

## First, Let's Pay All the Lawyers

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In 2010, a class of landowners sued in the U.S. Court of Federal Claims alleging that CSX Transportation, Inc. and its predecessors-in-interest ran a railroad right-of-way through property they owned in Shelby County, Tennessee. The Plaintiffs sued in the CFC alleging that the government took their reversionary property interests in the railroad rights-of-way when the government approved the conversion of the rail line to a recreational trail under the railbanking provisions of the National Trails System of 1983.

Over the next five years, the parties cross-moved for summary judgment on liability and following a Court ruling in the Plaintiffs' favor, the parties jointly agreed to hire an appraiser. That appraiser prepared an expert report on the fair market value of the property and served as the basis for settlement negotiations. Ultimately, those negotiations succeeded and the parties agreed to a damages award (just compensation) based on the market value of their property totaling \$5,097,501.55 (\$3,269,725.80 as principal and \$1,309,197.25 as interest) to be paid to 79 plaintiffs. Of this award, the attorneys sought to recover a 35% contingent fee, which the government opposed, arguing instead that class counsel should be limited to statutory fees.

On review, the Court approved the settlement agreement as fair and reasonable. In addition, the Court also granted the class counsel's motion for payment of its contingent fee. The Court reasoned that the CFC has routinely applied the common-fund doctrine and has allowed counsel to recover a contingency fee in rails-to-trails cases and other opt-in class actions in which plaintiffs have signed similar agreements stating approval of either paying a contingency fee of 35% of the total recovery or attorneys' fees under the Uniform Relocation Act, whichever amount is greater. The Court also cited the Supreme Court's holding "that an attorney may recover under a contingency fee agreement even if the defendant is statutorily obligated to pay attorneys' fees."

Finally, the Court concluded that the amount sought for the common fund was reasonable for a rails-to-trail case, and that the total amount of fees sought for recovery in this case was reasonable considering that the counsel spent over 1,800 hours working on this case to obtain a favorable result for their clients.

Read full decision [here](#).