

[Fees Must Be Allocated Between Successful and Unsuccessful Claims in the Pigford Litigation](#)

Posted on May 15, 2009 by [Gary A. Bresee](#)

The pigford litigation involved a group of African American farmers who alleged the U.S. Department of Agriculture denied them farm loans and otherwise discriminated against them based upon their race. One of those farmers, Robert Homes, was awarded \$300,000 against the USDA. However, Mr. Homes' was not as successful in his fee request filed under the Equal Credit Opportunity and Equal Access to Justice Acts. His \$192,000 fee claim was recently rejected by Judge Paul Friedman of the U.S. District Court for the District of Columbia.

The court reasoned that Mr. Homes alleged eleven distinct claims, but only succeeded on five. And since each claim was based on a separate set of facts, they were unrelated. Homes' lawyers were allegedly seeking time expended on some of the unsuccessful claims, so the court rejected the request. Judge Friedman further explained:

[S]imply reducing Covington's fee by a fraction corresponding to the number of unsuccessful claims is not likely to result in a fair and reasonable fee for Covington's service.

Comment: This is another good example of how fees could and should be allocated between claims. Whether you are the party requesting fees, or opposing the fee application, depending upon the statutory scheme, one should not rely on simple ratios based upon successful vs. unsuccessful claims (in this case, 5/11). Consider retaining an expert to analyze the specific billing entries, and allocate the time entries to work performed on only those claims upon which the party succeeded.