

United States Court of Appeals for the Federal Circuit

**DANIEL HAGGART, KATHY HAGGART, ET AL.,
FOR THEMSELVES AND AS REPRESENTATIVES
OF A CLASS OF SIMILARLY SITUATED PERSONS,**
Plaintiffs-Appellees

v.

UNITED STATES,
Defendant-Appellant

2018-1757

Appeal from the United States Court of Federal Claims
in No. 1:09-cv-00103-CFL, Senior Judge Charles F. Lettow.

Decided: November 27, 2019

CARTER GLASGOW PHILLIPS, Sidley Austin LLP, Washington, DC, argued for plaintiffs-appellees Daniel Haggart, Kathy Haggart, Cleveland Square, LLC, RC TC Meridian Ridge LLC, TWOSONS LLC, Dennis J. Crispin, Gretchen Chambers, DeBlois Properties LLC, Star L. Evans, Michael B. Jacobsen, Molly A. Jacobsen, Frances Jane Lee, Susan B. Long, Claudia Mansfield, Frederick P. Miller, Susan L. Miller, Leslie Milstein, PBI Enterprises LLC, Michael G. Russell, Elana Russell, James M. Sather, Kelly J. Sather, James E. Strang, Patricia Strang, Alison L. Webb, D. Michael Young, Julia H. Young, Faramarz Ghoddoussi,

Westpoint Properties, LLC. Also represented by THOMAS SCOTT STEWART, ELIZABETH MCCULLEY, Stewart Wald & McCulley, LLC, Kansas City, MO; STEVEN WALD, St. Louis, MO. Plaintiffs-appellees Cleveland Square, LLC, RC TC Meridian Ridge LLC, TWOSONS LLC, Dennis J. Crispin, Gretchen Chambers, DeBlois Properties LLC, Star L. Evans, Michael B. Jacobsen, Molly A. Jacobsen, Frances Jane Lee, Susan B. Long, Claudia Mansfield, Frederick P. Miller, Susan L. Miller, Leslie Milstein, PBI Enterprises LLC, Michael G. Russell, Elana Russell, James M. Sather, Kelly J. Sather, James E. Strang, Patricia Strang, Alison L. Webb, D. Michael Young, Julia H. Young also represented by LOUIS DAVID PETERSON, Hillis, Clark, Martin & Peterson PS, Seattle, WA. Plaintiffs-appellees Faramarz Ghodoussi, Westpoint Properties, LLC also represented by RICHARD SANDERS, Tacoma, WA.

DAVID CHARLES FREDERICK, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC, Washington, DC, argued for plaintiffs-appellees Gordon Arthur Woodley, Denise Lynn Woodley. Also represented by JOANNA ZHANG.

ERIC GRANT, Environment and Natural Resources Division, United States Department of Justice, Washington, DC, argued for defendant-appellant. Also represented by JEFFREY H. WOOD, BRIAN C. TOTH, JEFFREY B. CLARK, WILLIAM B. LAZARUS, MARY GABRIELLE SPRAGUE.

Before PROST, *Chief Judge*, WALLACH and HUGHES, *Circuit Judges*.

WALLACH, *Circuit Judge*.

Appellees Daniel Haggart, Kathy Haggart, et al. (collectively, “Landowners”) filed this “rails-to-trails” class action against the United States (“Government”), claiming that the Government, through the National Trails System Act, effected a Fifth Amendment taking of Landowners’

reversionary rights to property underlying railroad easements owned by the BNSF Railway Company. On remand, the U.S. Court of Federal Claims granted a motion to enforce a settlement agreement (“the Settlement Agreement”) that the parties had previously negotiated and agreed upon. *Haggart v. United States (Haggart VI)*, 131 Fed. Cl. 628, 643 (2017) (J.A. 1–16). Thereafter, the Court of Federal Claims entered a partial final judgment pursuant to Rule 54(b) of the Rules of the U.S. Court of Federal Claims, approving the Settlement Agreement, but deferring determination on the amount of attorney fees and costs to award class counsel under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“URA”). *Haggart v. United States (Haggart VIII)*, 136 Fed. Cl. 70, 81 (2018) (J.A. 28–39); *see* J.A. 40 (Rule 54(b) Judgment).

The Government appeals. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(3) (2012). We affirm.

BACKGROUND¹

In 2013, the Government and Landowners negotiated and agreed to the terms of the Settlement Agreement. *See* J.A. 2903–04; *see also* J.A. 2931–62 (Settlement Agreement).² In May 2014, the Court of Federal Claims

¹ The procedural history of this case is extensive, involving seven reported opinions by the Court of Federal Claims and a prior opinion by this court. We provide a summary of only those proceedings relevant here, which occurred after we remanded this case to the Court of Federal Claims in *Haggart v. Woodley (Haggart V)*, 809 F.3d 1336 (Fed. Cir. 2016). We assume familiarity with the prior procedural history of this case, a thorough recitation of which may be found in *Haggart V*. *See id.* at 1340–43.

² Pursuant to the Settlement Agreement, the Government agreed to pay Landowners \$140,541,218.69,

approved the Settlement Agreement and awarded class counsel \$33,172,243.74 in attorney fees under the common fund doctrine,³ in addition to the attorney fees set forth in the Settlement Agreement. *See Haggart v. United States (Haggart IV)*, 116 Fed. Cl. 131, 148–49 (2014). In *Haggart V*, we vacated the Court of Federal Claims’ approval of the Settlement Agreement and award of common-fund attorney fees. 809 F.3d at 1359. We held that the Court of Federal Claims “erred in approving a settlement agreement where class counsel withheld critical information . . . necessary for . . . class members to make an informed decision,” “such as the spreadsheets detailing the precise methodology used to calculate the fair market value of the properties.” *Id.* at 1351. We also held that the Court of Federal Claims erred in awarding class counsel fees under the common fund doctrine, because the URA addresses the “inequity” that would warrant the doctrine’s application, by “provid[ing] class counsel with reasonable fees as compensation for their efforts.” *Id.* at 1357–58; *see* 42 U.S.C. § 4654(c) (2012).

consisting of: \$110,000,000.00 in principal; \$27,961,218.69 in annual interest, “based upon an estimated date of payment of May 31, 2014”; and \$2,580,000.00 in statutory attorney fees and costs under the URA. J.A. 2932–33.

³ Under the common fund doctrine, “a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney[] fee from the fund as a whole.” *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 96 (2013) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)); *see Knight v. United States*, 982 F.2d 1573, 1580 (Fed. Cir. 1993) (“Recovery under the common fund doctrine stems from the equitable power of a court to create the obligation for attorney fees against benefits some received as a result of the advocacy of another.”).

On remand, the Court of Federal Claims conducted a hearing in August 2016, discussing: (1) the status of the case; (2) the necessary steps before the Court of Federal Claims could hold a second fairness hearing, including what information needed to be disclosed to the class members; and (3) how to deal with potential objectors. J.A. 5047–102 (Hearing Transcript). In the succeeding months, the parties engaged in extensive motions practice. *See, e.g.*, J.A. 5106–13 (Request for a Trial Setting), 5277–302 (Motion for Partial Summary Judgment), 5483–90 (Motion for Partial Summary Judgment), 5547–50 (Motion for Summary Judgment), 5560–65 (Motion for Summary Judgment), 5814–20 (Cross Motion for Summary Judgment), 5826–29 (Motion for Summary Judgment). In March 2017, the Court of Federal Claims heard arguments on the parties’ motions. J.A. 7436–515 (Hearing Transcript). The following month, class counsel moved to enforce the Settlement Agreement. J.A. 7516–42 (Motion to Enforce the Settlement Agreement).

In May 2017, the Court of Federal Claims granted class counsel’s Motion to Enforce the Settlement Agreement and denied all other outstanding motions. *Haggart VI*, 131 Fed. Cl. at 633; *see* J.A. 7543–44 (Judgment). The court concluded that “the Settlement Agreement was and remains a binding and enforceable contract” that “[t]he [G]overnment cannot avoid . . . even if it now has had a change of heart and wishes to back out[.]” *Haggart VI*, 131 Fed. Cl. at 641. In a footnote, the Court of Federal Claims rejected the Government’s argument that the parties had “abandoned” the Settlement Agreement, finding the claim to be “manifestly inconsistent with the [G]overnment’s previous positions before the court of appeals and th[e] Court [of Federal Claims.]” *Id.* at 641 n.11.

In July 2017, the Government filed a motion for reconsideration, arguing that the parties had abandoned the Settlement Agreement, as evidenced by their conduct on remand. J.A. 8174, 8209–14. Following a hearing in

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