

## [Ninth Circuit Rejects Exclusive Use of Lodestar Approach in Calculating Fees in Denial of Disability Insurance Benefits Matters](#)

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In [Crawford v. Astrue](#) 2009 DJDAR 15681 (Ninth Circuit 2009), the [Ninth Circuit Court of Appeals](#) reversed a fee award made by the district court. The Ninth Circuit concluded that the lower court failed to follow the mandate of [Gisbrecht v. Barnhart](#), 535 U.S. 789 (2002). In [Gisbrecht](#), the [United States Supreme Court](#) rejected the exclusive use of the lodestar approach in calculating fee awards in Social Security Disability Insurance (SSDI) cases. Instead, the court stated that the lower court must respect “the primacy of lawful attorney-client fee agreements” allowing for the use of contingency fee arrangements in SSDI cases.

In [Crawford](#), the Ninth Circuit heard three consolidated appeals involving one major issue. The Plaintiffs retained counsel to challenge denials of disability insurance benefits by the [Social Security Administration](#) (SSA). Prior to initiating the litigation in each case, the Plaintiffs entered into written contingent-fee agreements. Under the agreements, the Plaintiffs agreed to pay the attorney 25 percent of any past-due benefits awarded by the court. This fee arrangement is the maximum allowed under [42 U.S.C. Section 406\(b\)](#). In each case, the SSA awarded past-due benefits to the Plaintiffs. Without objection from their clients, the attorneys filed motions requesting fees of less than 25 percent. The application was supported with evidence of the work they had done. Nonetheless, the trial court in each case awarded significantly lower fees than the amounts agreed to under the contingency agreements.

The Ninth Circuit specifically noted that exclusive reliance on a lodestar calculation is invalid. The law requires that the attorneys in SSDI cases to establish the reasonableness of their fee. The factors to consider are the proportion of time the attorney spent on the case, lodestar calculation (as one factor), the quality of the work, and the risk assumed in accepting the case. Where a court largely relies on lodestar calculations this is not in compliance with the law. Moreover, the attorneys established that their performance seemed to be excellent, no wrongdoing existed in charging the fees, and they were at great risk in taking cases that would possibly yield no payment.

The Ninth Circuit concluded that the trial court incorrectly denied the attorneys’ requested fee.