In the United States Court of Federal Claims

No. 07-693L and No. 07-675L
CONSOLIDATED
(Filed: April 1, 2014)

DOROTHY L. BIERY, et al.,	)
and	)
JERRAMY and ERIN PANKRATZ, et al.,	)
Plaintiffs,	)
v.	)
THE UNITED STATES,	)
Defendant.	)

ORDER DENYING RECONSIDERATION

Pending before the court is plaintiffs' motion for reconsideration of this court's January 24, 2014 Opinion on Attorneys' Fees and Costs. Biery v. United States, No. 07-693 (Fed. Cl. Jan. 24, 2014) ("Opinion"). Under Rule 59 of the Rules of the United States Court of Federal Claims, the court "'may grant a motion for reconsideration when there has been an intervening change in the controlling law, newly discovered evidence, or a need to correct clear factual or legal error or prevent manifest injustice.'" Oenga v. United States, 97 Fed. Cl. 80, 83 (2011) (quoting Young v. United States, 94 Fed. Cl. 671, 674 (2010)). Rule 59 "is not intended to give an unhappy litigant an additional

chance to sway the court.'" Lone Star Indus., Inc. v. United States, 111 Fed. Cl. 257, 259 (2013) (quoting Fru-Con Constr. Corp. v. United States, 44 Fed. Cl. 298, 300 (1999)).

In their motion, plaintiffs seek reconsideration of three aspects of the court's prior ruling: (1) the hourly rates determined to be reasonable for the Washington, D.C. area for the purposes of calculating the statutory attorneys' fee award in this case; (2) the adjustment made to account for work related to unsuccessful claims that is not reimbursable under the applicable fee-shifting statute; and (3) the determination that Westlaw and similar expenses are not reimbursable in this case. Each is examined in turn.

I. Discussion

1. Hourly Rates

Plaintiffs seek reconsideration of the court's decision to use the "standard Laffey Matrix" rates, rather than the significantly higher rates from the "adjusted Laffey Matrix" prepared by economist Michael Kavanaugh, as a reasonable set of forum rates to apply after 2010. In support of the motion plaintiffs attach a copy of the most recent decision in Salazar v. District of Columbia, No. 93-452, 2014 WL 307484 (D.D.C. Jan. 28, 2014), amended by 2014 WL 342084 (Jan. 30, 2014). Plaintiffs argue that the Federal Circuit endorsed an earlier Salazar decision regarding the use of the adjusted Laffey Matrix in a footnote in Bywaters v. United States, 670 F.3d 1221, 1226 n.4 (Fed. Cir. 2012), and suggest that the most recent Salazar decision lends further support to the Federal Circuit's views. The government argues in response that the Federal Circuit did not endorse the

use of the adjusted Laffey Matrix and that there is nothing in the more recent Salazar decision that warrants reconsideration of the court's earlier decision.

The court agrees with the government. The court has reviewed the Bywaters opinion and notes that the Federal Circuit did not evaluate whether the adjusted Laffey rate was the appropriate rate to use as the forum rate in that case. Rather, the Circuit merely acknowledged that the adjusted Laffey rate had been used by some judges in the United States District Court for the District of Columbia and relied upon that rate to find that the forum rate could not be justified in that case. In holding that the adjusted Laffey rate was not an appropriate rate to apply in the present case, the court specifically held that recent decisions from federal courts in New York and California awarding fees to Arent Fox LLP demonstrate that plaintiffs' firm has not received the higher Laffey rates in other complex cases and thus the standard Laffey rate should be applied. Opinion at 18. Plaintiffs have not disputed that contention. As a result, the motion for reconsideration of the appropriate hourly rate is denied.

2. Adjustment for Unsuccessful Claims

Plaintiffs next contend that the court erred in making an adjustment to the fees awarded for work on unsuccessful claims. The plaintiffs argue that an adjustment is not appropriate for those hours because the court could not match up individual hours to individual parcels. They urge the court to reconsider the 30% across-the-board reduction in hours based on unsuccessful claims. The government argues that plaintiff has not presented a basis for reconsideration, but merely disagrees with the court's ruling. The government argues that where, as here, plaintiffs were not successful on many claims, it

was proper for the court to adjust the hours requested using a percentage tied to the number of unsuccessful claims. According to the government, plaintiffs fail to acknowledge that each claim in a takings case represents a separate parcel and that it is appropriate to consider each parcel separately in awarding fees and costs.

The court has reviewed plaintiffs' arguments and finds that the cases relied upon by plaintiffs are easily distinguishable from the present action and do not provide a basis for reconsideration. Accordingly, the motion for reconsideration of reductions for unsuccessful claims is denied.

3. Online Database Charges

Plaintiffs' final argument is that the court erred by not allowing reimbursement of costs for research using commercial databases such as Westlaw. The plaintiffs again rely on Salazar, this time to show that the standard practice in the District of Columbia is for firms to charge clients for their computerized research costs. The government does not dispute this contention, but argues that plaintiffs are simply using their motion for reconsideration as an opportunity to re-litigate an issue that the parties had a full and fair opportunity to litigate in this case. The court agrees with the government. The court denied plaintiffs their claimed online research fees because those fees were not identified as an expense that plaintiffs' counsel intended to pass on to the plaintiffs under the fee agreement in this specific case. Plaintiffs' attorneys have not demonstrated that the court erred in reaching this result in this specific factual context. For this reason, the motion for reconsideration of research costs is denied.

II. Conclusion

For the reasons set forth above, plaintiffs' motion for reconsideration of the Opinion is **DENIED**. The parties shall submit a joint status report with a proposed final judgment to the court addressing all issues, including just compensation with interest, fees, and costs, no later than **April 11, 2014**.

IT IS SO ORDERED.

s/Nancy B. Firestone
NANCY B. FIRESTONE
Judge