Testimony of Troy Coons on behalf of
Northwest Landowners Association
in favor of
SENATE BILL NO. 2335
Senate Energy and Natural Resources Committee
January 30, 2025

Chairman Patten and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents hundreds of farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist. The Northwest Landowners Association supports SB 2335 as a common-sense clarification to the existing law. It has always been true that landowners generally are able to recover their attorneys' fees and expenses in a case where they get more in compensation than the offer from the developer. If you have a lawsuit under the Surface Damages Act (Chapter 38-11.1 of the Century Code), a state court would award the fees for an expert witness when a landowner gets more than the offer.

A federal court recently ruled that in federal court, because the federal courts interpret costs under federal law instead of state law, they do not allow the landowner to recover the fees and expenses for hiring expert witnesses like an appraiser. It would be completely unfair to expect a landowner to pay $10-20,000 or more for an appraisal to defend their land, and then take that out of the compensation they get after trial because they can't recover it. In a lot of these cases where the development is a well pad or gathering line on part of a field, the amount in dispute might be less than $100,000, so the economics of the entire litigation changes when these kinds of expenses are put on the landowner and not reimbursed because of some procedural rules.

I'm attaching the case decision and the parts of the ruling related to this issue are highlighted. NWLA's general legal counsel handled this case and handles others, and he believes that it was always the intent of the Legislative Assembly to allow a landowner to recover the expense of their appraiser and other expert witnesses if the landowner obtains more compensation than was offered.

This is important because in this same decision, the court seems to imply that a landowner should get an appraiser as an expert witness right at the beginning of their case.[1] We believe that this clarification to the law is what the legislature has always intended and hope this will enable the federal courts to rely on this explicit state right to reimbursement of fees and expenses when landowners obtain more compensation than they were offered by a developer through litigation.

We feel that, by and large, most of the development occurring in the oil patch is done by private agreement. It is unfortunate that this law needs to be used at times and that there are disputes that have to be resolved in the courts. But that is how it goes sometimes, and the Surface Damage Act is the best solution because it allows us to ask a jury to decide what the compensation should be. If we obtain more than we were offered, we get our fees and expenses reimbursed so that we are made whole, otherwise the compensation would pay for the lawyer and we'd end up with nothing. There is a complicated reason that federal courts apply their own law and for that reason do not award expert witness fees in these cases, but we want to repeat that it is our belief that this bill merely clarifies what has always been the intent of this law – to make the landowner whole.

Thank you again for your time and we urge a **do pass** on SB 2335.

Thank you,

Troy Coons
Northwest Landowners Association

[1] "…Why the Plaintiffs did not seek an appraisal at the outset is not answered." *Rychner v. Cont'l Res., Inc.*, No. 1:19-cv-00071, 2024 U.S. Dist. LEXIS 232550, at *15 (D.N.D. Nov. 15, 2024)

Rychner v. Cont'l Res., Inc.

United States District Court for the District of North Dakota

November 15, 2024, Decided; November 15, 2024, Filed

Case No. 1:19-cv-00071

Reporter
2024 U.S. Dist. LEXIS 232550 *

Rychner et al., Plaintiffs, vs. Continental Resources, Inc., Defendant

Counsel: [*1] For Continental Resources Inc., Defendant: Lawrence Bender, LEAD ATTORNEY, Fredrikson & Byron PA (Bismarck), Bismarck, ND; Matthew W. Sherwood, PRO HAC VICE, McCarn & Weir, Amarillo, TX; Spencer D. Ptacek, Fredrikson & Byron PA (Minneapolis), Minneapolis, MN.

For Keith Rychner, Omer Rychner, Roselyn Rychner, Plaintiffs: Derrick L. Braaten, LEAD ATTORNEY, Braaten Law Firm, Bismarck, ND.

Judges: Daniel M. Traynor, United States District Judge.

Opinion by: Daniel M. Traynor

Opinion

ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION FOR ATTORNEY FEES AND DENYING MOTION FOR HEARING

INTRODUCTION

[¶1] THIS MATTER comes before the Court on Keith, Omer, and Roselyn Rychner's (collectively, "Plaintiffs") Motion for Attorney Fees filed on October 25, 2023. Doc. No. 126. Continental Resources, Inc., ("Continental") filed a Response on November 20, 2023. Doc. No. 136. Continental also filed a Motion for Hearing on November 28, 2023. Doc. No. 139. Plaintiffs filed a Reply on December 4, 2023. Doc. No. 141.

[¶2] On October 25, 2023, the Parties filed a stipulation for entry of judgment regarding compensation ("the Judgment"). Doc. No. 125. The Court issued an Order Adopting the Judgment which totaled $110,000 and was subsequently **[*2]** entered on October 27, 2023. Doc. Nos. 129-30. The issues that remain regard outstanding costs and attorneys' fees for the Plaintiffs. For the reasons set forth below, Plaintiffs' Motion is **GRANTED, in part**, and **DENIED, in part**, and Continental's Motion for Hearing is **DENIED**.

LEGAL STANDARDS

I. Costs

A. Citation to Proper Legal Authority

[¶3] As a threshold matter, Plaintiffs cite to N.D.C.C. § 28-26-06 as the legal authority supporting their request for costs because "*28 U.S.C. § 1920* also allows for recovery of the same costs and expenses as N.D.C.C. § 28-26-06." Doc. No. 128-1, p. 1 n. 1. This is incorrect. While there are similarities between N.D.C.C. § 28-26-06 and *28 U.S.C. § 1920*, they do not allow for the same recovery of costs and expenses. Therefore, the Court will analyze these claims under *Section 1920* to the extent it overlaps with North Dakota law.

B. Legal Standards

[¶4] "[F]ederal law governs an award of costs." *Dunne v. Res. Converting, LLC, 991 F.3d 931, 941 (8th Cir. 2021)*. *Rule 54(d) of the Federal Rules of Civil Procedure* provides costs other than attorneys' fees "should be allowed to the prevailing party" absent a prohibition by federal statute, rule, or court order. However, a district court has considerable discretion in awarding costs. *Marmo v. Tyson Fresh Meats, Inc., 457 F.3d 748, 762 (8th Cir. 2006)*; see also *Computrol, Inc. v. Newtrend, L.P., 203 F.3d 1064, 1072 (8th Cir. 2000)* noting an award of attorneys' fees rests in the sound and substantial discretion of the district court). The costs to be awarded **[*3]** as a matter of course under *Rule 54(d)(1)* are listed in *28 U.S.C. §1920*. Although a prevailing party is presumptively entitled to recover costs allowed by *28 U.S.C. § 1920*, the submitted bill of costs should always be given careful scrutiny. *Koppinger v. Cullin—Schiltz and Assocs., 513 F.2d 901, 911 (8th Cir. 1975)*. *Section 1920* provides the court may tax the following as costs:

> (1) Fees of the clerk and marshal;
> (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
> (3) Fees and disbursements for printing and witnesses;
> (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
> (5) Docket fees under section 1923 of this title; and
> (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

28 U.S.C. § 1920. If a federal statute only allows the recovery of "costs," then *Section 1920* must be read in conjunction with *28 U.S.C. § 1821*. *Rimini St., Inc. v. Oracle USA, Inc., 586 U.S. 334, 339, 139 S. Ct. 873, 203 L. Ed. 2d 180 (2019)*. *Section 1821* address per diem and mileage amounts for witnesses in attendance at any court of the United States. *28 U.S.C. § 1821*

[¶5] Local Rule 54.1 requires a party seeking an award of costs to provide "a verified statement of costs that contains, for each category of costs being claimed, a detailed breakdown of each item of claimed costs within **[*4]** the category with sufficient description that the item can be readily understood, together with a brief citation to the statutory or other legal authority that provides for recovery of the category of claimed costs, and any supporting documents that will be relied upon to establish the claims of costs." D.N.D. Civ. Loc. R. 54.1.

C. Disputed Costs

[¶6] Plaintiffs request recovery of costs totaling $33,575.32. Doc. No. 128-1, p. 5. Defendants argue certain costs are not taxable, namely $10.00 in statutory costs,[1] $275.00 in process server fees, and $4,121.79 in travel and lodging expenses. See Doc. No. 137, pp. 28-29.[2] *Section 1920* does not contemplate the process server fees and travel costs as recoverable. See *28 U.S.C. § 1920*; *Crues v. KFC Corp., 768 F.2d 230, 234 (8th Cir. 1985)* (finding process server fees are untaxable because *Section 1920* "contains no provision for such expenses."); McMahan v. Emerson Elec. Co., No. 2:15-CV-00022, 2021 WL 9593568, at *2 (D.N.D. Nov. 2, 2021) (finding travel and lodging

[1] This will be addressed in the Fees of the Clerk section.

[2] Continental's Response claims these are Rychner's costs but provides the figures for Murphy's in companion case 19-cv-69. The Court applies the appropriate costs established in Doc. No. 128-1.

expenses are not taxable under *Section 1920*). Plaintiffs do not dispute nor address these costs in their Reply. See Doc. No. 141. Therefore, $4,396.79 will not be taxed.

D. Remaining Costs

[¶7] Continental does not dispute the remaining $29,178.53 in costs. However, the Court will briefly analyze the remaining costs alleged to ensure they are in compliance with *Section 1920*. submitted bill of costs should always be **[*5]** given careful scrutiny. See *Koppinger, 513 F.2d at 911*(noting courts should carefully scrutinize the bills of costs for the prevailing party even though they are presumed to be awarded their costs).

1. Fees of the Clerk

[¶8] Plaintiffs request $10 in statutory costs and $400 for a filing fee. The Court finds these costs are taxable pursuant to *28 U.S.C. § 1920(1)*. $410 will be taxed to Continental.

2. Deposition Costs

[¶9] Plaintiffs request $9,435.44 in costs related to depositions. Doc. No. 128-1, pp. 2-4. When charging for deposition costs, courts look to whether the "depositions reasonably seemed necessary at the time they were taken." *Zotos v. Lindbergh Sch. Dist., 121 F.3d 356, 363 (8th Cir. 1997)* (cleaned up) (quoting *Manildra Milling Corp. v. Ogilvie Mills, Inc., 76 F.3d 1178, 1184 (Fed. Cir. 1996)*). Whether the depositions at issue here were used in obtaining judgment in favor of a party is immaterial. *Smith v. Tenet Healthsystem SL, Inc., 436 F.3d 879, 889 (8th Cir. 2006)* ("[E]ven if a deposition is not introduced at trial, a district court has discretion to award costs if the deposition was necessarily obtained for use in [a] criminal case and was not purely investigative." (cleaned up)). The Court has reviewed the entire record and concludes the depositions were reasonably necessary at the time they were taken. Therefore, this request is granted in its entirety, and Plaintiffs will recover $9,435.44 in deposition costs.

3. Witness [*6] Fees

[¶10] Plaintiffs request $933.26 in witness fees. Doc. No. 128-1, pp. 1-2. In the Eighth Circuit, "witness fees will not be taxed . . . if the witness is deposed but the transcript is not used at trial or in support of a motion." *Marmo v. Tyson Fresh Meats, Inc., 457 F.3d 748, 763 (8th Cir. 2006)*. There are several depositions from witnesses that were used to support a motion. They are as follows:

- $178.60 for BJ Kadrmas. Doc. No. 58-17.
- $178.60 for Ann Theesen. Doc. No. 58-2.
- $178.60 for Corey Schmitt. Doc. No. 58-19.[3]

[¶11] Because these witnesses were deposed and had their transcripts used to support a motion, $535.80 will be taxed. The remaining $397.46 in witness fees regarding Matthew Kostelecky, Kathryn Liska, and Guy Aman will not be taxed.

4. Fees of Expert Witnesses

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[3] There are two fee requests for Corey Schmitt. See Doc. No. 128-1. There is not another deposition of Corey Schmitt in the record so the second fee is not recoverable.

[¶12] Plaintiffs next ask for $18,326.72 for the fees of expert witnesses. The Supreme Court has held "[a] statute awarding 'costs' will not be construed as authorizing an award of litigation expenses beyond the six categories listed in *§§ 1821* and *1920*, absent an explicit statutory instruction to that effect." *Rimini St., Inc. v. Oracle USA, Inc., 586 U.S. 334, 339, 139 S. Ct. 873, 203 L. Ed. 2d 180 (2019)*. Plaintiffs argue the Surface Damages Act ("SDA") allows for the full reimbursement of costs and fees. See generally Doc. No. 127. While persuasive, the Court does not see **[*7]** explicit statutory instruction that these costs must be awarded, only that landowners should be afforded protections.[4] Expert fees are not included under *§§ 1920* and *1821* unless they were court appointed, which they were not in this case. Therefore, $18,326.72 in expert witness fees will not be taxed.

5. Procuring Evidence

[¶13] Plaintiffs finally request $73.11 in costs related to procuring evidence. Specifically, they ask for: (1) $25 in open record requests, (2) $14 for North Dakota Recorders Information Network ("NDRIN") documents, and (3) $34.11 in subpoenas. The Eighth Circuit has held it is not an abuse of discretion to deny a request for taxation of discovery-related copying costs. *Little Rock Cardiology Clinic PA v. Baptist Health, 591 F.3d 591, 601-02 (8th Cir. 2009)*. But *Little Rock Cardiology* does not mandate district courts deny such requests. The open records requests and the NDRIN documents were important for the Plaintiff to understand the case. As such, the Court will tax $39 for the open records and NDRIN documents under *28 U.S.C. § 1920(3)*. The $34.11 for subpoenas are akin to witness fees and are not collectable under *Section 1920*. Therefore, only $39 in fees are taxable for procuring evidence.

6. Costs Conclusion

[¶14] The Court has reviewed the record and the relevant authority in this case and hereby orders:

- $410 **[*8]** in filing fees are taxable pursuant to *28 U.S.C. § 1920(1)*.
- $9,435.44 in deposition costs are taxable pursuant to *28 U.S.C. § 1920(2)*.
- $535.80 in witness fees are taxable pursuant to *28 U.S.C. § 1920(3)*. The remaining $397.46 will not be taxed.
- $39 in procuring evidence relating to open records and NDRIN documents is taxable pursuant to *28 U.S.C. § 1920(3)*, but the remaining $34.11 in subpoenas will not be taxed.
- $4,396.79 in process server fees and travel expenses will not be taxed.
- $18,326.72 in expert witness fees will not be taxed.

[¶15] In total, Plaintiffs are awarded $10,420.24 in costs.

II. Attorneys' Fees

[¶16] Plaintiffs accrued $460,714.33 in attorneys' fees. However, Plaintiffs request $360,714.33 in recognition that both parties were in the "weeds" on discovery issues. Doc. No. 127, p. 4.[5]

A. Legal Standards

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[4] This is not the case for attorney's fees.

[5] Counsel also states they ceased tracking their fees and costs in August of 2023 in recognition of this. See Doc. No. 128, pp. 5-6.

[¶17] It is well-established that determining the amount of reasonable attorneys' fees to award a prevailing plaintiff in civil rights litigation is within the sound discretion of the trial court. *Hensley v. Eckerhart, 461 U.S. 424, 437, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983)*. "North Dakota law governs the award of attorney's fees." *Cont'l Res., Inc. v. Fisher, 102 F.4th 918, 929 (8th Cir. 2024)*. The North Dakota Supreme Court has approved two methods of determining reasonable attorneys' fees: (1) "the lodestar method" and (2) use of an itemized bill and affidavit. Id.

[¶18] In **[*9]** *Hensley*, the United States Supreme Court defined the role of the lodestar methodology:

> The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services. The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed. Where the documentation of hours is inadequate, the district court may reduce the award accordingly.
>
> The district court also should exclude from this initial fee calculation hours that were not "reasonably expended." Cases may be overstaffed, and the skill and experience of lawyers vary widely. Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary . . . . "Hours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority."

Hensley, 461 U.S. at 433-34 (citations and quotations omitted).

[¶19] In North Dakota, courts consider eight factors when considering awarding attorneys' **[*10]** fees:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
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> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
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> (3) the fee customarily charged in the locality for similar legal services;
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> (4) the amount involved and the results obtained;
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> (5) the time limitations imposed by the client or by the circumstances;
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> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent.

Fisher, 102 F.4th at 930-31[6] (quoting *Big Pines, LLC v. Baker, 2021 ND 70, ¶ 18, 958 N.W.2d 480*).[7]

[¶20] As a general rule, a reasonable hourly rate is the prevailing market rate, that is, "the ordinary rate for similar work in the community where the case has been litigated." *Emery v. Hunt, 272 F.3d 1042, 1048 (8th Cir. 2001)*. "A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." See *Norman v. Housing Authority of Montgomery, 836 F.2d 1292, 1299 (11th Cir. 1988)*; see also Deadwood Canyon Ranch, LLP v. Fidelity Expl. & Prod. Co., 2014 WL 11531553, at *3 (D.N.D. June 26, 2014) ("In accordance with the North Dakota Supreme Court and the Eighth Circuit Court of Appeals decisions, this **[*11]** Court must look to similar work in the state of North Dakota."). The relevant legal community to determine the prevailing market rate is generally the place where the case is filed. Id.

[¶21] The party seeking an award of attorneys' fees bears the burden of producing sufficient evidence "that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson, 465 U.S. 886, 895 n.11, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984)*. The district court is in the best position to understand what services are reasonable and what hourly

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[6] The fifth and seventh factors will not be discussed as they are irrelevant to the analysis.

[7] The U.S. Supreme Court in *Hensley* approved twelve factors to consider when adjusting the lodestar amount. *461 U.S. at 430 n.3*. Continental advances the twelve factors in *Hensley*, but the Court will apply the *Big Pines* factors North Dakota considers.

rates are appropriate in the relevant market. *Al-Birekdar v. Chrysler Group, LLC, 499 F. App'x 641, 648 (8th Cir. 2013)* (holding the district court did not abuse its discretion in reducing the requested hourly rates).

A. Reasonable Hourly Rate

[¶22] The Court has reviewed the hourly rate of the Plaintiffs' attorneys and finds the range of $225 to $350 an hour in a reasonable hourly rate in this market. See *MBI Oil & Gas, LLC v. Royalty Ints. P'ship, LP, No. 1:22-CV-00187, 2024 U.S. Dist. LEXIS 184900, 2024 WL 4449973, at *2 (D.N.D. Oct. 9, 2024)* (finding local counsel rate of $310 a reasonable hourly rate).[8] This also includes the fees relating to paralegals, law clerks, and a legal assistant.[9] Therefore, the Court will examine the attorneys' fees as they currently stand at $460,714.33.

B. Big Pines Factors

1. Time, Difficulty, and Skill [*12] .

[¶23] While the Court agrees with Plaintiff that both parties got lost in the weeds on some of the issues, this is not uncommon when one faces off against businesses like Continental.[10] A case requiring litigation of this nature requires a certain level of skill that is possessed by Plaintiffs' counsel. A significant amount of time was expended on both sides, but that is attributable to both sides obstinance on certain issues. The Court will not weigh that solely against the Plaintiffs when both sides are to blame. Therefore, this factor weighs in favor of a full award.

2. Precluded Employment

[¶24] While not argued by the Parties, it is apparent that Plaintiffs were precluded from other employment by taking this case. This case began in 2019, with hundreds of hours spent by multiple attorneys and staff, and is still before the Court today. It is apparent to the Rychers that a significant amount of time was expended on this case that resulted in the loss of other potential employment for their counsel. This factor weighs in favor of awarding the remaining amount of attorneys' fees to the Plaintiffs.

3. Amount Involved and Results Obtained

[¶25] The agreed upon award in the judgment is $110,000. **[*13]** The amount of attorneys' fees dwarfs the judgment amount by nearly 330%. While Plaintiffs obtained a favorable result, what they expended to achieve it is grossly excessive. However, the Court must consider what was at stake here: the principle that the Rychners were wronged as a matter of law and deserving of some compensation to be made whole.

[¶26] North Dakota law contemplates that "[i]t is the purpose of [the Surface Damages Act] to provide the maximum amount of constitutionally permissible protection to surface owners and other persons from the undesirable effects of development of minerals. This chapter is to be interpreted in light of the legislative intent expressed herein." *N.D.C.C. § 38-11.1-02*. Neither party disputes the SDA is the applicable law to these issues, and the intent from the North Dakota legislature makes clear the SDA is to provide the maximum protection possible for landowners. Id.

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[8] This analysis also supports the third factor and will be viewed as favorable.

[9] Plaintiffs offered paralegal hours at a discounted rate of $115 instead of $150 an hour, law clerks at $115 an hour, and a legal assistant at $75 an hour. Doc. No. 127; see generally Doc. No. 128-3.

[10] Continental also questions why six different attorneys worked on this case. Plaintiffs' response is that various attorneys have left the firm during the six years this case has been on-going. The Court finds this explanation reasonable.

That protection would not be possible without attorneys willing and able to litigate matters such as these. If undesirable attorneys' fees are awarded to the prevailing landowner, then there is no incentive for attorneys to litigate these issues and preserve landowner rights.

[¶27] Upon consideration, **[*14]** this factor is favorable to the Plaintiffs. When considering legislative intent and the rights at stake, an award of significant attorneys' fees is warranted to ensure the protection of landowners continues.

4. Experience, Reputation, and Ability of Lawyers

[¶28] When reviewing the record and relevant caselaw, and Court finds this factor favors an award of significant fees. Plaintiffs' counsel is well-versed in land disputes with Continental. See *Cont'l Res., Inc. v. Fischer, No. 1:18-CV-181, 2022 U.S. Dist. LEXIS 232006, 2022 WL 17960531 (D.N.D. Dec. 27, 2022)*, aff'd sub nom. *Cont'l Res., Inc. v. Fisher, 102 F.4th 918 (8th Cir. 2024)*; *Cont'l Res., Inc. v. Fisher, No. 1:18-CV-181, 2024 U.S. Dist. LEXIS 187511, 2024 WL 4494721, at *1 (D.N.D. Oct. 15, 2024)*; *Cont'l Res., Inc. v. Fisher, No. 1:18-CV-181, 2021 U.S. Dist. LEXIS 227504, 2021 WL 5567303 (D.N.D. Nov. 29, 2021)*. Attorney Braaten and his firm bring a wealth of experience that was undoubtedly invaluable during litigation. Therefore, the Court finds this factor as favorable for awarding attorneys' fees.

5. Weighing the Factors

[¶29] Upon review of the *Big Pine* factors, the Court finds they favor of a full award of fees. However, the Court must consider other fee considerations that warrant a reduction.

C. Other Costs Considerations

[¶30] United States Magistrate Judge Clare R. Hochhalter ruled each party was to bear their own costs associated with the Motions to Compel. Doc. No. 72. However, there were two Motions to Compel filed in this case, and only the first order contemplates the parties bearing their own costs. Upon review of the invoices, **[*15]** it appears 178 hours totaling $50,710[11] was billed regarding the first Motion to Compel. Doc. No. 128-3, pp. 23-80.[12] Plaintiffs may argue this total is misleading as there are blocks that billed for multiple tasks, not just those relating to the Motion to Compel. However, it is not the Court's job to determine how many hours in each block were devoted to the motion to compel and the other hours reviewing discovery. Thus, the Court counts the entire block as work towards the motion. This total will be reduced from the total award as Magistrate Judge Hochhalter has already ruled on this issue. This makes the total $410,004.33.

[¶31] Plaintiffs' approach to proving damages was also questionable and caused delay. It appears from the record Plaintiffs tried to base damages entirely off similar settlements between Continental and other landowners in the area. Why the Plaintiffs did not seek an appraisal at the outset is not answered.[13] This certainly caused some delay

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[11] The Court arrived at this figure by converting the invoices (Doc. No. 128-3) into a searchable PDF and searched for the word compel until June 1, 2021 (the Order to Compel date). This includes a $595 charge on June 30, 2020 because, while the motion to compel is not mentioned, it is clear the work described pertains to the motion to compel. Doc. No. 128-3, p. 52. The Court's examination of fees revealed an even larger amount of fees associated with the motion to compel than Continental found. See Doc. No. 137-4. A PDF is attached to this order showing how the Court arrived at this figure. The red colored entries were those that were not included in Continental's exhibit. Id.

[12] The dates range from November 2019 until June 3, 2021. The first and third of June 2021 were counted as they were largely reviewing the Order to Compel.

as comparable settlements, while relevant, do not provide evidence of the damages for the land the Rychner's owned. This delay favors a reduction in the total award.

[¶32] Poor documentation regarding the accrued fees also **[*16]** warrants a reduction. The Eighth Circuit has upheld percentage reduction on these types of issues. See *Jensen v. Clarke, 94 F.3d 1191, 1203, 1204 (8th Cir. 1996)* (affirming a 10% reduction for poor documentation). Regarding documentation, it is not the Court's job to be a "pig[] hunting for truffles" in the record. *Murthy v. Missouri, 603 U.S. 43, 144 S. Ct. 1972, 1992 n.7, 219 L. Ed. 2d 604 (2024)* ("Judges are not like pigs, hunting for truffles buried [in the record]." While Plaintiffs provided all the invoices from 2018 to 2023 for the total hours performed on the case, this was unhelpful in determining if the amount of hours expended on particular issues were reasonable.

[¶33] Considering the conduct of the parties and poorly presented documentation, the Court finds an additional percentage reduction of 10% is warranted. Therefore, $41,000.43 will be deducted from the final award. This brings the final total to $369,003.90.

D. Final Attorney's Fees Awarded

[¶34] The Court finds and orders the following regarding attorneys' fees:

- Plaintiffs accrued $460,714.33 in attorney fees.
- The *Big Pine* factors are either neutral or support a significant award.
- Magistrate Judge Hochhalter ordered each party to bear the costs associated with the first Motion to Compel. Therefore, $50,710 is deducted from the final award, bringing it to $410,004.33. **[*17]**
- Finally, the Court finds a 10% reduction is warranted due to the conduct of the parties and poor documentation. $41,000.43 will be deducted from the final amount.

[¶35] The Court has reviewed the record, the relevant caselaw, the *Big Pine* factors, and the arguments of the parties. The Court finds the reasonable attorneys' fees owed to Plaintiffs to be $369,003.90.

CONCLUSION

[¶36] Accordingly, for the reasons set forth above, Plaintiffs Motion for Attorney Fees (Doc. No. 126) is **GRANTED, in part**, and **DENIED, in part**. Continental's Motion for Hearing (Doc. No. 139) is hereby **DENIED**. The Court has ruled on the underlying Motion for Attorney Fees. The Clerk of Court is directed to enter judgment for $10,420.24 in costs and $369,003.90 in attorney fees for a total award of $379,424.14 in favor of the Plaintiffs.

[¶37] **IT IS SO ORDERED**.

November 15, 2024.

/s/ Daniel M. Traynor

Daniel M. Traynor, District Judge

United States District Court

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[13] Plaintiffs claim the initial appraiser dropped out unexpectedly without a citation in the record or supporting documentation. Doc. No. 141, p. 9. A citation provided in the next sentence that supports this premise is from the declaration of Attorney Braaten. Id. Without any evidence knowing where the appraisal was during this time, the amount of work that was completed, and why Plaintiffs waited so long to acquire one, the Court finds Plaintiffs' reasoning insufficient.

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