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DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
MAR 14 2012
By _____
Clerk Deputy Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	
	)	Subcase 37-21112
Case No. 39576	)	
	)	BRIEF IN SUPPORT
	)	OF AWARD OF ATTORNEY'S FEES
	)	AND COSTS

Claimant, Marathon Partners LLC ("Marathon"), by and through its attorney of record James P. Speck, of the law firm of Speck & Aanestad, A Professional Corporation, submits this brief in support of its request for attorney's fees and costs pursuant to I.R.C.P. 54 and Idaho Code Section 12-121. Three issues must be addressed in awarding attorney fees in this matter: First, is Claimant the prevailing party? Second, did the Objectors file and pursue their Objections herein frivolously, unreasonably or without foundation? Third, what is the amount of fees that should be awarded?

STATEMENT OF THE CASE

In February, 2007, the Idaho Department of Water Resources (the "Department") filed with this Court its Director's Report for Basin 37, Part 3. Included was the recommendation for Water Right No. 37-21112 (the "Water Right"), the subject of this Subcase and for which Marathon is the

Claimant. (*Affidavit of James P. Speck in Support of Attorneys Fees* (hereinafter “*Speck Affidavit*”), Exhibit 2.) The Department recommended the Water Right be decreed for the diversion of 1.419 cfs with a March 24, 1883 priority date from the Big Wood River at the Hiawatha Canal headgate to irrigate 54 acres within the City for Hailey approximately 4.5 miles down the Hiawatha Canal. On or about November 14, 2007, Tom O’Gara, John F. Stevenson, Bill Molyneux, Pete Van Der Meulen, Grace Eakin, Rocky Sherbine, Gerald Bashaw and Pepin Corso-Harris, by and through their attorney, Albert P. Barker, and Big Wood Canal Company, by and through its attorney, Craig Hobdey, filed an Objection against the Department’s recommendation for the Water Right. The Objection asserted that the diversion rate was excessive for the place of use, the period of year should be April 15 to October 31 instead of April 15 to November 15, and that the Water right should not exist as it has been forfeited for non-use or abandoned. (*Speck Affidavit*, Ex. 3) On or about January 14, 2008, Marathon filed its Response to Objection asserting reasons why the Water Right should exist and not be forfeited, disputing the other bases of the Objection and claiming it should recover its attorneys fees and costs. (*Speck Affidavit*, Ex. 4) .

From April, 2008 through March, 2009, Marathon’s attorney provided the Objectors’ attorneys with legal arguments, documents and other information in support of its request that the Objection be withdrawn (*Speck Affidavit*, Exs. 5, 6, 7, 8, 9 and 10)¹. During this time period Objectors did not provide to Marathon any documents or other evidence or information that would support the Objection.

¹ The Objectors had filed in November 2007 similar Objections asserting forfeiture in Subcases 37-21114, where the Blaine County School District was the Claimant, and 37-21116, where John Miley was the Claimant. 37-21112, 37-21114 and 37-21116 are all splits of the parent water right, 37-12818. The Objection to 37-21116 was withdrawn in April, 2010 and in March, 2011 the Objectors signed an SF5 for 37-21114 agreeing it should be decreed as recommended with minor changes unrelated to the substance of the Objection.

On April 27, 2010, the Initial Hearing for this Subcase was held in Twin Falls, Idaho. Then, on May 1, 2010, Mr. Barker emailed to Marathon's attorney two aerial photographs of the Marathon property and a printout from the Department's web site of a recommendation that the "parent" of the Water Right, 37-12818, be disallowed because of forfeiture and non-use. (*Speck Affidavit*, Ex. 11) This was the ONLY evidence ever produced by the Objectors during the proceedings of this Subcase to support their claim that the Water Right had been forfeited by non-use.²

Claimant then retained Mr. Anthony Morse to do an analysis of Landsat satellite imagery of its property from 1974 through 1987 to show that its property had, in fact, been consistently irrigated with the Water Right during that time period. (*Speck Affidavit*, Ex. 13) Marathon also interviewed and obtained affidavits from former and current neighbors who were familiar with the irrigation of its property during that same time period. (*Speck Affidavit*, Ex. 14 and 15) All of this information, which conclusively establishes that Marathon's property was irrigated from 1974 through 1986, but not irrigated in 1987, was presented to the Objectors' attorneys at a Settlement Conference on November 15, 2010. At the conclusion of this conference, Mr. Hobdey stated he would recommend to his client that it withdraw the Objection. Mr. Barker then confirmed this by his email to Marathon's attorney dated November 29, 2010 (*Speck Affidavit*, Ex. 16).

The information provided by Marathon at the November 15, 2010 Settlement Conference included a correction of the location of the irrigated acres on its property. The Department then

² Objectors failed to note that the Department's review of the non-use of 37-12818, as highlighted by numerous documents in its files, was focused solely on the period of time commencing with 1987 and that the claim for 37-12818 had been filed in February, 1989. Thus, under the law of the case in the SRBA, the Department's review was not based on a relevant period of five consecutive years for the purposes of determining forfeiture. They also failed to mention that the Department personnel, as documented in the February, 1995 Memorandum from L. Glenn Saxton to Jim Johnson and Pam Skaggs, had determined that "the information presently available does not clearly show that [37-12818] has been forfeited through non-use." (*Speck Affidavit*, Ex. 12).

proceeded to update its recommendation to account for this correction, and the layout and updated recommendation were circulated by an e-mail from Ms. Vicki Kelly to Mr. Hobdey, Mr. Barker and Mr. Speck on December 3, 2010 (*Speck Affidavit*, Ex. 17) for the parties review and approval.

However, in January and February, 2011, Mr. Hobdey refused to sign an SF5 based on the Department's corrected recommendation unless a field headgate remark was added (*Speck Affidavit*, Ex. 18). Notwithstanding the fact that the Objectors had previously signed SF5s for Big Wood River irrigation water rights with the same priority date as the Water Right delivered to two neighboring properties through the same Hiawatha Canal system without any such field headgate remarks,³ the Objectors continued to demand such a remark in this Subcase (*Speck Affidavit*, Ex. 19 and 20).

In the course of preparing for trial, Marathon then provided to the Objectors' attorneys two studies done by David R. Tuthill relating to the recommended quantity of water under the Water Right and the Objectors' request for field headgate limitations on that amount. (*Speck Affidavit*, Exs. 21 and 22). These studies concluded that no rate of flow or volumetric limitations were warranted. Objectors did not produce any evidence to refute Dr. Tuthill's findings and recommendations.

Marathon, in order to avoid the significant additional expense of litigating at a trial the issue of whether or not to include a quantity remark, agreed to add to the Department's recommendation for the Water Right an Explanatory Material remark that reads: "A portion of this water right is used for conveyance." Marathon understood this provision is not necessary to define or administer the Water Right and would not be included in the Partial Decree. A Standard Form 5 was then prepared accordingly and signed and initialed by the attorneys representing all parties and the Department. It

³ Copies of these SF5's for Subcases 37-21123 and 37-21125 are found at *Speck Affidavit*, Ex.25.

was then filed with this Court on January 17, 2012 (*Speck Affidavit*, Ex. 23). The Order of Partial Decree was subsequently issued by this Court on March 2, 2012 (*Speck Affidavit*, Ex. 24). With the exception of the correction of the location of the irrigated acres and the reduction of the total irrigated acres from 54 to 53,⁴ the terms and conditions of the Partial Decree **ARE IDENTICAL** to the recommendation for the Water Right filed by the Department with this Court in February, 2007.

ARGUMENT

I. Marathon is the Prevailing Party in this Subcase.

A prevailing party may recover reasonable attorneys' fees where the criteria established by I.R.C.P. 54(e)(1) are met. I.R.C.P. 54(e)(1) provides, in pertinent part, as follows:

In any civil action the court may award reasonable attorney fees. . . to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract. Provided, attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation

I.R.C.P. 54(d)(1)(B) requires this Court, in determining who is the prevailing party in this Subcase, to "consider the final judgment or result of the action in relation to the relief sought by the respective parties."

In this Subcase, Marathon did not object to the recommendation for the Water Right filed herein by the Department. Therefore, the entire relief it requested in this Subcase was to have the Water Right decreed as it was recommended. The Partial Decree issued herein on March 2, 2012,

⁴ The changes in the updated recommendation in the number and location of the irrigated acres had absolutely nothing to do with the Objection filed by Objectors. The Objectors never challenged or contested the recommended place of use for the Water Right.

is identical to the Director's Report recommendation filed in February 2007, with the minor exception of the number and location of the irrigated acres⁵. On the other hand, the Objectors made three claims against the recommendation for the Water Right and did NOT get any of the relief they requested. First, they asked that the Water Right be disallowed on the grounds of forfeiture or abandonment. It was not. Second, they asked that the period of use should be April 15 to October 31. Instead, it was decreed as it was recommended for April 15 to November 15. Third, they asserted that the recommended diversion rate of 1.419 cfs was excessive for the recommended 54 acre place of use. The Water Right was decreed for 1.419 cfs to irrigate 53 acres. Therefore, the final judgment, *i.e.* the Partial Decree, does not grant any of the relief requested by the Objectors⁶. Under these facts, Marathon is clearly the prevailing party.

II. Attorneys Fees are Provided by I.C. §12-121.

I.C. § 12-121 provides that, "In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties...." This statute has been supplemented by the provisions of I.R.C.P. 54(e)(1) which provides that "attorney fees under Section 12-121, Idaho Code, may be awarded by the court only when it finds from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation." *See, also, Noble v. Fisher,*

⁵ See fn. 4, above.

⁶ Objectors requested, and Marathon agreed, to include in the SF5 signed and filed in this Subcase an Explanatory Remark that reads, "A portion of this water right is used for conveyance." This provision is not necessary for defining, nor will it be used to administer, the Water Right, so it is not even included in the Partial Decree. At best it merely states the obvious that there is conveyance loss in the almost 4 ½ miles of the Hiawatha Canal from the headgate in the Big Wood River to the Marathon property. Even if this Court were to view this SF5 Explanatory Material provision as lessening the full relief requested by Marathon, it can and should still find that Marathon is the prevailing party. *See, Lower Payette Ditch Company v. Harvey*, 12.2 ISCR 1, January 5, 2012 ("[A] party that recovers less than the amount requested can still be a prevailing party, *Collins v. Jones*, 131 Idaho 556, 559, 961 P.2d 647, 650 (1998)")

126 Idaho 885, 894 P.2d 118 (Idaho 1995).

The primary focus of the Objection was the assertion that the Water Right should be disallowed on the grounds of forfeiture or abandonment. The Objectors filing and pursuit of the forfeiture claim was frivolous, unreasonable or without foundation for two reasons. First, the doctrine of collateral estoppel in the SRBA barred them from pursuing that claim. Second, they did not have any evidence to support the claim.

A. Collateral Estoppel.

Marathon, by the May 1, 2008 letter from its attorney to Mr. Hobdey (*Speck Affidavit*, Ex.7), requested Objectors to withdraw the Objection on the grounds that the doctrine of collateral estoppel barred them from asserting in the SRBA that the Water Right had been forfeited. The legal authority supporting Marathon's position on this issue is set forth at length in that letter and incorporated herein. The Department, in the four application for permit proceedings, all protested by Big Wood Canal Company, extensively reviewed the forfeiture issue and determined the permits should be issued since "the information presently available does not clearly show that [37-12818] has been forfeited through non-use" (February 6, 1995 Memorandum from L. Glen Saxton to Jim Johnson and Pam Skaggs taken from the Department's claim file for 37-12818, the parent right for 37-21112. *Speck Affidavit*, Ex. 12). In light of these prior administrative proceedings resulting in a determination that the parent water right, 37-12818, had not been forfeited, the Objectors filing and pursuit of the forfeiture Objection was frivolous, unreasonable and without foundation.

B. Objectors did not have any evidence of forfeiture.

The Idaho Supreme Court has held that,

Forfeiture of water rights is governed by Idaho Code section 42-222(2), which

provides that water rights may be lost if they are not applied to the beneficial use for which the rights were appropriated for five continuous years. I.C. § 42-222(2). However, this Court has often repeated its position that forfeiture of water rights is not favored in Idaho. *Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 87, 982 P.2d 917, 922 (1999). **Because of its disfavor for water right forfeiture, Idaho law requires that such actions be proved by the heightened evidentiary standard of clear and convincing evidence.** *Id.* (Emphasis added).

McCray v. Rosenkrance, 135 Idaho 509, 515, 20 P.3d 693, 699 (Idaho 2001). Therefore, for the Objectors to have met their burden of establishing that the Water Right had been forfeited, they would have had to produce clear and convincing evidence of non-use of the Water Right for five or more consecutive years prior to February, 1989, when the claim for the Water Right was filed in the SRBA proceedings.

From November, 2007, when the Objection was filed, to November, 2010, when the Objectors agreed to withdraw their forfeiture objection (see the November 29, 2010 e-mail from Mr. Barker to Mr. Speck, *Speck Affidavit*, Ex. 16), they provided only three pieces of evidence on this issue (see Mr. Barker's May 1, 2010 e-mail to Mr. Speck, *Speck Affidavit*, Ex. 11). The first was an aerial photograph taken in 1987 which the Objectors claimed showed the Marathon property was not irrigated at the time of the photograph. Marathon agrees that its property was not irrigated in 1987. The second was an August 29, 1984 aerial photograph which showed, according to the Objectors, that only 12.7 of the 53 acre Marathon place of use was irrigated. The Objectors did not produce any evidence of non-use for any other relevant year, much less for any period of five or more consecutive years prior to 1989. On the other hand, Marathon went to the effort and expense of an expert analysis of Landsat satellite imagery from 1974 through 1987. The report produced by Mr. Morse (*Speck Affidavit*, Ex. 13) establishes that the entire Marathon place of use was flood irrigated during at least the early part of the season in every year during that time frame with the exception of 1987

and possibly 1981. For example, for 1984, Mr. Morse's conclusion was that the entire field was irrigated through the end of June with only the western part of the field and the northeast corner being irrigated through the end of August. This conclusion was based on satellite imagery from May 22, 1984, June 23, 1984, July 25, 1984, and August 10, 1984, in addition to the August 29, 1984 aerial photograph. Objectors did not bother to look beyond the August 29, 1984 photograph even though the satellite imagery was equally available to them.

Objectors' third piece of evidence on the issue of forfeiture was simply a printout from the Department's internet website of a recommendation that the parent water right, 37-12818, be disallowed on the basis of forfeiture. Here, the Objectors apparently failed to thoroughly review the Department's files on this matter. That review was focused solely on a period of time commencing with 1987 whereas, under the law of the SRBA, the running of the forfeiture statute for the Water Right was tolled in February, 1989 when the claim was filed. The Objectors should have also noted that the Department's files included Mr. Glen Saxton's Memorandum dated February 6, 1995, wherein he reached a conclusion that "the information presently available does not clearly show that [37-12818] has been forfeited through non-use" (*Speck Affidavit*, Ex. 12). As a result of this conclusion, the Department proceeded to issue permits and then licenses to the Blaine County School District (37-8821) and John Miley (37-8819) using portions of the parent water right, 37-12818, as mitigation. *Id.*; *See, also*, Mr. Speck's March 6, 2009 letter to Mr. Barker and Mr. Hobdey, *Speck Affidavit*, Ex. 9). The Department also approved Transfer No. 4205 for a portion of this parent water right. *Id.* There simply is no information in the Department's files on which to base a finding on five or more consecutive years of non-use of 37-12818 prior to 1989. Moreover, every split of that parent water right (*See, Speck Affidavit*, Ex. 26) was recommended as a valid water right by the Department,

Objected to by the Objectors on the grounds that the water right had been forfeited, and then decreed as a valid water right by this Court. *See, SRBA Subcases 37-12818C, 37-12818D, 37-21113, 37-21114, 37-21115, 37-21116 and this Subcase.* Last, the Objectors apparently failed to interview anyone with personal knowledge of the irrigation history of the Marathon property. Had they talked to Jim Phillips, a longtime neighbor and local attorney, they would have learned of his recollection of the flood irrigation of the Marathon property as described in his Affidavit which Marathon provided to the Objectors. *Speck Affidavit*, Ex. 14. Similarly, had they talked to Burr Smith, a neighbor from 1983 until 1996, they would have learned of his recollection of the flood irrigation of the Marathon property from 1983 through 1987 as described in his Affidavit which Marathon provided to the Objectors. *Speck Affidavit*, Ex. 15.

The bottom line is that Objectors produced absolutely NO evidence whatsoever of forfeiture in this Subcase. An allegation of forfeiture of a water right is very serious. It's a claim that an extremely valuable asset does not exist. The removal of water rights to irrigate Marathons 53 acres would result in a significant financial loss for Marathon. This is a perfect example of why forfeiture is not favored under Idaho law and can only be established by clear and convincing evidence. In this Subcase, the Objectors have not come forward with anything to demonstrate they had evidence of forfeiture in November 2007 when they filed the Objection or that they thereafter found such evidence during these proceedings. Therefore, their claim that the Water Right was forfeited was brought and pursued frivolously, unreasonably and without foundation. *Bedke v. City of Oakley*, 149 Idaho 532, 237 P.3d 1(2010)(the Bedkes' failure to present any facts to establish their claim to a water right for water delivered to them through the City's municipal system was frivolous, unreasonable and without foundation).

The second claim in the Objection was that the recommended quantity of 1.419 cfs was excessive for the number of irrigated acres at the place of use. When the Objectors stated at the end of November, 2010 that they would withdraw their Objection, both Marathon and the Department believed this included the forfeiture allegation and other two claims asserted in the Objection. The Department updated its recommendation of the Water Right to reflect the information on the location of the irrigated acres provided by Marathon and circulated it to the parties on December 3, 2010. *Speck Affidavit*, Ex. 17. The Department believed the recommendation of 1.34 inches/acre (which is the duty of water decreed for the Water Right at 1.419 cfs to irrigate 53 acres) was reasonable. *See*, February 24, 2011 e-mail from the department's attorney, Mr. Nick Spencer, to the parties' attorneys. *Speck Affidavit*, Ex. 19. The Objectors' attorneys had previously (in August and September, 2009) signed SF5's for water rights with the same priority date as the Water Right delivered through the Hiawatha Canal to neighboring properties in Subcases 37-21123 (where the duty of water is 2.38 inches/acre for the Phillips property) and 37-21125 (where the duty of water is 1.94 inches/acre for the Knight property) without any field headgate limit remarks. *See, Speck Affidavit*, Exs. 20 and 25. Nonetheless, the Objectors refused to sign an SF5 in this Subcase that did not include a field headgate limit remark and without some additional justification for the recommended 1.34 inches/acre duty of water. *Speck Affidavit*, Ex. 18.

Here again, the Objectors did nothing more than simply allege the quantity was excessive without any facts to back it up, pointing solely to the requirements of Idaho Code § 42-220⁷.

⁷ Idaho Code § 42-220 provides in pertinent part, "[P]rovided, that when water is used for irrigation, no such license or decree of the court allotting such water shall be issued confirming the right to the use of more than one second foot of water for each fifty (50) acres of land so irrigated, unless it can be shown to the satisfaction of the department of water resources in granting such license, and to the court in making such decree."

Marathon, on the other hand retained David R. Tuthill to study the recommended quantity of water under the Water Right and the Objectors' request for field headgate limitations on that amount. Dr. Tuthill generated three separate reports (*Speck Affidavit*, Exs. 21 and 22). At the end of his January 11, 2012 Memorandum titled Computation of Flow Requirements for Water Right No. 37-21112 Under a Totally Gravity Flow System, Dr. Tuthill concludes that , "[T]he recommendation of 1.419 cfs for water right no. 37-21112 can be supported even without a canal loss component." See, p.5 of this Memorandum found at *Speck Affidavit*, Ex. 22. At no time during these proceedings did the Objectors produce any facts that contradict Dr. Tuthill's conclusion or the Department's position that the quantity recommended was reasonable and that a field headgate remark was not necessary for its administration.

Last, the Objectors simply never pursued their claim that the season of use for the Water Right should end on October 15 instead of November 15. Not one shred of evidence was produced by the Objectors on this issue and the Water Right was decreed with the November 15 end date.

In summary, the Objection as filed in November 2007 and as pursued by the Objectors through the more than four years of proceedings in this Subcase was entirely frivolous, unreasonable and without foundation. Pursuant to Idaho Code § 12-121 as supplemented by I.R.C.P. 54(e)(1), Marathon is entitled to an award of its attorneys fees.

III. Marathon Should Be Awarded All its Attorney's Fees and Costs.

I.R.C.P. § 54(e)(3) sets forth the factors to be considered by the Court in determining the amount of fees awarded, including the amount involved and the results obtained, the time and labor required, the nature and length of the professional relationship with the client and the novelty and difficulty of the questions. The relevant points are addressed below.

The most significant issue raised by the Objectors was their assertion that the Water Right had been forfeited and therefore should not be decreed. Water rights are an extremely valuable asset in the Wood River valley. In recent years, water rights with the same priority date as the Water Right and delivered through the same Hiawatha Canal system have sold for as much as \$30,000 per acre. This meant that the challenge to the validity of the Water Right by the Objectors could have caused Marathon to lose an asset worth as much as \$1,590,000. With this much at stake, Marathon was compelled to spend the time and money necessary to clearly establish that forfeiture had not occurred. They acquired from Mr. John Gaeddert some historical aerial photography of the Marathon property. Through Idaho Water Engineering, they retained Mr. Anthony Morse to analyze the available Landsat satellite imagery and compile a report of his analysis and findings. The cost of this work was \$8,925 and is included in the list of discretionary costs in the accompanying Memorandum of Attorneys Fees and Costs. The legal fees incurred from December 7, 2007, through December 20, 2010, were for work related solely to the issue of forfeiture and amounted to \$14,690.50. Excluding a separate allocation of some portion of the charges for photocopies, long distance telephone and photocopies, the total of attorneys fees and discretionary costs to defend the unreasonable forfeiture challenge was \$24,280.50, less than 2% of the amount at stake for Marathon.

Although identified in the Objection filed in November, 2007, the claim that the recommended quantity of 1.419 cfs to irrigate the 53-acre place of use was excessive was not mentioned again by the Objectors until January, 2011. Marathon, through its attorney, tried to convince the Objectors that such a Remark for the Water Right, which is the last right delivered on the Hiawatha Canal, was not necessary or even appropriate to its administration or definition. In June, 2011, trial was set for mid-January, 2012. In October, 2011, Marathon again retained Idaho

Water Engineering to analyze and make recommendations on the quantity remarks requested by the Objectors. In preparation for trial, Dr. Tuthill also prepared an analysis of the flow requirements for the Water Right for flood irrigation of the entire 53-acre place of use as that is how the property was irrigated at the commencement of the SRBA. The fees charged by Idaho Water Engineering for these services totaled \$3,405. The time and expense and use of judicial resources for the trial scheduled in this Subcase were then avoided by the signing and filing of the Standard Form 5 in mid-January, 2012. Marathon's attorneys fees for the period from February, 2011 through the review of the partial decree on March 3, 2012 were \$10,433.00. The remaining attorney's fees were incurred to pursue this request for an award of attorney's fees.

Finally, it must again be emphasized that Marathon obtained the full and complete relief it sought in the SRBA. The Partial Decree of the Water Right is almost exactly as it had been recommended by the Department back in February, 2007⁸. At the same time, the Objectors failed to prevail on any of the claims they asserted in their Objection filed in November, 2007. In light of all of the above, this Court should find that all of the attorneys fees incurred herein by Marathon are reasonable, and that the discretionary costs in the sum of \$13,267.82 were necessary and exceptional costs reasonably incurred that should, in the interest of justice in this Subcase, be assessed against the Objectors.

CONCLUSION

Marathon is clearly the prevailing party in this Subcase. Attorneys fees are provided for by Idaho Code § 12-121 as the claims set forth in Objection were brought and pursued frivolously,

⁸ See fn. 4, above, and related text.

unreasonably or without foundation by Objectors. Marathon should be awarded the entire amount of the attorneys fees and costs it incurred in this matter.

DATED this 13th day of March, 2012.

SPECK & AANESTAD
A Professional Corporation
Attorneys for Plaintiffs

By 
James P. Speck

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of March, 2012, I served a true and correct copy of the foregoing BRIEF IN SUPPORT OF AWARD OF ATTORNEY'S FEES AND COSTS on the following persons in the manner designated below:

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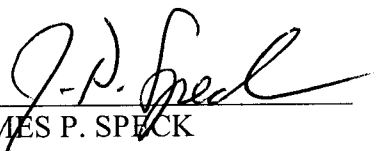
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