

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE SHARWLINE NICHOLSON, ET AL., :
: CV-00-2229 (JBW)
: CV-00-5155 (JBW)
: CV-00-6885 (JBW)
:
: DECLARATION OF
: LAWRENCE H. STIFFMAN ON
: BEHALF OF AMICUS CURIAE
: NEW YORK COUNTY
: LAWYERS' ASSOCIATION
:
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DR. LAWRENCE H. STIFFMAN, declares, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I make this declaration based on personal knowledge acquired through my work at Applied Statistics Laboratory, Inc. (“ASL”).
2. In 1965, I graduated from the University of Pittsburgh with a Bachelors of Science degree in Zoology. In 1968, I received a Masters Degree in Environmental Sciences from the University of Michigan. In 1978, I received a Ph.D in Public Health also from the University of Michigan.
3. I am the President of ASL, a survey and market research firm based in Ann Arbor, Michigan. ASL specializes in legal economics, survey research, market research and quantitative analysis. In particular, ASL has conducted hundreds of surveys on behalf of and under contract with various state bar associations concerning the economics of law practice.

4. From 1981 to the present, I have been commissioned by various state bar associations to design, conduct and analyze surveys of their members. These include the bar associations of Arizona, Colorado, Florida, Iowa, Kansas, Maine, Michigan, New Hampshire, New Mexico, New York and Ohio.

5. In addition to my work with ASL, for the past 16 years I have researched and analyzed labor utilization and billing practices at law firms nationally for the Institute of Law Firm Management's Annual Survey on Law Firm Compensation, published by the University of Michigan's Institute of Continuing Legal Education. I have testified more than 25 times as an expert witness with regard to legal fees and prevailing hourly rates, and have prepared affidavits or reports in an additional 50 matters, including a recent one concerning attorneys practicing in New York State.

6. In 1996, ASL was commissioned to assist the New York State Bar Association ("NYSBA") in conducting an economic survey of its members (the "Survey"). Specifically, ASL created the questionnaire used in the Survey, developed the sampling protocols and procedures, prepared and analyzed the data, and generated a report interpreting the results. A report encompassing the key results of the Survey were published by NYSBA as The 1997 Desktop Reference on the Economics of Law Practice in New York.

7. The Survey was mailed to a random sampling of NYSBA members during the summer and fall of 1996. It contained 20 questions on various economic aspects of the respondent's legal practice for 1995.

8. ASL generated a geographically representative sample of NYSBA members by categorizing them by office zip code, and then randomly selecting 25% of those members in each zip code to receive questionnaires. For example, for a zip code with 4,000 attorneys, 1,000 were selected. For a zip code with 100 attorneys, 25 were selected. The sampling was conducted in this manner to assure a proportionate sample was obtained within each zip code.

9. ASL received responses from approximately 1,400 attorneys statewide. About 33% of the respondents were sole or small firm practitioners with offices located in New York City. Zip codes were cross-referenced against United States Post Office files to link them to specific boroughs (i.e., Bronx, Manhattan, etc.)

10. Attached as Exhibit A is a true and accurate copy of the questionnaire used in the Survey (the “Questionnaire”).

11. Attached as Exhibit B is a summary I have prepared of the Survey data concerning the costs of office overhead and expenses for locations in New York City (the “Summary”).

12. The Summary provides separate data for different sizes of firms. Firm size is defined as the total number of attorneys in the firm. Both the median (50th percentile) and mean (average) values are reported. For the purposes of this analysis, four firm size categories are considered: solo practitioners, two-person firms, firms with three to five attorneys, and firms with six to nine attorneys.

This information is provided in Column A. The source of this information is Item 8 of the Questionnaire requesting the number of attorneys in the organization.

13. Column B shows four categories of unreimbursed expenses (i.e. expenses that are not directly billed) incurred by the practitioner or the firm on a per attorney basis, including associates, for 1995: salary and fringe benefits of all non-lawyer personnel (“NONLAWYER LABOR”), occupancy related costs (“OCCUPANCY”), including phone and utilities, all other expenses (“OTHER EXPENSES”) and total expenses (“TOTAL EXPENSES”). These statistics are derived from Item 20 of the Questionnaire.

14. Columns C and D reflect the mean and median values of all the expense data collected from the survey respondents. The “median” value is the middle value of a distribution which is ordered from low to high or high to low. It is a measure of central tendency which is not distorted by “outliers,” which are very high values or very low values. The “mean,” or arithmetic average is the simple average of all values in the distribution. It is another measure of central tendency but is more influenced by outliers, such as an expense value of \$200,000. In a perfectly normal situation (bell-curve shaped distribution of statistics), the mean equals the median.

15. Columns E and F reflect the compilation of median hours worked and hours billed per week for an average workweek in 1995. Item 16 of the Questionnaire requested statistics regarding billable legal work, office administration and unbilled legal work. Total hours is the sum of these values

and is therefore a more conservative measure by which to calculate hourly overhead costs than billable hours. There was little variation between firm size categories in median total hours (45 to 50 hours) worked or billable hours worked (25 to 30 hours).

16. Weekly hours are converted to annual hours by multiplying by 50 which, by convention, represents the average number of weeks worked per year in the United States economy. Median annual hour statistics are shown as Columns G and H.

17. Based on the Survey data, the Summary displays the derived overall hourly cost per attorney of maintaining a practice in 1995. The Summary calculates this figure by dividing the median value of the statistic by the median value of hours worked per year. The resultant statistics are found under Columns I and J.

18. Because these statistics represent data reported in 1995, it is necessary to adjust them for inflation to reflect overall hourly cost per attorney in 2001. Inflation, overall was moderate between 1995 and 2001 in most sectors of the United States economy. Legal services prices in New York City, however, increased at a rate faster than average (5 % in New York City versus 3% nationwide). For the purposes of this analysis, CPI Urban Wage earner information was utilized at the 5% annual rate and is utilized to adjust 1995 values for inflation as follows:

Base Year (1995)	1.00
1996	1.05
1997	1.05 X 1.05
1998	1.05 X 1.05 X 1.05
1999	1.05 X 1.05 X 1.05 X 1.05
2000	1.05 X 1.05 X 1.05 X 1.05 X 1.05
2001	1.05 X 1.05 X 1.05 X 1.05 X 1.05 X 1.05 = 1.34

19. As reflected above, assuming an inflation rate of 5% per year, and estimating based on changes in the CPI index of urban wage-related prices in the services sector in New York City as published by the United States Bureau of Labor Statistics, there is an inflation factor of 34% (or 1.34). In my opinion, this is a conservative estimate given the rapid increase in the price of legal services in the area during the second half of the 1990's.

20. Values for 1995 (Columns I and J) are adjusted for inflation utilizing an inflation factor of 1.34. Resultant 2001 estimates are found as Columns K and L.

21. Derivations of total overhead expenses by firm size category are highlighted on Exhibit B. Total overhead expenses per attorney increase with firm size. Based upon the derivation of unit costs utilizing reported total hours worked per year as the denominator, estimates of hourly overhead cost per attorney range from \$23.05 per hour to \$75.81 per hour for attorneys practicing in firms consisting of from one to nine attorneys.

22. The resulting hourly overhead expense, per attorney by firm size is therefore:

- (a) \$23.05 to \$30.89 per hour for a firm with a sole practitioner.
- (b) \$28.41 to \$38.07 per hour for a firm with two practitioners.
- (c) \$42.88 to \$57.46 per hour for a firm with three to five practitioners.
- (d) \$56.58 to \$75.81 per hour for a firm with six to nine practitioners.

23. I am informed that under Article 18-B of the County Law, Article 2 of the Family Court Act, and Article 2 of the Judiciary Law, private attorneys assigned to represent children and indigent adults in Family Court and Criminal Court (“assigned counsel”) are paid \$25 per hour for out-of-court representation and \$40 per hour for in-court representation.

24. When the in-court and out-of-court reimbursement rates are considered against the hourly overhead cost based on total hours (the more conservative estimate), it is clear that assigned counsel would have great difficulty maintaining a law practice in New York City.

25. The difficulty is exacerbated by the fact that these figures are all calculated before federal, state and local tax deductions. When income taxes are considered, an attorney may earn only from 50 to 67% of his income before taxes.

26. In some cases, practitioners attempting to maintain a New York City law practice on the statutory rates may actually lose money when the cost of overhead is considered. For example:

- (a) a sole practitioner paid at the out-of-court rate of \$25 per hour only makes \$1.95 per hour before taxes. At the in-court rate of \$40 per hour, a sole practitioner makes \$16.95 per hour before taxes.
- (b) a practitioner in a firm with another lawyer actually loses \$3.41 at the out-of-court rates before taxes; at the in-court rates the same practitioner earns only \$11.59 per hour before taxes.
- (c) a practitioner in a three to five lawyer firm loses \$17.88 before taxes at the out-of-court rates and loses \$2.88 before taxes at the in-court rate.
- (d) a practitioner in a firm with six to nine lawyers typically loses \$31.58 and \$16.58 before taxes at the out-of-court and in-court rates, respectively.

Dated: Ann Arbor, Michigan
November 13, 2001

Dr. Lawrence H. Stiffman