	350,000	350,000	350,000	27%	94,500		
7/9/2010	Giant/Western	350,000	350,000	700,000	27%	94,500		
1/18/2011	BP	2,400,000	2,400,000	3,100,000	30%	720,000		
5/31/2011	El Paso	1,500,000	1,500,000	4,600,000	30%	450,000		
6/16/2011	Hess	3,000,000	3,000,000	7,600,000	30%	900,000		
7/18/2011	Gulf/Golp	900,000	900,000	8,500,000	30%	270,000		
7/15/2011	Chevron	625,000	625,000	9,125,000	30%	187,500		
						2,716,500	8/30/2011	597,630
11/1/2012	Valero	6,000,000	6,000,000	15,125,000	30%	1,800,000	11/1/2012	396,000
11/14/2012	Shell/Sunoco	28,000,000	28,000,000	43,125,000	30%	8,400,000	11/27/2012	1,184,780
							Previously Paid	2,178,410
12/31/2012	Vitol	2,250,000	2,250,000	45,375,000	30%	675,000.00		
12/31/2012	Irving	20,000,000	20,000,000	65,375,000	30%	6,000,000.00		
12/31/2012	Conoco	10,500,000	10,500,000	75,875,000	30%	3,150,000.00		
2/15/2013	Shell/Sunoco	7,000,000	6,997,883	82,875,000	30%	2,099,364.90		
3/15/2013	Irving	11,527,024	11,505,916	94,402,024	30%	3,451,774.80		
6/15/2013	Irving	5,597,976	5,594,793	100,000,000	30%	1,678,437.90		
6/15/2013	Irving	20,510,120	20,500,325	120,510,120	15%	3,075,048.75		
				Total Fees In		33,046,126.35		
				22% of Total Fees In		7,270,147.80		
				Less: Previously Paid to Pawa		2,178,410.00		
				To Hold in SL Pawa Trust		5,091,737.80		

EXHIBIT B

THE RESOLUTION EXPERTS®

IN ARBITRATION BEFORE JAMS
BOSTON, MASSACHUSETTS

PAWA LAW GROUP, P.C.,	)	
Claimant	)	
v.	)	
SHER LEFF, LLP,	)	
Respondent	)	
	)	**JAMS Reference No. 1400014271**
SHER LEFF, LLP,	)	
Counter-Claimant	)	
v.	)	
PAWA LAW GROUP, P.C.,	)	
Counter-Respondent		

FINAL AWARD

Counsel for Claimant and Counter-Respondent, Pawa Law Group, P.C.:

Robert D. Cultice, Esq.
Christopher R. Looney, Esq.
Wilmer Hale LLP
60 State Street
Boston, MA 02109
Tel: (617) 526-6000
Fax: (617) 526-5000
robert.cultice@wilmerhale.com
christopher.looney@wilmerhale.com

71 SOUTH WACKER DRIVE SUITE 3090 CHICAGO, IL 60606 TEL 312-655-0555 FAX 312-655-0644

Counsel for Respondent and Counter-Claimant, Sher Leff, LLP:

Robert S. Chapman, Esq.
Jon-Jamison Hill, Esq.
Eisner Kahan Gorry Chapman Ross & Jaffe
9601 Wilshire Boulevard, Suite 700
Beverly Hills, CA 90210
Tel: (310) 855-3200
Fax: (310) 855-3201
rchapman@eisnerlaw.com
jhill@eisnerlaw.com

Allison D. Rhodes, Esq.
Calon Russell, Esq.
Hinshaw & Culbertson LLP
1000 SW Broadway, Suite 1950
Portland, OR 97205-3078
Tel: (503) 243-3243
Fax: (503) 243-3240
arhodes@hinshawlaw.com
crussell@hinshawlaw.com

Arbitrators:

Alexander L. Brainerd
JAMS
Two Embarcadero Center, Suite 1500
San Francisco, CA 94111
Tel: (415) 774-2626
Fax: (415) 982-5287
abrainerd@jamsadr.com

Eric E. Van Loon
JAMS
One Beacon Street, Suite 2210
Boston, MA 02108-3106
Tel: (617) 228-9112
Fax: (617) 228-0222
evanloon@jamsadr.com

Thomas Rakowski
JAMS
Thomas Rakowski P.C.
55 West Monroe Street
Suite 1700
Chicago, Illinois 60603
Tel: (312) 251-2263
Fax: (312) 878-0317
trakowski@jamsadr.com

Date, Time and Place of Arbitration:	**Wednesday, July 31 – Friday, August 2, 2013** **and** **Monday, August 5 – Wednesday, August 7, 2013** JAMS One Beacon Street Suite 2210 Boston, MA 02108-3106 Commencing at 9:00 a.m. eastern time
Primary Case Manager:	Jonathan Moss JAMS 71 South Wacker Drive Suite 3090 Chicago, Illinois 60606 Tel: (312) 655-9191 Fax: (312) 655-0644 jmoss@jamsadr.com
Case Managers:	John Carr JAMS One Beacon Street Suite 2210 Boston, MA 02108-3106 Tel: (617) 228-9128 Fax: (617) 228-0222 jcarr@jamsadr.com Jesse Dienner JAMS Two Embarcadero Center Suite 1500 San Francisco, CA 94111 Tel: (415) 774-2626 Fax: (415) 982-5287 jdienner@jamsadr.com

THE UNDERSIGNED ARBITRATORS (the "Panel"), having been designated in accordance with the "Agreement to Arbitrate", dated February 4, 2013, by and between Pawa Law Group, P.C., fka The Law Offices of Matthew F. Pawa, P.C. ("PLG") and Sher Leff LLP ("Sher Leff") (collectively, the "parties"); and PLG having filed its Demand for Arbitration dated February 6, 2013 and its Notice of Claims dated February 22, 2013; and Sher Leff having filed its Answer, Affirmative Defenses and Notice of Counter-Claim, dated March 11, 2013; and PLG having filed its Response to Counter-Claim and Statement of Affirmative Defenses dated March 22, 2013; and the parties having engaged in and having completed discovery; and this cause having proceeded to arbitration on July 31-August 2, 2013 and August 5-August 7, 2013; and the parties having offered documentary evidence in support of their respective positions, and having called witnesses, and having cross-examined opposing witnesses; and the parties having rested their respective cases, and having filed post-hearing submissions, and having argued their respective positions to the Panel by teleconference on September 12, 2013, and having filed post-argument letter briefs on September 23, 2013; and the Panel having issued an Interim Award on October 22, 2013; and Sher Leff having filed an objection to the Interim Award on October 24, 2013, and PLG having responded to said objection on October 25, 2013, and a teleconference hearing regarding said objection having been conducted on October 29, 2013; and PLG having filed a Corrected Application for Attorneys' Fees on November 8, 2013; and Sher Leff having filed a Motion to Withdraw Interim Award and Request for Hearing on November 13, 2013, and PLG having filed opposition to said motion on November 15, 2013; and Sher Leff having filed Opposition to PLG's Application for Attorneys' Fees on November 20, 2013, and PLG having filed its Reply Memorandum and supporting exhibits on November 27, 2013; and the Panel

having reviewed all of the foregoing filings and the submissions, allegations and proofs of the parties, Find, Conclude and AWARD as follows:

I.
INTRODUCTION AND PROCEDURAL STATEMENT

This dispute involves the apportionment of attorney fees between PLG and Sher Leff arising from their joint representation of the State of New Hampshire (the "State") in a groundwater contamination lawsuit brought by the State against numerous, major oil companies. All of the oil companies settled except ExxonMobil. The case was tried to verdict, and the jury awarded the State of New Hampshire $816,000,000. ExxonMobil's liability was apportioned to be $236,000,000 based upon its market share, and ExxonMobil is presently appealing that judgment in the New Hampshire Supreme Court. The case generated millions of dollars in contingent attorney fees to date, with more anticipated if all or part of the ExxonMobil verdict is affirmed on appeal.

Following the parties' failure to agree on how to split these present and future fees, they entered into an Agreement to Arbitrate, and PLG filed the instant Demand for Arbitration. Sher Leff has answered, filed Affirmative Defenses and a Counter-Claim; PLG has answered the Count-Claim and has filed Affirmative Defenses thereto. The Panel has denied PLG's motion to add a claim for breach of fiduciary duty, and has granted Sher Leff's motion to strike PLG's claim for violation of Massachusetts General Laws, c. 93 A §11. Sher Leff's motion to strike certain settlement conversations between Alexander Leff ("Leff") and Mathew Pawa ("Pawa") was taken with the case and is now denied, the Panel finding that the privilege has been waived by both parties' introduction of and reliance upon such evidence.

The cause proceeded to arbitration hearing, and the parties rested their respective cases on August 7, 2013. They agreed to submit post-hearing submissions and responses. An argument teleconference was conducted on September 12, 2013, and the parties agreed to file post-argument letter briefs citing additional case law. The Panel received these submissions on September 23, 2013.

An Interim Award was issued on October 22, 2013. As part of that Interim Award, the panel found that PLG is entitled to its attorney fees for having to prosecute its arbitration claims and defend against Sher Leff's counter-claim. The Interim Award set a briefing schedule for PLG to file its application for attorney fees and supporting documentation, for Sher Leff to respond to said application and for PLG to reply to Sher Leff's response. Thus, the Interim Award is interlocutory in nature, pending receipt of the parties' respective submissions relating to PLG's fee application.

On October 24, 2013, Sher Leff emailed an objection to the Interim Award stating that any delivery of the Interim Award to the State as directed by Sections III (G), IV (G) and V (G) was a violation of JAMS Rule 26 concerning confidentiality. PLG responded to Sher Leff's objection on October 25, 2013. A teleconference hearing was conducted with the parties and counsel on October 29, 2013, and Sher Leff's objection was taken under advisement.

On November 8, 2013, PLG filed its Corrected Application for Attorneys' Fees. Prior to responding to PLG's fee application (on October 13, 2013), Sher Leff submitted a Motion to Withdraw Interim Award and Request for Hearing, and PLG responded to said Motion on November 15, 2013. Sher Leff then, on November 20, 2013, filed its Opposition to PLG's Corrected Application for Attorneys' Fees, and PLG replied to said response on November 27, 2013. The arbitration hearing closed on November 27, 2013.

The Panel now issues this Final Award which determines the amount of PLG's attorney fees, addresses the post-Interim Award filings and supersedes the interlocutory Interim Award issued on October 22, 2013.

Burden of Proof, Standard of Proof and Governing Law

Although the terms of any oral side agreement involve questions of fact, this arbitration largely involves questions of law and mixed questions of law and fact. The burden of proof is upon the claimants, and regarding three claims (oral side agreement, attorney fees and arbitration costs) both parties are claimants; the standard of proof is preponderance of the evidence; and the governing law is the Federal Arbitration Act, the JAMS Comprehensive Rules and Procedures and the substantive law of the State of New Hampshire.[1]

II.
BACKGROUND

This hearing involved approximately 600 exhibits and testimony from 15 witnesses over a period of six days. The purpose here is not to recount that evidence. Rather, what follows is a summary, focusing upon the inter-relationships between the parties leading up to the filing of their respective claims. Additional facts are also contained in the analysis section. That some facts recited herein differ from the parties' positions is a result of determinations involving credibility, relevance and the weighing of evidence.

In early 2003, Pawa and representatives of the New Hampshire Attorney General's Office began discussing a potential lawsuit against a number of major oil companies for damages stemming from methyl tertiary butyl ether ("MTBE") contamination to the State's groundwater.

[1] The parties have been advised in prior case management orders that the governing law is that of the State of New Hampshire. The parties, nevertheless, have cited to out-of-state jurisdictions. This issue was brought up during the post-hearing oral argument teleconference, and both parties advised the Panel that it could consider out-of-state law as persuasive in the absence of New Hampshire law on point.

MTBE is a gasoline additive which had leaked from underground storage tanks into wells and groundwater. Pawa had investigated the issue, and confirmed that the State was facing a serious MTBE contamination problem. He also learned that the United States Congress was considering legislation that, if enacted prior to the State filing suit, could ban the State's claim. Pawa recommended that the State commence litigation promptly and authorize him to find a law firm to act as co-counsel with PLG. New Hampshire's Attorney General, Peter Heed ("Heed"), authorized Pawa to find such a firm, and in May, 2003, the State retained PLG, on an hourly basis to further investigate the State's claims and to conduct a nationwide search of law firms to collaborate with PLG in representing the State in litigation against the responsible parties.

Pawa interviewed several experienced environmental litigators, including Victor Sher ("Sher"), who was a founding partner of the San Francisco-based firm, Sher Leff, LLP. Sher is an experienced trial attorney, who had both litigated and recently settled, major MTBE cases. Pawa was aware of Sher's involvement in past MTBE cases, and he also knew of him by reputation as the past president of the Sierra Club Legal Defense Fund. According to Pawa, he told Sher that he was a sole practitioner without the financial resources or personnel to handle a case of this magnitude, and that if retained as PLG's co-counsel, Sher Leff must agree to advance all costs without any contribution by PLG. Pawa also requested that Sher Leff pay the salary of a PLG associate to work on the case. Pawa testified that Sher agreed to these terms.

Sher introduced Pawa to his law partner, Alexander Leff ("Leff"). Although not a litigator himself, Leff was heavily invested in contingent fee litigation. Sher told Pawa that Leff is a wealthy man who had more than sufficient funds to finance the State's case. Again, according to Pawa, Sher and Leff both assured him that if the State retained Sher Leff as PLG's

co-counsel, it would advance all costs without requiring any contribution from PLG, and it would also pay for a PLG associate to work on the case.

Pawa arranged for a meeting with Heed, Sher and himself in late May of 2003. Following a power point presentation at the New Hampshire Attorney General's office, Pawa recommended to Heed that the State retain Sher Leff as PLG's co-counsel. Heed accepted Pawa's recommendation, agreed to retain PLG and Sher Leff to represent the State, and asked both firms to submit a joint, written proposal for legal services on a contingent fee basis.

PLG and Sher Leff first discussed the State's proposal between their respective firms. They agreed upon terms, and submitted a draft to Heed. The draft included a description of the legal services to be provided and the contingent fee terms under which the firms would be paid, including how PLG and Sher Leff proposed to divide any contingency fee between themselves. Pawa and Sher Leff negotiated their fee division back and forth and ultimately agreed on 78% to Sher Leff and 22% to PLG.

Following a couple of weeks of negotiating over terms, the State, PLG and Sher Leff entered into the Legal Services Agreement, which was executed by the State on June 24, 2003 (the "2003 LSA"). The LSA provided that the amount PLG and Sher Leff would receive as attorney fees for legal services would consist of a contingency fee from any recovery, pursuant to a fee schedule with percentages ranging from 7.5% to 30%, depending upon the amounts recovered. Regarding the fee split between PLG and Sher Leff, paragraph 7(b) of the LSA provides:

> Client understands that there will be a division of contingent fees between Sher Leff, LLP and the Law Offices of Mathew F. Pawa, P.C. The division of contingent fees will be as follows: seventy-eight percent (78%) to Sher & Leff, and twenty-two percent (22%) to Law Offices of Mathew F. Pawa, P.C.

Paragraph 9(a) and (b) of the LSA provides that PLG and Sher Leff are obligated to advance all costs incurred in connection with their representation of the State; it further provides for payment of these costs from any cash recovery, whether by settlement or judgment. The LSA also provides that reimbursement for any unreimbursed costs incurred by either firm would occur after distribution of fees to PLG and Sher Leff and before any distribution to the State.

On October 30, 2003, the State initiated its case, *State of New Hampshire v. Hess, et al.* (No. 03-C-550 (the "*Hess* Case")), by filing a complaint in the Merrimack County Superior Court against 20+ oil company defendants. The State alleged unlawful contamination from MTBE contained in the gasoline manufactured and distributed by the defendants.

Prior to the execution of the LSA and the filing of the *Hess* Case, Pawa and Leff had discussed a proposed side agreement between their respective firms to govern issues not included in the LSA. On June 25, 2003, the day after Heed signed the 2003 LSA on behalf of the State, Leff emailed Pawa a draft document entitled Agreement for Joint Representation (the "JRA"). The terms of the proposed JRA required PLG to contribute "time, efforts, risks and resources" proportionate to its 22% share in order to receive its share. The proposed JRA also permitted Sher Leff to charge interest on all case costs advanced by Sher Leff, as well as on any advances made to PLG to pay for the PLG associate, and to deduct these sums from PLG's 22% share. The payments for a PLG associate were proposed to be defined as "Pawa Loans", and Sher Leff had the right to deduct these loans plus interest from PLG's 22% share.

Regarding the priority of the distribution of funds to PLG, the JRA proposed the following:

(a) To Sher Leff in the amount of outstanding principal on "Pawa Loans";

(b) To Sher Leff in the amount of interest on "Pawa Loans" at the rate of 2% per annum over the Prime Rate compounded monthly from the date of each advance;

(c) To Sher Leff to be held to secure PLG's repayment obligations pursuant to ¶¶ 9-10 and to fund any future "Pawa Loans"; and,

(d) Thereafter, to PLG, but only after the litigation is completed and any disputes with the State over fees or costs are resolved.

On June 26, 2003, the day after receiving the JRA, Pawa sent an email to Sher and Leff advising them that the proposed JRA "is too complicated and lengthy (and contains items we have not discussed and that would not be agreeable on my end)." Later that same day, after Pawa and Leff had discussed the proposed JRA, Pawa advised Sher by email that:

> Leff and I have just spoken regarding the proposed written agreement between our firms. As I am sure Leff has told you, we did not get very far because we have diametrically opposite views with respect to how the written agreement should be handled in general.

Pawa then made a counter-proposal to Sher Leff in the form of a draft letter agreement. PLG's counter-proposal confirmed the 78%/22% fee split as set forth in the LSA (with no mention of proportionality), and that Sher Leff would advance all case costs. Although this counter-proposal did not include the payment of interest on case costs as proposed by Sher Leff, it did propose to treat Sher Leff's payments for a PLG associate as non-recourse, no-interest loans. Pawa claims that Sher Leff never responded in writing to PLG's counter-proposal; instead, Leff continued to insist that PLG agree to the terms of Sher Leff's proposed JRA. Pawa testified that he continued to reject Sher Leff's proposed terms, and that he and Leff came to an impasse - "Alex wanted it his way. I wanted it my way." Although Pawa never executed the proposed JRA, Sher Leff claims that Pawa orally agreed to many of its terms.

After the *Hess* Case was filed in September 2003, it was promptly removed to Federal Court and assigned to the Multi-District Litigation Panel in Washington D.C. From there it was reassigned to the Southern District of New York. Subsequently, in 2007 the U.S. Court of Appeals for the Second Circuit remanded the case back to the New Hampshire State Court. From

2007 through 2012, there was considerable motion practice and several interlocutory appeals, and many of the defendants settled.

On June 25, 2010, at the request of the Attorney General, the State, PLG and Sher Leff entered into a second Legal Services Agreement (the "2010 LSA"). By its terms, the 2010 LSA superseded and replaced the 2003 LSA, governed all services provided by PLG and Sher Leff prior to and after its effective date, and included an integration clause where the parties acknowledged that the 2010 LSA contained their entire agreement and that no other agreement, statement or promise was binding on them. The terms of the 2010 LSA are largely the same as the 2003 LSA, including the legal services to be provided by PLG and Sher Leff and the calculations of the contingency fees to be paid to them. The agreement also contains the same 78%/22% fee split that was contained in the 2003 LSA.

The primary difference between the respective LSAs relates to the payment of attorney fees. In contrast to the 2003 LSA, where the State was to receive all cash recoveries and pay the attorney fees, the 2010 LSA requires cash recoveries to be directed in the first instance to the attorneys and held by them in an interest bearing escrow account (the "Revolving Fund"). It further requires that the monies in the Revolving Fund be released first, to pay any fees that the State owes to PLG and Sher Leff up to the date of each recovery; second, to pay unreimbursed costs up to the date of each recovery; and third, the remainder (if any) to be retained in the Revolving Fund or distributed to the State.

In late 2012, there were discussions between Pawa and Leff regarding the terms of Sher Leff's proposed side agreement. According to Pawa, Leff was pressuring him to accept terms that Pawa did not agree to. At the same time Pawa complained to Leff about PLG not receiving its share of attorney fees from the settlement proceeds. On January 14, 2013, just before the *Hess*

trial commenced, Leff and Pawa met with Associate New Hampshire Attorneys General Anne Edwards and Richard Head regarding PLG's complaint about not receiving its share of attorney fees from the settlement proceeds. At the meeting, Leff produced the unexecuted 2003 JRA and said that Pawa had orally agreed to its terms. When asked by Head if he could review the document, Leff pulled it back, refusing Head's request. Pawa denied any such oral agreement, and Head recommended that Pawa and Sher Leff arbitrate their respective rights to the contingent fees. On February 4, 2013, the parties executed the Agreement to Arbitrate that is the basis for this arbitration.

Post -Interim Award Filings

The Interim Award awarded PLG its attorney fees for having to prosecute its arbitration claim and to defend against Sher Leff's counterclaim. It also included a briefing schedule for filings relating to this issue. In addition to their respective filings relating to PLG's Application for Attorneys' Fees, the parties have submitted the following: Sher Leff's Objection to the Interim Award raising confidentiality concerns and PLG's response to said motion; PLG's request that the Panel issue a partial final award; and Sher Leff's Motion to Withdraw Interim Award and Request for Hearing, and PLG's opposition to said Motion. The Panel has carefully reviewed these filings and excepting Sher Leff's objection raising confidentiality concerns (addressed in Section III G *infra)* the remaining motion, objections and requests are denied for the reasons set forth in this Final Award.

III.
ANALYSIS

Some of the positions asserted by the parties have shifted somewhat from that which was alleged in their initial pleadings. Following a review of the pleadings, pre-hearing briefs and

post-hearing briefs, the Panel believes that the following reflect the central issues in this arbitration:

- What are the terms of the side agreement that Sher Leff and Pawa formed to govern aspects of their co-counsel relationship that remained unresolved by the LSAs?
- The effects, if any, of the 2003 and 2008 versions of the New Hampshire Rules of Professional Conduct upon PLG's claim for a 22% share of the attorney fees.
- Sher Leff's and PLG's requests for attorneys' fees.
- PLG's request for prejudgment interest.
- Sher Leff's and PLG's requests for arbitration costs.
- PLG's New Hampshire Consumer Protection Act claim.
- PLG's request that it replace Sher Leff to control the Revolving Fund.
- PLG's request to equitably attach 100% of all contingency fees relating to the ExxonMobil verdict, judgment or settlement.

A. THE ORAL SIDE AGREEMENT.

Sher Leff contends that the fee split was only one aspect of the joint representation upon which Sher Leff and PLG agreed, arguing that, "while the parties never signed a written contract reflecting their full agreement, Mr. Pawa orally confirmed the terms on a number of occasions." According to Sher Leff, the terms of this oral joint representation agreement closely track the terms of the written JRA that Pawa refused to sign. These terms include, among others, that any fee split to PLG must be proportionate to its services, responsibilities and risks; that Sher Leff would receive interest on advanced costs; and that the funds Sher Leff advanced for the PLG associate were actually interest bearing loans. According to PLG, however, there was never any discussion about proportionality or interest other than the JRA, which Pawa rejected. In fact, after Pawa's written rejection of the proposed JRA in 2003, the next time Leff mentioned

proportionality was on January 14, 2013 at the New Hampshire Attorney General's office – almost ten years after Pawa rejected it. If the only evidence in this case were Leff's claim of an oral joint representation agreement and Pawa's denials, the case might be somewhat more difficult to decide.

But this oral evidence is not the only evidence. There is much more, and it all weighs heavily against Sher Leff and in favor of PLG. First, there are the email exchanges documenting Pawa's rejection of the JRA and his counter offer. And other than the immediate period shortly after Pawa's rejection of the JRA, there is no documentation confirming the existence of an oral JRA.

Next, there is the conduct of the parties. "There is no surer way to find out what the parties meant, then to see what they had done." *Bogosian v. Fine*, 99 N.H. 340, 342 (1955). "[T]he meeting of the minds or concurrence of the parties is judged by what the parties may say or do, by their overt acts, by what they give each other to understand and not by any undisclosed meaning or intention which one of the parties might have had." *Maloney v. Boston Development Corp. et al.,* 98 N.H. 78, 81 (1953). Here, starting in June 2010 and continuing through November 2012 eight settlements occurred – Flint Hills, Giant/Western, BP, El Paso, Hess, Gulf/Golp, Chevron and Valero. In each instance, Sher Leff's notifications to the State and PLG stated that "[i]n accordance with the agreed upon terms as stated in the [LSA]". Every payment was 78% to Sher Leff and 22% to Pawa in accordance with the 2010 LSA. None of the notices contained any mention of the oral joint representation agreement, proportionality, interest or that the payments for the PLG associate were loans. Shortly thereafter, when PLG was paid for Shell/Sunoco settlement, the payment again was 22% to PLG. This time, however, Sher Leff

deducted $663,218 which it stated was to pay for the PLG associate. Even then, Sher Leff made no mention of proportionality or interest.

The Panel judges Leff to be a precise and careful lawyer. The record contains many detailed lists, spreadsheets and memorandums regarding the *Hess* case and other cases. This precise and careful nature is inconsistent with Sher Leff's failure to keep accurate attorney time records in what it now contends is a proportional fee case. It is also difficult to understand why Leff would wait almost ten years to remind Pawa and to inform the State of the terms Pawa supposedly agreed to in 2003. Nor in the usual course of events would a term as important as proportionality totally escape documentation. This evidence weighs heavily in favor of PLG's version of the agreement. "When an agreement involves repeated occasions for performance by either party with knowledge of the nature of the performance and the opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is given great weight in the interpretation of the agreement." See *Restatement (Second) of Contracts* §202(4) (1981)

Even stronger evidence of the parties' agreement are Sher Leff's own documents and Leff's own words. On August 5, 2011, Leff emailed Pawa stating:

> Matt,
>
> See calc below. I just wanted to make sure that you understand where things stand financially with NH. Vic and I have $1.8 million left over from the NH settlements after reimbursement of our $6.6 million out of pockets and our payment to you of your share of the fees. $1.8 million is a fraction of what *I have paid out thus far 8 years of NH overhead (lawyers, paralegals, office space, Ben, etc.).* Plus I continue to lay out more money every day. Thus SL is still way in the hole on NH. You now have $600K from NH free and clear. *That was our deal and you are entitled to every penny.* I am delighted to do business with you. But I just wanted to point out where you stand vis a vis SL. I am hopeful that SL will catch up to you someday!
>
> Alex

(emphasis added)

In another email on March 20, 2012, Jessica Grant (who Sher Leff hired to replace Victor Sher as lead counsel following Sher's departure from the firm) sent an email to Bora Ozturk, Sher Leff's then CFO, inquiring about payments by Sher Leff to PLG:

> When we were talking the other day about staffing costs, I forgot to mention an issue that seems strange to me + I am not sure if I have brought it up to you before. As you may (or may not) know, our firm pays the salary of Ben Krass, who is the associate who works on the NH case from Matt Pawa's firm. In addition, we used to pay 50% of Mark Reiley's salary, another Pawa associate (who quit last year). The money we pay for these Pawa associates is NOT recovered from the client. For some inexplicable reason, I do not believe we have ever asked Pawa, out of the 22% attorneys' fees he receives, to reimburse us the amount of the compensation we have paid for his associates. *To me, it seems odd that Pawa would get millions of dollars and not have to reimburse us for paying the salaries of his associates (which likely already totals over $500K).*

(emphasis added)

Ozturk forwarded Grant's email to Leff adding: "She brings up a good point. What do we do about this? Count this overhead as part of the percentage we will pay him?" Leff responded unequivocally: *"That was the deal that Vic and I struck with Pawa. We need to renegotiate with him."* (emphasis added). Leff's repeated references about needing to renegotiate the side agreement are at best inconsistent with Sher Leff's position that PLG had agreed upon those terms years earlier. And Leff's admission that he and Vic agreed to pay for a PLG associate is unambiguous.

In addition, over the next several months, Ozturk created multiple spread sheets and other documents comparing Leff's personal profits to PLG's fees. The spreadsheets repeatedly acknowledge PLG's entitlement to 22% of the contingency fees. There is no mention in any of these internal documents about a joint representation agreement that imposes a proportionality condition on PLG's 22% share or any of the other conditions that Sher Leff now claims were in existence at the time.

Finally and importantly, any side agreement urged by Sher Leff could not alter the unambiguous 78%/22% fee split set forth in the 2010 LSA, which "supersedes the Legal Services Agreement dated June, 2003", "appl[ies] to services provided by attorney on this matter before its effective date" and includes an integration clause stating that the LSA "contains the entire agreement of the parties". Such an integrated agreement discharges all prior agreements within its scope whether consistent or inconsistent with the terms of the integrated agreement. See *Restatement (Second) of Contracts* §213(2)

The documentary evidence in this record and the conduct of the parties, including Leff's own words describing the nature of the side agreement between Sher Leff and Pawa are strong evidence that Sher Leff cannot overcome. Further, the integration clause contained in the LSA bars any prior oral agreement regarding proportionality. For all of the above reasons, the Panel finds that the terms of the side agreement are those testified to by Pawa and reflected by the conduct of the parties: that there was no oral modification adding a proportionality condition to the unambiguous 78%/22% fee split stated in the LSAs; that Sher Leff would advance all costs, without interest, and without any contribution from PLG; that Sher Leff would pay for a PLG associate, and that such payments did not constitute a loan.

B. THE NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT.

Enacted in 2003, Rule 1.5(f) of the New Hampshire Rules of Professional Conduct was changed in 2008. The 2003 version provides:

> (f) A division of fee between lawyers who are not in the same firm may be made only if:
>
> (1) the client consents to employment of the other lawyer after a full disclosure that a division of fees will be made;
>
> (2) the division is made in reasonable proportion to the services performed or responsibility or risks assumed by each; and

(3) the total fee of the lawyers is reasonable.

The 2008 version of the same rule provides:

(f) a division of fee between lawyers who are not in the same firm may be made only if:

(1) the division is made either:

a. in reasonable proportion to the services performed or responsibility or risks assumed be each, or

b. based on an agreement with the referring lawyer;

(2) in either case above, the client agrees in a writing signed by the client to the division of fees;

(3) In either case, the total fee charged by all lawyers is not increased by the division of fees and is reasonable.

An important distinction between the two versions is that under the 2003 rule, any fee split must be proportional to services or risks or responsibility, while the 2008 Rule additionally allows for a fee based simply on an agreement with the referring lawyer. Thus, the latter version of the Rule, while retaining the proportionality concept also allows for what the commentators refer to as a naked referral fee.

According to Sher Leff, because PLG is not a referring lawyer pursuant to (f)(1)b of the 2008 Rule, he is subject to the proportionality requirement no matter which version of the rule (2003 or 2008) applies. Sher Leff also contends that PLG did not provide 22% of the services, or responsibility or risks. Thus, PLG is not entitled to a 22% share of the fee. Sher Leff also contends that because the 2003 rule required proportionality, and the parties never discussed changing this requirement before they executed the 2010 LSA, the 2008 naked fee provision never became part of the 2010 LSA. Finally, because Sher Leff did the vast majority of the work (it claims 97%), to allow PLG to receive a 22% share for his 3% of the work would yield PLG an

hourly rate of $2,700 compared to Sher Leff's $250 per hour. As such, PLG's requested 22% share would be unreasonable because it was violative of Rule 1.5(a).

PLG, on the other hand, argues that the 2010 LSA, not the 2003 LSA, is applicable; that Sher Leff cannot utilize ethical rules to dishonor the fee sharing agreement; that courts considering the issue have refused to assess the relative contributions of the attorneys under Rule 1.5, and even if the Panel were to assess the relative contributions, the responsibilities assumed and the services provided by PLG were more than sufficient to satisfy the rule; that because the 2008 Rule applies and that PLG is a referring lawyer, the proportionality argument is not applicable; and that Pawa's 22% share of the attorney fees is not unreasonable.

The Panel has considered evidence, the parties submissions and cited authorities, and for the following reasons finds that the 2010 LSA replaced and superseded the 2003 LSA; that Sher Leff may not use the New Hampshire Rules of Professional Conduct to avoid its contractual obligations; that because the 2008 version of the Rule applies and PLG is a referring lawyer, it is not bound to a proportionality requirement, and that even assuming that PLG is subject to a proportionality requirement, the responsibilities it undertook and the services it rendered were sufficient to satisfy the requirement; and that PLG's 22% of the attorney fees is not unreasonable.

1. **Utilization of Ethical Rules to Avoid the LSAs.**

PLG contends that Sher Leff cannot utilize ethical rules to avoid its contractual obligations under the LSAs. PLG points out that the New Hampshire Rules of Professional Conduct specifically provide that the Rules are "not designed to be the basis for civil liability" and that "[t]he purpose of the Rules can be subverted when the Rules are invoked by opposing parties as procedural weapons". *New Hampshire Rules of Professional Conduct*, *Statement of*

Purpose. PLG further states that several courts that have considered this issue have found that fee sharing agreements cannot be voided on ethical grounds. Sher Leff's response is short, and rather than risk misinterpreting its position, the argument is set forth below:

> That proposition has nothing to do with this case, and why PLG cites to it is a mystery. However, the fact that PLG does not cite the final sentence of the same paragraph is illustrative of PLG's desperation: the final sentence states "Nevertheless, as the Rules establish a standard of conduct for lawyers, a lawyer's violation of the Rule may be evidence of breach of the applicable standard of conduct."

(Respondent, Sher Leff LLP's Response Post-Arbitration Brief ¶4)

Sher Leff does not explain why the Statement of Purpose of the very Rule it relies upon or cases interpreting that rule have "nothing to do with this case". And, the fact that the Rules establish a standard of conduct for lawyers and are evidence of a breach of the standard of conduct misses the point. The issue here is not whether PLG violated an ethical Rule. Rather, the issue is whether Sher Leff can use that rule violation as a basis to avoid its contractual obligations.

The only New Hampshire case cited in the parties' initial post-hearing briefs is *Kalled v. Albee*, 142 N.H. 747 (1998) where a disbarred attorney sought to enforce a fee sharing agreement with his associate (Albee) that was never disclosed to the client. The trial court held that the attorney could not enforce the agreement, given that the attorney had been suspended prior to the entry of judgment in that case. The Supreme Court reversed, finding that the fee sharing agreement was void on public policy grounds due to the failure to obtain the client's informed consent to the fee split. However, because Albee did not dispute Kalled's *quantum meruit* claim, the court remanded the case for the trial court to determine Kalled's actual hours worked, prior to his disbarment. The court did state, however, that while "disciplinary rules may be used to determine whether a conduct violates public policy" (voidness), "[t]he Rules are not designed to provide a private cause of action. See N.H.R PROF. CONDUCT." *Kalled v. Albee*, 142 N.H. at

750. Here, Sher Leff does not contend the fee agreement is void. Nor could it make such an assertion, given that it has accepted 78% of the fee. See *Downs v. Knights of Columbus,* 80 A. 227 (N.H. 1911) (accepting benefits of a contract constitutes waiver of voidness defense). Other than stating that the Rules do not provide for a private cause of action, *Kalled* is of not much help here.

Other courts, however, have directly addressed the issue. In *Freeman v. Mayer*, 95 F. 3d 569 (7th Cir. 1996), the court affirmed summary judgment in favor of a lawyer who sought to enforce a 50%/50% fee sharing agreement against another lawyer who argued that a lack of "proportionate work" under the Indiana ethical rule barred such enforcement. Although the court assumed for purposes of argument that the division of work was not proportionate, it nevertheless ruled that the defending lawyer had no standing to raise a defense of this nature to avoid his contractual obligation, regardless of any disparity in the work performed by such firm. The court found the preamble to the Indiana Rules of Professional Conduct to be instructive:

> Violation of a rule should not give rise to a cause of action, nor should it create any presumption that a legal duty has been breached. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability, but reference to these rules as evidence of applicable standard of care is not prohibited. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that the rule is a just basis for a [lawyer's] self-assessment or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Ind. Rules of Prof. Conduct, Preamble, Scope.

Freeman v. Mayer, 95 F. 3d at 575.

Although the *Freeman v. Mayer* court analyzed the Indiana Rules of Professional Conduct, we believe that because of the similarity between the Indiana and New Hampshire Rules of Professional Conduct, a New Hampshire Court, analyzing the New Hampshire Rules of Professional Conduct, would reach the same result. We also find the following notation by the

Court to be somewhat analogous to the instant case; "Mayer, it appears simply had second thoughts when the case came out favorably and tried to improve the terms of his arrangement with Freeman *expost*". *Freeman v. Mayer*, 95 F. 3d at 576.

Similarly in a New York case, *Samuel v. Druckman & Sinel, LLP*, the court ruled that:

> an attorney who is bound by the same Code of Professional Responsibility, cannot be heard to argue that the fee-sharing agreement and the obligations thereunder must be voided on ethical grounds, when he freely agreed to be bound by and received the benefit of the same agreement, particularly where, as here, there is no indication that the client was in any way deceived or mislead.

Samuel V. Druckman & Sinel, LLP, 906 NE 2d 1042, 1045 (N.Y. 2009)

In its supplemental, post-hearing letter brief, Sher Leff cites two additional cases in support of its position that it may use the New Hampshire Rules of Professional Conduct to avoid its contractual obligations: *Dragelevich v. Kohn, Milstein, Cohen & Hausfeld*, 755 F.Supp. 1989 (N.D. Ohio 1990) and *McNeary v. American Cyanamide Co.*, 105 Wash.2d 136 (1986). The Panel is not persuaded by these cases. Instead, we find the following reasoning articulated in *Nickerson v. Holloway*, 220 Ga.App. 553 (1996) to be instructive:

> we agree with those courts which have held that as long as both attorneys have done some work on the case beyond signing and referring the client, the courts will not engage in the cumbersome task of evaluating after the fact the relative contributions made by the bickering attorneys. See, e.g., *Stissi v. Interstate & Ocean Transport Co.*, 814 F.2d 848 (2d Cir.1987) (applying New York law); *Schniederjon v. Krupa*, 130 Ill.App.3d 656, 85 Ill.Dec. 845, 474 N.E.2d 805 (1985).

Regarding the cases relied upon in Sher Leff's letter brief, the *Nickerson* court stated:

> We recognize that some other jurisdictions interepret the rule to require the fee division to bear at least a substantial relationship to division of work and responsibility. See, e.g., *Dragelevich v. Kohn, Milstein, Cohen & Hausfeld*, 755 F.Supp. 189 (N.D. Ohio 1990) (applying Ohio law); *McNeary v. American Cyanamid Co.*, 105 Wash.2d 136, 712 P.2d 845 (1986). *Because this approach is not necessary to serve the purpose of the Rule and because of the practical difficulties inherent in implementing it, however, we find these cases unpersuasive.*

(emphasis added). Nickerson vs. Holloway, 220 Ga.App. at 553.

In the absence of New Hampshire law on this issue, we believe a New Hampshire court would follow the reasoning articulated in *Nickerson* because the New Hampshire Rules of Professional Conduct provide that the rules are "not designed to be the basis of civil liability" and that "the purpose of the rule can be subverted when the rules are invoked by opposing parties as procedural weapons." *New Hampshire Rules of Professional Conduct, Statement of Purpose.*

The Panel concludes that the New Hampshire Rules of Professional Conduct would be subverted if Sher Leff is allowed to use them as procedural weapons to escape from its contractual obligations. The experts for both parties in this case agree that the ethical rules exist for the protection of the client. The client here has never once claimed that the fee division violates any part of Rule 1.5(f), or that it was deceived in any way regarding the split of fees between PLG and Sher Leff. In fact, the client interceded on PLG's behalf in December, 2012 by sending a letter to Sher Leff reminding it of the 78%/22% fee division in the LSA.

For all of the above reasons, we find that Sher Leff may not utilize the New Hampshire Rules of Professional Conduct to avoid its obligation to share the attorney fees in this case on a 78%/22% basis, as required by the LSAs. This finding is dispositive of all of the issues involving the New Hampshire Rules of Professional Conduct. In the spirit of completeness, however, we address two other issues which, like the instant issue, would also dispose of Sher Leff's New Hampshire Code of Professional Conduct arguments.

2. <u>Effect of the 2008 Amendment</u>.

As previously stated, Rule 1.5 was amended, effective January 1, 2008 to allow fee sharing "based upon an agreement with the "referring lawyer" (Rule 1.5(f)1(b)), "regardless of the work performed or responsibility assumed" (ETHICS COMMITTEE COMMENT). When

the parties executed the 2010 LSA, this 2008 Rule was in effect. Like the 2003 LSA, the 2010 LSA provides "[t]his agreement is subject to the New Hampshire Rules of Professional Conduct and Applicable State Law (including, but not limited to, RSA 508:4-e), and shall be interpreted in accordance with such rules and law." In turn, RSA 508P:4-e provides expressly that contingency fee agreements "shall be governed by...Rule 1.5 *as it may be amended by the supreme court from time to time".* (emphasis added). Thus, the parties clearly and unambiguously contracted at the outset to make their fee agreement subject to any future changes to Rule 1.5 and to interpret it accordingly. Finally, the 2010 LSA, which was executed after the effective date of amended Rule 1.5, expressly provides that it supersedes "the Legal Services Agreement dated June, 2003". It also states that "[o]nce effective, this Agreement will, however, apply to services provided by attorney on this matter before its effective date." Thus, it is clear that Sher Leff and PLG intended to make the 2010 LSA the operative, superseding contract and to make it retroactive to work already performed. Given that all distributions occurred subsequent to the execution of the 2010 LSA, PLG is entitled to the benefit provided in Rule 1.5(f)(1)(b).

We have reviewed Sher Leff's opposition and case law regarding the effect of the 2008 amendment, and we find it to be unpersuasive. The cases Sher Leff relies upon, *Walker v. Percy,* 142 N.H. 345 (1997); *Guardaldi v. Trans-Lease Group,* 136 N.H. 457 (1992); *Behrens v. S.P. Construction Co., Inc.,* 153 N.H. 498 (2006); *Chisholm v. Otultima Nashua Industrial Corp.*, 150 N.H. 141 (2003); *Maloney v. Boston Development Corp.*, 121 N.H. 722 (1981); and *Mills v. Nashua Federal Savings and Loans Ass'n*, 121 N.H. 722 (1981), all involve the unrelated issues of contract formation, offer and acceptance, meeting of the minds and oral modifications to written agreements. We have previously addressed these issues in Section III A. *supra.* The

issues here involve two separate, independent and unambiguous written agreements, one replacing the other. The 2003 LSA ceased to have any effect once it was replaced and superseded by the 2010 LSA. Moreover, because the 2010 LSA contains an unambiguous integration clause, the document must be interpreted from within its four corners without reference to any prior agreement. Sher Leff's unsupported theory that would require the parties to discuss or negotiate before the 2010 LSA could be subject to the 2008 Rules of Professional Conduct would stand the law of the contracts on its head. When the 2010 LSA was executed, it was subject to the 2008 Rules of Professional Conduct by both operation of law and pursuant to the express language of the 2010 LSA in the same manner that the 2003 LSA was subject to the Rules of Professional Conduct in effect at the time it was executed. There is no legal basis for Sher Leff's position.

Sher Leff also contends that PLG was never a referring lawyer because it was also hired in a separate agreement to investigate the case and "any referral was compensated under that agreement, not under the 2003 LSA or subsequent 2010 LSA"; that PLG could not refer the *Hess* case because it had never been hired to prosecute the claim; and that even if he did initially refer the case, the referral does not carry over to the 2010 LSA. Sher Leff neither cites authority in support of its proposition, nor does it provide any cogent argument in support. Thus, all we are left with are the facts. And the facts are these:

In early 2003, Pawa began investigating a potential lawsuit against major oil companies stemming from MTBE contamination to the State's groundwater. He discussed this with Associate Attorney General Maureen Smith, of the office's environmental division who was also concerned about the MTBE issue. In April 2003, Pawa provided a comprehensive memorandum to the Attorney General's Office, outlining the problem and advising the State of its options. He

next met with Attorney General Peter Heed. Heed testified that he found Pawa to be "very positive-very good". "He seemed very sharp and knew the lay of the land in what was going on as far as MTBE and past litigation." He said Pawa was aware of the legal issues, the pitfalls and the challenges that the State was going to face. Heed said that he then met with Maureen Smith and other members of his staff in the environmental unit, and they made a decision to go forward and employ Pawa on an hourly basis to help the State investigate and pursue a claim.

Heed said it was apparent from the beginning that Pawa, a sole practitioner, could not handle a case requiring such huge resources by himself, and part of Pawa's charge was to research and find firms with the experience and financial capability to bring such a complex case to trial.

Sometime in mid-May, 2003, Pawa arranged for Sher and himself to meet with Heed. Prior to that meeting, Heed had never heard of Sher Leff, Alexander Leff or Victor Sher. During that meeting, Sher conducted a Power Point presentation about Sher Leff. Heed testified that "but for Pawa's recommendation, he would not have hired Sher Leff". Heed said that Pawa gave us a high level of confidence in his knowledge. On cross-examination, Heed testified, "I would not have been comfortable with just one [firm] or the other."

Until this arbitration, Sher Leff never questioned that PLG was the referring lawyer. Pawa testified how he referred the case to Sher Leff. Heed testified that he had never heard of Sher Leff, Victor Sher or Alexander Leff "before Matt introduced us". In the June 25, 2003 email where Leff attached his proposed JRA, Leff wrote "We are grateful to you for bringing our firm to New Hampshire's attention and allowing us to participate with you in this important case." Finally, some nine years later, in a February 8, 2012 email to another attorney, Jessica Grant wrote that "Pawa referred the *Hess* case to us."

The preponderance of this evidence establishes that PLG was a referring attorney pursuant to Rule 1.5(f)(1)b, and that PLG did refer the *Hess* case to Sher Leff.

3. Proportionality of Services and Responsibility.

The Panel finds that PLG undertook sufficient responsibility to satisfy the responsibility prong of Rule 1.5(f)(1)a. Pawa undertook responsibility when he filed his appearance and affixed his name and signature to the complaint and other filings. By executing the LSAs, PLG became responsible to the State on a joint and several basis, the same as Sher Leff. Pawa was involved in all aspects of the case. He drafted pleadings and motions, took depositions, argued motions, attended case management conferences and argued several interlocutory appeals to the New Hampshire Supreme Court. He also maintained a close relationship with the State and kept communications open. The aforementioned is sufficient to satisfy the responsibility prong. See Rotunda & Dzienkowski, *Legal Ethics: The Lawyers Desk Handbook on Professional Responsibility,* at 188-89 (2009-10 ed.) (Responsibility in ABA Rule is euphemism for liability for malpractice, citing numerous authorities). That PLG satisfied the responsibility prong is supported by the New Hampshire Bar Association's Ethics Committee Formal Opinion #1995/96-12:

> Even where the referring attorney does not expect to perform 50% of the work, appropriate fee allocations could be agreed to in advance based on his/her expected percentage of the total work performed. In the alternative, a referring attorney may negotiate for a proportionate fee based on the "responsibility prong" of Rule 1.5(f)(2), *even if he or she performs only a small percentage of the trial preparation and in-court work.* It may be appropriate for him or her to receive a fee division that is more than nominal, if for example, he or she *has performed case evaluation work at the outset and remains jointly responsible for strategic and tactical decisions and for settlement evaluation and recommendations.*

(emphasis added)

We also find that PLG satisfied the services prong of the Rule. In addition to the above, Pawa developed the expert evidence of statewide injury and damages, argued the *parens patria*

appeal, and was intimately involved in the battle to remand the case back to state court. In sum, PLG, Pawa, Ben Crass and Wesley Kelman were deeply involved in nearly every aspect of the case. Sher Leff makes a point that Pawa was not actually involved in the trial itself, but that was not Pawa's decision. Rather, it was the result of a recommendation made by Jessica Grant. We disagree with Sher Leff that the service prong is only about hours worked or that mathematical precision must be shown to satisfy proportionality. Instead, the rule states, "in *reasonable* proportion to the services performed", not hours worked. Finally the Panel finds that Sher Leff has greatly overstated the services it performed and has undervalued the services performed by PLG. For all of these reasons, the Panel finds that PLG assumed sufficient responsibility and rendered sufficient services to satisfy the proportionality requirement of Rule 1.5(f)(1)a.

For any of the three separate and independent bases discussed in Sections III B (1-3) above, we find that the New Hampshire Rules of Professional Conduct do not have any effect on PLG's claim for a 22% share of the attorney fees as provided for in the LSAs.

4. <u>Reasonableness of Fee</u>.

Sher Leff also argues that Pawa's fee is unreasonable under Rule 1.5(a). According to Sher Leff, it did 97% of the work compared to PLG's 3%, and it thus earned $250 per hour compared to PLG's $2,700 per hour. While we disagree with how Sher Leff has apportioned the respective services of each firm, we find its argument to be without merit as a matter of law. Rule 1.5(a) states that:

> (a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee or expenses include the following:

The Rule then employs eight factors as bases for analysis. The thrust of the Rule is that an attorney may not charge *a client* an unreasonable fee or expense.

Rule 1.5(f)(3), on the other hand, applies specifically to reasonableness in the context of lawyers sharing a fee. It is axiomatic that the specific controls over the general. Thus, Rule 1.5(f)(3) is the applicable rule where lawyers share fees. It states:

> (f) a division of fee between lawyers who are not in the same firm may be made only if: (3) in either case, *the total fee charged by all lawyers* is not increased by the division of the fees and is reasonable.

(emphasis added).

Here, there is absolutely no evidence that the total fee was increased or that the total fee was not reasonable. Contrary to Sher Leff's argument, the New Hampshire Rules of Professional Conduct do not contain a reasonableness requirement as between fee sharing lawyers.

For all of the reasons contained in Sections 1-4 above, the Panel concludes that PLG acted in accordance with the New Hampshire Rules of Professional Conduct, and assuming *arguendo* that it did not, Sher Leff may not utilize these Rules to avoid its contractual obligations.

C. <u>ATTORNEY FEES</u>.

PLG has requested attorney fees for having to prosecute its arbitration claim and defend against Sher Leff's counter-claim. Sher Leff objects to PLG's claim and cites to *Guaraldi v. Trans-Lease Group,* 136 N.H. 437 for the proposition that under the American rule the parties are generally responsible for their own attorney fees, and that attorney fees may only be awarded or shifted by virtue of a statutory authorization, an agreement between the parties or an established exception.

The parties' Agreement to Arbitrate this matter states in pertinent part that:

> The parties will bear their own attorneys' fees and case costs (travel, discovery etc.) *except to the extent that attorneys' fees are awarded by the arbitrators*. Costs of the arbitration proceeding, including the fees of the arbitrators, shall be shared equally between the parties; Sher Leff will advance all such costs of the

> arbitration proceeding and arbitrators' fees. The final award will account of this advance and cost sharing agreement *except to the extent that costs of arbitration are awarded by the arbitrators.*

(emphasis added)

Contrary to Sher Leff's position that there is no agreement allowing the arbitrators to award attorney fees, we find that the above language amounts to a specific authorization that the Panel may award attorney fees. Had the parties intended to preclude the Panel from awarding fees, they could have said that. Instead, the parties' Agreement to Arbitrate unambiguously gives the Panel the general authorization to award attorney fees and costs of arbitration.

And even assuming, *arguendo*, that the language "except to the extent that attorneys' fees are awarded by the arbitrators" is somehow ambiguous, and the Panel looks outside the four corners of the Agreement to Arbitrate, the result is the same. The extrinsic evidence here, mainly the conduct of the parties, shows a clear intent to give the Panel the power to award attorney fees. PLG's Demand for Arbitration, filed February 6, 2013, requests "attorneys' fees and the costs and fees of the arbitrators". In its Notice of Claim, filed February 22, 2013, PLG again requests "PLG's interests, costs, attorneys fees and all costs of this arbitration". Sher Leff's Affirmative Defenses, filed March 11, 2013 nowhere make the argument it makes now, that the arbitrators are without power to award attorney fees. Instead, Sher Leff's own prayer for relief contained in its Counter-Claim states: "Claimant, Pawa Law Group, PC, must pay attorneys' fees and costs to Leff in [an] amount deemed fair and reasonable by the arbitration panel." Finally, at the outset of the arbitration hearing, the Panel and counsel discussed how the attorney fee claims would be handled within the context of the hearing (see July 31, 2013 hearing transcript, Volume 1, p. 4).

Moreover, Sher Leff's belated argument that the Agreement to Arbitrate does not allow the arbitrators to award reasonable attorney fees is inconsistent with its own request for

arbitration costs. The language in the Agreement to Arbitrate regarding the arbitrators' power to award attorney fees and the power to award arbitration costs is identical. In both instances, the agreement states that the parties shall be responsible for their own attorneys' fees/costs of arbitration except to the extent that the attorneys' fees/arbitration costs are awarded by the arbitrators. Because the language of the Agreement to Arbitrate is identical regarding the arbitrators' power to award both arbitration costs and attorney fees, it makes no sense that the Panel would have the power to award one and not the other. Either the Panel has the power to award both or it is without power to award either. For the above reasons, we conclude the Agreement to Arbitrate grants the Panel power to award both attorney fees and costs of arbitration.

In finding as we do, we reject Sher Leff's argument that the phrase "the parties will bear their own attorneys' fees" controls over the following phrase "except to the extent that attorneys' fees are awarded by the arbitrators." According to Sher Leff, to solely focus on the second phrase renders the first phrase meaningless, and that the exception thus swallows the rule. However, to solely focus on the first phrase, as urged by Sher Leff, renders the second phrase meaningless.

Wherever possible, all terms of a contract must be given effect, and a court must assume that all the words in a contract were placed there for a reason. All provisions must be considered. *Griswold v. Heat, Inc.*, 108 N.H. 119, 123. Contrary to Sher Leff's argument, both phrases here can be reconciled. The first phrase says that the parties will bear their own attorneys' fees *and case costs*. The second phrase gives the arbitrators the power to award attorneys' fees, but it makes no mention of case costs. Thus, the parties obviously intended that they would bear their own case costs but they would give the Arbitrators the power to award

attorneys' fees in whole or in part. This does not add a material new term to the Agreement to Arbitrate as urged by Sher Leff. As previously stated, the power to award fees stems directly from the Agreement to Arbitrate.

We find that an award of attorney fees is appropriate in this dispute. From the beginning, Sher Leff was aware of its obligations pursuant to the unambiguous language contained in the LSA providing for a 78%/22% fee split. There was no mention of proportionality, and Sher Leff's proposal to add a proportionality requirement was rejected by Pawa. The Panel has found that both Leff and Sher, from the outset, agreed to bear all costs, without any contribution from PLG and to pay for a PLG associate. Leff knew this was the arrangement Sher Leff had entered into. This is confirmed by Leff's own admissions and by Sher Leff's course of conduct. Instead of living up to the agreement he made, Leff began pressuring Pawa to renegotiate. Pawa refused. Finally, ten years after the parties had settled upon how they would move forward in this litigation, Leff produced the written JRA to the Attorney General stating that this is what Pawa had agreed to. This was not true, and Leff knew as much. In sum, had Sher Leff not acted in bad faith and instead had lived up to its obligations, this arbitration would never have been necessary. To the extent permitted by law, PLG should be placed in the position it would have been in had Sher Leff lived up to its obligations. An award that Sher Leff pay PLG's attorney fees is a part of that process.

Jurisdiction

For the first time, in its November 20, 2013 opposition to PLG's fee application, Sher Leff argues that the Panel is without jurisdiction to act further in this arbitration. According to Sher Leff, the arbitration hearing closed at the latest on September 23, 2013 when the parties submitted their simultaneously-exchanged, supplemental post-arbitration briefs. From that date,

the Panel had thirty days to render an award pursuant to the Agreement to Arbitrate and Rule 24(a) of the JAMS Comprehensive Arbitration Rules and Procedures ("JAMS Rules"). Sher Leff contends that the issuance of the October 22, 2013 Interim Award fails to comply with the above rules, and thus the Panel divested itself of jurisdiction to act any further.

Clearly, the Panel did issue an award in this matter within thirty days of the parties' filing their supplemental post-hearing briefs. It is also clear that it was not possible to issue a Final Award within the thirty days of the parties filing post-hearing briefs, because additional evidence was necessary for the Panel to enter an award of attorney fees. Thus, we understand Sher Leff's position to be that the Panel divested itself of jurisdiction because it issued an Interim Award instead of a Partial Final Award.

We conclude that Sher Leff has waived its jurisdictional challenge because it repeatedly continued to invoke this Panel's authority after the date Sher Leff claims the Panel was divested of jurisdiction. The parties' supplemental post-hearing briefs were filed on September 23, 2013. Within thirty days, on October 22, 2013, the Panel issued a timely Interim Award. According to Sher Leff, the hearing was closed no later than October 23, 2013. Yet, on October 24, 2013, it filed an objection requesting the Panel to change the Interim Award without any mention of a jurisdictional challenge. On October 29, 2013, Sher Leff participated in a teleconference hearing with the Panel regarding its objection to the Interim Award and request for a change. Again, it made no mention of the Panel having been divested of jurisdiction. On November 13, 2013, Sher Leff requested that the Panel entirely withdraw its Interim Award and grant it a hearing – an impossibility if the Panel had really divested itself of jurisdiction three weeks earlier. And again, there was no mention of a jurisdictional challenge. It was not until November 20, 2013, when

Sher Leff filed its opposition to PLG's Fee Application, that it raised any challenge to this Panel's jurisdiction.

It is axiomatic that a party may not challenge the Panel's jurisdiction to act while at the same time requesting the Panel to act. It is both logically and legally impossible. And for this reason it is specifically embodied in JAMS Rule 27(a), which provides:

> (a) If a Party becomes aware of a violation of or failure to comply with these Rules and fails promptly to object in writing, the objection will be deemed waived, unless the Arbitrator determines that waiver will cause substantial injustice or hardship.

For these reasons, we conclude that Sher Leff has waived its belated jurisdictional challenge.

Assuming, *arguendo*, that Sher Leff has not waived its jurisdictional challenge, we nevertheless conclude the argument is without merit. It is not disputed that the Interim Award was timely issued within thirty days from the time the parties filed their post-argument letter briefs. However, the arbitration hearing did not close on October 23, 2013 as Sher Leff contends. As mentioned previously, additional evidence was necessary and a briefing schedule had been established for the parties to submit such evidence. Thus, any award the Panel was required to issue by October 23, 2013, would have to be an Interim Award or a Partial Final Award.

There are good reasons, however, why the Panel chose not to issue a Partial Final Award and instead issued an Interim Award.

JAMS Rule 24(a) states in pertinent part that:

> (a) The Arbitrator shall render a Final Award or a Partial Final Award within thirty (30) calendar days after the date of the close of the Hearing as defined in Rule 22(h).....except (1) by the agreement of the Parties; (2) upon good cause for an extension of time to render the Award;

JAMS Rule 24(d) provides as follows:

> (d) In addition to a Final Award or Partial Final Award, the Arbitrator may make other decisions, including interim or partial rulings, orders and Awards.

With either an Interim Award or a Partial Final Award, the record here would remain open to receive additional evidence regarding attorney fees. The difference is that with an Interim Award the entire record would remain open until the issuance of a Final Award. With a Partial Final Award, however, the Panel's decisions on all issues except attorney fees would become final, invoking the fourteen day limit to seek judicial enforcement, modification, or vacature pursuant to JAMS Rule 24(k). Sher Leff never requested the Panel to issue a Partial Final Award. Nor does it offer any reason why the Panel should have issued a Partial Final Award requiring the parties to seek confirmation, enforcement, modification or vacature of the Partial Final Award, while at the same time they were respectively briefing PLG's Fee Application. Sher Leff's suggested procedure would also require the parties to initiate a second judicial proceeding to confirm or vacate the Final Award.

Finally, and most importantly, the procedure here was exactly what was agreed upon by the parties early on. Both parties requested attorney fees. The very first order entered in this arbitration, the agenda for the preliminary arbitration teleconference, required counsel to be prepared to discuss the bases for their respective fee shifting claims. Thus, it was obvious from the outset that if the Panel decided to award attorney fees it would be necessary for the parties to submit additional evidence. Here, although the supplemental post-hearing briefs were filed on September 23, 2013, PLG is seeking attorney fees through November 27, 2013. The Panel and counsel again discussed how this would be handled on the first day of the arbitration hearing, before any witnesses were called:

> THE CHAIRMAN: What I'd like to do is just go to each side and see if there is anything you feel we should be addressing at this point. We have read the briefs. We've read the submissions.

> Anything, Mr. Chapman?
>
> MR, CHAPMAN: No. We're okay.
>
> MR. CULTICE: Judge, just one thing. I've got a vague memory on this. I think we talked about the attorneys' fees claims and that you-all would handle those in the event that you decided that issue by way of affidavit after the taking of the evidence and that that's –
>
> THE CHAIRMAN: Well, whether it's by affidavit, but there will be some mechanism to address the issue. We'll determine whether the fees are warranted during the hearing, and we'll determine amounts, if any, you know, some type of bifurcated proceeding, whether it's by affidavit or however it's going to be done. It will sort of be up to you.

It is clear from the above that it was understood by all that should the Panel decide to award attorney fees, the hearing would remain open to receive additional evidence, and that is exactly what happened. After all such evidence and arguments were received, on November 27, 2013, the hearing closed. Thus, no matter what the rules would provide in the absence of an agreement, the arbitrators here followed the procedure that was agreed upon by the parties.

For all the above reasons the Panel finds that Sher Leff has waived its belated jurisdictional challenge. The hearing remained open until November 27, 2013 when the Panel received the final submissions regarding PLG's Fee Application. The Panel was never divested of jurisdiction.

Amount of Attorney Fees

Having determined that we have jurisdiction to proceed and that PLG is entitled to attorney fees, we now determine the amount. Pursuant to the briefing schedule contained in the Interim Award, PLG filed its Corrected Application for Attorneys' Fees ("fee application") on November 8, 2013. The fee application requests $1,099,735 for 1,777.10 hours of work performed by Wilmer Cutler Pickering Hale and Dorr ("Wilmer Hale") attorneys, litigation

assistants and a paralegal from February 4, 2013 through November 5, 2013. In its Reply Memorandum and Supplemental Affidavit filed on November 27, 2013, PLG requests $26,542.00 for 44.4 hours of additional work performed from November 6, 2013 through November 27, 2013. The total fee request amounts to $1,126,277. The fee application also requests a 25% enhancement of the fees due to what PLG characterizes as Sher Leff's discovery abuses, fabrication of defenses, knowing advancement of falsehoods and abusive litigation tactics. The fee application includes PLG's memorandums in support, affidavits of lead counsel, Robert Cultice, the affidavit of Michael Keating, contemporaneous time records and hourly rate data from comparable partners and associates in the Boston area.

In addition to issues having been already considered (jurisdiction and entitlement to attorney fees) Sher Leff's Opposition to PLG's Application for Attorneys' Fees, filed on November 20, 2013 focuses upon the following: that PLG is not entitled to a fee enhancement; that the rates charged by Wilmer Hale's attorneys, litigation assistants and paralegal are not reasonable; and that portions of Wilmer Hale's contemporaneous time records contain block billings and inconsistent, vague and duplicative entries.

PLG's Fee Application contains very detailed, contemporaneous time records of all work performed by Wilmer Hale attorneys, litigation assistants and paralegal from February 4, 2013 through November 27, 2013. The bulk of the attorney work (approximately 96%) was performed by Robert Cultice, a partner (approximately 47%), and Christopher Looney, a senior associate (approximately 49%). The vast amount of the paralegal work (approximately 75%) was performed by Laura Shine. Mr. Cultice's standard hourly rate of $975 has been reduced by approximately 10% for this application to $875. Mr. Looney's standard senior associate hourly rate of $605 has been reduced by approximately 10% for this application to $545. Laura Shine's

standard paralegal hourly rate of $340 has been reduced by approximately 10% for this application to $305.

In the Fee Application, Mr. Cultice states that he closely supervised the work of his team, and that he personally reviewed all time entries made by each team member. He also exercised his billing discretion to reduce time entries when he felt there was a question as to whether the time was productively spent. He also eliminated any time spent by an attorney or staff person who worked less than eight hours on this case. In total, he reduced the time for which PLG is seeking to recover fees by approximately 300 hours to ensure reasonableness and productivity in the number of hours worked. Finally, as mentioned, all standard rates have been reduced by 10% except for a litigation assistant, Cameron Modica, whose standard hourly billing rate was $105.

The Fee Application contains documentation reflecting that the rates Wilmer Hale charged in this case are similar to what other Wilmer Hale clients were charged. There is also documentation reflecting that the rates charged by Wilmer Hale in this case are similar to rates charged by partners and senior associates in other Boston law firms of similar size and prestige as Wilmer Hale. Also in the Fee Application is an affidavit from Michael Keating, a partner at the Boston firm of Foley Hoag for 34 years. He states that Foley Hoag is similar in size and prestige to Wilmer Hale and that the rates charged by Wilmer Hale in this case are similar to rates charged by Foley Hoag. He also avers that Wilmer Hale's billing rates in this case are fair and reasonable.

The test for reasonableness of attorney fees in New Hampshire includes an examination of the following factors: the amount involved, the nature, novelty and difficulty of the litigation, the attorney's standing and the skill employed, the time devoted, the customary fees in the area,

the extent to which the attorney prevailed, and the benefit thereby bestowed on his client. *Manchester v. Doucet*, 582 A. 2d 288, 290 (N.H. 1990). An application of these factors to the instant case reflects that Wilmer Hale fees would be on the plus side of the scale on almost every factor. The amount of fees resulting from the multiplication of the number of hours productively spent by a reasonable hourly rate is generally considered to be presumptively reasonable. *Spooner v. EEN, Inc.*, 644 F. 3d 62, 67-68 (1st Cir. 2011). The Panel's role here is not to determine whether the number of hours worked by PLG's attorneys represents the most efficient use of resources, but rather whether the number is reasonable. See *P.M.I. Trading, Ltd. v. Farstad Oil, Inc.*, 160 F. Supp. 2d 614-16 (S.D.N.Y. 2001).

Although Sher Leff vigorously disputes that Wilmer Hale's billings are reasonable, it does not offer any competing affidavits. Sher Leff's arguments include the following:

- That because part of the arbitration was scheduled to take place in Chicago, but actually took place in Boston, "high end Boston rates" are unreasonable. However, the relevant community for determining the proper billing rate in fee applications is the place where the case is actually heard. *Rhode Island Medical Society v. White House,* 323 F. Supp. 2d 283, 287 (D.R.I. 2004). Sher Leff also fails to allege that Chicago rates are any lower than Boston rates.
- That the affidavit of Robert Cultice, who has practiced in Boston for 30 years, attesting to the reasonableness of Wilmer Hale's rates, is not evidence of reasonableness. Again, Sher Leff offers no competing affidavit to support its argument. Sher Leff's criticism amounts to little more than the unverified argument of attorneys who practice nearly 3,000 miles away from Boston.

- That certain time entries by Christopher Looney contain block billings. Block billing is not a *per se* prohibited practice. We have reviewed the entries and conclude that while they are not perfect they are adequate to support the time requested. See *N. Lumber Manufacturers Assoc. v. N. States Pallett Co.*, 2011 U.S. Dist. LEXIS 11876, at 23-24 (D.N.H. Jan. 31, 2011).
- That Christopher Looney billed for "post-trial briefs" on May 16, 2013 before there was any trial or hearing in this matter. Sher Leff concludes that Mr. Looney must have done work on the underlying *Hess* matter and that this work was mistakenly billed to this arbitration. PLG explains, however, that neither Looney nor anyone else at Wilmer Hale ever did work on the *Hess* case, and that Mr. Looney obviously intended to record "pre-trial" rather than "post-trial". We find PLG's explanation to be reasonable.

Moreover, all of the above and other Sher Leff objections are minor and amount to very little of the 1857 hours billed by Wilmer Hale in this arbitration. The total amount of the hours Sher Leff is objecting to is easily covered by the 10% reduction from standard billing rates and the 300 hours that were not billed pursuant to Mr. Cultice's direction.

For all the foregoing reasons we conclude that the attorney fees requested by PLG are reasonable and we award PLG $1,126,277, the full amount requested.

PLG also requests that its fee requests be enhanced by 25% due to what Sher Leff characterizes as discovery abuses, fabrication of defenses, knowing advancement of falsehoods and abusive litigation tactics. We agree with Sher Leff that PLG's fee award compensates PLG for the attorney time spent in connection with these matters. For this reason and the reasons

stated in our denial of PLG's Consumer Protection Act Claim (see Section III F. *infra*), we deny PLG's request for a fee enhancement, and said claim is dismissed.

D. PREJUDGMENT INTEREST.

PLG has requested prejudgment interest pursuant to RSA 524:1-(b) (2013), which states:

> In all other civil proceedings at law or in equity in which a verdict is rendered or a finding is made for pecuniary damages to any party, whether for personal injuries, for wrongful deaths, for consequential damages, for damage to property, business or reputation, for any type of loss for which damages are recognized, there shall be added forthwith by the clerk of the court to the amount of damages interest thereon from the date of the writ or filing of the petition to the date of judgment...

Pursuant to RSA 336:1, the State Treasurer has notified the Administrative Office of the Courts that simple rates of interest on judgments and prejudgments for the year 2013 is 2.1%.

Sher Leff did not respond to Pawa's request for prejudgment interest at the arbitration hearing or in its post arbitration submission. Sher Leff does, however, address this issue in its post interim award Motion to Withdraw Interim Award and Request for Hearing arguing that PLG violated the Agreement to Arbitrate by placing the disputed funds in a non-interest bearing account. PLG disputes Sher Leff's position and states that it deposited the funds exactly as the documents used to open the accounts indicated.

Although we conclude that Sher Leff may request reconsideration because the Interim Award is interlocutory, we nevertheless find Sher Leff's position to be without merit. Assuming, *arguendo*, that PLG did somehow violate the Agreement to Arbitrate in setting up the account, we find that Sher Leff waived the issue through its failure to raise it at arbitration or in its post arbitration briefs. We also find that Sher Leff is not permitted to ask the Panel to reconsider an issue that it never requested the Panel to consider in the first place.

Here, the time elapsed from the filing of PLG's Notice of Claim (February 22, 2013) to the date this award (December 10, 2013) is 291 days.

Thus, PLG is entitled to prejudgment interest in the amount of $94,122.84 ($5,621,803 x 2.1%) = 118,057.86 x 291/365 (.79726027%) = $94,122.84.

E. ARBITRATION COSTS.

Both PLG and Sher Leff have requested costs of arbitration in their respective pleadings and briefs. The award of costs of arbitration is also provided for in Rule 24(f) of the JAMS Comprehensive Arbitration Rules and Procedures. For the same reasons that PLG is entitled to attorney fees, it is entitled to arbitration costs. Again, but for Sher Leff's bad faith conduct and its failure to live up to its obligations, this arbitration would not have been necessary. PLG should be placed in the position it would have been in if Sher Leff had honored its agreement to the extent permitted by law.

Pursuant to paragraph 1.7 of the Agreement to Arbitrate, Sher Leff is to advance all costs of the arbitration proceeding and the arbitrators' fees. In accord with our decision to award PLG its costs in this arbitration, we direct Sher Leff to continue its funding of JAMS administrative costs and arbitrators' fees until the conclusion of this arbitration, without any contribution from PLG.

F. THE NEW HAMPSHIRE CONSUMER PROTECTION ACT.

PLG has requested that its actual damage be trebled, but not less than doubled, pursuant to the New Hampshire Consumer Protection Act, RSAS 358-A:2 (the "Act"). The underlying issues, which are hotly contested, involve whether Sher Leff's conduct falls within the purview of the act, whether the act applies to attorneys, and whether PLG has proved its claim by a preponderance of the evidence. Without addressing the merits of these issues, and assuming that Sher Leff is liable under the Act (and we offer no such opinion), we decline PLG's request for additional damages.

As stated previously, the Panel finds that PLG should be placed in the position it would have been in if Sher Leff had lived up to its obligation. We believe our awards of 22% of the attorney fees in this case, prejudgment interest, attorney fees and costs of arbitration accomplish this objective.

Despite its differences with PLG, Sher Leff has nevertheless provided an outstanding service to its client, the State of New Hampshire, and it should be compensated for the services it performed and the responsibilities and risks it has undertaken pursuant to the terms of the 2010 LSA and the side agreement.

In sum, PLG's request to double or treble damages would unduly punish Sher Leff and provide a windfall for PLG. PLG's claim pursuant to the New Hampshire Consumer Protection Act is therefore denied and said claim is dismissed.

G. CONTROL OF THE REVOLVING FUND AND EQUITABLE ATTACHMENT.

Because we find that Sher Leff has failed to live up to its obligations under the Revolving Fund and the 2010 LSA, we conclude that PLG should replace Sher Leff and assume control of the Revolving Fund. Given that PLG may assume control over the administration of the Revolving Fund in accordance with paragraph 28 of the LSA, we see no reason to order an attachment as requested by PLG at this time.

The Interim Award dated October 22, 2013 directed "PLG to furnish a copy of this Award to the State of New Hampshire Attorney General's Office, and that it request the State to consent to PLG being placed in control of the Revolving Fund." Sher Leff has objected to that direction arguing that it constitutes "a direct violation of JAMS Rule 26 concerning confidentiality", and PLG has responded to said objection. The Panel has reviewed the parties'

submissions and has considered their respective arguments. For the reasons that follow, we believe that Sher Leff's objection has merit and we therefore withdraw our previous directive for PLG to furnish a copy of the Award to the State of New Hampshire Attorney General's Office, and we modify our previous directive for PLG to request the State to consent to PLG being placed in control of the Revolving Fund.

Because the LSAs are tripartite agreements between Sher Leff, PLG and the State, any change in control of the Revolving Fund requires action by all three parties. This arbitration, however, involves only Sher Leff and PLG. The State is not a party. Thus, although the Panel possesses authority to change control of the Revolving Fund as between Sher Leff and PLG, consent by the State is necessary to effectuate that change.

Rule 26(a) of the JAMS Comprehensive Arbitration Rules and Procedures provides in pertinent part:

> (a) JAMS and the Arbitrator shall maintain the confidential nature of the Arbitration proceeding and the Award, including the Hearing, except as necessary in connection with a judicial challenge to or enforcement of an Award, or unless otherwise required by law or judicial decision.

The Rule clearly requires JAMS and the Arbitrators to maintain the confidential nature of the arbitration proceedings and the Award. Although the State has an interest in this arbitration, we nevertheless conclude that the confidentiality mandate of Rule 26 prohibits JAMS and the arbitrators from directing that any award be forwarded to the State. We do not decide whether the parties may or should forward a copy of any award to their client, the State of New Hampshire. Our only determination is that neither JAMS nor the arbitrators should be a part of that decision.

For the foregoing reasons we find that PLG may in its discretion request the State of New Hampshire to consent to PLG being placed in control of the Revolving Fund. If such a request is

made and the State consents to PLG being placed in control of the Revolving Fund, we direct Sher Leff to immediately thereafter take whatever action is necessary to remove itself from control of the Revolving Fund that it presently controls and to take whatever action is necessary to place PLG in control of the Revolving Fund. These directions are made in accordance with Rule 24(e) of the JAMS Comprehensive Arbitration Rules and Procedures.

IV.
CONCLUSIONS

The Panel has carefully reviewed the evidence and the arguments of the parties. Any arguments or claims not specifically addressed in this award have nevertheless been considered, and they are not addressed because they are either duplicative, not clearly articulated or are matters that do not warrant an explanation. The Panel concludes as follows:

A. THE LEGAL SERVICES AGREEMENT AND THE ORAL SIDE AGREEMENT.

1. The language contained in the 2010 LSA stating that the division of contingent fees is 78% to Sher Leff and 22% to PLG is unambiguous, and it is thus binding upon the parties.

2. Sher Leff has failed to prove by a preponderance of the evidence that the parties orally modified the LSAs by adding a proportionality condition.

3. The terms of the oral side agreement include, along with other terms not contested here, that Sher Leff shall advance all costs, without interest and without any contribution by PLG, and that Sher Leff shall pay for a PLG associate, and that such payments do not constitute a loan.

B. NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT.

1. Sher Leff is not entitled to utilize the New Hampshire Rules of Professional Conduct to avoid its obligations to share attorney fees in this case on a 78%/22% basis as required by the 2010 LSA.

2. The New Hampshire Rules of Professional Conduct, effective January 1, 2008, apply to this case, because these rules were in effect when the 2010 LSA was executed and were in effect at the time the fee distributions were made.

3. PLG is a referring lawyer pursuant to the New Hampshire Rules of Professional Conduct, effective January 1, 2008.

4. PLG has undertaken sufficient responsibilities and has performed sufficient services to satisfy the proportionality requirement of Rule 1.5(f)(1)a.

5. The New Hampshire Rules of Professional Conduct, effective January 1, 2008, do not contain a reasonableness requirement as between fee sharing lawyers. PLG's 22% share of the attorney fees in this case is not unreasonable.

C. <u>ATTORNEY FEES.</u>

1. The Panel has jurisdiction to award PLG its attorney fees.

2. The fees Wilmer Hale charged PLG to represent PLG in this arbitration are reasonable.

3. PLG is entitled to have Sher Leff pay its attorney fees for prosecuting its claims and for defending against Sher Leff's counter-claim in the amount of $1,126,277.

4. PLG's request for a 25% enhancement of its fee claim is denied, and said claim is dismissed.

5. Sher Leff's claim for attorney fees is denied, and said claim is dismissed.

D. <u>PREJUDGMENT INTEREST.</u>

PLG is entitled to prejudgment interest in the amount of $94,122.84 pursuant to RSA 524:1-(b) (2013) and RSA 336:1 (2013).

E. ARBITRATION COSTS.

1. In accordance with the Agreement to Arbitrate and Rule 24(f) of the JAMS Comprehensive Arbitration Rules and Procedures, Sher Leff shall be responsible for all JAMS administrative costs and arbitrators' fees without any contribution from PLG. The parties shall bear all of their own other costs of any nature.

2. Sher Leff's claim for arbitration costs is denied, and said claim is dismissed.

F. NEW HAMPSHIRE CONSUMER PROTECTION ACT.

PLG's New Hampshire Consumer Protection Act claim is denied, and said claim is dismissed.

G. CONTROL OVER THE REVOLVING FUND AND EQUITABLE ATTACHMENT.

The Panel concludes that PLG should replace Sher Leff and assume control of the Revolving Fund. PLG may in its discretion request the State of New Hampshire to consent to PLG being placed in control of the Revolving Fund. If such a request is made and the State of New Hampshire consents to PLG being placed in control of the Revolving Fund, Sher Leff is directed to immediately thereafter take whatever action is necessary to remove itself from control of the Revolving Fund that it presently controls and to take whatever action is necessary to place PLG in control of the Revolving Fund. PLG's request for an equitable attachment is denied.

V.
FINAL AWARD

A Final Award is entered as follows:

A. THE LEGAL SERVICES AGREEMENT AND THE ORAL SIDE AGREEMENT.

1. A Final Award is entered in favor of PLG and against Sher Leff in the amount of $5,621,803 on PLG's claim for breach of the 2010 LSA.

2. A Final Award is entered in favor of PLG and against Sher Leff on PLG's Declaratory Judgment claim for 22% of any contingency fees arising from the ExxonMobil verdict, judgment or settlement, all in accordance with the 2010 LSA.

3. A Final Award is entered in favor of PLG and against Sher Leff on Sher Leff's counter-claim, and said counter-claim is dismissed.

B. THE NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT.

A Final Award is entered in favor of PLG and against Sher Leff on Sher Leff's claims and defenses pursuant to the New Hampshire Rules of Professional Conduct, and said claims and defenses are dismissed.

C. ATTORNEY FEES.

1. A Final Award is entered in favor of PLG and against Sher Leff in the amount of $1,126,277 on PLG's claim for attorney fees.

2. A Final Award is entered in favor of PLG and against Sher Leff on Sher Leff's claim for attorney fees, and said claim is dismissed.

D. PREJUDGMENT INTEREST.

A Final Award is entered in favor of PLG and against Sher Leff in the amount of $94,122.84 on PLG's claim for prejudgment interest pursuant to RSA 524:1-(b) (2013).

E. ARBITRATION COSTS.

1. A Final Award is entered in favor of PLG and against Sher Leff on PLG's claim for arbitration costs, and Sher Leff is directed to pay all JAMS administrative costs and arbitrator's

fees until the conclusion of this arbitration without any contribution from PLG. The parties shall bear all of their own other costs of any nature.

2. A Final Award is entered in favor of PLG and against Sher Leff on Sher Leff's claim for arbitration costs, and said claim is dismissed.

F. NEW HAMPSHIRE CONSUMER PROTECTION ACT.

A Final Award is entered in favor of Sher Leff and against PLG on PLG's New Hampshire Consumer Protection Act claim, and said claim is dismissed.

G. CONTROL OF THE REVOLVING FUND AND EQUITABLE ATTACHMENT.

1. A Final Award is entered in favor of PLG and against Sher Leff on PLG's request to be placed in control of the Revolving Fund. PLG may in its discretion request the State of New Hampshire to consent to PLG being placed in control of the Revolving Fund. If such a request is made, and the State of New Hampshire consents to PLG being placed in control of the Revolving Fund, Sher Leff is directed to immediately thereafter take whatever action is necessary to remove itself from control of the Revolving Fund that it presently controls and to take whatever action is necessary to place PLG in control of the Revolving Fund.

2. A Final Award is entered in favor of Sher Leff and against PLG on PLG's claim for an equitable attachment, and said claim is dismissed.

This Final Award resolves all claims of the parties submitted for decision in this arbitration.

The parties are notified that JAMS and the arbitrators intend to discard all exhibits in their possession after 60 days from the date of this Award unless the parties, or one of them, requests in writing that said exhibits be returned.

Dated: December 10, 2013

ARBITRATORS:

Alexander L. Brainerd

Thomas Rakowski

Eric E. Van Loon

SERVICE LIST

Case Name: Pawa Law Group f/k/a vs. Sher Leff LLP et al.

Reference #: 1400014271

Panelist: Van Loon, Eric E.,
Rakowski, Thomas R.,
Brainerd, Alexander L.,

Hear Type: Arbitration

Case Type: Business/Commercial

Robert S. Chapman

Eisner Kahan Gorry Chapman, et al.
Robert S. Chapman
9601 Wilshire Blvd.
Suite 700
Beverly Hills, CA 90210
rchapman@eisnerlaw.com

Respondent
Phone: 310-855-3200
Fax: 310-855-3201

Party Represented:
Alexander Leff
Sher Leff LLP

Robert D. Cultice

Wilmer Hale LLP
Robert D. Cultice
60 State St.
Boston, MA 02109
robert.cultice@wilmerhale.com

Claimant
Phone: 617-526-6000
Fax: 617-526-5000

Party Represented:
L/O Matthew F. Pawa, P.C.
Pawa Law Group, P.C.

Jon-Jamison Hill

Eisner Kahan Gorry Chapman, et al.
Jon-Jamison Hill
9601 Wilshire Blvd.
Suite 700
Beverly Hills, CA 90210
jhill@eisnerlaw.com

Respondent
Phone: 310-855-3200
Fax: 310-855-3201

Party Represented:
Alexander Leff
Sher Leff LLP

Christopher R. Looney

Wilmer Hale LLP
Christopher R. Looney
60 State St.
Boston, MA 02109
christopher.looney@wilmerhale.com

Claimant
Phone: 617-526-6000
Fax: 617-526-5000

Party Represented:
Pawa Law Group, P.C.

Allison D. Rhodes

Hinshaw & Culbertson LLP
Allison D. Rhodes
1000 SW Broadway
Suite 1950
Portland, OR 97205-3078
arhodes@hinshawlaw.com

Respondent
Phone: 503 243-3243
Fax: 503 243-3240

Party Represented:
Alexander Leff
Sher Leff LLP

Calon Russell

Hinshaw & Culbertson LLP
Calon Russell
1000 SW Broadway
Suite 1250
Portland, OR 97205-3078
CRussell@hinshawlaw.com

Respondent
Phone: 503 243-3243
Fax: 503 243-3240

Party Represented:
Alexander Leff
Sher Leff LLP

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Pawa Law Group f/k/a / Sher Leff LLP et al.
Reference No. 1400014271

I, Michael McCants, not a party to the within action, hereby declare that on December 18, 2013 I served the attached Final Award on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Chicago, ILLINOIS, addressed as follows:

Robert D. Cultice Esq.
Christopher R. Looney Esq.
Wilmer Hale LLP
60 State St.
Boston, MA 02109
Phone: 617-526-6000
robert.cultice@wilmerhale.com
christopher.looney@wilmerhale.com
Parties Represented:
L/O Matthew F. Pawa, P.C.
Pawa Law Group, P.C.

Allison D. Rhodes Esq
Calon Russell Esq.
Hinshaw & Culbertson LLP
1000 SW Broadway
Suite 1950
Portland, OR 97205-3078
Phone: 503 243-3243
arhodes@hinshawlaw.com
CRussell@hinshawlaw.com
Parties Represented:
Alexander Leff
Sher Leff LLP

Jon-Jamison Hill Esq.
Robert S. Chapman Esq.
Eisner Kahan Gorry Chapman, et al.
9601 Wilshire Blvd.
Suite 700
Beverly Hills, CA 90210
Phone: 310-855-3200
jhill@eisnerlaw.com
rchapman@eisnerlaw.com
Parties Represented:
Alexander Leff
Sher Leff LLP

I declare under penalty of perjury the foregoing to be true and correct. Executed at Chicago, ILLINOIS on December 18, 2013.

Michael McCants

Michael McCants
mmccants@jamsadr.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Pawa Law Group, P.C.

(b) County of Residence of First Listed Plaintiff Middlesex County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Robert D. Cultice
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street, Boston, MA 02109

DEFENDANTS

Sher Leff, LLP also known as Sher Leff PC

County of Residence of First Listed Defendant San Francisco County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☒ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☒ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
Federal Arbitration Act, 9 U.S.C. § 9; 28 U.S.C. § 1332(a)(1)

Brief description of cause:
Complaint to Confirm Arbitration Award

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
01/01/2014

SIGNATURE OF ATTORNEY OF RECORD
/s/ Robert D. Cultice

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. **Title of case (name of first party on each side only)** Pawa Law Group, P.C. v. Sher Leff, LLP also known as Sher Leff PC

2. **Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).**

   ☐ **I.** **410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.**

   ☐ **II.** **110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.**

   ☑ **III.** **120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.**

   ***Also complete AO 120 or AO 121. for patent, trademark or copyright cases.**

3. **Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.**

   None

4. **Has a prior action between the same parties and based on the same claim ever been filed in this court?**

   YES ☐ **NO** ☑

5. **Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)**

   YES ☐ **NO** ☑

   If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

   YES ☐ **NO** ☐

6. **Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?**

   YES ☐ **NO** ☑

7. **Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).**

   YES ☑ **NO** ☐

   A. **If yes, in which division do all of the non-governmental parties reside?**

   Eastern Division ☑ **Central Division** ☐ **Western Division** ☐

   B. **If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?**

   Eastern Division ☐ **Central Division** ☐ **Western Division** ☐

8. **If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)**

   YES ☐ **NO** ☑

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Robert D. Cultice

ADDRESS 60 State Street Boston, MA 02109

TELEPHONE NO. 617-526-6021

General Information

Court	United States District Court for the District of Massachusetts; United States District Court for the District of Massachusetts
Federal Nature of Suit	Other Statutes - Arbitration[896]
Docket Number	1:14-cv-10001
Status	CLOSED