

## Class Counsel Gets a Hair Cut

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Plaintiffs, a class of 22 individual landowners, Geneva Rock Products, Inc. and Fox Ridge Investments, LLC, brought a rails-to-trails takings case in the U.S. Court of Federal Claims, seeking just compensation for the taking of their property. The taking arose when the Surface Transportation Board issued a Notice of Interim Trail Use, authorizing a recreational trail of plaintiffs' property that had previously been encumbered by a railroad-purposes-only easement.

The parties had filed cross-motions for partial summary judgment relating to liability and damages, resulting in the Court assigning liability to the Government for the taking of certain parcels but not others, and delineating the existence of triable issues of fact relating to the ownership of particular plots of land. The Court further determined the proper method of calculating damages—the difference in value of the parcels with and without the burden of the trail easement.

In light of the Court's findings and conclusions, the parties reached a settlement, in which the Government agreed to pay roughly \$24 million in damages, of which 35% would have gone to class counsel under a contingent fee agreement.

In reviewing the settlement, the Court accepted the proposed settlement as fair, reasonable, and adequate. But in reviewing the attorneys' fees, the Court cross-checked the reasonableness of the 35% contingent fee that the class members had agreed to "determine whether that award is a reasonable approximation of the attorney's time and expertise." The Court explained that it had "a fiduciary duty to independently review the reasonableness of class counsel's proposed fee." Although the Court concluded that the quality of class counsel representation was exemplary, and that the issues addressed in the case were complex, the Court also concluded that the class counsel fee award should be cut in half, or to 17½%. The Court explained:

*The reduction of fees by half takes into account that there are relatively few class members in this rails-to-trails class action, which correlates to the amount of work class counsel had to perform. Moreover, a lodestar cross-check reveals that the court's recommended fee award reasonably reflects the hard work of counsel and avoids a windfall for plaintiffs' attorney.*

Read the opinion [here](#).