

2025 SENATE ENERGY AND NATURAL RESOURCES

SB 2335

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2335
1/30/2025

Relating to the recovery of attorney's fees in an action relating to oil and gas production.
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10:00 a.m. Chairman Patten opened the hearing.

Members present:

Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Clarify landowners' rights
- Legal fees in compensation disputes

10:00 a.m. Senator Jeff Magrum introduced the bill.

10:02 a.m. Troy Coons, Northwest Landowners Associations, testified in favor and submitted testimony #32688.

10:07 a.m. Jaclyn Hall, ND Association for Justice, testified in favor.

10:09 a.m. Todd D. Kranda, Attorney, ND Petroleum Council, testified in opposition and submitted testimony #32890.

10:16 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

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 *Manindra 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

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

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;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (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

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.*

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 \$50,710¹¹ 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

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

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.

End of Document

SENATE BILL 2335

Testimony of Todd D. Kranda

Senate Energy and Natural Resources Committee

- January 30, 2025 -

Chairman Patten and members of the Senate Energy and Natural Resources Committee, for the record, my name is Todd D. Kranda, I am an attorney with the law firm of Kelsch Ruff Kranda Nagle & Ludwig law firm in Mandan, ND. I am appearing before you as a lobbyist on behalf of the North Dakota Petroleum Council.

The North Dakota Petroleum Council represents more than 550 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline development, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota, South Dakota, and the Rocky Mountain region.

The North Dakota Petroleum Council is opposed to SB 2335 as submitted which deals with an award of costs, disbursements, and reasonable expert witness fees in compensation cases under Chapter 38-11 NDCC.

North Dakota already has laws that exist that address the award of costs, disbursements, and reasonable expert witness fees in litigation matters. Those existing statutes provide for the award of costs and disbursements, and reasonable expert witness fees in various cases including these types of situations involving a surface owner and a mineral developer. The changes proposed in SB 2335 are unnecessary and fail to provide a meaningful process to assist in getting these types of disputes resolved for the mutual benefit of the surface owner and the mineral developer.

The North Dakota Petroleum Council opposes the passage of SB 2335 and urges this committee to give SB 2335 a **Do Not Pass Recommendation**. Thank you for the opportunity to provide this information. I would be happy to try to answer any questions.

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Peace Garden Room, State Capitol

SB 2335

2/6/2025

Relating to the recovery of attorney's fees in an action relating to oil and gas production.
--

10:19 a.m. Chairman Patten opened the hearing.

Members present:

Chairman Patten, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Vice Chairman Kessel absent.

Discussion Topics:

- Bill schedule

10:20 a.m. Committee discussion on upcoming schedule.

10:23 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2335
2/20/2025

Relating to the recovery of attorney's fees in an action relating to oil and gas production.
--

9:05 a.m. Chairman Patten opened the hearing.

Members present:

Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Attorney fee recover provisions
- Independent appraisal requirements
- Collaboration between industry and landowners

9:05 a.m. Senator Boehm introduced proposed amendment and submitted testimony #38231.

9:08 a.m. Will Hauser, Continental Resources, answered questions.

9:11 a.m. Senator Boehm moved amendment LC# 25.1216.01002.

9:11 a.m. Senator Gerhardt seconded.

Senators	Vote
Senator Dale Patten	Y
Senator Greg Kessel	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Justin Gerhardt	Y
Senator Desiree Van Oosting	Y

Motion Passed 7-0-0.

9:13 a.m. Senator Boehm moved as Do Pass as amended.

9:13 a.m. Senator Van Oosting seconded the motion.

Senators	Vote
Senator Dale Patten	Y
Senator Greg Kessel	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Justin Gerhardt	Y
Senator Desiree Van Oosting	Y

Motion Passed 7-0-0.

9:13 a.m. Senator Boehm will carry the bill.

9:13 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

February 18, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2335

Introduced by

Senators Magrum, Dwyer, Paulson

2-20-25

John 10/2

1 A BILL for an Act to create and enact a new section to chapter 38-11.1 of the North Dakota
2 Century Code, relating to pretrial appraisals; and to amend and reenact section 38-11.1-09 of
3 the North Dakota Century Code, relating to the recovery of attorney's fees in an action relating
4 to oil and gas production.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new section to chapter 38-11.1 of the North Dakota Century Code is created
7 and enacted as follows:

8 **Pretrial appraisal required before commencement of action to recover compensation.**

- 9 1. As used in this section, "certified appraiser" has the same meaning as in section
10 43-23.3-01.
- 11 2. Before commencing a legal action to recover compensation, a person entitled to
12 compensation shall obtain a written appraisal valuing all parcels affected or
13 foreseeably affected by drilling operations under this chapter. A certified appraiser, an
14 individual possessing a temporary permit under section 43-23.3-11, or an individual
15 possessing a permit under section 43-23.3-04.1 shall conduct the required appraisal.
- 16 3. A person seeking compensation under this chapter shall provide to a mineral
17 developer a copy of an appraisal issued under subsection 2. The mineral developer
18 may make a new offer for settlement to the surface owner within thirty days of
19 receiving the appraisal. If an offer is made under this subsection, the amount of the
20 offer serves as the offer contemplated under section 38-11.1-09.

1 4. If requested by a surface owner, the mineral developer shall reimburse the reasonable
2 costs incurred by the surface owner for obtaining a required appraisal under this
3 section.

4 5. An appraisal or opinion of value expressed in an appraisal is inadmissible at a
5 proceeding commenced under this chapter, unless the information is offered by the
6 surface owner. Whether an appraisal is issued under this section does not require or
7 prohibit the introduction of specific evidence offered at a proceeding commenced
8 under this chapter.

9 **SECTION 2. AMENDMENT.** Section 38-11.1-09 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **38-11.1-09. Rejection - Legal action - Fees and costs.**

12 If the person seeking compensation rejects the offer of the mineral developer, that person
13 may bring an action for compensation in the court of proper jurisdiction. If the amount of
14 compensation awarded by the court is greater than ~~that which had been~~ the amount offered by
15 the mineral developer, the court shall award the person seeking compensation reasonable
16 attorney's fees, any costs assessed by the court and disbursements under chapter 28-26, all
17 ~~reasonable expert witness fees,~~ and interest on the amount of the final compensation awarded
18 by the court from the day drilling is commenced. The rate of interest awarded must be the prime
19 rate charged by the Bank of North Dakota on the date of the judgment.

**REPORT OF STANDING COMMITTEE
SB 2335**

Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **AMENDMENTS** ([25.1216.01002](#)) and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2335 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

2/20/2025
25.1216.01002
Title.

Prepared by the Legislative Council
staff for Senator Boehm
February 18, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2335

Introduced by

Senators Magrum, Dwyer, Paulson

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14 individual possessing a temporary permit under section 43-23.3-11, or an individual
15 possessing a permit under section 43-23.3-04.1 shall conduct the required appraisal.
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17 developer a copy of an appraisal issued under subsection 2. The mineral developer
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19 receiving the appraisal. If an offer is made under this subsection, the amount of the
20 offer serves as the offer contemplated under section 38-11.1-09.

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2 costs incurred by the surface owner for obtaining a required appraisal under this
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13 may bring an action for compensation in the court of proper jurisdiction. If the amount of
14 compensation awarded by the court is greater than ~~that which had been~~ the amount offered by
15 the mineral developer, the court shall award the person seeking compensation reasonable
16 attorney's fees, any costs ~~assessed by the court~~ and disbursements under chapter 28-26, ~~all~~
17 reasonable expert witness fees, and interest on the amount of the final compensation awarded
18 by the court from the day drilling is commenced. The rate of interest awarded must be the prime
19 rate charged by the Bank of North Dakota on the date of the judgment.

2025 HOUSE ENERGY AND NATURAL RESOURCES

SB 2335

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2335
3/13/2025

Relating to the recovery of attorney's fees in an action relating to oil and gas production.
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4:19 p.m. Chairman Porter opened the hearing.

Members Present: Chairman Porter, Vice Chairman D.Anderson, Vice Chair Novak,
Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson,
M.Ruby, Conmy, Foss

Discussion Topics:

- Lawsuits
- Litigations
- Land appraisals

4:19 p.m. Senator Jeffrey Magrum, North Dakota Senator for District 8, introduced the bill.

4:21 p.m. Troy Coons, Chairman of the Northwest Landowners Association, testified in favor and provided testimony #41381.

4:26 p.m. Derick Braaten, Owner of Braaten Law Firm, testified in favor.

4:43 p.m. William Houser, Director of Regulatory Affairs for Continental Resources, testified in favor.

4:48 p.m. Ron Ness, President of North Dakota Petroleum Council, testified in favor

4:50 p.m. Ladd Erickson, McLean County States Attorney, testified in favor.

Additional written testimony:

Sandra Rupp, ND Resident, submitted testimony in favor #40155

Steve Rupp, ND Resident, submitted testimony in favor #40523

Susan Long, ND Resident, submitted testimony in favor #40573

Lucas Wald, ND Resident, submitted testimony in favor #41201

Lanny Kenner, ND Resident, submitted testimony in favor #41217

Sabrina Hildenbrand, ND Resident, submitted testimony in favor #41332

4:51 p.m. Chairman Porter closed the hearing.

Saydee Wahl for Leah Kuball, Committee Clerk

Dear Energy and Natural Resource Committee,

SB2335 just makes sense. Common sense! If any developer wishes to deal with a landowner for acres, it should be considered a Standard for that developer to pay for any and all appraisals.

Therefore, I urge you to Support SB2335 with a DO PASS recommendation

Respectfully,

Sandra J. Rupp
District 28
Edgeley ND

Support SB2335

I am writing today in support of SB2335. It makes so much sense to allow the landowner to recover the costs associated when the offer from a developer is less than what they are awarded, if they have to hire expert witnesses. If a private landowner challenges compensation, the associated fees would be subtracted from their judgement in the settlement. The landowner loses even if they win.

Please consider a DO pass on this bill.

Thank you,

Steve Rupp
District 28

Chair and Members of the Committee,

I am a North Dakota landowner writing in support of SB 2335.

SB 2335 preserves the right of surface owners to introduce appraisal information in court, while protecting against its misuse by others. The amendment ensures that landowners who are awarded more than the developer offered can recover attorney's fees, court costs, and interest—further reinforcing the principle of just compensation.

This is a commonsense bill that balances the rights of landowners with the needs of responsible development. I urge you to **protect landowner's rights** with a “Do Pass” recommendation on SB 2335.

Thank you for your time,

Susan R. Long

Berlin, ND

Chairman and Members of the Committee,

As a North Dakota landowner, I am writing in support of Senate Bill 2335. This bill provides essential safeguards for surface landowners, ensuring just compensation and legal protections against the actions of mineral developers.

It legally protects the surface landowner from legal fees brought on by mineral developers. As landowners we need all of these safeguards in place to protect ourselves and our property from private and public entities that have contributed to these challenges.

Respectfully,

Lucas Wald
Edgeley ,ND
District 28

Lanny Kenner
District 7

Chairman Porter and committee members,
Please vote YES on SB 2335.

Pertaining to oil and gas production, this bill would allow a landowner to recover pretrial appraisal costs along with attorneys fees and court costs in cases where an oil or gas company offered the landowner less money than the landowner wanted. If it went to court and the landowner was awarded a better price this should be done.

Please vote YES on SB 2335.

Thank you, Lanny Kenner

Energy and Natural Resource Committee,

I urge you to protect landowners with a “Do Pass” on SB2335. As landowners, we need this to protect ourselves from the actions of private entities. Please, consider what is best for our state instead of the private corporations.

Respectfully,

Sabrina Hildenbrand

Monango,ND

District 28

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in favor of
SENATE BILL NO. 2335
House Energy and Natural Resources Committee
March 13, 2025

Chairman Porter 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, which started 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.

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.

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.

We also agree with some of our friends in the industry that both the industry and the landowners are often better off working out voluntary agreements versus litigating over compensation. We worked with folks in the industry very hard from the beginning of the session to also come up with some language that we believe will be a significant incentive to settle lawsuits

on the front end. The legislation now also includes an appraisal requirement prior to litigation. While this is an additional burden on the landowner, we worked out language that requires the appraisal to be reimbursed or paid for directly by the operator seeking access to the landowner's property. The appraisal is also not admissible in the subsequent legal proceeding unless the landowner chooses to use it. This means that the appraisal will not prejudice the landowner and can provide significant benefits, and will be reimbursed or paid for by the operator. More important, it will create an additional focus on settlement early in litigation, before the expenses of attorneys' fees and other court costs become so great that settlement becomes difficult or impossible. We feel this is an excellent compromise between industry and landowners to reduce litigation and increase cooperation between landowners and the industry.

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

Thank you,

Troy Coons

Northwest Landowners Association

25.1216.02000

Sixty-ninth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2335

Introduced by

Senators Magrum, Dwyer, Paulson

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13 foreseeably affected by drilling operations under this chapter. A certified appraiser, an
14 individual possessing a temporary permit under section 43-23.3-11, or an individual
15 possessing a permit under section 43-23.3-04.1 shall conduct the required appraisal.
- 16 3. Before a court may take jurisdiction over an action commenced under this chapter,
17 As a person seeking compensation under this chapter shall have provided to a mineral
18 developer a copy of an appraisal issued under subsection 2. The mineral developer
19 may make a new offer for settlement to the surface owner within thirty days of
20 receiving the appraisal. If a new offer is made under this subsection, the amount of the
new offer serves as the offer contemplated under section 38-11.1-09.

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1 4. ~~If requested by a surface owner, the mineral developer shall reimburse the reasonable~~
2 ~~actual costs of the required appraisal incurred by the surface owner for obtaining a~~
3 ~~required appraisal under this section or at the election of the surface~~
4 ~~owner, the mineral developer shall pay the reasonable actual~~
25 ~~costs direct to the appraiser.~~
3 ~~section.~~
6 5. ~~The required An appraisal or opinion of value expressed in an the required appraisal is~~
7 ~~inadmissible at a proceeding commenced under this chapter, unless the~~
8 ~~information is offered by the surface owner. Whether an appraisal is issued under this section~~
9 ~~does not require or prohibit the introduction of specific evidence offered at a proceeding~~
10 ~~commenced under this chapter.~~

411

512 SECTION 2. AMENDMENT. Section 38-11.1-09 of the North Dakota Century Code is
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714 38-11.1-09. Rejection - Legal action - Fees and costs.

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13 may bring an action for compensation in the court of proper jurisdiction. If the amount of
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15 the mineral developer, the court shall award the person seeking compensation reasonable
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17 interest on the amount of the final compensation awarded by the court from the day drilling is
18 commenced. The rate of interest awarded must be the prime rate charged by the Bank of North
19 Dakota on the date of the judgment.

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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

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

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;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (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 930-31⁶ (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

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 Rychers 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.

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 \$50,710¹¹ 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

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

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.

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

SB 2335

3/20/2025

Relating to the recovery of attorney's fees in an action relating to oil and gas production.
--

4:00 p.m. Chairman Porter opened hearing.

Members Present: Chairman Porter, Vice Chairman D.Anderson, Vice Chair Novak,
Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson, Ruby,
Conmy, Foss

Discussion Topics:

- Committee Action

4:02 p.m. Representative Headland moved to adopt amendment LC# 25.1216.02002, #43320.

4:02 p.m. Representative Hagert seconded the motion

4:03 p.m. Voice Vote - Motion Passed

4:03 p.m. Representative J. Olson moved a Do Pass as Amended.

4:03 p.m. Representative Headland seconded the motion.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Anna Novak	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Austin Foss	Y
Representative Jared c. Hagert	Y
Representative Craig Headland	Y
Representative Pat D. Heinert	Y
Representative Jorin Johnson	Y
Representative Andrew Marschall	Y
Representative Jeremy L. Olson	Y
Representative Matthew Ruby	Y

4:04 p.m. Motion Passed- 13-0-0

4:04 p.m. Representative Hagert will carry the bill.

4:05 p.m. Chairman Porter closed the hearing.

House Energy and Natural Resources Committee

SB 2335

03/20/25

Page 2

Saydee Wahl for Leah Kuball, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

VC 3/20/25
1 of 2

ENGROSSED SENATE BILL NO. 2335

Introduced by

Senators Magrum, Dwyer, Paulson

1 A BILL for an Act to create and enact a new section to chapter 38-11.1 of the North Dakota
2 Century Code, relating to pretrial appraisals; and to amend and reenact section 38-11.1-09 of
3 the North Dakota Century Code, relating to the recovery of attorney's fees in an action relating
4 to oil and gas production.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new section to chapter 38-11.1 of the North Dakota Century Code is created
7 and enacted as follows:

8 **Pretrial appraisal required before commencement of action to recover compensation.**

- 9 1. As used in this section, "certified appraiser" has the same meaning as in section
10 43-23.3-01.
- 11 2. Before commencing a legal action to recover compensation, a person entitled to
12 compensation shall obtain a written appraisal valuing all parcels affected or
13 foreseeably affected by drilling operations under this chapter. A certified appraiser, an
14 individual possessing a temporary permit under section 43-23.3-11, or an individual
15 possessing a permit under section 43-23.3-04.1 shall conduct the required appraisal.
- 16 3. A ~~Before a court may take jurisdiction over an action commenced under this chapter, a~~
17 ~~person seeking compensation under this chapter shall provide~~ must have provided to a
18 mineral developer a copy of an appraisal issued under subsection 2. The mineral
19 developer may make a new offer for settlement to the surface owner within thirty days

of receiving the appraisal. If ~~an~~ a new offer is made under this subsection, the amount of the new offer serves as the offer contemplated under section 38-11.1-09.

4. ~~If requested by a surface owner, the~~ The mineral developer shall reimburse the reasonable actual costs of the required appraisal incurred by the surface owner for obtaining a required appraisal under this section or, at the election of the surface owner, the mineral developer shall pay the reasonable actual costs directly to the appraiser.

5. ~~An~~ The required appraisal or opinion of value expressed in ~~an~~ the required appraisal is inadmissible at a proceeding commenced under this chapter, unless the information is offered by the surface owner. Whether an appraisal is issued under this section does not require or prohibit the introduction of specific evidence offered at a proceeding commenced under this chapter.

SECTION 2. AMENDMENT. Section 38-11.1-09 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-09. Rejection - Legal action - Fees and costs.

If the person seeking compensation rejects the offer of the mineral developer, that person may bring an action for compensation in the court of proper jurisdiction. If the amount of compensation awarded by the court is greater than ~~that which had been~~ the amount offered by the mineral developer, the court shall award the person seeking compensation reasonable attorney's fees, any costs ~~assessed by the court~~ and disbursements under chapter 28-26, and interest on the amount of the final compensation awarded by the court from the day drilling is commenced. The rate of interest awarded must be the prime rate charged by the Bank of North Dakota on the date of the judgment.

**REPORT OF STANDING COMMITTEE
ENGROSSED SB 2335**

Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS** ([25.1216.02002](#)) and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). Engrossed SB 2335 was placed on the Sixth order on the calendar.

25.1216.02002
Title.

Prepared by the Legislative Council
staff for Representative Porter
March 19, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2335

Introduced by

Senators Magrum, Dwyer, Paulson

1 A BILL for an Act to create and enact a new section to chapter 38-11.1 of the North Dakota
2 Century Code, relating to pretrial appraisals; and to amend and reenact section 38-11.1-09 of
3 the North Dakota Century Code, relating to the recovery of attorney's fees in an action relating
4 to oil and gas production.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new section to chapter 38-11.1 of the North Dakota Century Code is created
7 and enacted as follows:

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- 9 1. As used in this section, "certified appraiser" has the same meaning as in section
10 43-23.3-01.
- 11 2. Before commencing a legal action to recover compensation, a person entitled to
12 compensation shall obtain a written appraisal valuing all parcels affected or
13 foreseeably affected by drilling operations under this chapter. A certified appraiser, an
14 individual possessing a temporary permit under section 43-23.3-11, or an individual
15 possessing a permit under section 43-23.3-04.1 shall conduct the required appraisal.
- 16 3. Before a court may take jurisdiction over an action commenced under this chapter, a
17 person seeking compensation under this chapter shall provide must have provided to a
18 mineral developer a copy of an appraisal issued under subsection 2. The mineral
19 developer may make a new offer for settlement to the surface owner within thirty days.

1 of receiving the appraisal. If a new offer is made under this subsection, the amount
2 of the new offer serves as the offer contemplated under section 38-11.1-09.

3 4. If requested by a surface owner, the mineral developer shall reimburse the
4 reasonable actual costs of the required appraisal incurred by the surface owner for
5 obtaining a required appraisal under this section or, at the election of the surface
6 owner, the mineral developer shall pay the reasonable actual costs direct to the
7 appraiser.

8 5. An appraisal or opinion of value expressed in an appraisal is
9 inadmissible at a proceeding commenced under this chapter, unless the information is
10 offered by the surface owner. Whether an appraisal is issued under this section does
11 not require or prohibit the introduction of specific evidence offered at a proceeding
12 commenced under this chapter.

13 **SECTION 2. AMENDMENT.** Section 38-11.1-09 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **38-11.1-09. Rejection - Legal action - Fees and costs.**

16 If the person seeking compensation rejects the offer of the mineral developer, that person
17 may bring an action for compensation in the court of proper jurisdiction. If the amount of
18 compensation awarded by the court is greater than ~~that which had been~~ the amount offered by
19 the mineral developer, the court shall award the person seeking compensation reasonable
20 attorney's fees, any costs ~~assessed by the court~~ and disbursements under chapter 28-26, and
21 interest on the amount of the final compensation awarded by the court from the day drilling is
22 commenced. The rate of interest awarded must be the prime rate charged by the Bank of North
23 Dakota on the date of the judgment.

2025 SENATE ENERGY AND NATURAL RESOURCES

SB 2335

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Peace Garden Room, State Capitol

SB 2335
3/28/2025

Relating to the recovery of attorney's fees in an action relating to oil and gas production.
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10:07 a.m. Chairman Patten opened the hearing.

Members present:

Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Conference committee assignment
- Legislative timing

10:09 a.m. Chairman Patten assigned Senator Kessel and Senator Enget to investigate the background of the amendment.

10:11 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk