

# LITIGATING ATTORNEYS' FEE CLAIMS - PROVING REASONABLENESS AND RATES OF ATTORNEYS' FEES AND COSTS

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- General principles behind attorneys' fee awards
  - General resources on attorneys' fee litigation
  - What law controls
    - State and federal court
    - Common law, statutory, or contractual fee claims
- Trial to the court? Or trial to a jury?
  - Jury trial: yes, no, and maybe
  - Bifurcation, Zeno's paradox, and counsel as witness
- Expert testimony
  - Necessity
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- Calculating the fee
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  - Fee arrangements between counsel and client - fixed and contingent fees
  - Overview of factors considered
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  - Other jurisdictions

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➤ **General Treatises on Fee Practice and Procedure**

- Robert L. Rossi, ATTORNEYS' FEES (3d ed. 2012).
  - <http://store.westlaw.com/attorneys-fees-3d/13067/13503816/productdetail>
  - [Rossi Table of Contents](#)
- Alba Conte, ATTORNEY FEE AWARDS (3d ed. 2010).
  - <http://store.westlaw.com/attorney-fee-awards-3d-trial-practice-series/128337/13503976/productdetail>
  - [Conte Table of Contents](#)
- Mary Derfner & Arthur Wolf, COURT AWARDED ATTORNEY FEES (2012).
  - <http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?pageName=relatedProducts&skuId=SKU10543&catId=121&prodId=10543>
  - [Derfner Table of Contents](#)

➤ **Statutory and Other Bases for Attorneys' Fees Claims.**

- The American Rule
  - *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247 (1975) ("In the United States, the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser.").
  - *Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn. 2000) (under Minnesota's common law, "each party bears [its] own attorney fees in the absence of a statutory or contractual exception.").

- *Trope v. Katz*, 902 P.2d 259, 262 (Cal. 1995) (“California follows what is commonly referred to as the American rule, which provides that each party to a lawsuit must ordinarily pay his own fees.”)
- *Dade County v. Pena*, 664 So. 2d 959, 960 (Fla. 1995) (“This Court follows the ‘American Rule’ that attorney’s fees may only be awarded by a court pursuant to an entitling statute or an agreement of the parties.”)
- Robert L. Rossi, *ATTORNEYS’ FEES*, § 6.1 (3d ed. 2012) (stating that the general rule is that there is no recovery of attorneys’ fees).
- Examples of Exceptions to American Rule
  - *Fownes v. Hubbard Broad., Inc.*, 310 Minn. 540, 246 N.W.2d 700 (1976) (recognizing contractual and statutory exceptions).
  - *First Fiduciary Corp. v. Blanco*, 276 N.W.2d 30, 34 (Minn. 1979) (recognizing third-party-litigation exception to the American rule allows a court to award attorneys’ fees to the prevailing party where the wrongful act of the defendant thrusts the plaintiff into litigation with a third person; the plaintiff may recover from the defendant the expenses incurred in conducting the litigation against the third party, including attorneys’ fees).
  - *Marek v. Chesny*, 473 U.S. 1, 23 (1985) (Brennan, J., dissenting) (“Congress has enacted well over 100 attorney’s fees statutes.”).
  - William A. Harrington, *Award of Counsel Fees to Prevailing Party Based on Adversary’s Bad Faith, Obduracy, or Other Misconduct*, 31 A.L.R. Fed. § 833 (1977) (providing exceptions to the American rule).

## ➤ What Law Applies?

- State law applies for diversity or pendent jurisdiction claims.
  - *Ferrell v. West Bend Mut. Ins. Co.*, 393 F.3d 786, 796 (8th Cir. 2005) (“[S]tate law generally governs the question whether there is a right to attorney’s fees.” (citing *Alyeska*, 421 U.S. at 260 n.31)).
  - *Witzman v. Gross*, 148 F.3d 988, 990 (8th Cir. 1998) (noting supplemental state-law claims are governed by state law because “[t]he *Erie* principles apply equally to pendent jurisdiction.” (quoting *Marigold v. Cal. Pub. Util. Comm’n*, 67 F.3d 1470, 1478 (9th Cir. 1995)).
- Federal case law may give guidance to state courts, but is not controlling.
  - *Specialized Tours, Inc. v. Hagen*, 392 N.W.2d 520, 542 (Minn. 1986) (“We are free to adopt our own standards to be applied by our courts in determining reasonable attorney fees recoverable under the Minnesota Securities Act. We need not defer to the analytical approach of the federal courts in resolving these issues.”).

## ➤ Court Trial or Jury Trial?

- *Ross v. Bernhard*, 396 U.S. 531 (1970) (explaining that when determining the right to jury trial, courts should examine the nature of the issue to be tried “rather than the character of the overall action,” and establishing a three-part test for evaluating the issue: (1) customary treatment of the issue prior to merger of law and equity courts; (2) remedy sought; and (3) the abilities and limitations of juries).

- Jury Trial

- *United Prairie Bank v. Haugen*, 813 N.W.2d 49 (Minn. 2012) (finding as a matter of first impression, defendant had a right to a jury trial on bank's claim for attorney's fees, as claim was essentially a legal claim, rather than an equitable claim, claim arose under contract, and fees were essentially a form of money damages).
- *Simplot v. Chevron Pipeline Co.*, 563 F.3d 1102 (10th Cir. 2009) (finding that plaintiff was entitled to a jury trial on the attorneys' fees claim because it was part of the merits of the contract claim).

- No Jury Trial

- *Ideal Elec. Sec. Co., Inc. v. Int'l Fid. Ins. Co.*, 129 F.3d 143, 150 (D.C. Cir. 1997) (“[O]nce a contractual entitlement to attorney's fees has been ascertained, the determination of a reasonable fee award is for the trial court . . .”).
- *Resolution Trust Corp. v. Marshall*, 939 F.2d 274, 279 (5th Cir. 1991) (“Since there is no common law right to recover attorneys fees, the Seventh Amendment does not guarantee a trial by jury to determine the amount of reasonable attorneys fees.”).
- *E. Trading Co. v. Refco, Inc.*, 229 F.3d 617, 627 (7th Cir. 2000) (finding that if debtor prevailed on its claim, it was entitled to attorneys' fees, “an issue to be resolved after the trial on the basis of the judgment”).
- *Scotts Co. v. Cent. Garden & Pet Co.*, 256 F. Supp. 2d 734, 748 (S.D. Ohio 2003) (“Attorneys fees and costs are matters traditionally reserved for court determination” and “contractual fee-shifting provision for reimbursement [of fees] . . . does not change the equitable nature of the relief sought.”).

- *Redshaw Credit Corp. v. Diamond*, 686 F. Supp. 674, 676 (E.D. Tenn. 1988) (“[T]he determination of attorneys’ fees is not properly a jury question where the prevailing party’s right to collect the fees arises from a private contract provision.”).
  - *Cheek v. McGowan Elec. Supply Co.*, 511 So. 2d 977, 979 (Fla. 1987) (“A contractual provision authorizing the payment of attorney’s fees is not part of the substantive claim because it is only intended to make the successful party whole by reimbursing him for the expense of litigation.”).
  - *Hudson v. Abercrombie*, 374 S.E.2d 83, 85 (Ga. 1988) (“[T]here is no constitutional right to a jury trial on the issue of attorney fees.”).
  - *Missala Marine Serv., Inc. v. Odom*, 861 So. 2d 290, 296 (Miss. 2003) (“[T]he trial court is the appropriate entity to award attorney’s fees and costs.”).
  - *State ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832, 836 (Mo. 1995) (“[O]nce liability therefor has been established, the reasonableness of attorney’s fees is a question of law, not a question of fact.”).
- Partial Jury Trial
    - A few courts have countenanced jury determination of the right to fees, but then drawn the line at jury determination of the amount of those fees. *McGuire v. Russell Miller, Inc.*, 1 F.3d 1306, 1313 (2d Cir. 1993) (“[I]f the jury decides that a party may recover attorneys’ fees, then the judge is to determine a reasonable amount of fees.”); see also *Paramount Comm. Inc. v. Horsehead Ind.*, 731 N.Y.S.2d 433 (N.Y. App. Div. 2001).

- Single trial or bifurcation.
  - Potential impact on liability issues supports bifurcation.
  - Zeno's Paradox

➤ **Sources of Evidence for Determining Hourly Rates**

- Expert Opinions
  - Counsel of Record
  - Independent Counsel
- Billing Rate Surveys
  - Laffey Matrix- <http://laffeymatrix.com/>
  - Bucklin.org - <http://www.bucklin.org/>
  - Price Waterhouse - <http://www.pwc.com/us/en/law-firms/surveys/brass-survey.jhtml>
  - Database of Billing and Practices - <http://almlegalintel.com/ALI/billingrates>
  - Comparable cases

➤ **Expert Opinions**

- Expert Testimony Permitted/Required
  - *Wojahn v. Faul*, 242 Minn. 33, 38, 64 N.W.2d 140, 143 (Minn. 1954) (“There is no requirement that a jury award for attorneys’ fees must be based on expert testimony.”).
  - *Tracy v. Perkins-Tracy Printing Co.*, 278 Minn. 159, 169, 153 N.W.2d 241, 244 (Minn. 1967) (“In light of the amount involved [\$3,000] and complexity of the issues raised [foreclosure], we believe that the trial judge was justified in making the allowance . . . without the necessity of expert opinions on the question.”).

- *Colonial Plumbing's Heating Supply Co. v. Contemporary Constr. Co., Inc.*, 464 A.2d 741 (R.I. 1983) (holding that practicing attorneys are qualified as experts on fair and reasonable attorneys' fees).
- *St. Onge, Steward, Johnson & Reens LLC v. Media Group Inc.*, 851 A.2d 570 (Conn. Ct. App. 2004) (finding that although expert testimony might not always be required, in patent case where issues were beyond the ordinary knowledge of juries, expert testimony was needed).
- Trial Counsel as Witness.
  - Likely permitted under Model Rules of Professional Conduct 3.7. MODEL RULES OF PROF'L CONDUCT 3.7 ("A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless: . . . (2) the testimony relates to the nature and value of legal services rendered in the case.").
  - But the rule is premised on traditional presentation to the court, not a jury. *See id.* cmt. 3 ("Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.").

### ➤ Calculating the Fee

- Lodestar Method
  - *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (explaining that the starting point is ascertainment of the number of adequately documented hours expended on the litigation multiplied by a reasonable hourly rate).
  - *Specialized Tours, Inc.*, 492 N.W.2d at 542 (holding that the "analysis of the Supreme Court in *Hensley* provides a sensible and fair approach to such determinations").

- Fee Arrangement Between Counsel and Client
  - *Zebeck v. Metris, Co.*, No. A07-0756, 2008 Minn. App. Unpub. LEXIS 608, at \*21-22 (Minn. Ct. App. May 27, 2008) (stating that where a party and his attorneys contractually agree to an alternative fee arrangement such as a contingency fee, “his attorneys ran the risk of not being compensated if his lawsuit was not successful” and the attorneys should be compensated accordingly).
  - *Fl. Patient’s Comp. Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985) (finding that the court should consider whether a fee is fixed or contingent in determining reasonable attorneys’ fees).
- Overview of Factors Considered
  - *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 621 (Minn. 2008) (“Factors considered in determining reasonableness include ‘the time and labor required; the nature and difficulty of the responsibility assumed; the amount involved and the results obtained; the fees customarily charged for similar legal services; the experience, reputation, and ability of counsel; and the fee arrangement existing between counsel and the client.’” (quoting *State v. Paulson*, 290 Minn. 371, 373, 188 N.W.2d 424, 426 (1971))).
  - *Fl. Patient’s Comp. Fund*, 472 So. 2d at 1150 (explaining that courts must look to various criteria when determining reasonable attorneys’ fees, including: time and labor required, novelty and difficulty of the issues, skill required, customary fees charged in the locality, amounts involved and results obtained, nature and length of representation, and experience and reputations of the lawyer).
  - *Jane Massey Draper, Excessiveness or Inadequacy of Attorney’s Fees in Matters Involving Commercial and General Business Activities*, 23 A.L.R. 5th 241, § 2 (1994) (discussing factors that affect fee reasonableness).

- Factors Considered

- Documentation

- *Hensley*, 461 U.S. at 433–37 (“Where the documentation of hours is inadequate, the district court may reduce the award accordingly. . . . [T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. The applicant should exercise ‘billing judgment’ with respect to hours worked . . . and should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims.”).

- *Bores v. Domino’s Pizza LLC*, No. 05-cv-2498 (RHK/JSM), 2008 U.S. Dist. LEXIS 87252, at \*22 (D. Minn. Oct. 27, 2008) (“[M]any of the submitted time records lack sufficient detail to permit the Court to ascertain if the time expended was reasonably necessary, redundant or excessive. The records are replete with vague entries such as ‘[g]ather information and respond to clients request’, [i]dentify and prepare documents’, ‘appeal communications’, ‘correspondence’, ‘review memos’, ‘review documents and issues,’ . . . . It is appropriate to reduce the compensable number of hours on this basis.”).

- *Owner-Operator Indep. Drivers Ass’n v. Supervalu, Inc.*, No. 05-cv-2809 (JRT/JJG), 2012 U.S. Dist. LEXIS 184055, 48-49 (D. Minn. Sept. 30, 2012) (“Incomplete or imprecise billing records prevent the Court from exercising meaningful review and are grounds for reducing a fee award.” (citing *Hensley*, 461 U.S. at 433; see *H.J. Inc. v. Flygt Corp.*, 925 F.2d 257, 260 (8th Cir. 1991))).

o Redaction of Privileged Communications

- Although parties have the right to assert the attorney-client privilege and to redact the descriptions contained in the original time records for confidential attorney-client communications, they are not thereby relieved of their burden to prove the reasonableness of hours spent and that those hours related to the claim on which they prevailed at trial.
- *In re Stisser*, 818 N.W.2d 495, 509–10 (Minn. 2012) (affirming district court’s denial of attorneys’ fees because redacted invoices “did not supply the [opposing party] with any documentation on which to make a reasoned decision”).
- *Ideal Elec. Sec. Co. v. Int’l Fid. Ins. Co.*, 129 F.3d 143, 151–152 (D.C. Cir. 1997) (explaining that a party asserting a claim for attorneys’ fees is obligated to “disclose the billing statements itemizing those fees in [their] entirety . . . . [A party] may opt to withhold billing statements under a claim of attorney-client privilege; however, where [the] assertions of a privilege results in the withholding of information necessary to [the opposing party’s] defense to [the] claim against it, the privilege must give way to [the opposing party’s] right to mount a defense.”).
- *Grand Elec., LLC v. Int’l Bhd. of Elec. Workers Local 265*, No. 4:09CV3160, 2011 U.S. Dist. LEXIS 147956, at \*11–12 (D. Neb. Dec. 22, 2011) (holding that a party claiming fees waived its privilege by making a request for attorneys’ fees and placing the billing statements at issue).

○ Duplication/Excess Hours

- *Roemmich v. Eagle Eye Dev. LLC*, No. 1:04-cv-079, 2006 U.S. Dist. LEXIS 94320, at \*7-8 (D.N.D. Dec. 29, 2006) (deducting fees for duplicated efforts attributed to withdrawal of plaintiff's counsel at the defendant's request).
- *Bores*, 2008 WL 4755834, at \*7 (“[N]o fewer than twenty attorneys and paralegals have billed time in connection with this case. While the Court is cognizant that this action has been pending for almost three years and has involved extensive discovery, motion practice, and an appeal, it is nevertheless left with the impression that Dominos and its counsel have ‘overlawyered’ this case.”).

○ Adverse Party's Hours

- *Mendez v. Radec Corp.*, 818 F. Supp. 2d 667, 668-69 (W.D.N.Y. 2011) (“Where the opposing party challenges the reasonableness of the rate or hours charged by the moving party's counsel, courts are more likely to find that evidence of the nonmoving party's counsel's fees are relevant and discoverable.”).
- *New York v. Microsoft Corp.*, No. 98-1233, 2003 U.S. Dist. LEXIS 8713, at \*9-10 (D.D.C. May 12, 2003) (“Given that [defendant] does not challenge the reasonableness of [plaintiff's] representations of hours expended or the appropriate hourly rate, the Court fails to see how the request for an accounting of [defendant's] attorneys' hours spent and tasks performed during the litigation is ‘relevant to the claim or defense of any party.’” (quoting Fed. R. Civ. P. 26(b)(1))).

- Nature and Difficulty of the Responsibility Assumed
  - *Milner*, 748 N.W.2d at 624 (“Moreover, because the results obtained, the complexity of the litigation, and the duration of the litigation should be fully reflected in the lodestar amount, these factors should not be used again in determining whether a multiplier is warranted.”).
- Amount Involved and the Results Obtained
  - Public benefit
    - *City of Riverside v. Rivera*, 477 U.S. 561, 574, 578 (1986) (finding that reasonable fees can be disproportionate to the amount of underlying relief where the suit provided a public benefit by addressing “important civil and constitutional rights that cannot be valued solely in monetary terms”).
  - Private benefit
    - Proportionality
      - *Green v. BMW of N. Am., LLC*, 826 N.W.2d 530 (Minn. 2013) (explaining that a reasonable fee award excludes hours that are excessive given the nature of a case; hours that are not properly billed to one’s client are also not properly billed to one’s adversary pursuant to statutory authority).
      - *Specialized Tours, Inc.*, 392 N.W.2d at 543 (noting that there should be a “relationship between the amount of the fee awarded and the results obtained” (quoting *Hensley*, 461 U.S. at 437)).
      - *Robinson v. City of St. Charles, Mo.*, 972 F.2d 974 (8th Cir. 1992) (affirming the denial of attorneys’ fees because “[i]n an action seeking only money damages, a [successful verdict], unaccompanied by

any kind of damage award, not even a nominal award, does not sufficiently change the legal relationship between the parties so as to make the verdict anything more than a technical victory.” (quoting *Warren v. Fanning*, 950 F.2d 1370, 1375 (8th Cir. 1991))).

▪ Unsuccessful Claims

• *Hensley*, 461 U.S. at 436 (“If, on the other hand, a [party] has achieved only partial or limited success, the product of hours reasonably expended on the litigation as a whole times reasonable hourly rate may be an excessive amount. This will be true even where the plaintiff’s claims were interrelated, nonfrivolous, and raised in good faith. . . . Again, the most critical factor is the degree of success obtained. . . . But had [plaintiffs] prevailed on only one of their six general claims, . . . a fee award based on the claimed hours clearly would have been excessive.”).

• *Wal-Mart Stores, Inc. v. Barton*, 223 F.3d 770, 773 (8th Cir. 2000) (holding that a plaintiff who prevails on only some of his claims is not entitled to any fees for unsuccessful, unrelated claims and, if the success on the prevailing claims is limited, then he is “entitled only to an amount of fees that is reasonable in relation to the results obtained” (quoting *Jenkins by Jenkins v. Missouri*, 127 F.3d 709, 716 (8th Cir. 1997))).

• *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 776 N.W.2d 172, 179 (Minn. Ct. App. 2009) (holding that fees for unsuccessful claims may be recoverable if the successful and unsuccessful claims share a “common core of facts” and “related legal theories” (citing *Hensley*, 461 U.S. at 435)).

- *Ryther v. KARE 11*, 864 F. Supp. 1525, 1532–33 (D. Minn. 1994) (denying the portion of attorneys’ fees attributable to an unsuccessful defamation claim because it was “distinct in all respects from the discrimination and reprisal claims. [The defamation claim] involve[d] discrete facts and occurred after Ryther was removed from the air at KARE 11.”).
  - *Scott v. Forest Lake Chrysler-Plymouth-Dodge*, 668 N.W.2d 45, 50–51 (Minn. Ct. App. 2003) (affirming the division of fees by seven to account for plaintiff’s success on only one of seven claims).
  - *Hensley*, 461 U.S. at 436–37 (“The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success.”).
  - *Gopher Oil Co., Inc. v. Union Oil Co. of Cal.*, 955 F.2d 519, 527–28 (8th Cir. 1992) (reversing attorneys’ fee award and remanding for “apportionment of attorney fees to exclude work related to the fraud litigation” because it was unrelated to the successful claims).
- Fees customarily charged for similar legal services.

## APPENDIX OF ILLUSTRATIVE CASES

### **Minnesota (State & Federal)**

*Mayo Clinic, et al. v. Elkin*, No. 11-cv-2959, 2013 U.S. App. LEXIS 17832 (8th Cir. Aug. 27, 2013).

*Karlen v. Jones Lang LaSalle Am.'s, Inc.*, No. 12-cv-1102 (JNE/JJG), 2013 U.S. Dist. LEXIS 100038 (D. Minn. July 17, 2013).

*Miklesh v. Bradstreet & Assocs., LLC et al.*, No. 12-cv-457 (JRT/LIB), 2013 U.S. Dist. LEXIS 97305 (D. Minn. July 12, 2013).

*Owner-Operator Indep. Driver Ass'n, et al. v. Dunaski*, No. 09-cv-1116 (DWF/RLE), 2012 U.S. Dist. LEXIS 129475 (D. Minn. Sept. 12, 2012).

*Walman Optical v. Quest Optical, Inc.*, No. 11-cv-0096 (PJS/JJG), 2012 U.S. Dist. LEXIS 111767 (D. Minn. Aug. 9, 2012).

*BP Grp., Inc. v. Capital Wings Airlines, Inc.*, No. 09-cv-2040 (JRT/JSM), 2011 U.S. Dist. LEXIS 107483 (D. Minn. Sept. 21, 2011).

*Schaub v. Cnty. of Olmsted*, No. 06-cv-2725 (JRT/FLN), 2011 U.S. Dist. LEXIS 93236 (D. Minn. Aug. 19, 2011).

*Vaidyanathan v. Seagate US LLC*, No. 09-cv-1212 (DWF/JSM), 2011 U.S. Dist. LEXIS 25784 (D. Minn. Mar. 11, 2011).

*Hippert v. Ritchie*, No. A11-152, 2012 Minn. LEXIS 689 (Minn. Aug. 16, 2012).

*DeCook v. Rochester Int'l Airport Joint Zoning Bd.*, 811 N.W.2d 610 (Minn. Mar. 22, 2012).

*Peterson v. BASF Corp.*, No. C3-02-857 (Minn. June 12, 2006).

*Schmitz v. United States Steel Corp.*, No. 69DU-CV-08-3442 (6th Dist. Feb. 20, 2012).

### **Other Jurisdictions**

*Fleming v. Covidien, Inc.*, No. 11-cv-56836, 2013 U.S. App. LEXIS 20257 (9th Cir. Oct. 3, 2013).

*Am. Ed. of Internal Med. v. Muller*, Nos. 12-cv-3135, 12-cv-3781, 2013 U.S. App. LEXIS 18941 (3d Cir. Sept. 12, 2013).

*Gonzalez v. City of Maywood*, No. 11-cv-56594, 2013 U.S. App. LEXIS 18703 (9th Cir. Sept. 9, 2013).

*Joyce v. Town of Dennis*, 720 F.3d 12 (1st Cir. 2013).

*Torres v. Gristede's Operating Corp.*, 519 Fed. App'x 1 (2d Cir. 2013).

*CARCO Grp., Inc. v. Maconachy*, 718 F.3d 72 (2d Cir. 2013).

*City of Laredo v. Montano*, No. 12-cv-0274, 2013 Tex. LEXIS 890 (Oct. 25, 2013).

## Minnesota (State & Federal)

➤ *Mayo Clinic, et al. v. Elkin*, No. 11-cv-2959, 2013 U.S. App. LEXIS 17832 (8th Cir. Aug. 27, 2013).

- Plaintiffs brought breach of contract claim, including statutory claim under Minn. Stat. § 325C.04 for misappropriation of trade secrets. Under the statute, a prevailing party is entitled to “reasonable” attorneys’ fees.
- The prevailing party sought compensation for 5,311 hours of work at the “average” billing rate of \$461 an hour. Of the total \$2.4 million sought, the party seeking fees attributed \$1.9 million to the statutory trade secret claim.
- The district court awarded the full amount of fees requested. It described Defendant’s conduct in litigation as “contumacious,” and rejected his objections to the attorneys’ fees when he was the cause of much of the work performed by Plaintiff’s counsel.
- The district court did not award costs under the statute, however, because the statute only provided for attorneys’ fees. Plaintiff was left to recover taxable costs, not actual costs.
- On appeal, the Eighth Circuit vacated the district court’s order and remanded. It set aside the propriety of Defendant’s litigation tactics and found “insufficient support in the record for this staggering award on the basis of Mayo’s trade secret claim alone.” The court found that the documents filed by Mayo failed to distinguish work performed in furtherance of Mayo’s trade secret claim and its remaining claims.
- Relevant documents:

[Eighth Circuit’s Opinion](#)  
[District Court’s Order](#)

➤ *Karlen v. Jones Lang LaSalle Am.'s, Inc.*, No. 12-cv-1102 (JNE/JJG), 2013 U.S. Dist. LEXIS 100038 (D. Minn. July 17, 2013).

- Plaintiff sued alleging nonpayment of commissions and bonuses, as well as breach of contract, unjust enrichment, and promissory estoppel. Plaintiff obtained summary judgment on claim that Defendant failed to pay him commissions related to one transaction. All other claims were either waived by Plaintiff or dismissed on summary judgment. Defendants were ordered to pay Plaintiff \$72,503.54. Of that amount, \$34,521 represented commission payments, which were doubled under Minnesota law, and a \$3,461.54 penalty.
- Plaintiff sought \$48,548.31 in fees and \$2,018.22 in costs pursuant to Minn. Stat. § 181.171, subd. 3.
- The court acknowledged that both parties attempted to calculate the number of hours reasonably spent on the lone successful claim, but noted that calculation is only the starting point. The court reduced the fees sought, noting that Defendant prevailed on the majority of claims.
- The court also noted that Plaintiff was not entitled to any payments under his contract with Defendant until at least two months after he filed his lawsuit. The court found that it was only because of communications between attorneys that Plaintiff was successful on his claim. “In effect, the attorneys representing both parties needlessly increased the cost of resolving this dispute.”
- The court reduced to the fee award to \$20,000 based on the time, labor, and skill required for the prosecution of his only successful claim.
- Relevant Documents:

[District Court Order](#)

[Miller-Van Oort Supplemental Affidavit in Support of Motion for Attorney Fees](#)

➤ ***Miklesh v. Bradstreet & Assocs., LLC et al.*, No. 12-cv-457 (JRT/LIB), 2013 U.S. Dist. LEXIS 97305 (D. Minn. July 12, 2013).**

- Plaintiff succeeded on FDCPA claim and sought attorneys' fees.
- The court recommended granting the motion for attorneys' fees in part, reducing the hourly rate and reducing the hours billed or awarding a pro rata share for some hours. Defendants objected, claiming the hourly rate and number of hours were excessive.
- The magistrate judge's R&R recommended decreasing the hourly rate from \$400 per hour to \$325 because of the attorney's recent suspension and probationary status during the pendency of the case. The district court found the R&R's reduction due to the attorney's suspension was sufficient. It also noted that courts in the district had awarded a wide range of attorneys' fees in similar litigation since the attorney's reinstatement.
- Relevant Documents

[District Court Order](#)

[Little Declaration in Opposition to Motion for Attorney Fees](#)

[Lyons Declaration in Support of Motion for Attorney Fees](#)

➤ ***Owner-Operator Indep. Driver Ass'n, et al. v. Dunaski*, No. 09-cv-1116 (DWE/RLE), 2012 U.S. Dist. LEXIS 129475 (D. Minn. Sept. 12, 2012).**

- Plaintiff seeks \$3.3 million in attorneys' fees on a 28 U.S.C. § 1983 claim.
- Opposing party claims the hourly rates were too high and too many hours were expended.
- The court agreed that the hourly rates were too high considering the work done, not who the attorneys were. The court reduced the rates from \$435 to \$575 to \$225 to \$400 per hour, as was typical of that kind of work in the local community, and made a 25% across-the-board reduction in hours for a total award of \$1.6 million.

- Relevant documents:

[District Court Order](#)

[Cullen Affidavit in Support of Motion for Attorney Fees](#)

[Goins Declaration in Support of Motion for Attorney Fees](#)

[Tanick Affidavit in Support of Motion for Attorney Fees](#)

[O'Grady Affidavit in Opposition to Motion for Attorney Fees](#)

[Devine Affidavit in Opposition to Motion for Attorney Fees](#)

[Perron Affidavit in Opposition to Motion for Attorney Fees](#)

[Vasaly Declaration in Opposition to Motion for Attorney Fees](#)

[Cullen Declaration in Support of Plaintiffs' Reply to Defendants' Opposition to Motion for Attorney Fees](#)

- ***Walman Optical v. Quest Optical, Inc.*, No. 11-cv-0096 (PJS/JJG), 2012 U.S. Dist. LEXIS 111767 (D. Minn. Aug. 9, 2012).**

- Moving party requested \$223,000 in fees and costs for obtaining a contempt order. The court ordered fees in the amount of \$33,262, describing the result as a “pyrrhic” victory.
- Court opined that seeking contempt should have been a “modest” undertaking, and it was “flabbergasted” by the size of the request.
- Court reduced the rates for the time spent from \$465 an hour on average to \$250 an hour, indicating that the rates were adjusted to reflect the specific work done, rather than the lawyer’s standard rate. The court concluded that the issues in the merits case were highly sophisticated and justified high billing rates for technical expertise. But, the court dismissed the notion that the same lawyers should have handled the contempt proceeding, observing that less sophisticated (and lower rate) lawyers could have managed that proceeding.
- Relevant documents:

[District Court Order](#)

[Schwiebert Affidavit in Support of Motion for Attorney Fees](#)

➤ *BP Grp., Inc. v. Capital Wings Airlines, Inc.*, No. 09-cv-2040 (JRT/JSM), 2011 U.S. Dist. LEXIS 107483 (D. Minn. Sept. 21, 2011).

- In a diversity case, the entitlement to attorneys' fees is governed by the substantive law that controls the outcome of the litigation. The methodology by which fees are awarded is a procedural issue governed by the forum's rules, however. The fees sought here were under terms of contract.
- Rates between \$250 and \$565 per hour sought. The prevailing party presented no evidence concerning comparable rates in the community, but opposing counsel did.
- Court approved fees with a 15% across-the-board reduction.
- Computer assisted legal research fees were recoverable under the terms of the contract giving rise to the claim, although not under statute or rule.
- Relevant documents:

[District Court Order](#)

[Scott Affidavit in Support of Motion for Attorney Fees](#)

[Scott Second Affidavit in Support of Motion for Attorney Fees](#)

[Streater Affidavit in Opposition of Motion for Attorney Fees](#)

➤ *Schaub v. Cnty. of Olmsted*, No. 06-cv-2725 (JRT/FLN), 2011 U.S. Dist. LEXIS 9323 (D. Minn. Aug. 19, 2011).

- Plaintiff, a paraplegic, asserted *Monell* and ADA claims against the Olmstead County Adult Detention Center where he was imprisoned, claiming the facility was indifferent to his medical needs.

- Plaintiff sought \$352,200 for New York counsel based on 824.45 hours of work performed by three attorneys. Hourly rates ranged from \$225 an hour to \$550 an hour. The high rate represented a \$50 an hour discount from that lawyer's standard rate. Plaintiff also sought \$112,585 reflecting an hourly rate of \$500 per hour for local counsel.
- Defendant objected on the ground that the fee claim was supported only by the affidavits of counsel, and claimed that the law required affidavits in addition to the attorneys' own affidavits to establish rates prevailing in the community.
- Defendant presented affidavit testimony from an independent attorney that civil rights issues are handled in the local community at rates of \$150-\$250 per hour.
- Court noted that the proposed rates were "similar to those recently deemed reasonable in civil rights enforcement actions and related cases in this district," even though some of the New York rates were "on the higher end of the scale."
- Court declined to reduce the hourly rates requested despite the "dearth of evidence" proffered to support the rates, in light of the extraordinary result – nearly \$1 million award.
- Court also noted that the circumstances justified higher rates: the hostility generated by the claims in the local community (Plaintiff was a convicted sex offender accusing a local jail of violating his civil and constitutional rights), plus an excellent result (the recovery vastly exceeded Defendant's Rule 68 offer of judgment in the amount of \$40,000) warranted an award of the full amount of fees sought by the New York lawyers. The court reduced the local counsel's fees, however, awarding \$90,068.
- Although Plaintiff did not prevail on all his claims, those as to which the Plaintiff was unsuccessful "were intricately related" to the claim in which he succeeded.

- Relevant documents:

[August 4, 2011 Eighth Circuit Order](#)

[August 19, 2011 District Court Order](#)

[Colleluori Affidavit in Support of Motion for Attorney Fees](#)

[Corson Affidavit in Support of Motion for Attorney Fees](#)

[Stephenson Affidavit in Opposition of Motion for Attorney Fees](#)

- ***Vaidyanathan v. Seagate US LLC*, No. 09-cv-1212 (DWF/JSM), 2011 U.S. Dist. LEXIS 25784 (D. Minn. Mar. 11, 2011).**

- Plaintiff sued claiming that false representations induced him to accept a position with Defendant corporation and move from Texas to Minnesota. Plaintiff asserted two claims: violation of Minn. Stat. § 181.64 and promissory estoppel.
- A jury found that Defendant made a knowingly false representation to Plaintiff regarding the kind or character of the work he would perform and that the false representation induced Plaintiff to move. The jury awarded damages of \$1.9 million on the statutory claim.
- Plaintiff sought an award of attorneys' fees under Minn. Stat. § 181.65. The court initially awarded \$517,352 for attorneys' fees incurred during the litigation to the date the court entered judgment in Plaintiff's favor on the jury award. Plaintiff then sought an additional \$97,000 for fees incurred after judgment, through post-trial motions.
- The supplemental fee request sought fees for roughly 290 hours of work, at lawyer rates that range between \$190 and \$495 per hour.
- The district court found the fee request to be "excessive in light of the tasks accomplished." The court noted that many of the substantive issues raised in the post-trial motions had already been briefed and argued extensively during trial. The court ultimately awarded \$63,000 in additional attorneys' fees.

- The Defendant also asked the court to stay the determination of fees pending an appeal. The court denied the request, saying that this was not the “rare instance” in which delaying the fee consideration pending appeal would promote justice and efficiency.
- Relevant documents:

[District Court Order](#)

[Shulman Affidavit in Support of Motion for Attorney Fees](#)

[Behrens Affidavit in Support of Motion for Attorney Fees](#)

[Snyder Affidavit in Support of Motion for Attorney Fees](#)

[Boyd Affidavit in Support of Motion for Attorney Fees](#)

[Foster Affidavit in Support of Motion for Attorney Fees](#)

[Robbins Affidavit in Support of Opposition to Motion for Attorney Fees](#)

➤ *Hippert v. Ritchie*, No. A11-152, 2012 Minn. LEXIS 689 (Minn. Aug. 16, 2012).

- Litigation challenging state and federal legislative districts in light of new census data. Fees sought under 28 U.S.C. § 1983 for deprivation of constitutional right to one person, one vote.
- Fees awarded to all Plaintiffs because relief included judicial redistricting. Though no party seeking redistricting obtained the exact relief requested, all had some measure of success and all contributed to the final outcome.
- Fees awarded were between one half and one third of those requested, consistent with prior decisions of earlier redistricting panels awarding only partial fees and costs.
- Relevant documents:

[District Court Order](#)

[Hippert Plaintiffs’ Memorandum and Affidavits in Support of Motion for Attorneys’ Fees](#)

[Lillehaug Affidavit in Support of Motion for Attorney Fees](#)

[Elias Affidavit in Support of Motion for Attorney Fees](#)

➤ *DeCook v. Rochester Int'l Airport Joint Zoning Bd.*, 811 N.W.2d 610 (Minn. Mar. 22, 2012).

- Appellate attorneys' fees claimed after conclusion of three appeals and remand proceedings in inverse condemnation action. Awarded \$170,000 for regulatory taking and sought fees under Minn. Stat. § 117.045.
- After discussing at length why the statute applied to appellate attorneys' fees sought in claims of this particular type, the supreme court discussed whether the court of appeals prior denial of attorneys' fees in connection with the first appeal was a bar to the claim on the later appeals.
- The court decided that although the Plaintiffs had been successful in the first appeal, they had not received the relief that entitled them to attorneys' fees (they had not yet "prevailed" in the action, but merely reinstated their claim), thus, the court of appeals correctly denied the fee request after the first appeal. Because Plaintiffs ultimately prevailed, however, the supreme court held they were entitled fees at the end of all three appellate proceedings for all three appeals (two proceedings in the court of appeals, and one in the supreme court).
- Evidence considered by the court in approving an award of \$69,000 included detailed billing records and an affidavit of counsel. Defendants did not file substantive opposition to the amount of time or rates. Nevertheless, the supreme court reduced a supplemental fee award from the requested \$51,000 for fees incurred in responding to the fee issue, to \$21,000. The court also refused to award any fees for work performed by a second firm.
- No costs taxable against government, so cost request was denied.

- Relevant documents:

[September 28, 2011 Minnesota Supreme Court Order](#)

[March 22, 2012 Minnesota Supreme Court Order](#)

[August 7, 2012 Minnesota Supreme Court Order](#)

[October 31, 2011 DeCook Supplemental Memorandum Regarding Attorneys' Fees](#)

[December 19, 2011 DeCook Supplemental Reply Memorandum Regarding Attorneys' Fees](#)

[April 18, 2012 Response to Supplemental Memorandum Regarding Attorneys' Fees](#)

➤ ***Peterson v. BASF Corp.*, No. C3-02-857 (Minn. June 12, 2006).**

- Consumer fraud class action against herbicide manufacturer. After extensive trial and appellate proceedings, including certiorari to the United States Supreme Court, Plaintiffs ultimately prevailed. They moved for a separate award of attorneys' fees for proceedings in the Minnesota Supreme Court following remand from the United States Supreme Court.
- Respondents requested that the supreme court remand the motion and similar motions made in related appeals to the district court for factual and legal determination. The court denied that request, and awarded attorneys' fees for proceedings in the supreme court in the amount of \$467,000, together with approximately \$13,000 in costs.
- Relevant documents:

[Minnesota Supreme Court Order](#)

[Farmers' Memorandum in Support of Motion for Lodestar Attorneys' Fees](#)

[BASF Response to Plaintiffs' Motion for Lodestar Attorneys' Fees](#)

➤ *Schmitz v. United States Steel Corp.*, No. 69DU-CV-08-3442 (6th Dist. Feb. 20, 2012).

- Suit for damages for retaliatory discharge under Minn. Stat. §176.82, subd. 1. After court trial, Defendant was found guilty of threatening to discharge Plaintiff for seeking workers' compensation benefits. Compensatory damages of \$15,000 were recovered.
- Plaintiff sought fees of more than \$300,000, based only on the retaliation claim.
- The district court awarded \$203,112 in attorneys' fees. The trial court concluded that the statute was specifically designed to encourage wronged individuals to seek recovery, even if the claim has relatively low monetary value.
- Relevant documents:

[Minnesota State District Court Order](#)

[Halunen Affidavit in Support of Motion for Attorney Fees](#)

[Baillon Affidavit in Support of Motion for Attorney Fees](#)

[Neumann Affidavit in Support of Motion for Attorney Fees](#)

[Kitzer Affidavit in Support of Motion for Attorney Fees](#)

[Vocke Affidavit in Support of Motion for Attorney Fees](#)

[May Affidavit in Support of Motion for Attorney Fees](#)

[Smith Affidavit in Support of Motion for Attorney Fees](#)

[Clark Affidavit in Support of Opposition to Motion for Attorney Fees](#)

## Other Jurisdictions

➤ *Fleming v. Covidien, Inc.*, No. 11-cv-56836, 2013 U.S. App. LEXIS 20257 (9th Cir. Oct. 3, 2013).

- Plaintiffs moved to certify two classes—one for failure to pay “off-the-clock” wages in violation of state law and the other alleging that the wage statements were deficient because they did not include information required by state statute. The district court granted class certification only to the defective wage statement class and Plaintiffs prevailed in a one-day bench trial. Court ordered that the Defendant pay \$500,000 in penalties and the class counsel’s reasonable attorneys’ fees. Counsel sought \$452,805.00.
- Defendants argued that the Plaintiffs prevailed on only a fraction of their original action, which consisted of “such simple issues and proof that [Plaintiffs] presented no witnesses and tried the case in less than a day.” The off-the-clock claims, in contrast, “were the focus of discovery, asserted against two additional Defendants, and litigated through class certification.” Still, Plaintiffs sought approximately 85% of the totally fees documented for the entire case.
- The district court awarded only \$60,000—88% less than the fees requested—explaining that it was unlikely that counsel devoted the vast majority of hours to the less complex claims. The district court alternatively explained that even if class counsel spent the majority of his time on the simpler claim, “the bulk of those hours were duplicative and inefficient”
- The Ninth Circuit agreed with class counsel’s argument that the district court abused its discretion in failing to provide adequate reasons for the reduction, vacating and remanding the decision. The court explained that “when a district court reduces either the number of hours or the lodestar by a certain percentage greater than 10%, it must provide a clear and concise explanation for why it chose the specific percentage to apply.” Further, “[t]he greater the

deviation from the 10% threshold, the “more specific articulation of the court’s reasoning is expected.”

- Relevant documents:

[District Court’s Minute Order](#)  
[Ninth Circuit’s Opinion](#)

➤ *Am. Ed. of Internal Med. v. Muller*, Nos. 12-cv-3135, 12-cv-3781, 2013 U.S. App. LEXIS 18941 (3d Cir. Sept. 12, 2013).

- Jury found Defendant infringed a copyrighted exam question and granted \$82,446 damages. Although Plaintiff claimed it expended more than \$850,000 in litigation and post-trial fees, it requested only \$371,049 in fees. The district court found that excessive, instead ordering Defendant to pay half the amount awarded by the jury, \$41,223. Defendants challenged the number of hours expended and the adequacy of the supporting documentation, and argued much of the time was excessive and redundant.
- The district court agreed that the number of hours was unreasonable, excessive, and redundant. Rather than determine an adjusted lodestar after excluding that time, however, the district court moved directly to the discretionary factors and reduced the fee. The district court also found the “gross disparity” between the fees sought and the damages awarded supported the substantially reduced fee award.
- On appeal, the court vacated and remanded the decision. It was troubled by the district court’s failure to specify the total number of hours it found excessive or redundant and to calculate an adjusted lodestar after excluding such time, as well as its use of a “proportionality” analysis in setting the fee amount. One concurring judge noted the use of proportionality analysis may be a useful consideration in copyright cases, in contrast to the civil rights case cited by the majority.

- Relevant documents:

[District Court's Order](#)  
[Third Circuit's Opinion](#)

➤ ***Gonzalez v. City of Maywood*, No. 11-cv-56594, 2013 U.S. App. LEXIS 18703 (9th Cir. Sept. 9, 2013).**

- Fees sought after settlement of eight civil rights lawsuits pursuant to 42 U.S.C. § 1988. The stipulation for settlement provided that each Plaintiff would receive \$500,000 and could apply to the district court for attorneys' fees, but the fee award would be limited to \$1,000,000 for work and \$25,000 for the fee application.
- Plaintiffs applied for the maximum amount permitted by the stipulation. The district court granted only \$473,138.24, refusing to award more to the attorneys than the individual Plaintiffs received. To compute this figure, the district court determined the lodestar amount and cut the number by 66%.
- The Ninth Circuit vacated and remanded the decision. It held that the district court abused its discretion by (1) applying across-the-board cuts to the lodestar without any justification; (2) failing to find a reasonable hourly rate on which to compute the lodestar; (3) declining to award a state-law multiplier without explanation; and (4) declining to award fees for work performed on fee application without proving adequate reasoning.
- The court also noted that while the amount a plaintiff recovers is a relevant factors when making adjustments to the lodestar amount, there is no correct ratio between the amount of attorneys' fees and the amount litigants recover – particularly in civil rights cases.

- Relevant documents:

[District Court's Order](#)  
[Ninth Circuit's Opinion](#)

➤ *Joyce v. Town of Dennis*, 720 F.3d 12 (1st Cir. 2013).

- Plaintiff obtained summary judgment on gender discrimination claim and held a trial on damages. Both parties challenged the award of \$30,000 in attorneys' fees under state law.
- District court found Plaintiff's success was "very limited and pyrrhic in nature," but found she was entitled to fees as the victim of discrimination. The district court held that it would link the fees to the amount of compensatory damages awarded by the jury, if any. After the jury awarded Plaintiff \$15,000 in compensatory damages, she sought reimbursement for \$167,855 in fees and \$4,993 in costs. The district court deemed this excessive and unreasonable. It also criticized Plaintiff for rejecting a "reasonable" settlement offer of \$35,001. Invoking Rule 68's application by analogy and finding the number of hours excessive, the court concluded that \$30,000 in fees and \$4,600 in costs was a reasonable award.
- On appeal, the court vacated the district court's order and remanded for further proceedings, holding that the district court abused its discretion by (1) linking the amount of compensatory damages to the fees and (2) factoring in Plaintiff's refusal of settlement offer.
- Relevant documents:

[District Court's Order](#)  
[First Circuit's Opinion](#)

➤ *Torres v. Gristede's Operating Corp.*, 519 Fed. App'x 1 (2d Cir. 2013).

- Defendants appealed district court's award of \$3,415,450 in attorneys' fees and \$442,609.85 in costs, in connection with a \$3,530,00 settlement on the eve of a class action trial in a Fair Labor Standards Act case.
- Defendants claimed that the district court (1) failed to adequately examine the billing records and, if it had, it would have prompted a reduction greater than 15%; (2) erroneously relied on Defendant's

“vigorous approach to litigating this case” to justify the fee; and (3) impermissibly awarded fees and costs in a sum that was disproportionate to the settlement and exceeded the customary one-third recovery in contingency fee cases.

- Affirming, the Second Circuit emphasized that fee shifting is meant to provide rough justice, not reimburse a precise dollar amount after extensive auditing. It noted that the district court summarized the pertinent billing records in charts in its opinion and evidenced familiarity with the chart and the whole case at the hearing on the fee request. Ultimately, the court concluded that Defendant’s claim that the district court abdicated its responsibility to review the applications was meritless.
- The court dismissed the claim that the district court improperly relied on Defendant’s “vigorous approach” to determine the fee award. It concluded it did not need to decide “the precise extent to which the[] litigation tactics expanded [P]laintiffs’ costs to conclude that the district court did not clearly err.” Also, the court noted that the district court cited this issue only to explain why Plaintiffs incurred such high fees and not to sanction them for defending as they did.
- Regarding the proportionality issue, the court noted that the fee award is not to be measured against the settlement amount and the most critical factor is the degree of success obtained. The court noted that the Plaintiffs succeeded on summary judgment on FLSA liability and obtained an injunction and other non-monetary relief. The court went on to hold that even if this were a “common fund” case, it would affirm because the district court could select from lodestar and percentage methods.
- The court rejected the claim that the award contravened the goals of fee shifting because it exceeded the settlement, noting that each Plaintiff only received approximately \$11,000.

- Relevant Documents:

[District Court's Order](#)  
[Second Circuit's Summary Order](#)

➤ ***CARCO Grp., Inc. v. Maconachy*, 718 F.3d 72 (2d Cir. 2013).**

- Plaintiff sought over \$4 million in fees and costs for suit involving breach of contract and related claims and counterclaims under the EA and APA.
- The district court deducted numerous entries based on “the specifics of the work performed and the circumstances of what adequate prosecution of the case required” to arrive at \$1,874,515.51. Then, it imposed a 20% reduction “to bring the fee award within the contours of the amount of damages awarded in his action.”
- On appeal, the Second Circuit found that the district court erred in applying a 20% reduction and reversed, finding the attempts to bring the award more proportional to the award inappropriate.
- Relevant documents:

[District Court's Order](#)  
[Second Circuit's Opinion](#)

➤ ***City of Laredo v. Montano*, No. 12-cv-0274, 2013 Tex. LEXIS 890 (Oct. 25, 2013).**

- Eminent domain case where jury determined that City of Laredo's condemnation was not for an authorized public use and awarded attorney's fees and expenses to the property owner under state statute.
- The City appealed the award, citing deficiencies in the proof provided. The court of appeals reformed the award and affirmed as reformed for \$422,302.91. As a part of the reformation, the court of appeals broke the award down by the three attorneys who represented the landowners during the litigation: Peterson

(\$46,302.91), Gonzalez (\$339,000), and Benavides-Maddox (\$37,000).

- On appeal to the Texas Supreme Court, the city challenged the fees as to Gonzalez and Benavides-Maddox and the proof offered in support of those fees.
- The Texas Supreme Court reversed and remanded the judgment, concluding that deficiencies remained in the proof for Gonzalez's fees. The Court was especially troubled by Gonzalez's testimony that he worked on the case for "a barebones minimum" of six hours per week for the preceding 226 weeks, but he had not maintained time records.
- The court affirmed the judgment for Benavides-Maddox's fees. She testified that she used a billing system to keep track of her hours. She explained that she had billed and been paid \$25,000 for her work leading up to trial. She further testified that she worked "about twelve hours per day during the course of the five-day trial." Although she also provided an estimate (and no documentation) of her fees, the court found her estimation "different in significant respects" from Gonzalez's. In particular, the court emphasized that her billing inquiry involved "contemporaneous events and discrete tasks—the trial and associated preparation for each succeeding day." The court also noted that it was a task the opponent witnessed at least in part, having also participated in the trial. Presumably, the court noted, Benavides-Maddox had not had time to bill or even record this time in her billing system.
- Relevant documents:

[Texas Supreme Court Opinion](#)