UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 96-1285 (RCL)
	)	
GALE A. NORTON, et al.,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' OPPOSITION TO PLAINTIFFS' APPLICATION FOR ATTORNEYS' FEES AND EXPENSES RELATED TO THE SECOND CONTEMPT TRIAL

Introduction

Plaintiffs have filed an application for an award of attorney's fees and expenses associated with the second contempt trial in a total amount substantially exceeding three million dollars. Based on the Court's treatment of the plaintiffs' 1999 fee petition and award as well as plaintiffs' request for reasonable market rates for their counsel, plaintiffs' petition is apparently made pursuant to 28 U.S. C. § 2412(b), which, in relevant part, provides that:

> Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a) to the prevailing party in any civil action brought by or against the United States or any agency or official of the United States acting in his or her official capacity in any court having jurisdiction over such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

Plaintiffs argue that a substantial award – above and beyond that attributable to the motions for orders to show cause and the contempt trial itself – is appropriate because the Interior defendants have defended themselves in bad faith throughout this litigation.[1]

Importantly, as the Court itself initially posited, there is no waiver of sovereign immunity for the recovery sought based on the nature of the contempt proceedings. Even if a proper waiver existed, imposition of the award of attorney's fees and expenses for bad faith is highly discretionary and requires specific findings which are discussed in greater detail below. Accordingly, assuming that the contempt findings of this Court endure[2], the Interior defendants respectfully further oppose plaintiffs' petition for several other reasons. First, although the Interior defendants do not take issue with the reasonableness of the overwhelming majority of the hours plaintiffs' counsel actually expended preparing for and during the contempt trial, plaintiffs have failed to satisfy their burden of demonstrating that all of the attorney hours were necessarily incurred or that Mr. Rempel should be compensated at his normal rate for performing tasks during the trial which were equivalent to those of a paralegal. Second, the portion of

---

[1] To the extent that plaintiffs are seeking fees under any other theory, the Interior defendants respectfully request the opportunity to oppose the petition in a supplemental brief once the alternative basis is clarified.

[2] Based on the pendency of the appeal in the D.C. Circuit, it may be appropriate for the Court to hold plaintiffs' instant petition in abeyance. To the extent a decision by the Court of Appeals implicates either the findings of fact or the ultimate contempt determination, the Interior defendants may have additional grounds on which to oppose plaintiffs' petition.

the petition premised on the bulk of plaintiffs' overall case preparation on the merits amounts to an improper request for a double recovery. For all of these reasons, the Interior defendants respectfully request that the Court deny the petition as precluded by or counseled against by principles of sovereign immunity or as insufficiently supported. In the alternative, if the Court makes any award, it should limit the amount to the approximately $1 million in fees and expenses closely linked with the contempt proceedings.

ARGUMENT

I. Legal Framework

A. The Waksburg Issue

As this Court previously indicated, the issue left open in the D.C. Circuit's decision in United States v. Waksburg, 112 F.3d 1225 (D.C. Cir. 1997), requires resolution in plaintiffs' favor before any fees could be awarded in connection with the contempt action. See September 17, 2002 Memorandum Opinion at 129 & n.163.[3] In Waksburg, the D.C. Circuit acknowledged but did not resolve a serious constitutional question: whether

> separation of powers principles require the government's immunity to give way because judicial power to enforce court orders against the United States through contempt is an essential feature of the judicial function under Article III of the Constitution.

---

[3] It should be noted here that plaintiffs' reference to the "apparent complicity" of Department of Justice attorneys in the frauds on the court contested during the trial is speculation that is vigorously disputed by those very attorneys as well as defendants. See Pls.' Petition at 11 n.20.

Waksburg, 112 F.3d at 1227; see Ruckelshaus v. Sierra Club, 463 U.S. 680, 685 (1983) (holding that absent a valid waiver, sovereign immunity bars the shifting of attorney's fees against the federal government). Recognizing that the Court has indicated that it is unpersuaded that sovereign immunity bars awarding fees and expenses, the Interior defendants respectfully request that the Court reconsider that conclusion, particularly in light of authorities not cited in the September 17, 2002 Memorandum. Most significantly, the only Court of Appeals to address the issue squarely in the contempt context has answered this question, in relevant part, in the negative. Coleman v. Espy, 986 F.2d 1184 (8th Cir.) ("We hold that compensatory civil contempt actions are barred under the doctrine of sovereign immunity."), *cert. denied sub nom.* Dye v. Espy, 510 U.S. 913 (1993).

As the Court acknowledged at the outset of the contempt proceedings and in the Memorandum Opinion finding contempt, civil contempt may serve either coercive or compensatory purposes. Sept. 17, 2002 Mem. Op. at 9, 11, 112. Thus, the availability of monetary award to plaintiffs depends upon the reasons for granting the orders to show cause as well as the relief ultimately ordered. Because the five contempt specifications involved events almost entirely in the past at the time the Court issued the orders to show cause, the instant contempt action is primarily compensatory in nature. In terms of relief, the Court ordered "further proceedings to ensure that the defendants properly discharge their fiduciary obligations, appoint[ed] another special master to monitor the status of trust reform, and award[ed] plaintiffs attorneys' fees and expenses." Id. at 112.

Although the first two of these remedies appear coercive in nature, the third is unmistakably compensatory. One of the purposes of fee-shifting is to compensate the opposing party for the expense incurred because of the bad-faith. Chamber v. NASCO, Inc., 501 U.S. 32, 53-54 (1991) (also acknowledging a punitive aspect to awards of attorneys' fees where bad faith is found); see Nepera Chemical, Inc. v. Sea-Land Serv., Inc., 794 F.2d 688, 702 (D.C. Cir. 1986) (purposes of the bad faith exception to the general rule on attorney's fees are to punish wrongdoers and to compensate the prevailing litigants).

Accordingly, for the same reasons articulated by the Eighth Circuit in Coleman and consistent with the concerns expressed by our Circuit in Waksburg, the Interior defendants submit that plaintiffs have failed to establish a waiver of sovereign immunity to support a compensatory award of attorneys' fees and expenses based on civil contempt. See also United States v. Woodley, 9 F.3d 774, 781 (9th Cir. 1993) ("A court may impose money awards against the United States only under an express waiver of sovereign immunity."). In Armstrong v. Executive Office of the President, 821 F. Supp. 761 (D.D.C.), rev'd in part on other grounds, 1 F.3d 1274 (D.C. Cir. 1993), the Court addressed a similar issue, recognizing that "imposition of monetary sanctions against the federal government often is barred by the doctrine of sovereign immunity." Armstrong, 821 F. Supp. at 773. In so recognizing, the Court noted:

> Several courts have held that the doctrine of sovereign immunity applies to prevent a court from imposing compensatory fines against a government entity in a civil contempt proceeding. See Coleman v. Espy, 986 F.2d 1184 (8th Cir. 1993); McBride v.

> Coleman, 955 F.2d 571 (8th Cir. 1992)[, *cert. denied*, 506 U.S. 819 (1992)]; Barry v. Bowen, 884 F.2d 442 (9th Cir. 1989). The rational [sic] for applying the doctrine of sovereign immunity in such cases is to prevent a claimant from being "positioned to recover an unlimited amount of compensatory damages from the United States without being bound by the strictures of the Tucker Act or the Federal Tort Claims Act." McBride, 955 F.2d at 576.

Id.

Even if plaintiffs had established such a waiver, the same rationale counsels in favor of the exercise of appropriate restraint by declining to extend the contempt power as far as awarding attorneys' fees and expenses. Quite apart from the grave constitutional concerns posed by compensatory civil contempt, the findings of litigation misconduct implicate the identical concerns such that the Court should exercise its "considerable discretion" and refrain from awarding plaintiffs their fees and expenses. United States v. Horn, 29 F.3d 754, 770 (1st Cir. 1994) (sovereign immunity precludes monetary sanctions against the government for litigation misconduct), cited in Sept. 17, 2002 Mem. Op. at 129; See September 17, 2002 Memorandum Opinion, at 14-15, quoting Perkinson v. Gilbert/Robinson, Inc., 821 F.2d 686, 689 (D.C. Cir. 1987). For either contempt or litigation misconduct, the limited waiver of sovereign immunity contained in the Equal Access to Justice Act, 28 U.S.C. § 2412, must be narrowly construed in favor of the Interior defendants. Sierra Club, 463 U.S. at 685; Library of Congress v. Shaw, 478 U.S. 310, 318 (1986). Indeed, the Court "may not find a waiver unless Congress' intent is ' "unequivocally expressed" ' in the relevant statute." United States v. Mitchell, 445 U.S.

535, 538 (1980); Hubbard v. EPA, 982 F.2d 531, 532 (D.C. Cir. 1992). Plaintiffs have not shown any such expression.

Plaintiffs misunderstand this issue by relying on Rule 37 of the Federal Rules of Civil Procedure, which does not apply to the contempt proceedings. Notably omitting any argument that Rule 37 could supply a waiver of sovereign immunity, plaintiffs misdirect attention to the April 2002 Fee Application and the first contempt proceeding. Pls.' Petition, at 11-12. Because the first contempt proceeding involved discovery, Rule 37 clearly applied. But the second contempt proceedings were analytically distinct because they were predicated on the Court's inherent authority. Accordingly, plaintiffs have failed to identify a valid waiver of sovereign immunity to support their request for fees and expenses arising out of the second contempt proceedings.

B. Standard for Awarding Fees Based on Bad Faith

If the Court is convinced that EAJA or some other provision of law supplies the requisite waiver of sovereign immunity for plaintiffs to recover attorneys' fees and costs, the analysis is straightforward. The bad-faith provision of the EAJA is "a narrow one . . . typically invoked in cases of vexatious, wanton, or oppressive conduct." Barry v. Bowen, 825 F.2d 1324, 1334 (9th Cir. 1987). In order to recover under this exception, plaintiffs must establish that the Interior defendants acted "in bad faith, vexatiously, wantonly, or for oppressive reasons." Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 258-59 (1975). The standard for application of the bad faith exception is a stringent one, and is met only in exceptional cases where there are dominating reasons

of justice for awarding fees. Id.; United States v. Standard Oil Co. of California, 603 F.2d 100, 103 (9th Cir. 1979). "The D.C. Circuit has not squarely ruled on whether bad faith is a prerequisite to a grant of attorneys' fees in a contempt action." Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 103 F.3d 1007, 1017 n. 14 (D.C. Cir. 1997).

The award of fees under 28 U.S.C. § 2412(b) is entirely discretionary. E.g., Maritime Management, Inc. v. United States, 242 F.3d 1326, 1332 (11th Cir. 2001). Because the total amount of the petition (excluding expenses and fees sought for preparation of the petition) is $ 3,171,914.84, and approximately two-thirds of that amount is not connected to the contempt action, the Court would be within its discretion to deny fees entirely. Environmental Defense Fund, Inc. v. Reilly, 1 F.3d 1254, 1258 (D.C. Cir. 1993), as supplemented, No. 90-1387 (Sept. 10, 1993). Even if the Court is not inclined to deny fees outright, however, because the fees are sought against the United States, the Court "must scrutinize the claim with particular care." Copeland v. Marshall, 641 F.2d 880, 888 (D.C. Cir. 1980). In addition, in evaluating the reasonableness of all the elements of billing, items of expense or fees that may not be "unreasonable between a first class law firm and a solvent client, are not [always] supported by indicia of reasonableness sufficient to allow us justly to tax the same against the United States." In re North (Shultz Fee Application), 8 F.3d 847, 852 (D.C. Cir.1993) (per curiam). Although it is not the function of the Court to pass judgment on the propriety of professional decisions of counsel or the wisdom of their client's

decision either to retain additional counsel or at any particular billing rates, the Court has a duty to review the petition to ensure that plaintiffs' counsel has exercised independent judgment such that the fees sought are reasonable and not unnecessarily inflated before taxing them against the United States. In re Donovan, 877 F.2d 982, 996 (D.C. Cir. 1989) (per curiam). Petitioners bear the burden of demonstrating the reasonableness of each element of their fee request. In re North (Bush Fee Application), 59 F.3d 184, 189 (D.C. Cir. 1995) (per curiam).

C. Scope of the Petition

Plaintiffs' petition is overbroad. Although plaintiffs acknowledge that "the instant fee application is filed in response to this Court's Second Contempt Judgment," (Pls.' Petition at 3) they proceed to argue that recovery of expenses and fees not directly associated with the contempt proceedings should be awarded. But the burden is on plaintiffs to show the hours worked with enough specificity to allow the Court to determine their reasonableness and their nexus to the claims on which plaintiffs prevailed. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983); see Gates v. Deukmejian, 987 F.2d 1392, 1397 (9th Cir. 1992) ("The fee applicant bears the burden of documenting the appropriate hours expended in the litigation and must submit evidence in support of those hours worked."). Remarkably, plaintiffs' "proposal" requests multiple bites at the apple by insisting that any rejected fees from this petition be subject to reconsideration if they later assert that the same work qualifies for compensation under a separate

Order. Such an approach contradicts the requisite proof of the particular task and its necessary relationship to a specific claim for fees.

Under the guise of vindicating public policy concerns, plaintiffs also boldly assert that it would not be inappropriate for them to recover more than once for the same hours of work. Pls.' Petition at 13-15. That argument stands in sharp contrast with the public interest, confirmed repeatedly by the courts, in limiting the impact on the public fisc out of which any award will be paid. None of the cases cited by plaintiffs to support their double-recovery theory involve payment of fees by the federal government. Moreover, because fees are not sought under Rule 11 of the Federal Rules of Civil Procedure or from a private entity in this petition, Caisse Nationale de Credit Agricole-CNCA v. Valcorp, Inc., 28 F.3d 259 (2d Cir. 1994), discussed on pages 14-15 of Plaintiffs' Petition, is inapposite.

II. Specific Objections to Plaintiffs' Fee Petition

If the Court finds that fees are appropriately awarded to plaintiffs, the Interior defendants object to the amounts in the petition for the reasons set forth below.

A. Schedule A Fees for the Contempt Trial Itself

Plaintiffs' fee demand is of course predicated upon the Findings of Fact and Conclusions of Law enumerated in the Court's September 17, 2002 contempt decision. Accordingly, for all of the reasons defendants previously opposed the issuance of the five specifications in the Court's orders to show cause, and then contested the same in the trial held between December 6, 2001 and February 28, 2002, and detailed in

Defendants' Proposed Findings of Fact and Conclusions of Law [filed on February 28, 2002], defendants respectfully submit apply with equal force to render an award of attorney's fees and expenses to plaintiffs unfounded. These arguments are incorporated by reference, but for the sake of brevity will not be restated here.[4]

The Interior defendants observe that the compressed nature of the second contempt proceedings, with trial following closely on the issuance of the orders to show cause and proposed findings of fact and conclusions of law submitted promptly after the close of evidence, tended both to limit the time expended and to make it readily identifiable. Notwithstanding its concession that most of the time documented in Attachment A of the Declarations was reasonable, the Interior defendants respectfully object to the request for fees incurred by Mr. Levitas at trial because the petition fails to specify what he contributed to the trial. See FDIC v. Bender, 182 F.3d 1, 5-6 (D.C. Cir. 1999) (instructing the district court not to award attorney's fees for in-house counsel unless it could determine that counsel "contributed anything of substantive value"); Milgard Tempering, Inc. v. Selas Corp. of Am., 761 F.2d 553, 558 (9th Cir. 1985) (requiring showing that in-house counsel "actively participat[ed]" to justify awarding fees). Mr. Levitas examined no witnesses and presented no argument to the Court during the contempt trial. Although the Interior defendants in no way intend to denigrate the role Mr. Levitas plays overall in the litigation, they simply observe that

---

[4] The Interior Defendants note that they have filed a notice of appeal to the a brief seeking reversal of the findings of civil contempt by Secretary Norton and Assistant Secretary McCaleb.

the need for his daily presence in the courtroom (75.4 hours billed at an hourly rate of $360 for a total of $27,144) is not sufficiently evidenced in the petition to warrant an award of fees in connection with the instant fee petition. See Grendel's Den, Inc. v. Larkin, 749 F.2d 945, 953 (1st Cir. 1984) ("we see no justification for the presence of two top echelon attorneys at each proceeding" particularly where one attorney "was merely in attendance [and did not] actually address[] the court").[5]

Moreover, although recognizing that the Court previously awarded fees for work of Mr. Rempel at a rate of $225 per hour (November 12, 2002 Memorandum Opinion, at 9), examination of his declaration submitted with the instant petition reveals unmistakably that the work he performed in connection with the contempt trial did not require use of his accounting expertise. Importantly, unlike the previous petition, Mr. Rempel's declaration here omits any reference to his administrative and clerical time being de minimis. See Nov. 12, 2002 Mem. Op. at 9 (relying on that

---

[5] Further, the Interior defendants object to all time sought by Mr. Levitas that was billed by eleven different attorneys and support staff members of his firm. These so-called "sub-retainees" comprise $ 22,989.50 (representing 147.5 hours) of the total amount sought by Mr. Levitas. First, the petition provides no information regarding the backgrounds of the individuals to enable the Interior defendants to assess their billing rates under the *Laffey* matrix. Second, the billing for these individuals is not sufficiently identified to be tied to the contempt proceedings to bring their work within the proper scope of the award directed in the Court's September 17, 2002 Memorandum Opinion. Any award based on the work of Mr. Levitas should be limited to a reasonable number of hours associated with the motions for orders to show cause. His declaration suggests that Mr. Levitas spent approximately 50 hours in October and November of 2001 working on issues closely linked with the contempt proceedings. At a rate of $360 per hour, that represents $18,000. To the extent the Court is inclined to award fees to Mr. Levitas, the Interior defendants respectfully urge that such an award be limited to no more than that amount.

assertion in rejecting the Interior defendants contention that Mr. Rempel's services were akin to a paralegal). The descriptions of his time omit any mention of accounting analysis or tasks on which Mr. Rempel brought his accounting skills to bear. Accordingly, for the same reason "[i]t simply is not reasonable for a lawyer to bill, at her regular hourly rate, for tasks that a non-attorney employed by her could perform at a much lower cost," Mr. Rempel's hours in connection with the contempt trial should be compensated at the rate applicable to paralegals. Davis v. City and County of San Francisco, 976 F.2d 1536, 1543 (9th Cir. 1992), *vacated in part and reh'g denied*, 984 F.2d 385 (9th Cir. 1993).

It is appropriate to distinguish between work which can be accomplished by a non-accountant but which Mr. Rempel may do because plaintiffs' existing counsel have no other help available. See Missouri v. Jenkins, 491 U.S. 274, 288 n.10 (1989). This is particularly true for the hours associated with the contempt trial itself which did not involve any accounting issues whatsoever. The Interior defendants do not suggest that Mr. Rempel's activities during the trial itself – organizing trial exhibits and materials and other similar tasks – were not necessary or appropriate or even that Mr. Rempel has not performed other services during the case which may warrant compensation at the higher rate, merely that the absence of a paralegal on plaintiffs' counsels' staff during the contempt trial does not warrant compensating plaintiffs at a higher rate for Mr. Rempel's services simply because he has advanced training which the petition does not demonstrate he was called upon to apply for the fees sought in this context.

Application of the hourly rate for paralegals ($ 95 per hour) reduces fees for Mr. Rempel on Schedule A from $147,109.50 to $ 62,111.

B. Schedule B Fees Are Not Recoverable and Double Recovery Should Be Rejected.

Plaintiffs argue that the misconduct found by the Court in the second contempt trial entitles them to recover essentially "full fees incurred in litigating the matter" and advocate that the possibility of double recovery for the same work is acceptable. Pls.' Petition, at 15. Plaintiffs' position is flatly contrary to the language and purpose of EAJA which is to reimburse a party for fees paid out to its counsel. See Meyers v. Heckler, 625 F. Supp. 228, 231 (S.D. Ohio 1985). The application of the statute should not result in a windfall to plaintiffs or their counsel. See id.; Ulead Systems, Inc. v. Lex Computer & Management Corp., 151 F.Supp.2d 1192, 1214-15 (C.D. Cal. 2001) (citing the impropriety of potential double recovery of attorneys' fees as one reason for denying imposition of attorneys' fees as a sanction); Resolution Trust Corp. v. 12A Associates, 782 F.Supp. 270, 272 (S.D.N.Y. 1992) ("Counsel's double-billing . . . indicate[s] to the Court that their performance as officers of the Court has been sub-standard and unprofessional. Accordingly, the Court strikes [the] request for attorneys' fees."). Plaintiffs bear the burden of tracing their time to the particular basis on which fees are awarded. In light of plaintiffs' frank admission that none of the time reflected on Attachment B's relates to the contempt trial itself and instead represents essentially all of the work they have done on the case to date, those fees should be denied outright.

Likewise, plaintiffs' alternative argument that "stonewalling" by the Interior defendants justifies an award of the total amount of their fees incurred in this case up to this point is unavailing. The cases plaintiffs rely upon are inapposite because they involve exclusively private parties being sanctioned under Rule 11 of the Federal Rules of Civil Procedure. See Pope v. Federal Express Corp., 138 F.R.D. 684 (W.D. Mo. 1991); Chapman & Cole v. Itel Container Int'l B.V., 865 F.2d 676 (5th Cir. 1989); Fashion House, Inc. v. K Mart Corp., 124 F.R.D. 15 (D.R.I. 1988). None of these cases involve either the application of EAJA sanctions imposed after findings of contempt.

C. Schedule C Fees Should Be Proportionately Reduced Because Time for Preparing Schedule B Fees and Argument Was Unnecessary.

The total amount plaintiffs seek in fees for "Core-Time" under Attachment A is $1,167,104.74 (including all amounts sought by Mr. Levitas which should be reduced as set forth above). The total amount for "Non-Core Time" under Attachment B is $2,004,810.10. Thus, the "Non-Core Time" represents approximately 63% of the total time plaintiffs billed in this case working on the merits.[6] Because the "Non-Core Time" is not properly compensable, plaintiffs should not be awarded fees connected with preparing the petition with respect to "Non-Core Time." Accordingly, at a minimum, the Schedule C Fees for preparing the petition, should be reduced by the same

[6] $2,004,810.10 divided by the sum of $1,167,104.74 and $2,004810.10 (or $3,171914.84) is 0.632. Therefore, the Non-Core Time represents 63.2% of the total time (excluding time for preparing the attorneys' fees petition) sought by plaintiffs.

percentage, which overall would result in those fees being cut from $154,542.85 to $97,671.08.[7]

D. The Interior Defendants Do Not Object to the Costs of the Trial Transcripts, But Costs Incurred by Mr. Levitas Should Be Denied As Insufficiently Documented.

The only costs sought by plaintiffs in their petition are for trial transcripts ($24,094.75) and other items ($2,146.58) which Mr. Levitas claims were related to the contempt trial on a percentage basis relating to the time he traces to work associated with contempt. Although Mr. Levitas conclusorily asserts that those unitemized expenses "includ[e] electronic research, copying charges, and long distance charges incurred each month in connection with the representation of the plaintiff class," (Levitas Declaration, ¶ 7), and those items would generally be compensable under 28 U.S.C. § 2412(b), the total amount should not be awarded because expenses other than those incurred primarily between November, 2001 and February, 2002 are eligible and none of the expenses are sufficiently documented as relating to either the trial or the motions for orders to show cause which resulted in the five contempt specifications either for the defendants to formulate a specific response or for the Court to award. Cf. In re Meese, 907 F.2d 1192, 1204 (D.C. Cir. 1990) ("for lack of documentation, we exclude the $707 claimed as a travel expense.").

---

[7] Notably, plaintiffs do not seek reimbursement for any time spent by Mr. Levitas in connection with preparing his declaration. See Levitas Dec. ¶ 8.

Conclusion

Because there is no valid waiver of sovereign immunity to support an award of fees and expenses against the government based on the compensatory nature of the relief flowing out of the contempt trial, plaintiffs' petition should be denied in its entirety. To the extent the Court finds that a sufficient waiver exists, the fees sought should be reduced substantially because plaintiffs are limited to reasonable fees actually incurred in connection with litigating the second contempt trial and preparing their petition. Accordingly, the compensation for the time plaintiffs have identified as "Non-Core" should be denied. In addition, plaintiffs should not be awarded fees for time spent preparing the "Non-Core" portion of their petition such that the amounts sought should be reduced by 63 percent. Therefore, to the extent the Court grants the petition, the Interior defendants submit that the award should be limited to the following amounts[8]:

Mr. Gingold: $ 384,338.54 plus $33,600 for the petition for a total of $ 417,938.54

Mr. Harper: $ 194,038.00 plus $24,000 for the petition for a total of $ 218,038

Mr. Brown: $305,484.20 plus $32,000 for the petition for a total of $ 337,484.20

Mr. Rempel: $ 62,111.00 plus $ 7,300 for the petition for a total of $ 69,511.00

Mr. Levitas: $ 18,000.

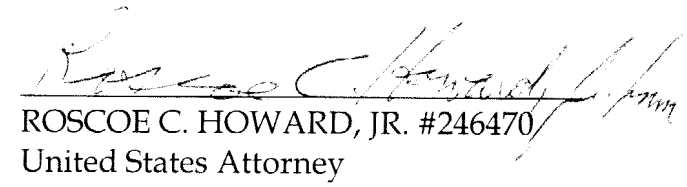
---

[8] Except for Mr. Rempel, whose fees are reduced by application of the hourly rate for a paralegal to the hours he listed in Attachment A to his declaration, the amounts for the contempt trial are taken directly from the Attachment A's submitted with the corresponding declaration. The amounts for preparation of the petition reflect approximately 63% of the amount claimed on Attachment C's.

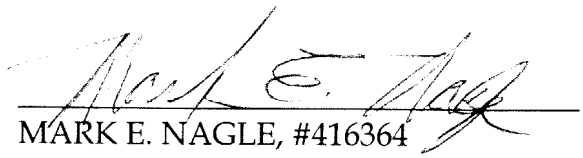
GRAND TOTAL: $ 1,060,971.74

In addition, the Interior defendants do not object to the costs of the trial transcripts in the amount of $24,094.75 as reasonable.

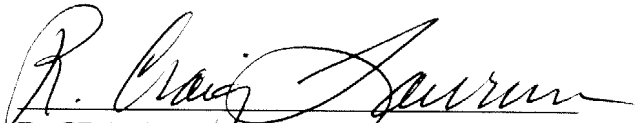
Respectfully submitted,



ROSCOE C. HOWARD, JR. #246470
United States Attorney



MARK E. NAGLE, #416364
Assistant United States Attorney



R. CRAIG LAWRENCE, #171538
Assistant United States Attorney
555 4th Street, N.W. - 10th Floor
Washington, D.C. 20530
(202) 514-7704

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing DEFENDANTS' OPPOSITION TO PLAINTIFFS' APPLICATION FOR ATTORNEYS' FEES AND EXPENSES RELATED TO THE SECOND CONTEMPT TRIAL was made by facsimile transmission of an exact copy to:

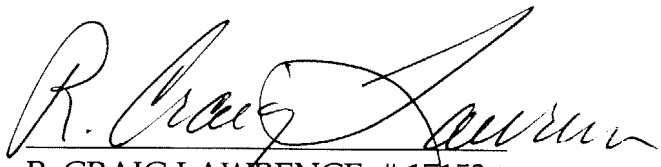
Keith Harper, Esq.
Lorna Babby, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, D.C. 20036-2976
202-822-0068 (fax)

Dennis M Gingold, Esq.
Mark Brown, Esq.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
202-318-2372 (fax)

Alan L. Balaran, Special Master
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006
(202) 986-8477 (fax)

Joseph Kieffer, III, Special Master-Monitor
420 Seventh Street, N.W.
Suite 705
Washington, D.C. 20004
(202) 478-1958 (fax)

on this 18th day of December, 2002.



R. CRAIG LAWRENCE, # 171538
Assistant U.S. Attorney
555 4th Street, N.W. - 10th Floor
Washington, D.C. 20530
(202) 514-7159