

[Know Your Relevant Community and Prevailing Market Rates](#)

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Do you know your community's prevailing market rates?

It has become increasingly important to be familiar with your relevant community and its current market rates when applying for attorneys' fees. For example, the Ninth Circuit recently held that in attorneys' fees awards under the Longshore and Harbor Workers' Compensation Act ("LHWCA"), the Benefits Review Board ("BRB") should have made findings regarding the relevant community and the current prevailing rates. *Christensen v. Stevedoring Services of America* (9th Cir., March 2, 2009); and *Van Skike v. Director, Office of Workers' Compensation Programs* (9th Cir., March 2, 2009).

In two separate BRB cases counsel requested \$350 per hour for their fees. After reviewing the evidence submitted by both parties as to what hourly rate was appropriate, and after accounting for the applicable attorney-fee regulation, 20 C.F.R. §702.132(a), the BRB found that a \$250 per hour rate was appropriate in the general geographic region of Portland, Oregon. Both plaintiffs appealed and their cases were consolidated for that purpose.

Plaintiffs argued on appeal that the BRB abused its discretion and committed legal error when it rejected the market indicators submitted by counsel, and instead relied on other decisions in previous cases, when the judges in those previous cases failed to base their fee awards on market rates. The Ninth Circuit remanded, holding that BRB's findings had to reflect the relevant community and current prevailing market rate. The court of appeals observed that reasonable attorney fees are to be calculated according to the prevailing market rates in the relevant community, and that use of the lodestar method in calculating attorney fees under the LHWCA was proper. The relevant community typically is defined as the forum in which the district court sits.

However, the court felt the BRB's definition of the relevant community -- by looking solely to what other administrative law judges and the BRB had awarded in other LHWCA cases in the same geographic region -- was too limited. The BRB had to determine the relevant community and the reasonable hourly rate so that its awards were based on current rather than merely historical market conditions.

What is your community's prevailing market rate?