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FLORIDA CITIES WATER COMPANY

RATE APPLICATION FOR RECOVERY OF LEGAL FEES

TESTIMONY OF L. GRAY GEDDIE, JR.

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4 Q. Please state your name and business address.

5 A. L. Gray Geddie, Jr., 300 North Main Street, Greenville, South Carolina 29601.

6 Q. By whom are you employed and in what capacity?

7 A. I am a shareholder in the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
8 ("Ogletree:). Our firm has offices in various cities in the Carolinas, as well as in Atlanta,
9 Washington, Houston, Birmingham, Nashville and Albany. We specialize in the areas of
10 labor and employment law, environmental law, and litigation. I currently serve as the head
11 of the litigation group at Ogletree.

12 Q. Tell us about your educational and professional background and training.

13 A. I received a B.A. in Economics and Business Administration from Furman University in
14 Greenville, South Carolina in 1966. My law degree is from the University of South Carolina
15 where I received my J.D. in 1969. Following graduation from law school, I worked for the
16 Tennessee Valley Authority ("TVA") as a trial attorney, until the Fall of 1974. While at
17 TVA, I was introduced to the field of environmental law, and was trial counsel on some
18 noteworthy cases for TVA, including environmental challenges to a number of TVA projects
19 including the *Strip Mine Coal* case, the *Duck River Dam* project, and the early stages of the
20 *Tellico Dam* case. My litigation work at TVA was not limited to environmental cases,
21 however. I was responsible for a broad range of cases involving such matters as land
22 condemnation, automobile accidents, contract matters, employment issues, and other matters
23 of interest to TVA.

24 Q. What did you do when you left TVA in 1974?

25 A. After TVA, I accepted a position with the firm of Thompson, Ogletree and Deakins, a

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1 predecessor firm to my current firm. My trial work has continued with Ogletree and in
2 recent years, has been concentrated in the environmental and toxic tort areas. These cases
3 include common law actions as well as actions premised upon the federal Clean Water Act,
4 the Clean Air Act, the Toxic Substances Control Act, Superfund, and the numerous state and
5 federal regulations that implement these statutes. A partial listing of the environmental cases
6 that I have been responsible for over the past ten years includes:

7 *Whitfield v. Sangamo*

8 *Kelly v. Para-Chem Southern*

9 *Zehr v. Hoechst Celanese*

10 *Johnson v. Hoechst Celanese*

11 *Braswell Shipyards v. Beazer East*

12 *Commercial Realty v. Beazer East*

13 *Dent and Conoco v. Beazer East*

14 *Moore Drums v. Lockheed*

15 *Interstate Associates v. Textron*

16 *Textron v. Pitney Bowes*

17 *Thomason v. Johnson & Johnson*

18 *Timmerberg, et al. v. NIPA Hardwicke Chemical Company*

19 *U.S.A. v. Schlumberger* (Pickens County and Chem-Dyne Superfund Sites)

20 *U.S.A. v Hoechst Celanese* (NESHAPs Enforcement Action)

21 Numerous state and federal enforcement actions

22 Environmental Permit Challenges for Laidlaw, International Paper, and others

23 Q. Do you belong to any professional associations?

24 A. I am a member of the Bars of the State of South Carolina and the District of Columbia. I am

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1 admitted to practice in those jurisdictions as well as the Second, Fourth, Fifth, Sixth, and
2 Eleventh Circuit Courts of Appeal and the United States Supreme Court. I am a member of
3 the American Bar Association, the Defense Research Institute, and the South Carolina
4 Defense Trial Lawyers Association. I have been a frequent lecturer on environmental
5 litigation issues before those organizations as well as business and industry-related trade
6 associations.

7 Q. Have you ever testified before the Commission before?

8 A. No.

9 Q. What have you been asked to do with regard to this case?

10 A. I was retained to provide an expert opinion as to the reasonableness of the legal fees incurred
11 by Florida Cities Water Company ("FCWC" or "Florida Cities") in defending the
12 enforcement action brought by the Department of Justice ("DOJ"), for the Environmental
13 Protection Agency ("EPA"), for alleged violations of the Clean Water Act's National
14 Pollutant Discharge Elimination System (NPDES) permit program. I met with officials of
15 Florida Cities on October 7, 1997, in Tallahassee, Florida. I met with Dennis Getman,
16 Gerald Allen, and Ken Gatlin to gather background on the case. I had already been furnished
17 a copy of the Court decisions and was generally familiar with the issues that had been
18 litigated. At this meeting I was furnished with a copy of certain legal memoranda regarding
19 the procedures of the Florida Public Service Commission. I was asked to do an investigation
20 and evaluation of the legal progress of the case, the positions taken by the company during
21 the case, and to come to an opinion as to the reasonableness of the legal fees that were paid
22 by Florida Cities in the defense of the case.

23 Q. Have you reached such opinions?

24 A. Yes. It is my opinion that the legal fees incurred by Florida Cities were necessary and
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1 reasonable in light of the number and type of violations alleged, the magnitude of the civil
2 penalties sought, the litigation strategies used by the DOJ attorneys, and the ultimate
3 outcome of the case.

4 Q. In reaching that opinion, what did you do?

5 A. I was initially provided with a copy of the decision written by United States District Judge
6 Ralph W. Nimmons, Jr., dated November 22, 1995. This decision allowed me to get a
7 general feel for the allegations made by the Department of Justice in the case, the litigation
8 positions taken by both sides during the progress of the case, and the ultimate resolution of
9 the issues by the Court. The government through its Amended Complaint sought to recover
10 statutory penalties under the Clean Water Act in an amount in excess of \$104,000,000. In
11 the ultimate opinion of the Court issued on August 20, 1996, those penalties were reduced
12 to \$309,710. In my opinion, this result was an astonishing victory for FCWC and a tribute
13 to the quality of the defense presented by the company and its attorneys. As noted by the
14 Court, the mitigation evidence offered by FCWC was very persuasive and compelled the
15 reduction in the amount of penalties. Specifically, the Court essentially adopted the
16 company's positions on the important mitigation issues of the seriousness of the Clean Water
17 Act violations, the history of past violations, the company's good faith efforts to comply with
18 the requirements of the regulations, the economic impact of the proposed penalty, and the
19 other equitable factors brought to the court's attention by the company's evidence. The
20 scope of the remedy sought by the government, namely the \$104 million, made this case a
21 "bet the company" case in that FCWC simply could not afford to pay the penalties sought.
22 Even the government's own economic expert noted that FCWC could only pay a penalty of
23 \$7.5 million and would have to borrow the money to pay that. As noted by Judge Nimmons,
24 "Florida Cities does not have the ability to pay the statutory maximum penalty." With the
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1 prospect of an unfavorable outcome affecting the ability of the company to survive, it was
2 certainly reasonable for the company to present a vigorous defense led by the finest, most
3 experienced lawyers that the company could find. It was through the efforts of those
4 attorneys that the extraordinary results in this case were obtained.

5 Q. In reaching your opinion, how did you define the term "reasonable"?

6 A. I was guided by the previous decisions of the Florida Public Service Commission and those
7 of the United States Supreme Court. Mr. Gatlin provided me with the following language
8 from the Florida PSC:

9 Although we find that fines associated with violations of DEP and
10 EPA should be borne by the shareholders of the utility, we believe it
11 is reasonable for UWF (the utility) to recover the costs of defending
12 such fines. As the Commission previously concluded, the legal
13 expenses incurred for defending fines from DEP and EPA could
14 facilitate avoided or reduce amount of fines.

15 The United States Supreme Court, in the case of *City of Burlington v. Dague* addressed the
16 issue of the reasonableness of attorneys' fees awarded under the Clean Water Act. The Court
17 approved "lodestar" attorney fee method is calculated by multiplying the attorney's hourly
18 rate times the number of hours expended. In view of the Supreme Court, there is a strong
19 presumption that the "lodestar" represents the reasonable fee under the Clean Water Act. The
20 Court noted that the attorney's hourly rate is influenced by the skill and sophistication as
21 well as the experience of the attorney and the number of hours expended will depend upon
22 the difficulty of the issues in the case.

23 Q. Did you evaluate the services provided by FCWC's attorneys against this definition of
24 "reasonableness"?

25 A. Yes. In my opinion, the legal fees paid to the firms defending FCWC against the exorbitant
fines and penalties sought by EPA were reasonable under the circumstances of this case. It
was an extremely complex case with diverse and novel issues that seemed to pop up on a

1 regular basis. The situation was exacerbated by the efforts of the opposing attorneys to
2 thoroughly litigate every issue possible to the highest degree. The complexity of the case
3 coupled with the financial exposure to the company fully justified the effort that went into
4 the defense of the case by the attorneys involved. The extraordinary results obtained after
5 the trial through the decision of the Court are perhaps the best evidence of the effectiveness
6 of defense counsel's efforts and advocacy. In sum, it is my opinion that the hourly rate of
7 the attorneys was reasonable, the scope and extent of the legal work done was reasonable,
8 and that the total legal fees sustained by the company were reasonable under the
9 circumstances of this case. There can be little doubt that the legal expenses suffered by
10 FCWC resulted in a drastic reduction of the potential penalties ultimately paid by the
11 company.

12 Q. Did you do any background search for information on the various attorneys involved in the
13 case?

14 A. Yes. I was already familiar with Lee Deihns of Alston & Bird as I handled matters with
15 him while he was employed by EPA Region IV. With regard to the Washington attorneys,
16 I contacted my firm's Washington office and inquired as to the professional reputations of
17 Richard Leon, David Berz, Gary Baise and Don Scroggin. Their reputations within the D.C.
18 Bar were outstanding. Lastly, I relied upon FCWC and Ken Gatlin for information on the
19 Florida firms and they likewise were first-rate in every respect.

20 Q. What did you do next?

21 A. As mentioned earlier, I met with FCWC officials in Tallahassee to gather background
22 information on the EPA/DOJ enforcement action. I wanted to know how the case was
23 staffed, including the decision process involved in their selection of outside counsel to
24 litigate the matter. Next, I telephoned the lead counsel on the case — Gary Baise — and set
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1 up a meeting at his offices in Washington, DC. Mr. Baise sent me copies of his legal fees
2 statements, and selected litigation documents, prior to that meeting. At the meeting,
3 discussed more fully later in this testimony, Mr. Baise and I discussed the overall strategy
4 for defending the enforcement action, as well as the specific findings and rulings on which
5 he believed the case turned. Mr. Baise described his basic billing process, how the case was
6 staffed by his firm, and answered my questions on how and why certain specific strategies
7 were researched and advanced. While at his offices I also reviewed Mr. Baise's compilations
8 of the pleadings and discovery, and viewed the document productions from the underlying
9 enforcement case. I requested, and was provided with, copies of certain pleadings and
10 discovery papers for closer review. At various times subsequent to this visit, I requested and
11 was provided with additional information on the underlying lawsuit.

12 Q. Was there anything that you requested from Mr. Baise that was not provided?

13 A. No.

14 Q. Who else did you speak with concerning the legal fees?

15 A. In evaluating the bills of the other firms, I categorized each firm as either trial counsel of
16 settlement counsel. The trial counsel firms included the firms associated with Gary Baise,
17 the firms associated with Don Scroggin, and the local counsel in the case, Buddy Hume and
18 John Noland of the Ft. Myers law firm of Henderson, Franklin & Starnes. The settlement
19 counsel firms were Alston & Bird of Atlanta, Baker & Hostetler of Washington, Weil,
20 Gotshall & Manges of Washington, Hopping, Green, Sams & Smith of Tallahassee, and
21 Landers and Parsons of Tallahassee. In my opinion, the decision to split the functions of trial
22 and settlement counsel was a prudent one in that it permitted each firm to utilize its talents
23 and experience on the job given to it by FCWC. It also allowed the settlement negotiations
24 to continue at the same time that trial preparations were underway, thereby freeing the trial
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1 and settlement counsel to work independently of each other.

2 Q. How did you communicate with the various counsel involved in the case?

3 A. Insofar as the settlement counsel were concerned, I was provided with copies of their
4 invoices for services rendered and I contacted the primary attorney in each of the firms to
5 verify that the work as described in the invoices had been done and to seek any additional
6 information these counsel could provide. There contacts were:

7 **Alston & Bird.** I talked with Lee Deihhns, the partner who coordinated the effort
8 of the firm on behalf of FCWC. He was asked to facilitate a settlement of the Water
9 Act matter while it was before Region IV of EPA in Atlanta. Mr. Deihhns is a
10 former Deputy Regional Administrator at EPA Region IV and served for a time as
11 Acting Regional Administrator. He had worked with the pertinent Region IV
12 personnel and was very familiar with the Region's enforcement policies, past
13 practices, and settlement strategies. The effort to administratively settle the matter
14 turned out to be unsuccessful. Once the matter was referred from EPA Region IV to
15 the DOJ, the role of Alston & Bird was substantially reduced, as shown by the
16 minimal invoices in 1994 - 1996. I have reviewed the charges of Alston & Bird
17 (\$28,246) and in my opinion, the amount of time spent and the charges paid were
18 reasonable and consistent with charges for similar services from other firms in the
19 Atlanta area. Mr. Deihhns rate of \$250 and later \$275 per hour was reasonable based
20 upon the prevailing legal rates in Atlanta for lawyers of his caliber. Because of Mr.
21 Deihhns' past EPA experience, he was uniquely qualified to represent FCWC in the
22 settlement negotiations.

23 **Hopping, Green, Sams & Smith.** I reviewed the invoices paid to the Hopping law
24 firm which totaled \$4,111. I then telephoned Kathleen Blizzard of the firm and
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1 discussed the scope and extent of her work on the Clean Water Act case. Ms.
2 Blizzard had previously handled an enforcement matter concerning the Barefoot Bay
3 Treatment plant and had negotiated a Consent Order with EPA Region IV in the late
4 1980s. That Consent Order formed the basis of the Federal District Judge's decision
5 that a major portion of the remedy sought by the Justice Department in the Clean
6 Water Act case was barred by the doctrine of *Res Judicata*. In order to be able to
7 advance the argument, trial counsel asked Ms. Blizzard to review her files, review
8 the pleadings in the Clean Water Act case, conduct the appropriate legal research,
9 and draft an affidavit in support of FCWC's Motion for Summary Judgment. My
10 review of the records and my interview of Ms. Blizzard lead to the conclusion that
11 the time spent on the project, the hourly rate of \$165 per hour, the quality of the
12 work, and the importance of her work to the eventual outcome of the case were
13 reasonable.

14 **Baker & Hostetler.** I examined the invoices paid to the Baker firm and I
15 interviewed the partner involved in the case, Richard Leon of the firm's Washington
16 office. Mr. Leon has had a long and distinguished career, including a stint as the
17 Deputy Assistant Attorney General of the United States. He supervised the part of
18 the Justice Department where DOJ trial counsel Dan Jacobs worked. Mr. Leon had
19 also worked with Gary Baise in a successful settlement of a similar case involving
20 the Tenneco Company in the past. Mr. Leon was asked to review the facts and
21 pleadings in the case at bar with a view towards a possible settlement of the case. At
22 the time he was employed, the litigation had become "bare knuckled" in Mr. Leon's
23 view and he felt that he could use his credibility within the Justice Department,
24 particularly with trial counsel Dan Jacobs, to independently assess the case and help
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1 facilitate a settlement. The charges for these services totaled \$30,941, the vast bulk
2 of which represented the time of Mr. Leon. He met with Mr. Jacobs and other
3 representatives of the Justice Department and worked in coordination with David
4 Berz, counsel for Avatar. The two of them tried without success to reach a pre-trial
5 settlement of the case. Mr. Leon's time consisted of his review of the pleadings,
6 documents and depositions taken in the case. His work was dependent in some part
7 upon the timing of the summary judgment rulings made by the Court. Mr. Leon
8 charged \$300 per hour for his services, a rate which I find to be consistent with other
9 Washington practitioners with his level of experience and his sophistication in
10 enforcement matters. In my opinion, the charges of Baker & Hostetler in this matter
11 were reasonable and were calculated towards reaching a settlement that would have
12 been in the best interests of FCWC and its rate payers. Unfortunately, the
13 government was unwilling to settle the matter on an acceptable basis prior to trial.

14 **Landers & Parsons.** I reviewed the invoices of the Landers firm and spoke with Jay
15 Landers regarding the work done by his firm. Mr. Landers is the former Secretary
16 of the Florida Department of Environmental Regulations, the state equivalent of
17 EPA. FCWC asked Mr. Landers in 1991 and 1992 to try and facilitate a settlement
18 of the *Waterway Estates* case before EPA referred the case to the DOJ. His efforts
19 preceded those of Lee Deihns of Alston & Bird but regrettably were unsuccessful
20 in preventing the case from being filed. Mr. Landers also prepared an affidavit under
21 the supervision of the Baise & Miller firm regarding the administrative order entered
22 into in the late 1980s which covered the *Carrollwood* settlement. The affidavit was
23 an important part of the successful *Res Judicata* argument adopted by the Federal
24 District Court Judge in his final order. The total charges paid to the Landers firm
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1 were \$5,404, which represented principally the work done by Mr. Landers at the rate
2 of \$150 per hour. In light of the importance of his work, the hourly rate, the small
3 number of hours spent, and the result in the case, the fees paid by FCWC to Landers
4 & Parsons were reasonable.

5 **Weil, Gotshall and Manges**. David Berz of this firm had performed legal services
6 on behalf of Avatar in the past and played an active role in the selection of Gary
7 Baise as lead trial counsel for FCWC in this case. The charges by Mr. Berz and his
8 firm for legal services provided on behalf of Avatar are not a part of the rate
9 proceeding. However, specific charges for work performed on behalf of FCWC in
10 an attempt to settle the case are included. Those charges total \$45,250. Mr. Berz's
11 efforts to resolve the case coincided with the efforts of Richard Leon. In the end, Mr.
12 Leon played a lesser role and the lead spokesperson for FCWC became Mr. Berz.
13 Berz contacted Lois Schiffer of the DOJ and asked for an independent assessment of
14 the case by a DOJ official more senior than trial counsel Dan Jacobs. Mr. Berz and
15 FCWC believed that Mr. Jacobs was overzealous in his prosecutorial duties. Mr.
16 Berz's efforts were partially successful in that Ms. Schiffer assigned Bob Homiak,
17 a senior DOJ attorney, the task of conducting an independent review of the case. Mr.
18 Berz consulted with Mr. Homiak on the case, supplied him with pertinent documents,
19 and essentially discussed the pros and cons of each side's positions with a view
20 towards settlement. Though the efforts of the two men came close to a settlement,
21 the re-entry of Dan Jacobs into the discussions ended the settlement possibilities and
22 an eventual trial on the merits became inevitable. Mr. Berz's efforts, at \$405 per
23 hour, were expensive but were within the fee range of Washington attorneys with his
24 level of experience and his wealth of background knowledge. In my view, the
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1 potential settlement of the matter prior to trial was a prudent and reasonable goal for
2 FCWC. Mr. Berz's efforts and his contacts almost accomplished the goal but
3 ultimately failed. In light of his services, the time spent, and value of the sought-
4 after goal, my opinion is that the limited services provided to FCWC by Weil,
5 Gotshall & Manges firm were reasonable.

6 Q. Did you ever request any information from these other firms that was not provided to you?

7 A. No.

8 Q. Did you ever request any information from Florida Cities that was not provided to you?

9 A. No.

10 Q. What did you do to determine the reasonableness of the trial lawyers' fees?

11 A. I followed the same procedures that I followed in evaluating the fees paid to settlement
12 counsel. I reviewed the bills and invoices of the various firms. These documents contained
13 a description of the services provided, the hourly rate of the attorney involved, and a
14 description of any specific expenses such as copying charges or travel expenses for which
15 the firms sought reimbursement. I also reviewed the pleadings filed in the case, the motions
16 filed by all the parties, the briefs in support of the motions, certain transcripts of hearings,
17 and the trial transcript. This review was necessary for me to make a judgment as to the
18 zealotness with which the government attorneys pursued their allegations in the Complaint.
19 My conclusion from this review is that the government attorneys vigorously pursued every
20 theory of their case to the greatest extent possible. They constantly sought to expand the
21 scope of discovery in the case, they vigorously sought to interview FCWC executives in
22 apparent violation of the applicable Florida rules of professional conduct, they repeatedly
23 filed motions to reconsider after virtually every ruling made by the Court in the case, and in
24 general used the power of the DOJ to seek every advantage available to them. I cannot
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1 determine the number of professional government personnel that were involved as those
2 records are not available to me but my sense is that the DOJ "threw the book" at FCWC in
3 their efforts to prevail in this case.

4 With this background in mind, FCWC with the help of David Berz of the Weil, Gotshall and
5 Manges law firm in Washington asked Gary Baise, then with the firm of Jenner & Block, to
6 head up the defense of the case. Mr. Baise had previously been employed by the EPA in
7 several high-level positions and was thoroughly familiar with the provisions of the Clean
8 Water Act. Mr. Baise had an excellent track record in defending companies against
9 enforcement actions filed by the DOJ under this law. He was an excellent choice by FCWC
10 and the defense that he put together was very successful.

11 When originally employed as trial counsel, Mr. Baise's hourly rate for legal services was
12 \$275 and those of his trial staff were somewhat less. These rates, considering the level of
13 experience of Mr. Baise and his associates and the degree of difficulty involved in the
14 defense of the case, were reasonable. Mr. Baise's primary associate was Don Scroggin of
15 the Jenner & Block firm. These two lawyers had worked closely together on many cases for
16 many years. Their teamwork and dedication to the needs of the client survived the breakup
17 of their law firm a few months before trial.

18 The specific trial strategy adopted by the Baise/Scroggin team is fully discussed in the pre-
19 filed testimony of Gary Baise and will not be repeated here. Suffice it to say that the defense
20 met every challenge presented to them by the prosecution. The defense was handled with
21 the same degree of zealotness as that of the prosecution. Indeed, the defense attorneys had
22 little choice but to conduct the defense in that manner. I was concerned and paid particular
23 attention to the duplication of services by the firms with which Baise and Scroggin were
24 associated over the course of the case. My concerns were answered by the fact that though
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1 the names of the firms may have changed, the individual attorneys involved remained the
2 same. In a sense, the defense that began with Gary Baise and Don Scroggin at Jenner &
3 Block and ended with them being at separate firms did not change at all. The only change
4 of significance was that the hourly rate was reduced from \$275 at Jenner & Block to \$200
5 per hour at the subsequent firms. This reduction was made on January 1, 1995. Almost two-
6 thirds of the fees paid to their firms for services in this case were at the reduced rate.

7 On October 16, 1997, my partner, Nancy Monts and I traveled to Washington to confer with
8 Florida Cities' lead trial counsel, Gary Baise and his staff. At the Baise firm, we reviewed
9 eight volumes of pleadings, seven volumes of discovery documents, and had access to more
10 than fifty depositions. In light of the fact that the trial transcript was available, I saw no need
11 in reviewing the fifty-plus depositions. However, we did review the expert reports that were
12 filed in the case by the experts for both sides. Gary Baise, Liz Pollener and their paralegal
13 Yoyo Juette met with us for almost seven hours in their offices and made every document
14 that we requested available to us for review. These documents included selected briefs,
15 motions and legal research memoranda.

16 We discussed the overall strategy of the defenses to the positions taken by the government
17 attorneys in their Complaint, how those positions changed over the course of the litigation,
18 and how the issues in the case were resolved by the Court when presented to it. Mr. Baise
19 described his basic billing process, how the case was staffed, and answered my questions as
20 to how and why certain strategies were researched and advanced. Mr. Baise was very
21 forthcoming in his responses and has sent me additional information as requested.

22 I contacted Don Scroggin on November 6, 1997 and he confirmed the FCWC certainly
23 received great value from the legal services rendered. We did not review each separate time
24 entry but from an overall standpoint, Mr. Scroggin essentially carried the load on the trial
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1 preparation, summary judgment, and the trial itself. His hourly rate of \$200 was reasonable
2 in my judgment and the work done by Mr. Scroggin was prudent, well thought out, and
3 consistent with the company's theory of the case. In sum, he and his firm delivered superior
4 legal services at a reasonable cost to FCWC.

5 FCWC General Counsel Dennis Getman selected the Ft. Myers, Florida law firm of
6 Henderson, Franklin & Starnes as local counsel in the federal court action. I spoke with John
7 Noland and Buddy Hume of the firm regarding the scope of their work in the case. As
8 reflected on their time sheets and billings, their work was of the traditional local counsel role
9 of appearing at hearings, giving advice on the local court rules and customs, conforming
10 pleadings to the local rules, and assisting in trial preparations. Mr. Hume was also asked to
11 help out on the legal research under Florida law regarding the *ex parte* contacts of former
12 FCWC officials by the DOJ lawyers. The Henderson firm did not participate in the actual
13 trial itself but provided trial preparation assistance under the direction of Mr. Scroggin. The
14 hourly rates of the Henderson lawyers ranged from \$175 to \$210 per hour, a fee within the
15 median range of the Price Waterhouse Statistical Survey, and therefore reasonable under the
16 circumstances. The total bill of \$34,635 over the two and one-half years of effort was also
17 reasonable.

18 Q. From your research, do you know the total legal expenses associated with FCWC's defense
19 of the enforcement action?

20 A. The total legal expenses incurred by FCWC and paid to the law firms involved in the defense
21 of the Clean Water Act case were \$3,615,264. A breakdown of the total by law firm and by
22 invoice numbers is attached as Exhibit A to this testimony.

23 Because my assignment was to render an opinion as to the reasonableness of the legal fees,
24 my testimony does not address whether, for example, an expert witness' fee is reasonable.

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1 My opinion is limited to the fees charged for services provided by the outside counsel's
2 office (for example, attorney and paralegal rates and time). Mr. Baise's testimony will cover
3 whether particular additional categories of expenses (for example, the retention and use of
4 experts), incurred at the direction of outside counsel, were reasonable under the
5 circumstances of the litigation. It is clear that expert witnesses were required to meet the
6 government's allegations in their Complaints. The experts selected are described by Mr.
7 Baise in his testimony. The selection process was prudent and reasoned and the experts who
8 offered testimony did an excellent job.

9 Q. In reaching your opinion, did you consider the propriety of settlement negotiations and the
10 reasonableness of the parties' positions?

11 A. Yes. The settlement discussions are spelled out in detail in the testimony of Gary Baise and
12 various attempts to reach a settlement at various times by Lee Deihns, David Berz, Jay
13 Landers, and Richard Leon are well described in my earlier testimony. In sum, FCWC made
14 many attempts to settle the matter, including a \$500,000 offer of judgment, all of which were
15 rejected by the DOJ attorneys. The District Court judgment of \$309,710 makes it clear that
16 the DOJ attorneys' rejection of the settlement offers was unreasonable. On the other hand,
17 the judgment amount underscores the reasonableness of the positions taken by the attorneys
18 for FCWC. In my opinion, the settlement positions taken by FCWC in this case were
19 reasonable in every respect.

20 Q. Were there any measures in place at FCWC to control the cost of legal fees?

21 A. Yes. Each law firm was required to bill FCWC on a monthly basis and the bills were broken
22 down by the attorney or legal assistant involved, the rate charged by the individual, and a
23 description of the work being charged for. These invoices were reviewed by FCWC General
24 Counsel Dennis Getman who reviewed them in detail. It was Mr. Getman who requested a
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1 cut in the hourly fee of Messrs. Baise and Scroggin when they left the Jenner & Block firm.

2 This reduction amounted to a tremendous savings over the course of the litigation.

3 In addition, the Court itself imposed limits on the number of discovery depositions and
4 expert witnesses that could be called. This prevented anyone from engaging in unnecessary
5 discovery as far as depositions were concerned. A review of the record demonstrates that
6 it was the government attorneys who constantly tried to broaden the scope of discovery.
7 When the Court agreed to broaden the scope, the FCWC lawyers had no choice but
8 participate.

9 Lastly, in the area of out-of-pocket expenses, the law firms were instructed that travel should
10 be at a reasonable expense level (moderate hotels, coach airline tickets, etc.), major copying
11 charges should be done by professional copy services, and other out-of-pocket expenses
12 should be itemized and kept to the minimum necessary to do the job. My review of the
13 charges indicate that these instructions were followed and that the out-of-pocket charges
14 were prudent and were reasonable.

15 Q. Were the hourly rates reasonable in the FCWC cases?

16 A. As my firm has offices in Washington and Atlanta, I am familiar with the rates charged by
17 attorneys in those cities. I supplemented this knowledge with a review of the 1996 Price
18 Waterhouse Law Firm Statistical Survey. My analysis indicated that the rates charged by
19 the various attorneys in this case were reasonable. For example, it is clear that the \$275 and
20 then \$200 per hour rate charged by Messrs. Baise and Scroggin were below that charged by
21 attorneys with comparable experience and expertise in the Clean Water Act enforcement
22 actions. The rates of Messrs. Leon and Berz are somewhat higher than expected but those
23 rates were justified because of the specialized expertise of those two attorneys. On balance,
24 as the vast bulk of the fees were paid to Messrs. Baise and Scroggin's law firms and a
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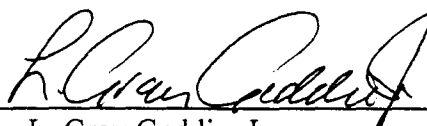
1 comparatively small portion of the totals were paid to Messrs. Leon and Berz, the estimated
2 composite hourly rate paid to the Washington attorneys was reasonable.

3 With regard to the Florida lawyers, I relied on the Price Waterhouse report for the Southern
4 states and determined that all of the rates charged by the Florida firms were within the group
5 median and were, in my opinion, reasonable.

6 Lastly, the paralegal or legal assistant rates charged by the various law firms were compared
7 to the Price Waterhouse survey and they fall within the range charged by comparable firms.
8 As such, my opinion is that the legal assistant hourly rates were reasonable.

9 Q. In conclusion, are there any reasonable steps that could have been taken by FCWC to reduce
10 the legal fees they paid in this case?

11 A. In my opinion, the company took reasonable steps to keep the legal fees in check. It made
12 an offer of judgment early in the case of \$500,000, and after the trial court decision tried to
13 recover many of the legal costs it had incurred under the Federal Rules of Civil Procedure.
14 The District Court reluctantly denied this motion because of the fact that the losing party
15 (the DOJ) was an agency of the federal government and that the government had not agreed
16 to be sued in this manner. Had the plaintiff been a private litigant rather than the
17 government, FCWC would likely have prevailed. Similarly, had the plaintiff been a private
18 litigant rather than the federal government, the prosecution of the case and the necessary
19 response to that prosecution would most likely have been significantly less. In the end,
20 FCWC did what it had to do to prevail in this case — those efforts were prudent — those
21 effects were reasonable — and perhaps most importantly, those efforts were effective.

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23
24 
25 L. Gray Geddie, Jr.

**FCWC LEGAL FEES AND SERVICES
PAID TO LAW FIRMS**

Alston & Bird	\$ 28,246
Baise & Miller	936,423
Baker & Hostetler	30,941
Gabeler, Baise & Miller	1,118,792
Gabeler, Battocchi & Griggs	252,787
Henderson, Franklin & Starnes	34,635
Hopping, Green, Sams & Smith	4,111
Jenner & Block	1,158,675
Landers & Parsons	5,404
Weil, Gotshall & Manges	45,250
TOTAL:	\$ 3,615,264