

Bond Case Briefs

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Otay Mesa Property, L.P. v. United States

United States Court of Federal Claims - November 6, 2015 - Fed.Cl. - 2015 WL 6769105

Landowners, after succeeding on their claim against government for permanent physical taking of easement over certain property – a strip of land along the border with Mexico – moved for recovery of attorneys’ fees and costs under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA).

Otay Mesa requested attorneys’ fees in the amount of \$1,705,631.59 and expenses in the amount of \$397,943.01, plus costs of \$85,242.82. The attorneys’ fees were based on 5,725.50 hours billed by two firms. The total attorneys’ fee amount included a ten percent contingency fee of \$80,472.84. Otay Mesa’s requested expenses range from early 2006 through September 30, 2015.

The Court of Federal Claims – in awarding \$1.1 million in attorneys’ fees and \$276k in costs – held that:

- Flat fee of \$10,000 for litigation strategy memorandum prepared prior to complaint was not reimbursable;
- Fees that landowners incurred for work by outside attorneys were reimbursable;
- Awarding landowners \$11,860 for attorneys’ fees on their motion for attorneys’ fees and closing costs was reasonable;
- Including contingency fee due to landowners’ counsel in attorneys’ fees award was appropriate;
- Deducting any amount from attorneys’ fees award based on partial success by certain of landowners’ businesses was unwarranted;
- Landowners were entitled to recover 60% of fees and costs for period before first appeal; and
- Landowners were entitled to recover all fees and costs for period following first appeal.

Flat fee of \$10,000 that landowners paid to law firm for litigation strategy memorandum that firm prepared prior to filing complaint was not reimbursable under the URA following landowners’ success on their claim against government for permanent physical taking of easement over certain property, even though firm may have used factual and legal knowledge it gained by drafting the preliminary report in litigating landowners’ claim, this fee was not incurred “because of such proceeding,” but rather preceded any such proceeding.

Fees that landowners incurred for work by outside attorneys were reimbursable under the URA following landowners’ success on their claim against government for permanent physical taking of easement over certain property, where single firm represented landowners throughout nearly ten years of litigation in this case, and landowners’ requests for fees it incurred by hiring specialized appellate attorney and expert on land use and zoning were neither excessive nor redundant.

Generally, when the Court of Federal Claims is determining reasonable attorneys’ fees pursuant to a federal fee-shifting statute, costs associated with administrative services are more appropriately charged to overhead and should therefore be included within an attorney’s hourly rate.

Reimbursing landowners for 1.6 hours at paralegal rate of \$85, rather than at associate rate of \$295, was appropriate under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, where disputed time entries described required legal duties such as summarizing billing information for motion for award of attorneys' fees and costs.

Awarding landowners \$11,860 for attorneys' fees on their motion for attorneys' fees and closing costs was reasonable under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, including \$9,360 for 24 hours of time landowners' counsel spent on matter before oral argument and \$2,500 incurred at oral argument, in light of government's comprehensive, if not excessive, objections to landowners' request for reimbursement.

Including \$80,472.84 contingency fee due to landowners' counsel in attorneys' fees award to landowners was appropriate under the URA following success on their claim against government for permanent physical taking of easement over certain property, where landowners actually incurred such fee when it made payment and including contingency fee in calculating average hourly rate still produced billing rate well below average market rate in Washington, D.C. local market.

Reducing attorneys' fees award by \$85,000 credit that counsel issued to landowners after landowners disputed fees already paid in another matter was unwarranted in determining reasonable fees under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, where counsel issued landowners credit for disputed amount rather than writing check to landowners, and landowners then applied some of this credit toward amounts due in this case, but nothing in that scenario made those amounts due any less "incurred" than they would be had landowners paid with check.

Deducting any amount from attorneys' fees award based on partial success by certain of landowners' businesses was unwarranted in determining reasonable fees under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, where all businesses involved in this case were owned and operated by landowners, as family, counsel represented family through its businesses from outset of litigation, court considered claims raised throughout litigation as belonging to common entity, and all businesses shared in damages award.

Reducing number of hours by 40% was appropriate for period of time between landowners' filing of initial complaint through first appeal, including discovery efforts leading to government's partial stipulation and first and second trials, under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, where, except for stipulation, landowners' claims were timed-barred and reimbursement was not warranted for time spent pursuing such stale claims, although counsel's dogged efforts were important in obtaining stipulation.

Landowners were entitled to recover for all hours expended by their counsel during period of time covering remand trial on damages, second appeal, calculation of interest, and landowners' motion for attorneys' fees under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, where only remaining issue during this period was amount landowners should recover as just compensation for easement to which government had stipulated.

Landowners were entitled to recover 60% of costs incurred during period of time between landowners' filing of initial complaint through first appeal, and all costs incurred for period of time

covering remand trial on damages, second appeal, calculation of interest, and landowners' motion for attorneys' fees under the URA following landowners' success on their claim against government for permanent physical taking of easement over certain property, where first phase involved several claims that were time-barred, while second phase involved only remaining issue as to amount landowners should recover as just compensation for easement to which government had stipulated.