

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Michael C. Farrar, Chairman
E. Roy Hawkens
Nicholas G. Trikouros

In the Matter of)	
)	Docket No. IA-05-052
)	
DAVID GEISEN)	ASLBP No. 06-845-01-EA
)	

DAVID GEISEN'S APPLICATION FOR AWARD OF ATTORNEYS' FEES

Pursuant to 5 U.S.C. 504 and 10 C.F.R. § 12.101 et seq., David Geisen hereby applies for an award of \$258,187.50, an amount reflecting the product of the 3,442.5 attorney hours expended in Mr. Geisen's defense in the above captioned proceeding and \$75.00, the maximum dollar amount per hour allowed to be awarded under 10 C.F.R. 12.106.¹ Mr. Geisen asserts that the above captioned proceeding is an "adversary adjudication" under 5 U.S.C. 504 and related regulations. Mr. Geisen, who has an individual net worth less than \$2 million, *see* Declaration of David Geisen attached hereto as Exhibit A, requests an award of fees and costs because the enforcement action taken against him by the NRC Staff in the above captioned proceeding was not substantially justified.

On January 4, 2006, David Geisen was debarred for five years under the authority of an immediately effective Enforcement Order brought by the NRC Staff alleging that he engaged in

¹ Mr. Geisen also applies herein for reasonable attorney expenses associated with the defense of the NRC proceeding, which have yet to be fully determined, but will be submitted as soon as possible.

“deliberate misconduct” in violation of 10 C.F.R. 50.5(a)(2) by knowingly making false statements to the Commission (“Order”).

Mr. Geisen denied the Staff’s allegations and demanded the expedited hearing to which he was entitled. Over the next twelve months, the Staff moved five times to stay that hearing at the request of the U.S. Department of Justice. Three times the Board denied the Staff’s motions.² Once, the Commission affirmed the Board’s decision.³ Finally, the Commission stayed the proceeding.⁴

On December 8-12, 2008, close to three years after issuance of the Order, Mr. Geisen received his hearing before this Panel. On August 28, 2009, on a vote of two to one, the Board panel found that the NRC Staff failed to “demonstrate by a preponderance of the evidence that Mr. Geisen committed the knowing misrepresentations alleged in the Enforcement Order’s several charges against him,” LBP-09-24, 70 NRC __ (slip op.) at 144 (“Initial Decision”), and set aside the Order. *Id.* at 145. The Panel’s decision has subsequently been upheld by the Commission. *In the Matter of David Geisen*, CLI-10-23 (Aug. 27, 2010).

In the Initial Decision, this Panel thoroughly outlined the reasons that the Staff’s allegations against Mr. Geisen failed as a matter of fact and law. The analysis set forth in the Initial Decision makes clear that the Staff’s position was not substantially justified. Moreover, the procedural history of this case compels the conclusion that the Staff, at the behest of the Department of Justice, unreasonably protracted the proceeding in a manner than unnecessarily

² *In the Matter of David Geisen*, LBP-06-13 (2006); November 14, 2006 Hearing Transcript at 417-419; *Order (Denying Government’s Request to Stay Proceeding)*(January 12, 2007).

³ *In the Matter of David Geisen*, CLI 06-19, 64 NRC 9 (2006).

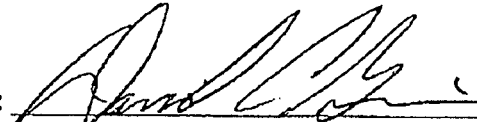
⁴ *In the Matter of David Geisen*, CLI 07-06, Nuclear Reg. Rep. P 31528, 2007 WL 294140 (N.R.C.) (Feb. 1, 2007).

VERIFICATION

I hereby declare, under the penalty of perjury, that the factual information contained in the foregoing is true and correct based on my personal knowledge, information and belief or on information and documents gathered by, or presently available to me.

Dated: September 27, 2010

By:



David Geisen

EXHIBIT A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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Michael C. Farrar, Chairman
E. Roy Hawkens
Nicholas G. Trikouros

In the Matter of

DAVID GEISEN

)
) Docket No. IA-05-052
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) ASLBP No. 06-845-01-EA
)

DECLARATION OF DAVID GEISEN

Pursuant to 28 U.S.C. § 1746, I, David C. Geisen, declare as follows:

1. I am over eighteen years old, and am competent to make this declaration. Unless otherwise stated herein, the facts set forth below are based on my personal knowledge.

2. As of January 4, 2006, my estimated net worth was \$299,325 as calculated based on the value of the following assets and liabilities:

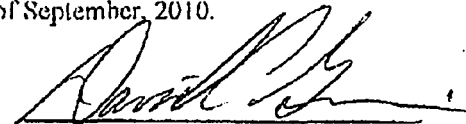
- a. primary residence: tax assessed value of \$401,600, mortgage balance of \$315,421;
- b. an individual retirement account valued at \$186,900;
- c. savings account valued at \$3,427.40;
- d. checking account valued at \$10,603.36;
- e. 2002 Honda Odyssey with an estimated Kelley Blue Book value of \$18,500, loan balance of \$8,985;

- f. 1995 Honda Civic with an estimated Kelley Blue Book trade-in value of \$1,525;
- g. 1994 Ford Ranger with an estimated Kelley Blue Book trade-in value of \$1,175.⁴

3. I had no other holdings, investments, or principal assets of any value.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27 day of September, 2010.



David Geisen

⁴ The Kelley Blue Book values for 2006 were estimated by using current Kelley Blue Book values for the a vehicle of analogous make and model in the model year four years later than the actual make and model of the vehicle owned in 2006. For example, the 2006 value of the 1995 Honda Civic was estimated using the current value of a 1999 Honda Civic.

CERTIFICATE OF SERVICE

I hereby certify that, on the 27th day of September, 2010, true and genuine copies of the foregoing were served on the following persons by electronic mail and, as indicated with an (*), first class mail, postage prepaid:

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Docket, Hearing

From: Hibey, Richard [rhibey@milchev.com]
Sent: Monday, September 27, 2010 6:28 PM
To: Farrar, Mike; Hawkens, Roy; Trikouros, Nicholas; Docket, Hearing; Valloch, Karen; Johanna.Thibault@nrc.gov
Cc: Sexton, Kimberly; Simon, Marcia; Wise, Andrew; Mosley, Kevin
Subject: In the Matter of David Geisen: Docket No. IA-05-052
Attachments: 09-27-10 Geisen Application for Attorneys Fees.PDF

Please find attached David Geisen's Application for Award of Attorneys' Fees.

Sincerely,

Richard A. Hibey
Miller & Chevalier Chartered
655 15th Street, NW
Washington, DC 20005
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* * *

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X-MID: 26009047

X-fn: 09-27-10 Geisen Application for Attorneys Fees.PDF

X-IronPort-AV: E=Sophos;i="4.57,244,1283745600";
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Received: from dcex02.milchev.com ([75.103.236.18]) by mail2.nrc.gov with
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Date: Mon, 27 Sep 2010 18:27:48 -0400

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X-MS-Has-Attach:

X-MS-TNEF-Correlator:

Thread-Topic: In the Matter of David Geisen: Docket No. IA-05-052

Thread-Index: ActekzXCWYcFjz1wQc+IYTwbBJVlgQ==

From: "Hibey, Richard" <rhibey@milchev.com>

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