UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

September 10, 1997

RICHARD F. LAREAU, Complainant,	)
v.	) 8 U.S.C. §1324b Proceeding) OCAHO Case No. 96B00048
US AIRWAYS, INC., Respondent.	)

ORDER GRANTING RESPONDENT'S REQUEST FOR ATTORNEY'S FEES

MARVIN H. MORSE, Administrative Law Judge

Appearances: John B. Kotmair, Jr., on behalf of Complainant.
Barbara Berish Brown, Esq. and Kenneth M. Willner, Esq., Paul, Hastings, Janofsky & Walker, LLP, and Michelle V. Bryan, Esq., US Airways, Inc., on behalf of Respondent.

I. *Procedural History*

Pursuant to the May 21, 1997, Final Decision and Order, 7 OCAHO 932 (1997), dismissing the Complaint of Richard F. Lareau (Lareau or Complainant), on June 30, 1997, US Airways, Inc. (US Airways[1] or Respondent), by its attorneys, timely filed a Motion for Attorneys' Fees (Application). Lareau neither contests nor otherwise responds to the Application.

US Airways requests $8,469.61 in attorney's fees, law clerk's and technician's fees, and related expenses, and provides a detailed ex-

[1]Formerly, USAir, Inc.

planation and summary in support. Lareau does not question the reasonableness of either the time or hourly rates claimed in the Application.

II. *Discussion*

A. *Test for Awards of Attorney's Fees Under 8 U.S.C. §1324b*

Title 8 U.S.C. §1324b(h) provides in pertinent part that

> An administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

Furthermore,

> [T]he Supreme Court has held that a . . . [c]ourt may, in its discretion, award attorney's fees to a prevailing Defendant in a [discrimination] case upon a finding that the plaintiff's action was frivolous, unreasonable, groundless and without foundation, even though not brought in subjective bad faith.

Jasso v. Danbury Hilton & Towers, 3 OCAHO 566, at 6 (1993), 1993 WL 544051, at *10–11 (O.C.A.H.O.), citing *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978).

An award of attorney's fees depends on satisfaction of a two-part test:

> (1) the party claiming attorney's fees must prevail, and
>
> (2) the complainant must have been unreasonable in filing the underlying action.

Id.

1. *US Airways Is the Prevailing Party*

The Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (discussing fee awards under Civil Rights Attorney's Fees Awards Act, 42 U.S.C. §1988) and *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 793 (1989) (discussing fee awards under 42 U.S.C. §§1983, 1988), defined the prevailing party as the one who succeeds or prevails "on a significant issue in the litigation" and achieves "some of the relief they sought. . . ." In *Texas*

State Teachers, the Court found that "[t]he touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute." 489 U.S. at 792–93. Those "who prevailed on a significant issue in the litigation and . . . obtained some of the relief sought . . . are thus 'prevailing parties' within the meaning of [the statute]." *Id.* at 793.

US Airways "succeeded" on a significant claim set forth in its second affirmative defense**,** failure to state a claim upon which relief can be granted, when I dismissed Lareau's Complaint with prejudice for failure to state a cause of action cognizable under §1324b(g)(3), thus affording US Airways the "relief sought," and "materially altering" US Airways' and Lareau's legal relationship. To similar effect, US Airways' legal relationship with Lareau was "materially altered" when I dismissed his Complaint for lack of subject matter jurisdiction. US Airways, therefore, satisfies the first of this two-part test; it is the prevailing party.

I find that Respondent meets the prevailing party test of *Texas State Teachers*, *i.e.*, (1) it prevailed on a significant issue in the litigation by demonstrating that Lareau failed to state a cause of action, and (2) it obtained the relief it sought in its Answer when I dismissed Lareau's Complaint.

2. *Lareau's Complaint, Without Reasonable Foundation in Law and Fact, Is Frivolous*

Fee shifting turns on a determination that the prevailing party has established that "the losing party's argument is without reasonable foundation in law and fact." 8 U.S.C. §1324b(h). *See Horne v. Hampstead*, 7 OCAHO 959, at 6 (1997)*; Jasso*, 3 OCAHO 566, at 5, 1993 WL 544051, at *2 (citing *Jones v. Dewitt Nursing Home*, 1 OCAHO 1235, 1268 (1990)).

Lareau continued to press his frivolous 8 U.S.C. §1324b claims—*i.e.,* he did not withdraw his Complaint as well he might have in light of unanimous OCAHO precedent dismissing discrimination claims predicated on an employer's refusal to accept self-styled tax-

exemption documents.[2] Lareau was, therefore, on notice that his claims were without foundation in fact and law.

On the core issue of *Lareau v. US Airways*, 7 OCAHO 932, whether or not an employee may successfully sue an employer for withholding federal taxes from the worker's wages, the U.S. Court of Appeals for the Seventh Circuit has held that:

> Employees have no cause of action against employers to recover wages withheld and paid over to the government in satisfaction of federal income tax liability.

Edgar v. Inland Steel Co., 744 F.2d 1276, 1278 (7th Cir. 1986) (such lawsuits represent "yet another disturbing example of a patently frivolous appeal by abusers of the tax system merely to harass the collection of public revenue"). *See also Kaucky v. Southwest Airlines*, 109 F.3d 350, 353 (7th Cir. 1997) ("Money collected in error by a lawful agent [such as an employer]. . . can be recovered only from the government, because a claim or suit to collect such money is a claim or suit for a tax refund"); *Webb v. United States,* 66 F.3d 691, 697–98 (4th Cir. 1995), *cert. denied*, 117 S. Ct. 1079 (1997).

---

[2]*See*—to cite only those cases decided prior to *Lareau—Jarvis v. AK Steel,* 7 OCAHO 930 (1997)*; Mathews v. Goodyear Tire & Rubber Co.,* 7 OCAHO 929 (1997)*; Winkler v. West Capital Fin. Servs.*, 7 OCAHO 928 (1997); *Lee v. Airtouch Communications*, *Inc.,* 7 OCAHO 926, at 4–5 (1997); *Smiley v. City of Philadelphia*, 7 OCAHO 925 (1997); *Austin v. Jitney-Jungle Stores of Am., Inc.*, 6 OCAHO 923 (1997), 1997 WL 235918 (O.C.A.H.O.); *Wilson v. Harrisburg Sch. Dist.*, 6 OCAHO 919 (1997), 1997 WL 242208 (O.C.A.H.O.); *Costigan v. NYNEX*, 6 OCAHO 918 (1997), 1997 WL 242199 (O.C.A.H.O.); *Boyd v. Sherling*, 6 OCAHO 916 (1997), 1997 WL 176910 (O.C.A.H.O.); *Winkler v. Timlin Corp.*, 6 OCAHO 912 (1997), 1997 WL 148820 (O.C.A.H.O.); *Horne v. Town of Hampstead* (*Horne II*), 6 OCAHO 906 (1997), 1997 WL 131346 (O.C.A.H.O.); *Lee v. Airtouch Communications, Inc.,* 6 OCAHO 901 (1996), 1996 WL 780148 (O.C.A.H.O.), *appeal filed*, No. 97–70124 (9th Cir. 1997); *Toussaint v. Tekwood Assoc.*, 6 OCAHO 892 (1996), 1996 WL 670179 (O.C.A.H.O.), *appeal filed*, No. 96–3688 (3d Cir. 1996). Complainant's representative, John B. Kotmair, Jr. (Kotmair), as Director, National Worker's Rights Committee (Committee), represented all but the *Tekwood* complainant. Although varying in detail, these precedents share a common factual nucleus: rejection by the employer of an employee's or applicant's tender of improvised, unofficial documents purportedly exempting the offeror from taxation. The documents are all self-styled "Affidavit(s) of Constructive Notice" (that the offeror is tax-exempt) and "Statement(s) of Citizenship" (exempting the offeror from social security contributions). In every case, the complaint was dismissed.

Christiansburg Garment Co. v. EEOC, 434 U.S. 412, *supra,* addressed fee-shifting. In *Christiansburg*, the Supreme Court applied the prevailing party standard to civil rights defendants, holding that a court "may in its discretion award attorney's fees to a prevailing defendant in a Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in bad faith." 434 U.S. at 421. Subsequently, in *Hensley v. Eckerhart*, the Court explained that "[a] prevailing defendant [in a 42 U.S.C. §1988 civil rights action] may recover an attorney's fee only where the suit was vexatious, frivolous, or brought to harass or embarrass the defendant. See H.R. Rep. No. 94–1558, p. 7 (1976)." 461 U.S. at 429 n.2.

Lareau's Complaint was summarily dismissed for lack of subject matter jurisdiction *and* for failure to state a claim upon which relief could be granted. "[T]he *Christiansburg* standard is . . . likely to have been met where ***the plaintiff's case is dismissed for failure to state a claim on which relief could be granted. . . ."***[3] Lareau maintains that his employer discriminated against him by refusing to accept his self-styled, gratuitously tendered documents,[4] subjecting him to the universal demands of the Internal Revenue Code and the Social Security Act, the legality of which are undisputed and

[3]1 Court Awarded Attorney Fees (MB) ¶10.04, at 10–77—10–78 (May 1997) (footnote omitted) (emphasis added). *See, e.g., Patton v. County of Kings*, 857 F.2d 1379 (9th Cir. 1988) (upholding attorney's fees awarded to prevailing defendant where action dismissed for plaintiff's failure to state a cause of action and where plaintiff's action found frivolous); *Harbulak v. County of Suffolk*, 654 F.2d 194, 197 (2d Cir. 1981) (reversing and remanding for award of attorney's fees to defendant after finding "no basis whatsoever for a suit against" the defendant and plaintiff's claim "unreasonable and groundless, if not frivolous."); *Riviera Carbana v. Cruz*, 588 F. Supp 80 (D.P.R. 1980) (holding that plaintiff failed to allege or state a cause of action and stating that even if plaintiff had stated a cause of action, "'federal courts are without power to entertain claims if they are so attenuated and unsubstantial as to be absolutely devoid of merit' or if they are obviously, as in the instant case, frivolous") (citation omitted), *aff'd sub nom. Carbana v. Cruz*, 767 F.2d 905 (1st Cir. 1985) (unpublished table decision).

[4]*See* Complaint, at ¶16a (identifying the documents which Respondent refused to accept as "Statement of Citizenship" and "Affidavit of Constructive Notice" which Lareau presented to prove tax exemption and social security secession). *See also* OSC Charge, wherein Lareau characterizes as an "unfair employment practice" US Airway's refusal to forward his self-styled and gratuitously proferred Statement of Citizenship to the IRS, to "acknowledge my Affidavit of Constructive Notice that I no longer had application for social security benefits," and to exempt him from federal withholding taxes.

long-settled.[5] US Airways, moreover, is statutorily mandated to withhold income taxes[6] and social security contributions[7] and is immunized from legal liability for withholding by 26 U.S.C. §3102(b),[8] 26 U.S.C. §3403,[9] and the Anti-Injunction Act, 26 U.S.C. §7421(a),[10] which has been interpreted to prohibit suits against employers who withhold taxes. *See United States v. American Friends Serv. Comm.*, 419 U.S. 7, 10 (1974). "[T]o take a position which indicates a desire to impede the administration of tax laws is a legally frivolous action." *McKee v. United States*, 781 F.2d 1043, 1047 (4th Cir.), *cert. denied*, 477 U.S. 905 (1986).

Where an employer is statutorily immunized from liability, an action brought against the employer for the performance of that duty is frivolous *per se*. "A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory. . . ." *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997). "A claim is based upon an indisputably meritless legal theory if the defendants are immune from suit." *Graves v. Hampton*, 1 F.3d 315, 317 (5th Cir. 1993) (citing *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)); *Austin v. Jitney-Jungle Stores, Inc.*, 6 OCAHO 923, at 22 (1997), 1997 WL 235918, at *17 (O.C.A.H.O.) (citing *Neitzke*, 490 U.S. at 325, *cited in Graves*, 1 F.3d at 317). Because US Airways, "an employer who in compliance with statutory obligations . . . deducts withholding tax and social security contributions, . . . is statutorily immunized from suit[,]" Lareau's action is frivolous and meritless. *Austin*, 6 OCAHO 923, at 22, 1997 WL 235918, at *17.

Therefore, I find that there is "no legal or factual basis for any of [Lareau's] allegations," and I award US Airways **$5,296.47** in attorney's fees and related expenses, the computation of which is ex-

[5]All employees residing in the United States are subject to withholding taxes and social security (FICA) contributions, which employers must collect "at the source"—i.e., in the workplace, through payroll deductions. 26 U.S.C. §§3101, 3102, 3402(a)(1), 3403. *See Helvering v. Davis*, 301 U.S. 619, 644 (1937); *Charles C. Steward Mach. Co. v. Davis*, 301 U.S. 548, 590 (1937).

[6]26 U.S.C. §3402(a).

[7]26 U.S.C. §3102(a).

[8]26 U.S.C. §3102(b) ("Every employer . . . shall be indemnified against the claims and demands of any person. . . . ").

[9]26 U.S.C. §3403 ("The employer . . . shall not be liable to any person. . . . ")

[10]26 U.S.C. §7421(a) ("[N]o suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person. . . . ").

plained at **II, B.**, below. *Lee v. Airtouch Communications*, 7 OCAHO 926, at 6. Respondent's prevailing party status and Lareau's action against an employer legally immunized from liability satisfy the threshold requirements of the 8 U.S.C. §1324b(h) two-part test for award of attorney's fees.

B. *Reasonableness of Attorney's Fees Request*

"In any complaint respecting an unfair immigration-related employment practice, an [ALJ], in the judge's discretion, may allow a prevailing party. . . a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact." 8 U.S.C. §1324b(h). "Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative, stating the actual time expended and the rate at which fees and other expenses were computed." 28 C.F.R. §68.52(c)(2)(v). In *Lareau*, counsel supplies the following facts and figures to support its $8,469.61 attorney's fees request:

1. *Attorney Barbara Berish Brown*

Qualifications: Senior Partner, Paul Hastings; 1971 graduate of Yale University Law School; chair of firm's employment law practice; coauthor of EEO Update (BNA, 1997).
Rate Charged: $284.75 (discounted from usual rate of $350 per hour).
Number of Hours: 2.25 x $284.75 = $640.68.

2. *Attorney Kenneth Wilner*

Qualifications: "Of Counsel," Paul Hastings; 1987 graduate of University of Virginia School of Law; ten years' experience in labor and employment law.
Rate: $207 (discounted from regular rate of $235).
Number of Hours: 14.75 x $207.00 = $3,053.25.

3. *Attorney Julian B. Decyk*

Qualifications: "Of Counsel," Paul Hastings, Los Angeles Office; 1984 graduate of Harvard University Law School; expert in taxation.
Rate: $243
Number of Hours: .75 x $243 = $182.25.

4. ***Law Clerk Glenn Merten***

Rate**:** $90
Number of Hours: 58 x $90 = $5,220.00.

5. ***Legal Assistant Christian Dennison***

Rate: $67.50
Number of Hours: .50 x $67.50 = $33.75.

5. ***Other Expenses***:

—Photocopy Charges:	7.40
—Postage/Express Mail:	1.24
—Lexis:	35.00
—Photocopy Charges:	55.80
—Photocopy Charges:	13.40
—Postage/Express Mail:	7.32
—Lexis:	631.88
—Photocopy:	9.60
—Facsimile:	54.97
Total Miscellaneous Charges:	$816.61.
Total Charges:	**$9,946.54.**

Of this total, US Airways requests **$8,469.61**. "The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley*, 461 U.S. at 433. The *Hensley* calculation is the "lodestar" amount. "The courts may then adjust this lodestar calculation by other factors. . . . [I]n *Hensley* and in subsequent cases, [the Supreme Court has] adopted the lodestar approach as the centerpiece of attorney's fee awards." *Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989).

"The product of reasonable hours times a reasonable rate does not end the inquiry. There remain other considerations that may lead the . . . court to adjust the fee upward or downward, including the important factor of the 'results obtained.'" *Hensley*, 461 U.S. at 434. "The . . . court also may consider other factors identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–719 ([5th Cir.]

1974), though it should note that many of these factors usually are subsumed within the initial calculation of hours reasonably expended at a reasonable hourly rate." *Hensley*, 461 U.S. at 434 n.9. "The *Johnson* factors may be relevant in adjusting the lodestar amount, but no one factor is a substitute for multiplying reasonable billing rates by a reasonable estimation of the number of hours expended on the litigation." *Blanchard*, 489 U.S. at 94. "The amount of the fee, of course, must be determined on the facts of each case. On this issue the House Report simply refers to twelve factors set forth in *Johnson*. . . . The Senate Report cites to *Johnson* as well. . . . " *Hensley,* 461 U.S. at 430.

"A number of circuits, following the lead of the Fifth Circuit in *Johnson v. Georgia Highway Express*, . . . have announced that their district courts are to consider and make detailed findings with regard to twelve factors relevant to the determination of reasonable attorneys' fees. . . . " *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 (4th Cir.), *cert. denied*, 439 U.S. 934 (1978).[11] These twelve factors are:

> (1) The time and labor required. . . . (2) The novelty and difficulty of the questions. Cases of first impression generally require more time and effort on the attorney's part. . . . (3) The skill requisite to perform the legal service properly. . . . (4) The preclusion of other employment by the attorney due to acceptance of the case. . . . (5) The customary fee. . . . (6) Whether the fee is fixed or contingent. [*But see Blanchard v. Bergeron*, 489 U.S. 87 (1989)]. . . . (7) Time limitations imposed by the client or the circumstances. . . . (8) The amount involved and the results obtained. . . . (9) The experience, reputation, and ability of the attorneys. . . . (10) The 'undesirability' of the case. . . . (11) The nature and length of the professional relationship with the client. . . . (12) Awards in similar cases.

Johnson, 488 F.2d at 717–19. The Fourth Circuit held that to award attorney's fees, a "court must first apply the *Johnson* factors in initially calculating the reasonable hourly rate and the reasonable number of hours expended by the attorney; the resulting 'lodestar' fee, which is based on the reasonable rate and hours calculation, is presumed to be fully compensatory without producing a windfall."[12]

---

[11] *See Barber*, 577 F.2d at 226:

> We agree that these factors must be considered by district courts in this circuit in arriving at a determination of reasonable attorneys' fees in any case where such determination is necessary; and in order to make review by us effective, we hold that any award must be accompanied by detailed findings of fact with regard to the factors considered.

[12] "In determining a 'reasonable' attorney's fee . . . this Court has long held that a district court's discretion must be guided strictly by the factors enumerated by the Fifth Circuit in *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974). *See Daly v. Hill*, 790 F.2d 1071, 1077 (4th Cir. 1986). . . . *Daly*, 790 F.2d at 1075 n.2 (noting that the Johnson approach has been approved by Congress and by the Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424, 434 n.9 . . . (1983))." *Trimper v. City of Norfolk, Va.*, 58 F.3d 68, 73 (4th Cir. 1995).

Trimper v. City of Norfolk, Va., 58 F.3d 68, 73 (4th Cir. 1995) (referencing *Daly v. Hill*, 790 F.2d 1071, 1078 (4th Cir. 1986)), *cert. denied*, 116 S. Ct. 535 (1995).

Employing the twelve *Johnson* factors, US Airways' Application is a reasonable request for attorney's fees. For *Lareau,* counsel billed US Airways a total of 17.75 attorney's hours, 58 law clerk's hours, and .5 of a legal assistant's hour for reviewing statutes, procedures, and documents sent by the client; legal research; drafting Answer; consulting with client regarding facts of case; assembling exhibits; preparing opposition to motion for default judgment; preparing motion for summary judgment; and reviewing the opinion dismissing this case. Of these hours, charges related to defending against Lareau's motion for a default judgment will be disallowed, because it is not the fault of Lareau alone[13] that the Complaint was not timely answered. Furthermore, attorney's fees arising from US Airways' own delay in answering the Complaint are not "reasonable." It would be inequitable to force Lareau to shoulder charges US Airways could reasonably have avoided by answering the Complaint in a timely manner. In the absence of any clear authority for awarding *unnecessary* attorney's fees, this is the better rule.[14]

Therefore, as derived from October 25, 1996—June 19, 1997 Paul, Hastings, Janofsky & Walker, LLP's billing records, tendered in support of the Application, those charges reasonably allocable to US Airways' response to Lareau's motion for default judgment will be deducted from the amount requested:

[13]Although Lareau's OSC Charge contained a more complete address for USAir, the Notice of Hearing was mailed to USAir utilizing only a street address. OSC Charge, ¶2. USAir's Response To Order To Show Cause blames this for its failure to timely answer Lareau's Complaint: "The Complaint was served on USAir . . . [but] [n]o USAir official was specified on the envelope."

[14]Because of important public policy concerns, forums have broad discretion when awarding attorney's fees to winning defendants charged with discrimination. *See Edward Brown v. Fairleigh Dickinson University,* 560 F. Supp. 391, 402 (D. New Jersey, 1983) (assessing against plaintiff in a discrimination case containing both frivolous and legitimate claims only those attorney's fees clearly deriving from frivolous claims). Although *all* of Lareau's claims are frivolous, the default motion practice was not *entirely* of his doing. Therefore, as a matter of discretion, taking into account the relative economic posture of the parties, this portion of the fee claim is rejected. *Compare Commissioner, Immigration and Naturalization Service v. Jean*, 496 U.S. 154, 161–162 (1990) ("the EAJA—like other fee-shifting statutes—favors treating a case as an inclusive whole, rather than line-items").

Date	*Charge Deducted*	*Amount of Reduction*
8/27/97	default research; response (KMW)	4 hrs. x $207 = ($828)
8/29/96	revise response (KMW)	.25 hrs. x $207 = (51.75)
8/30/96	review response (BBB)	.50 hrs. x $284.75 = ($142.37)
8/30/96	revise response (KMW)	.10 hrs. x $207 = ($20.70)
9/04/96	confer and prepare response exh. (KMW)	.25 hrs. x $207 = ($51.75)
9/16/96	prepare opposition to motion (KMW)	.25 hrs. x $207 = ($51.75)

Total Amount Deductible From Attorney's Fees: ($1,146.32)

Counsel worked at a reduced rate for US Airways and discounted the total billings charged. The discounted hourly rate of $284 for work by a partner in a major Washington firm is reasonable and customary, as is $243 and $207 for Of Counsels' work. The discounted hourly rates are reasonable in light of recent OCAHO caselaw in which ALJs awarded attorney's fees ranging from $75 per hour to $275 per hour: *Horne v. Hampstead,* 7 OCAHO 959 (1997) (awarding $630 in attorney's fees at $150 an hour for work by a partner and an associate in Towson, MD, a suburb of Baltimore); *Werline v. Public Service Electric & Gas Company*, 7 OCAHO 955 (1997) (awarding $512.50 in attorney's fees at $125 per hour for work by an associate attorney general for respondent in Cedarville, NJ); *Jarvis v. AK Steel*, 7 OCAHO 952 (1997) (awarding "legal fees" in the amount of $1,833.75, with compensation for attorneys in Pittsburgh, PA, at rates of $275 per hour and $240 per hour); *Lee v. Airtouch*, 7 OCAHO 926 (1997) (awarding $7,531.26 for attorney's fees including $15.70 in costs billed for the San Diego, CA, market at rates of $155 per hour for in-house counsel and $216.75 per hour for outside counsel); and *Wije v. Barton Springs/Edwards Aquifer Conservation District*, 5 OCAHO 785 (1995), 1995 WL 626204 (O.C.A.H.O.) (awarding "legal fees" of $51,530.34 in the Austin, TX, market at the rate of

$185 per hour for a partner and the rates of $120 per hour and $75 per hour for associate attorneys).[15] Therefore, attorney's fees of **$2,547.61** ($3,693.93 less ($1,146.32) expended for response to the motion for default) are reasonable.

However, this does not end the inquiry, because US Airways has also requested compensation for a law clerk's and a legal technician's time. Here, the $90 hourly rate charged for the services of a law clerk, whom US Airways does not contend is a member of the Bar of any state, appears excessive (*see Johnson* factors number three, five, nine, and twelve—requisite skill; customary fee; experience, reputation, and ability; and awards in similar cases),[16] particularly in light of standards such as those articulated in the Equal Access to Justice Act (EAJA), 5 U.S.C. §504, Pub. L. 96–481, §203(a)(1), which—although not controlling here—generally limits ***attorney*** compensation to a rate not to exceed $125 an hour, and by this forum, which has approved attorney fee awards as low as $75 an hour. More puzzling yet is the legal assistant rate, at $67.50 an hour.[17] Therefore, I lower the law clerk's hourly rate to $30 an hour, $10 an hour beyond the upper limit of what Washington area law firms advertise as the hourly salary for law clerk positions, and the rate of the legal technician to $20 an hour.

Accordingly, I award a total of $**5,296.47** in attorney's fees and related expenses, as follows:

Charge	***Amount***	
Attorney's fees	$2,729.86	(discussed *supra*)
Law Clerk's fees	$1,740.00	(58 hours at $30 an hour)

[15]As this is not a fee award under the Equal Access to Justice Act (EAJA), 5 U.S.C. §504, I am not bound by the generally applicable EAJA statutory limit of $125 per hour. 5 U.S.C. §504(b)(1)(A)(ii) ("attorney or agent fees shall not be awarded in excess of $125 per hour. . . .") or by the failure of EAJA to address awarding of other fees and expenses.

[16]Computing the minimum annual amount charged for a law clerk's time at $90 an hour, 40 hours a week, 52 weeks a year, one would project an annual billing of at least $187,200!

[17]Again, computing the minimum annual amount charged for a legal technician's time at $67.50 an hour, 40 hours a week, 52 weeks a year, one would project an annual billing of at least $140,400!

Legal Tech's fees	10.00	(.50 hour at $20 an hour)
Expenses	816.61	
Total Award:	**$5,296.47**	

III. *Conclusion*

Respondent is the prevailing party and the Complaint is without reasonable foundation in law and fact.

Lareau is directed to pay to US Airways **$5,296.47** in attorney's fees and related expenses.

SO ORDERED.

Dated and entered this 10th day of September, 1997.

MARVIN H. MORSE
Administrative Law Judge