

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL  
SUBDIVISION OF THE STATE OF  
NEVADA,

Appellant,

vs.

180 LAND CO., LLC, A NEVADA LIMITED-  
LIABILITY COMPANY; AND FORE STARS,  
LTD., A NEVADA LIMITED-LIABILITY  
COMPANY,

Respondents.

180 LAND CO., LLC, A NEVADA LIMITED-  
LIABILITY COMPANY; AND FORE STARS,  
LTD., A NEVADA LIMITED-LIABILITY  
COMPANY,

Appellants/Cross-Respondents,

vs.

CITY OF LAS VEGAS, A POLITICAL  
SUBDIVISION OF THE STATE OF  
NEVADA,

Respondent/Cross-Appellant.

No. 84345

Electronically Filed  
Sep 30 2022 10:13 a.m.  
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**AMENDED  
JOINT APPENDIX  
VOLUME 119, PART 5**

LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq.

Nevada Bar No. 2571

[kermitt@kermittwaters.com](mailto:kermitt@kermittwaters.com)

James J. Leavitt, Esq.

Nevada Bar No. 6032

[jim@kermittwaters.com](mailto:jim@kermittwaters.com)

Michael A. Schneider, Esq.

Nevada Bar No. 8887

[michael@kermittwaters.com](mailto:michael@kermittwaters.com)

Autumn L. Waters, Esq.

Nevada Bar No. 8917

[autumn@kermittwaters.com](mailto:autumn@kermittwaters.com)

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

*Attorneys for 180 Land Co., LLC and  
Fore Stars, Ltd.*

LAS VEGAS CITY ATTORNEY'S OFFICE

Bryan K. Scott, Esq.

Nevada Bar No. 4381

[bscott@lasvegasnevada.gov](mailto:bscott@lasvegasnevada.gov)

Philip R. Byrnes, Esq.

[pbyrnes@lasvegasnevada.gov](mailto:pbyrnes@lasvegasnevada.gov)

Nevada Bar No. 166

Rebecca Wolfson, Esq.

[rwolfson@lasvegasnevada.gov](mailto:rwolfson@lasvegasnevada.gov)

Nevada Bar No. 14132

495 S. Main Street, 6th Floor

Las Vegas, Nevada 89101

Telephone: (702) 229-6629

*Attorneys for City of Las Vegas*

CLAGGETT & SYKES LAW FIRM

Micah S. Echols, Esq.

Nevada Bar No. 8437

[micah@claggettlaw.com](mailto:micah@claggettlaw.com)

4101 Meadows Lane, Suite 100

Las Vegas, Nevada 89107

(702) 655-2346 – Telephone

*Attorneys for 180 Land Co., LLC and  
Fore Stars, Ltd.*

McDONALD CARANO LLP

George F. Ogilvie III, Esq.

Nevada Bar No. 3552

[gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)

Amanda C. Yen, Esq.

[ayen@mcdonaldcarano.com](mailto:ayen@mcdonaldcarano.com)

Nevada Bar No. 9726

Christopher Molina, Esq.

[cmolina@mcdonaldcarano.com](mailto:cmolina@mcdonaldcarano.com)

Nevada Bar No. 14092

2300 W. Sahara Ave., Ste. 1200

Las Vegas, Nevada 89102

Telephone: (702) 873-4100

LEONARD LAW, PC

Debbie Leonard, Esq.

[debbie@leonardlawpc.com](mailto:debbie@leonardlawpc.com)

Nevada Bar No. 8260

955 S. Virginia Street Ste. 220

Reno, Nevada 89502

Telephone: (775) 964.4656

SHUTE, MIHALY & WEINBERGER, LLP

Andrew W. Schwartz, Esq.

[schwartz@smwlaw.com](mailto:schwartz@smwlaw.com)

California Bar No. 87699

(admitted pro hac vice)

Lauren M. Tarpey, Esq.

[ltarpey@smwlaw.com](mailto:ltarpey@smwlaw.com)

California Bar No. 321775

(admitted pro hac vice)

396 Hayes Street

San Francisco, California 94102

Telephone: (415) 552-7272

*Attorneys for City of Las Vegas*

# **EXHIBIT “G”**

ORIGINAL

10

DISTRICT COURT

FILED

CLARK COUNTY, NEVADA

May 23 4 19 PM '03

STEVE SISOLAK,

Plaintiff(s),

vs.

MCCARRAN INTERNATIONAL AIRPORT,  
and CLARK COUNTY, a political  
subdivision of the State of  
Nevada,

Defendant(s).

) *Shirley B. Hargrave*  
)  
) CLERK

) CASE NO. A434337

) DEPT. NO. XIII

) Date: May 14, 2003

) Time: 8:45 a.m.

DECISION

THIS MATTER was the subject of further proceedings on  
May 14, 2003 pursuant to the Decision and Interim Order entered  
May 12, 2003. At that time, counsel indicated that they felt  
that there is ample support in the record for their respective  
positions concerning the Uniform Relocation Assistance and Real  
Property Acquisition Policies Act, 42 USC §§ 4601-4655, and its  
support, or lack thereof, for fee/cost awards to Plaintiff under  
NRS Chapter 342.

Subsequently, the Court has received Plaintiff's  
Second Supplemental Exhibit Concerning Application of URA  
Requirements to This Case, filed May 14, 2003, and Defendants'  
Objection to Plaintiff's Second Supplemental Exhibit Concerning

RECEIVED

MAY 23 2003

COUNTY CLERK

MARK R. DENTON  
DISTRICT JUDGE  
DEPARTMENT THIRTEEN  
LAS VEGAS, NEVADA 89155

21844

1 Application of URA Requirements to This Case, filed May 16,  
2 2003. In the latter document, Defendants object not to the fact  
3 that Plaintiff filed a further supplement, but to the content of  
4 the supplement, urging that the contention made by Plaintiff  
5 with respect to the supplemental exhibit is without basis.  
6

7 In a nutshell, the positions of the parties can be  
8 condensed to that of Plaintiff, which is that there is a broad  
9 swath of applicability to federally funded projects with no  
10 displacement requirement in inverse condemnation cases, versus  
11 that of Defendants, which is that there is a requirement of a  
12 specific nexus between federal funding and the taking at issue,  
13 with a displacement requirement.  
14

15 The pertinent language of NRS 342.105 is the  
16 following, to-wit:  
17

18 1. Any department, agency,  
19 instrumentality, or political subdivision of  
20 this state...which is subject to the  
21 provisions of the federal Uniform Relocation  
22 Assistance and Real Property Acquisition  
23 Policies Act of 1970...and the regulations  
24 adopted pursuant thereto, and which  
25 undertakes any project that results in the  
26  
27  
28

1        acquisition of real property...shall provide  
2        relocation assistance and make relocation  
3        payments...as are necessary to comply with  
4        those federal requirements (emphasis  
5        supplied)  
6

7        ...

8  
9        The Court is persuaded that the record demonstrates  
10       that Defendants are "subject to" the URA and that a nexus exists  
11       to the extent necessary. Moreover, the use of the words "...any  
12       project that results in the acquisition of real property..."  
13       indicates that a specific nexus is not required. The case of  
14       *County of Clark v. Alper*, 100 Nev. 382, 685 P.2d 943 (1984) is  
15       not inconsistent with this observation: "In order for the  
16       provisions of this act [former NRS 342.320(2)] to apply, the  
17       public body administering the programs or projects must be  
18       funded in whole or in part by the federal government." (*Alper*,  
19       *supra*, at 396)  
20  
21

22        Moving to the "payments" that are properly to be  
23       considered, the Court notes, first, that there is indeed no  
24       requirement in the URA that actual displacement have been  
25       occasioned if an inverse condemnation proceeding is necessary to  
26  
27

1 establish the occurrence of a taking.<sup>1</sup> In this regard, Title  
2 III of the URA makes it clear in its statement of policy, 42 USC  
3 §4651(8), that, "[i]f any interest in real property is to be  
4 acquired by exercise of the power of eminent domain, the head of  
5 the Federal agency concerned shall institute formal condemnation  
6 proceedings..."

8 Furthermore, 42 USC §4654(c), regarding costs and  
9 fees, does not limit eligibility to persons who have actually  
10 been displaced and who have required relocation assistance. In  
11 other words, where an owner of property has successfully  
12 prosecuted an inverse condemnation action, he is, by the  
13 unambiguous language of the federal statute itself, entitled to  
14 claim fees and costs, and Chapter 342 NRS simply carries the  
15 concept over to acquisitions of property by political  
16 subdivisions and departments of the state of Nevada that are  
17 "subject to" the URA.

20 A. Costs.

21 Now, turning to the question of costs, it appears to  
22 the Court that, in embracing the URA as a reference point, NRS  
23

---

25 <sup>1</sup>The very title of the URA demonstrates that displacement  
26 is but one of its subjects: Uniform Relocation Assistance and  
27 Real Property Acquisition Policies Act (emphasis supplied.)

1 342,105 is of necessity adopting the concept of  
2 "reimburse[ment]" for "...reasonable costs, disbursements, and  
3 expenses, including reasonable...appraisal...fees actually  
4 incurred because of such proceeding[ ]" that is used in 42 USC  
5 §4654(c). Accordingly, the limitations of NRS 37.190 are  
6 clearly inapplicable, and there is thus no need for the Court to  
7 reach Plaintiff's equal protection argument relative thereto.  
8

9           However, just as NRS chapter 342 evinces a legislative  
10 intention to adopt a broader qualification for costs than is set  
11 forth in NRS 37.190, NRS 18.005 is a legislative pronouncement  
12 on what is deemed "reasonable," and a \$1,500.00 ceiling is  
13 presumed to be applicable for expert witnesses unless the  
14 circumstances of necessity otherwise warrant. Moreover, the  
15 term "reasonable" is used in 42 USC §4654(c). In this vein, the  
16 Court determines that, while the existence of such ceiling shows  
17 a legislative intention that the issue of reasonableness should  
18 reflect that figure as a "governor," so to speak, there is cause  
19 to exceed the ceiling for witnesses Campa and Jack, and it will  
20 award \$20,000.00 for Ms. Campa and \$14,000.00 for Mr. Jack. To  
21 such extent, therefore, Defendants' Motion to Retax Costs is  
22 GRANTED in part. In making this ruling, the Court is not by any  
23 means expressing or implying that the fees charged by Ms. Campa  
24  
25  
26  
27  
28



1 and Mr. Jack were unreasonable. Rather, the Court is  
2 constrained by the referenced statute, NRS 18.005, to assess the  
3 term "reasonable" for purposes of a cost award.

4 The balance of Defendants' cost motion is DENIED.

5  
6 B. Attorneys' Fees.

7 Plaintiff's Motion for attorneys' fees is GRANTED in  
8 part, and the Court will award fees commensurate with  
9 Plaintiff's contingency fee agreement upon the principal sum of  
10 the jury's verdict, per Plaintiff's contingency fee agreement.  
11  
12 42 USC §4654(c); NRS 342.105; *Osprey Pacific Corp. v. United*  
13 *States*, 42 Fed. Cl. 740, 172 A.L.R. Fed. 507 (1999) dismissed on  
14 other grounds, 215 F.3d 1344 (Fed. Cir. 1999); *Cf. Robinson v.*  
15 *State*, 20 P.3d 396 (Ut. 2001). However, the Court will not  
16 award a further contingency fee on the prejudgment interest to  
17 which Plaintiff is entitled.

18  
19 The Court has no doubt that entering into a  
20 contingency fee arrangement in a case of this type and magnitude  
21 is to be considered commercially reasonable from the standpoint  
22 of the client and professionally reasonable from the standpoint  
23 of the lawyer, who is taking the risk of non-compensation after  
24 much effort and time and restraint upon other applications of  
25 those resources. Indeed, much more time and effort will have to  
26  
27

1 be spent on the appeal that Defendants have alluded to, with  
2 Plaintiff's counsel continuing to be at risk of receiving no  
3 compensation depending upon the result of the appeal.

4  
5 Furthermore, the contingency percentage applied is  
6 reasonable in the context of this case and is owed by the client  
7 if the amount adjudged by the jury to be just compensation is  
8 allowed to stand.

9  
10 On the other hand, just because a fee arrangement  
11 between lawyer and client is reasonable for them does not  
12 mandate that a compulsory fee award payable by the client's  
13 adversary must mirror it in order to be deemed "reasonable"  
14 under the law that provides for the making of the award.

15  
16 What tips the scale on this point is the fact that  
17 this was an inverse condemnation case that required not only a  
18 determination of just compensation, but also the extra effort to  
19 prove a taking in the first place. This is the meaning of cases  
20 such as *Osprey Pacific Corp., supra*. Indeed, some federal cases  
21 dealing with fee awards under the URA have approved awards in  
22 excess of applicable contingency fee agreements. See e.g.  
23 *Shelden v. United States*, 41 Fed. Cl. 347 (1998).<sup>2</sup>

24  
25  
26 <sup>2</sup>The Defendants maintain that, if fees are awardable at  
27 all, the lodestar approach would be applicable and that, since  
28

1 Finally, a governmental entity in an inverse  
2 condemnation case should contemplate, in its handling of a case  
3 and formulating its settlement posture, that the contingency fee  
4 route may be the only one available to the Plaintiff and that a  
5 large contingency fee may be sought at the end. Maybe when this  
6 case gets to the Supreme Court settlement conference program,  
7 the exposure to the contingent fee will be taken into account by  
8 both sides.  
9

10  
11 C. In light of the foregoing fee disposition,  
12 Defendants' Motion for Protective Order is DENIED as moot.  
13 . . . . .  
14

15  
16 time records have not been maintained by Plaintiff's counsel, no  
17 fees can be awarded. As to time records, counsel was on a  
18 contingency, and so keeping track of her time as though she was  
19 billing on an hourly basis would not be expected. *Shelden*,  
20 *supra*. Moreover, if the Court were to apply the lodestar  
21 approach in this case, it would apply the highest hourly rate  
22 charged by Defendants' counsel, \$300.00 per hour, multiplied by  
23 the number of hours billed by Defendants' counsel, 3,911.94  
24 hours per Ex. E. attached to Plaintiffs' Reply to Opposition to  
25 Motion for Attorney's Fees (4/29/03), as the Court is satisfied  
26 that Plaintiff's counsel would have worked at least as many  
27 hours. This calculation alone would render a fee award of  
28 \$1,173,582.00. To that, the Court would render a fifteen  
percent (15%) premium of \$176,037.30 in accordance with the  
factors discussed in paragraphs 2), 3), 4), 8), 9), 11), and 12)  
of Plaintiff's said Reply to Opposition, for a grand total of  
\$1,349,619.30. However, the fact that this figure is less than  
the contingency fee percentage does not negate the  
reasonableness of the latter in this case.

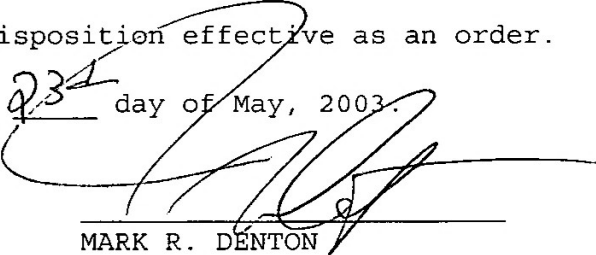
1 CONCLUSION

2 Counsel for Plaintiff is directed to submit a proposed  
3 order with any requisite findings consistent with B. above.

4  
5 Counsel for Defendants is directed to submit a  
6 proposed order with any requisite findings consistent with A.  
7 and C. above.

8 This Decision sets forth the Court's intended  
9 disposition on the subject but anticipates further order of the  
10 Court to make such disposition effective as an order.

11  
12 DATED this 23<sup>rd</sup> day of May, 2003.

13  
14   
15 MARK R. DENTON  
16 DISTRICT JUDGE

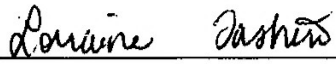
17 CERTIFICATE

18 I hereby certify that on the date filed, I placed a  
19 copy of this Decision in the attorney's folder in the Clerk's  
20 Office or mailed a copy to:

21 LAURA WIGHTMAN FITZSIMMONS, ESQ.

22 JONES VARGAS

23 Attn: R. Douglas Kurdziel, Esq.

24   
25 LORRAINE TASHIRO  
26 Judicial Executive Assistant  
27 Dept. No. XIII