

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

AFFIDAVIT

ACTION NO. 1

Index No. 315-08

Hon. Richard B. Meyer

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

ADIRONDACK PARK AGENCY,

Plaintiff,

-against-

LEWIS FAMILY FARM, INC., SALIM B. LEWIS
and BARBARA LEWIS,

Defendants.

ACTION NO. 2 /
COUNTERCLAIM

Index No.: 332-08

Hon. Richard B. Meyer

**AFFIDAVIT IN SUPPORT OF LEWIS FAMILY FARM'S MOTION
TO RECOVER FEES AND EXPENSES PURSUANT TO CPLR ARTICLE 86**

State of New York)
) ss.:
County of Albany)

JORGE VALERO, being sworn, deposes and says:

1. I am the law firm Administrator for McNamee, Lochner, Titus & Williams, P.C. As the full time Administrator for a law firm consisting of 32 attorneys, I am responsible for the day-to-day management of the firm. I have been a law firm Administrator for nearly 20 years.

2. I make this affidavit in support of the motion of Plaintiff, Lewis Family Farm, Inc. (the "Farm") for an Award of Attorney's Fees and Expenses.

3. As a professional law firm Administrator, I am not only familiar with the rate structure of the lawyers in the McNamee firm, but I also maintain my knowledge and understanding of law firm management through seminars, publications, research and resource materials.

4. McNamee is one of the Capital Region's oldest and largest law firms. Perhaps due to its longstanding relationship with clients, McNamee has maintained hourly rates that have tended to be below market. Currently, rates in the law firm range from \$150.00 to \$375.00 per hour plus occasional contingency fee work.

5. I have reviewed the materials and data on attorney hourly rates provided by the State of New York in opposition to the Farm's Motion for an Award of Fees. I do not understand why the State decided to rely solely upon a five year old, single-source database in an effort to establish attorney hourly rates in New York.

6. As an experienced law firm administrator, I rely on companies that provide a broader, more long term and annual report of the trends, averages, ranges and hourly rates for lawyers in New York. The best source for this information in my experience is an annual survey published by Incisive Legal Intelligence ("Incisive"), formerly published by Altman Weil Publications. The survey was first published in 1972 and has been continuously published since then. Incisive's most recent survey is dated July, 2009 and the title page of their 2009 report is attached as Exhibit "A".

7. According to the survey, which is attached as Exhibit "B", the hourly range here at the McNamee firm is significantly below market. Indeed, the range of

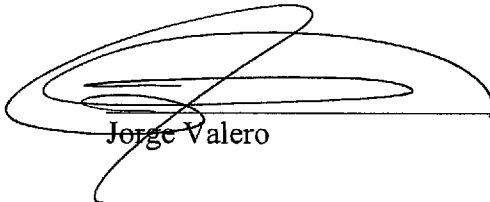
hourly rates for a partner/shareholder in New York is \$300 to \$454, with an average hourly rate of \$350. According to the National Law Journal ("NLJ") Top 250 Law Firm survey, dated December 8, 2008 which is attached as Exhibit "C", the hourly rate for a partner/shareholder in the Capital Region is \$190 to \$850. The average partner billing rate range is \$308 to \$626. Thus, the hourly rate set forth by John Privitera in the application for an award now before the Court of \$300 per hour is well below market.

8. Given Mr. Privitera's status in the McNamee firm as an experienced, well-known and top-rated litigator with over 30 years of experience, one would expect his rates to fall in the 95th percentile. According to Exhibit B, the 95th percentile hourly rate for firms in New York is \$454.

9. Likewise, according to Incisive's survey which is attached as Exhibit "D" the hourly rate for partners/shareholders with over 30 years of experience in New York is \$373 to \$503, with a 95th percentile hourly rate of \$503 per hour.

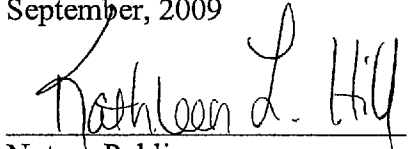
10. Likewise, the hourly rate charged by Jacob Lamme, an associate in this firm, of \$150-175 per hour is well within the norm.

11. For the foregoing reasons, according to established databases and reliable surveys, Mr. Privitera's rate of \$300 per hour and Mr. Lamme's rate of \$150-175 per hour are more than reasonable.



Jorge Valero

Sworn to before me this 17th day of
September, 2009



Notary Public
KATHLEEN L. HILL
Notary Public, State of New York
No. 01HI6029213
Qualified in Sub. C
Commission Expires Aug. 9, 20 13

THE SURVEY OF LAW FIRM ECONOMICS

2009 Edition

Custom Report for Firm 4000

Release Date: July 2009

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STANDARD HOURLY BILLING RATES
As of January 1, 2009

| State/Status | | 4000 | Number of Offices | RATE | | | | | |
|--------------|---------------------------------------|------|----------------------|----------------------|---------------|-------------------------|--------------|-------------------------|-----------------------|
| | | | | Number of Lawyers | Average \$ | Lower Quartile \$ | Median \$ | Upper Quartile \$ | Ninth Decile \$ |
| NM | Partner/Shareholder-Equity/Non-Equity | -- | 3 | 96 | -- | -- | -- | -- | -- |
| | Associate/Staff Lawyer | -- | 3 | 53 | -- | -- | -- | -- | -- |
| NV | Partner/Shareholder-Equity/Non-Equity | -- | 3 | 43 | -- | -- | -- | -- | -- |
| | Associate/Staff Lawyer | -- | 3 | 38 | -- | -- | -- | -- | -- |
| NY | Partner/Shareholder-Equity/Non-Equity | 253 | 14 | 295 | 350 | 300 | 340 | 375 | 454 |
| | Associate/Staff Lawyer | 201 | 13 | 193 | 239 | 200 | 235 | 268 | 320 |
| OH | Partner/Shareholder-Equity/Non-Equity | -- | 14 | 378 | 305 | 270 | 300 | 350 | 385 |
| | Associate/Staff Lawyer | -- | 16 | 321 | 182 | 150 | 170 | 205 | 235 |
| OK | Partner/Shareholder-Equity/Non-Equity | -- | 1 | 81 | -- | -- | -- | -- | -- |
| | Associate/Staff Lawyer | -- | 1 | 28 | -- | -- | -- | -- | -- |
| OR | Partner/Shareholder-Equity/Non-Equity | -- | 3 | 55 | -- | -- | -- | -- | -- |
| | Associate/Staff Lawyer | -- | 3 | 29 | -- | -- | -- | -- | -- |
| PA | Partner/Shareholder-Equity/Non-Equity | -- | 29 | 507 | 339 | 270 | 325 | 405 | 476 |
| | Associate/Staff Lawyer | -- | 27 | 311 | 214 | 170 | 200 | 240 | 300 |
| SC | Partner/Shareholder-Equity/Non-Equity | -- | 11 | 239 | 268 | 159 | 285 | 350 | 375 |
| | Associate/Staff Lawyer | -- | 11 | 197 | 173 | 129 | 150 | 210 | 250 |
| SD | Partner/Shareholder-Equity/Non-Equity | -- | 1 | 29 | -- | -- | -- | -- | -- |
| | Associate/Staff Lawyer | -- | 1 | 7 | -- | -- | -- | -- | -- |
| TN | Partner/Shareholder-Equity/Non-Equity | -- | 7 | 128 | 316 | 275 | 300 | 350 | 400 |
| | Associate/Staff Lawyer | -- | 7 | 77 | 206 | 178 | 200 | 230 | 253 |
| TX | Partner/Shareholder-Equity/Non-Equity | -- | 19 | 280 | 367 | 285 | 375 | 440 | 525 |
| | Associate/Staff Lawyer | -- | 16 | 214 | 239 | 195 | 235 | 280 | 310 |
| UT | Partner/Shareholder-Equity/Non-Equity | -- | 2 | 39 | -- | -- | -- | -- | -- |
| | Associate/Staff Lawyer | -- | 2 | 16 | -- | -- | -- | -- | -- |
| VA | Partner/Shareholder-Equity/Non-Equity | -- | 6 | 86 | 294 | 225 | 260 | 334 | 470 |
| | Associate/Staff Lawyer | -- | 7 | 72 | 213 | 165 | 198 | 255 | 297 |
| VT | Partner/Shareholder-Equity/Non-Equity | -- | 2 | 22 | -- | -- | -- | -- | -- |
| | Associate/Staff Lawyer | -- | 2 | 13 | -- | -- | -- | -- | -- |

(continued on next page)



The National Law Journal 250 Billing

| FISCAL YEAR | ORGANIZATION NAME | BRANCH NAME | QTY | STATE | Headquarters | PARTNER | PARTNER | ASSOCIATE | ASSOCIATE | ASSOCIATE | PARTNER | FIRMWIDE | ASSOCIATE | PARTNER BILLING | FIRMWIDE | NUM ATTORNEYS |
|-------------|---------------------------|-------------|--------|-------|--------------------|------------------|-------------------|------------------|-------------------|------------------|------------------|------------------|------------------|-----------------|------------------|---------------|
| | | | | | | BILLING RATE LOW | BILLING RATE HIGH | BILLING RATE LOW | BILLING RATE HIGH | BILLING RATE AVG | BILLING RATE AVG | BILLING RATE AVG | BILLING RATE MED | RATE MED | BILLING RATE MED | |
| 2008 | Bond, Schoeneck & King | Albany | Albany | NY | Syracuse, N.Y. | 210 | 450 | 150 | 250 | 187 | 308 | 268 | 185 | 310 | 275 | 28 |
| 2008 | Dewey & LeBoeuf | Albany | Albany | NY | New York | | | | | | | | | | | 8 |
| 2008 | Drinker Biddle & Reath | Albany | Albany | NY | Philadelphia | | | | | | | | | | | 4 |
| 2008 | Greenberg Traurig | Albany | Albany | NY | New York | 335 | 850 | 175 | 525 | 323 | 520 | 426 | 325 | 535 | 425 | 23 |
| 2008 | Harris Beach | Albany | Albany | NY | Rochester, N.Y. | 250 | 475 | 140 | 275 | | | | | | | 10 |
| 2008 | Hiscock & Barclay | Albany | Albany | NY | Syracuse, N.Y. | 190 | 650 | 145 | 430 | 235 | 361 | 319 | 224 | 359 | 322 | 39 |
| 2008 | Hodgson Russ | Albany | Albany | NY | Buffalo, N.Y. | 240 | 665 | 165 | 450 | 230 | 355 | 303 | 235 | 350 | 300 | 8 |
| 2008 | Jackson Lewis | Albany | Albany | NY | White Plains, N.Y. | 250 | 595 | 180 | 405 | | | | | | | 1 |
| 2008 | Manatt, Phelps & Phillips | Albany | Albany | NY | Los Angeles | 495 | 850 | 290 | 505 | 407 | 626 | 533 | 410 | 620 | 550 | 6 |
| 2008 | McKenna Long & Aldridge | Albany | Albany | NY | Atlanta | 370 | 750 | 220 | 450 | 274 | 454 | | | | | 2 |
| 2008 | Nixon Peabody | Albany | Albany | NY | Boston | 565 | 845 | 230 | 350 | 370 | 570 | 468 | 365 | 590 | 430 | 14 |
| 2008 | Phillips Lytle | Albany | Albany | NY | Buffalo, N.Y. | 250 | 475 | 155 | 355 | 230 | 334 | 288 | 220 | 330 | 300 | 6 |

Source: National Law Journal, December 8, 2008

**STATE BY YEARS OF LEGAL EXPERIENCE
STANDARD HOURLY BILLING RATES
As of January 1, 2009**

| State/Years of Experience | | 4000 | Number of Offices | RATE | | | | | |
|---------------------------|------------------|------|-------------------|-------------------|------------|-------------------|-----------|-------------------|-----------------|
| | | | | Number of Lawyers | Average \$ | Lower Quartile \$ | Median \$ | Upper Quartile \$ | Ninth Decile \$ |
| NJ | Under 2 Years | -- | 4 | 35 | -- | -- | -- | -- | -- |
| | 2 or 3 Years | -- | 6 | 46 | 226 | 199 | 215 | 245 | 315 |
| | 4 or 5 Years | -- | 6 | 30 | 242 | 210 | 235 | 275 | 289 |
| | 6 or 7 Years | -- | 5 | 26 | 280 | 230 | 250 | 360 | 375 |
| | 8 to 10 Years | -- | 8 | 42 | 277 | 248 | 275 | 295 | 382 |
| | 11 to 15 Years | -- | 11 | 57 | 319 | 300 | 310 | 338 | 395 |
| | 16 to 20 Years | -- | 10 | 50 | 374 | 335 | 368 | 400 | 464 |
| | 21 to 30 Years | -- | 10 | 86 | 388 | 349 | 388 | 425 | 479 |
| | 31 or More Years | -- | 13 | 58 | 431 | 375 | 425 | 471 | 505 |
| NY | Under 2 Years | -- | 6 | 44 | 193 | 170 | 180 | 200 | 245 |
| | 2 or 3 Years | 175 | 5 | 27 | 222 | 200 | 200 | 230 | 300 |
| | 4 or 5 Years | 178 | 9 | 34 | 233 | 190 | 225 | 250 | 338 |
| | 6 or 7 Years | -- | 6 | 26 | 269 | 229 | 250 | 296 | 377 |
| | 8 to 10 Years | -- | 9 | 44 | 264 | 246 | 255 | 275 | 325 |
| | 11 to 15 Years | 252 | 10 | 56 | 305 | 275 | 298 | 325 | 377 |
| | 16 to 20 Years | 237 | 8 | 54 | 326 | 275 | 325 | 375 | 435 |
| | 21 to 30 Years | 261 | 10 | 103 | 354 | 300 | 335 | 375 | 469 |
| | 31 or More Years | 259 | 12 | 97 | 373 | 330 | 375 | 388 | 503 |
| OH | Under 2 Years | -- | 10 | 66 | 155 | 150 | 150 | 160 | 175 |
| | 2 or 3 Years | -- | 12 | 69 | 174 | 150 | 175 | 185 | 200 |
| | 4 or 5 Years | -- | 12 | 46 | 194 | 174 | 198 | 210 | 220 |
| | 6 or 7 Years | -- | 14 | 57 | 194 | 150 | 200 | 220 | 240 |
| | 8 to 10 Years | -- | 10 | 58 | 210 | 174 | 215 | 241 | 275 |
| | 11 to 15 Years | -- | 12 | 79 | 253 | 220 | 265 | 285 | 325 |
| | 16 to 20 Years | -- | 11 | 66 | 274 | 240 | 275 | 306 | 340 |
| | 21 to 30 Years | -- | 12 | 129 | 306 | 273 | 315 | 345 | 385 |
| | 31 or More Years | -- | 14 | 129 | 324 | 285 | 330 | 370 | 400 |

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