

# **Bond Case Briefs**

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## **ATTORNEYS' FEES - FEDERAL**

### **McCarty v. United States**

**United States Court of Federal Claims - April 9, 2019 - 142 Fed.Cl. 616**

Landowners brought rails-to-trails action against United States, alleging Fifth Amendment takings claims.

Parties settled. Landowners moved for attorney fees.

The Court of Federal Claims held that:

- Difference between St. Louis rates and forum rate was not very significant, and therefore application of locality-rate exception was not warranted;
- United States had to reimburse landowners' counsel based on historic, not current, hourly forum rates determined according to United States Attorney's Office (USAO) Matrix;
- Fees in excess of amount recovered could be awarded;
- Counsel's recovery of attorney fees for hours expended on issue of fee recovery, known as "fees on fees," had to be reduced by 50%;
- Hours expended on class certification and decertification were reimbursable;
- Hours that were devoted to "client development" were reimbursable;
- Counsel's hourly rates had to be reduced by 50% for billing entries that did not reflect case-related work performed simultaneously with travel; and
- Billing entries reflecting managing client data, preparing exhibits, preparing case law database, and compiling documents for oral argument had to be reimbursed at paralegal rates.

Difference between St. Louis rates and forum rate was not very significant, and therefore application of locality-rate exception was not warranted on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims; highest number of hours expended in St. Louis were those of paralegal, who billed approximately 32 percent of claimed hours, and some of this paralegal's work was done in Indiana, where the takings occurred, and landowners were represented by national law firm and disparity between firm's District of Columbia rates and St. Louis rates was only 15%.

United States had to reimburse landowners' counsel based on historic, not current, hourly forum rates determined according to United States Attorney's Office (USAO) Matrix, on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims, since matrix was based on changes in prices for goods and services, including legal services in Washington, D.C. and court was applying that forum rate.

Attorney fees in excess of amount recovered could be awarded, on claim under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims, due to unusually contentious fee dispute prompted in large part by tactical approach by United States and hours landowners'

counsel were forced to expend litigating that aspect of case.

Landowners' counsel's recovery of attorney fees for hours expended on issue of fee recovery, known as "fees on fees," had to be reduced by 50%, on claim under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims, since work done in current case was duplicative of work performed in related cases.

Hours expended on class certification and decertification were reimbursable, on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims; case initially involving over 200 properties and 66 plaintiffs reasonably was treated as candidate for class action even though such procedure ultimately became untenable as litigation ran its course.

Hours that were devoted to "client development" were reimbursable, on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims, since tasks listed were all directly related to litigation and necessary for pursuing landowners' claims.

Counsel's hourly rates had to be reduced by 50% for billing entries that did not reflect case-related work performed simultaneously with travel, on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims.

Claimed hours that included both travel and reimbursable work, such as preparing for and attending meetings with landowners in Indiana, follow-up from client meetings, trail and property inspections, meeting with appraiser, and preparing for and conducting depositions could be reimbursed at timekeepers' full hourly rates on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims.

Billing entries reflecting managing client data, preparing exhibits, preparing case law database, and compiling documents for oral argument had to be reimbursed at paralegal rates, on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims, since those hours constituted administrative work.

Claimed hours for team meetings, motions to strike and fee application, subpoena responses, expert work, and trial preparation could be reimbursed at each timekeeper's regular rate, on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims.

Billing entries for compiling plaintiff data from geographic information system mapping, drafting "follow-up letters," researching, drafting legal memoranda, conducting team meetings and strategy sessions, and reviewing pleadings were reimbursable at each timekeeper's regular rate, on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims; those tasks, including mapping, were legal in nature because case involved properties whose boundaries had to be defined to establish liability and damages.

Recurring vague billing entries warranted 50% reduction, on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims.

Timekeeping entries that did not provide sufficient level of detail to allow court to effectively review reasonableness of claimed hours had to be reduced by 25% on grounds of "block billing," on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims.

On a claim for attorneys' fees under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), block billing entails lumping tasks together in time entries rather than making such entries task-by-task; block billing poses the same difficulties as vague entries, in that it prevents a court from determining whether the claimed hours are reasonable due to the lack of detail.

Hours expended on unsuccessful claims were reimbursable, on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims; although 102 of 219 claims were voluntarily dismissed via stipulation, research performed on all properties, even those resulting in unsuccessful claims, was useful in framing and ultimate resolution of case.