

No. 11-5158

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ELOUISE PEPION COBELL, *et al.*,
Plaintiffs-Appellees,

HARVEST INSTITUTE FREEDMEN FEDERATION, *et al.*,
Movants-Appellants,

v.

KENNETH LEE SALAZAR, *et al.*,
Defendants-Appellees.

PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS

Plaintiffs-Appellees respectfully move to recover their attorneys' fees and costs from Appellants and their counsel pursuant to 28 U.S.C. §§ 1912 and 1927 and Rule 38 of the Federal Rules of Appellate Procedure.

Appellants Harvest Institute Freedmen Federation, LLC, Leatrice Tanner-Brown, and William Warrior (collectively, "HIFF") brought this appeal from the district court's denial of permissive intervention. But as the Court found in its order granting Plaintiffs' and the government's motions to dismiss, on appeal HIFF made "no argument" concerning the denial of permissive intervention. Instead, HIFF attempted to re-litigate various legal claims that are not at issue in this appeal and that previously had been rejected by three other federal courts.

In addition, HIFF's counsel, Percy Squire, continued to pursue this frivolous appeal even after the Supreme Court of Ohio indefinitely suspended his law license and instructed him not to represent clients in legal matters before *any* court. Despite an order from this Court to show cause why Mr. Squire's admission to practice should not be similarly suspended, Mr. Squire continued to file frivolous pleadings, including a petition for rehearing and rehearing *en banc*. Shortly after Mr. Squire filed that petition, this Court indefinitely suspended his admission to practice.

In sum, this appeal was plainly frivolous and served only to unreasonably and vexatiously delay the settlement in this historic class action lawsuit between the United States and 500,000 Indian trust beneficiaries. The Court should award Plaintiffs their attorneys' fees and costs in defeating this appeal to help deter HIFF and its counsel from filing further frivolous lawsuits that unjustly burden other litigants and consume the federal judiciary's scarce resources.

BACKGROUND

I. The *Cobell* Litigation

This lawsuit began more than fifteen years ago when Plaintiffs, representing a class of individual Indians whose land and related natural resources are held in trust by the United States, sued the government for an accounting of trust assets. In December 2009, after years of protracted litigation, the parties reached a

landmark \$3.4 billion settlement. After the parties signed the settlement agreement, Congress enacted and the President signed the Claims Resolution Act of 2010, which expressly “authorized, ratified, and confirmed” the settlement and payments to class members. Claims Resolution Act of 2010, Pub. L. No. 111-291, 124 Stat. 3064 (Dec. 8, 2010). The district court approved the settlement on June 20, 2011, entered a final order on July 27, 2011 (Doc. 3850), and entered final judgment on August 4, 2011 (Doc. 3853).

II. HIFF’s previous frivolous litigation

A few months before final settlement approval, HIFF moved for permissive intervention in an effort to block the settlement. (Doc. 3684.) HIFF contended that the class settlement was unconstitutional because it discriminated against the descendants of African-American slaves who were owned by certain Indian tribes and who, following emancipation, were given certain rights through treaties between the United States government and the tribes. (*Id.*) HIFF already litigated its Indian treaty claims and its related racial discrimination claims, and lost three times in three different federal courts. HIFF first sued the United States government in the Court of Federal Claims, arguing that HIFF’s members were entitled to a share of certain Indian trust funds. *Harvest Inst. Freedman Fed’n v. United States*, 80 Fed. Cl. 197, 199 (2008), *aff’d*, 324 F. App’x 923 (Fed. Cir. 2009), *cert. denied*, 130 S. Ct. 1147 (2010). The court dismissed HIFF’s claims

and the Federal Circuit affirmed. *Id.* HIFF then sued the United States and Speaker Nancy Pelosi in the Southern District of Ohio. In that lawsuit, HIFF sought to stop passage of the legislation authorizing the *Cobell* settlement on the ground that HIFF's members were entitled to be treated as Indian trust beneficiaries (a claim previously rejected by the Court of Federal Claims and the Federal Circuit) and therefore the *Cobell* legislation was racially discriminatory. The district court dismissed that suit. *Harvest Inst. Freedman Fed'n, LLC v. United States*, No. 2:10-cv-449, Doc. 10 at 2-3 (S.D. Ohio May 25, 2010). HIFF appealed that dismissal but later voluntarily dismissed the appeal. *Harvest Inst. Freedman Fed'n, LLC v. United States*, No. 10-3678 (6th Cir. 2010). HIFF then filed a third lawsuit, again in the Southern District of Ohio, raising the same issues as its previous lawsuit in that court. *Harvest Inst. Freedman Fed'n, LLC v. United States*, No. 2:10-cv-1131, Doc. 17 (S.D. Ohio Jan. 31, 2011). The district court again dismissed the suit. *Id.* HIFF then appealed the dismissal, which is currently pending in the Sixth Circuit. *Harvest Inst. Freedman Fed'n, LLC v. United States*, No. 11-3113 (6th Cir.).

III. HIFF's frivolous efforts to intervene in the *Cobell* case

Three days after the district court in Ohio dismissed HIFF's second lawsuit in that court, HIFF sought to intervene in this class action, seeking to assert the same legal arguments that had already been rejected by the Southern District of

Ohio, the Court of Federal Claims, and the Federal Circuit. (Doc. 3684.) HIFF conceded that none of the individuals it purportedly represents are class members in this case. (Doc. 3684-1 at 7-9.) The district court denied permissive intervention on the grounds that the motion was untimely, that HIFF and its representatives were not class members, that HIFF lacked standing, and that HIFF's claims did not share any common factual or legal issues with the claims in this action. (Doc. 3772.) HIFF then moved for reconsideration, which the district court denied. (Doc. 3796.)

HIFF sought certification for an interlocutory appeal. (Doc. 3801.) While its motion for certification of an interlocutory appeal was pending, HIFF filed a notice of appeal from the district court's denial of its motion for permissive intervention and its motion for reconsideration. (Doc. 3817.) The district court then denied the motion to certify those orders for interlocutory appeal because "the movants advance arguments that are irrelevant to this case on their face" and "[t]here is no 'controlling question of law as to which there is substantial ground for difference of opinion' and no appeal from these orders would help advance this case." (Doc. 3822.)

IV. HIFF's frivolous filings in this Court

Both Plaintiffs and the government then moved to dismiss this appeal. (App. Docs. 1326538 & 1326548.) HIFF responded initially by filing a 52-page

brief that far exceeded the 20-page limit for a response to a motion. *See* Fed. R. App. P. 27(d)(2). The Court lodged the brief but did not file it. Four days later, after the time to respond to Plaintiffs' and the government's motions had passed, HIFF moved for leave to exceed the 20-page limit. The Court denied that motion and HIFF ultimately filed a corrected 20-page response. (App. Doc. 1340928.)

On December 29, 2011, the Court dismissed this frivolous appeal, noting that, although HIFF appealed only from the denial of permissive intervention and the motion to reconsider the denial of intervention, on appeal "appellants make no argument in support of their challenge to those orders." (App. Doc. 1350153.) Instead, HIFF's response to the motions to dismiss attempted to re-argue the merits of legal claims that it previously litigated (and lost) in three other federal courts, but which were not the subject of this appeal. (App. Doc. 1340928.)

After the Court dismissed HIFF's appeal, HIFF filed a frivolous petition for rehearing and suggestion for rehearing en banc. (App. Doc. 1351644.) Its argument was premised both on its claim to represent "nonnamed class members" (*id.* at 13), even though it had previously conceded that it did not represent members in either *Cobell* class (Doc. 3684-1 at 7-9), and on the same legal arguments previously rejected by three other federal courts. (App. Doc. 1351644 at 5-13.) Notably, HIFF's petition for rehearing and rehearing en banc again failed

to include any argument concerning the district court's denial of permissive intervention—the sole issue in this appeal. (App. Docs. 1361257 & 1361259.)

V. The improper conduct of HIFF's counsel

HIFF was represented in this frivolous appeal by Percy Squire, an Ohio attorney. Plaintiffs learned after this appeal began that the Supreme Court of Ohio had indefinitely suspended Mr. Squire's license to practice law, "ordered that [Mr. Squire] immediately cease and desist from the practice of law in any form," and ordered that Mr. Squire was "hereby forbidden to appear on behalf of another before *any* court, judge, commission, board, administrative agency or other public authority." (App. Doc. 1341103 at 4) (emphasis added). Mr. Squire continued to represent his clients in this appeal for several months until this Court indefinitely suspended him as well. During that time, despite a November 7, 2011 order from this Court to show cause why he should not be suspended, Mr. Squire filed pleadings in this Court, including a frivolous petition for rehearing or rehearing en banc. (App. Doc. 1351644.)

ARGUMENT

I. The Court should award Plaintiffs their attorneys' fees and costs incurred in opposing HIFF's appeal.

A. HIFF's appeal was frivolous.

HIFF's appeal from the district court's denial of permissive intervention was frivolous, as indicated by HIFF's failure to provide even a single legal argument

challenging the court's decision. This Court should award Plaintiffs their attorneys' fees and costs incurred in opposing HIFF's frivolous appeal. This Court can assess attorneys' fees and costs against HIFF under both Rule 38 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 1912. "Damages are awarded by the court in its discretion in the case of a frivolous appeal as a matter of justice to the appellee and as a penalty against the appellant." Fed. R. App. P. 38 Advisory Committee Note. An appeal is considered frivolous, and thus worthy of awarding damages, when its disposition is "obvious" and the legal arguments are "wholly without merit." *Reliance Ins. Co. v. Sweeney Corp.*, 792 F.2d 1137, 1138 (D.C. Cir. 1986).

This appeal readily satisfies that standard. HIFF abandoned the sole basis for its appeal—an argument that the district court abused its discretion by denying HIFF's motion for permissive intervention. Indeed, HIFF's initial 52-page brief, which the Court struck as improper, contained only a single sentence concerning the merits of permissive intervention and that sentence made no substantive argument for why the denial of permissive intervention was improper. (App. Doc. 1331210 at 2.) In its corrected 20-page brief, HIFF did not include any argument concerning the merits of the district court's orders denying permissive intervention and reconsideration, although those were the only two orders from which HIFF appealed. (App. Doc. 1340928.) As this Court's dismissal order found,

“appellants make *no argument* in support of their challenge to those orders.” (App. Doc. 1350153) (emphasis added).

Instead, HIFF devoted its entire brief to an argument that HIFF’s members should be treated as Indian trust beneficiaries, that the *Cobell* settlement is racially discriminatory, and that HIFF is entitled to appeal the district court’s final judgment on that basis. But as this Court expressly found, HIFF did not appeal the final judgment, only the denial of permissive intervention. Moreover, because HIFF and the individuals it purports to represent are not parties or class members in this case, HIFF *could not have* appealed the final judgment. *See Marino v. Ortiz*, 484 U.S. 301, 403 (1988) (holding that only class members may appeal a class action settlement); *United States ex rel. Louisiana v. Jack*, 244 U.S. 397, 402 (1917) (holding that only parties to a lawsuit, or those that properly become parties, may appeal a judgment).

HIFF also violated this Court’s rules during the appeal, including filing a 52-page response to Plaintiffs’ motion to dismiss without first obtaining leave to exceed the Court’s 20-page limit. (App. Doc. 1331210.) After the Court rejected that 52-page brief, HIFF filed an untimely request to exceed the page limits (App. Doc. 1331598), which the Court denied (App. Doc. 1340005).

Finally, even if HIFF had been permitted to intervene, the claims HIFF sought to assert in the case were similarly frivolous. HIFF has asserted one or

more of those claims—and lost—in *three other federal suits*. By filing this appeal, HIFF needlessly consumed limited judicial resources for claims that unquestionably are barred by *res judicata*. Imposing sanctions in this case will help deter HIFF from filing further frivolous lawsuits and ensure that this Court's scarce judicial resources are preserved for cases worthy of consideration. *See Finch v. Hughes Aircraft Co.*, 929 F.2d 1574, 1578 (Fed. Cir. 1991).

B. HIFF's frivolous appeal unjustly harmed the 500,000 class members in this historic lawsuit.

Attorneys' fees and costs are particularly appropriate in this case because Plaintiffs' fees and costs incurred in defending against this frivolous appeal will be paid to Class Counsel by class members out of their settlement funds. After Plaintiffs and the government reached their historic \$3.4 billion settlement in this 16-year lawsuit, they agreed that any attorneys' fees incurred after the settlement would be subject to a separate, not-yet-submitted, attorneys' fees request of no more than \$12 million. (Doc. 3660-17 at 3.) Those attorneys' fees will be paid by class members out of their \$1.512 billion settlement fund. (*Id.*) They will not be paid out of the \$1.9 billion land consolidation fund or otherwise be paid by the government.

Thus, the attorneys' fees incurred to defend the settlement against HIFF's frivolous lawsuit will be paid directly from funds that would otherwise be paid to the 500,000 Indian class members in this case. Those settlement funds are crucial

to the day-to-day lives of class members. As the district court found, “many of the Indian beneficiaries depend on their IIM trust income for the basic staples of life.” *See Cobell v. Norton*, 394 F. Supp. 2d 164, 273 (D.D.C. 2005). In short, the class members in this landmark settlement, many of whom are among the poorest people in the nation, should not be forced to pay the cost of defeating this frivolous appeal.

C. Plaintiffs incurred \$69,226.47 in attorneys’ fees and costs to defeat HIFF’s frivolous appeal.

Plaintiffs total expenses incurred to defeat HIFF’s frivolous appeal are \$69,226.47. Plaintiffs’ counsel expended 142.6 hours on this appeal through March 1, 2012, as documented and verified in the accompanying declarations. *See Charnes Decl.* at ¶ 6 (attached as Exhibit A). Counsel have applied their customary hourly rates to these hours worked, which are consistent with rates in the market. *See Kattan ex rel. Thomas v. Dist. Of Columbia*, 995 F.2d 274, 278 (D.C. Cir. 1993) (holding an attorney’s usual hourly rate is presumptively the reasonable rate, provided it is in line with the prevailing rates in the community). This equals total attorneys’ fees expenses of \$65,237.00. Plaintiffs also incurred costs such as copying, on-line legal research, and filing expenses of \$3,989.47. *See Charnes Decl.* at ¶ 7.

The time Plaintiffs’ counsel invested in defending this frivolous appeal was reasonable considering the high stakes involved in any challenge to this landmark

settlement. Plaintiffs' counsel had to treat HIFF's frivolous appeal as it would any other appeal, given the importance of this settlement as perhaps the only reasonable solution to this protracted litigation, and the only means to ensure that all 500,000 class members obtain monetary relief for the government's long-standing breaches of trust. It was therefore reasonable for Plaintiffs' counsel to spend 142.6 hours defending the settlement in this appeal. Counsel has provided this Court with a detailed account of those hours, as well as the usual and customary hourly rates it charges. *See* Charnes Decl. at ¶ 6; Gingold Decl. at ¶ 13 (attached as Exhibit B); Rempel Decl. at ¶ 3 (attached as Exhibit C). Applying those hours to its usual and customary hourly rates and awarding \$69,226.47 is a reasonable and proper award of expenses incurred by Plaintiffs to ensure that their landmark settlement is properly protected.

II. The Court also should award attorneys' fees and costs against HIFF's counsel, Percy Squire.

This Court should also award attorneys' fees against HIFF's counsel of record, Percy Squire, and hold him jointly and severally liable with HIFF. Under 28 U.S.C. § 1927, federal courts may assess damages and costs directly against an attorney who "multiplies the proceedings in any case unreasonably and vexatiously." This standard is met "when an attorney knows or reasonably should know that a claim pursued is frivolous." *Tareco Props., Inc. v. Morriss*, 321 F.3d 545, 550 (6th Cir. 2003); *see also South Star Commc'ns, Inc. v. FCC*, 949 F.2d

450, 452 (D.C. Cir. 1991) (directing attorney to pay sanctions awarded pursuant to Rule 38 for frivolous appeal).

First, Mr. Squire represented HIFF in the district court (in which his admission to practice now is also suspended) and thus was aware that HIFF appealed only from the denial of permissive intervention. As a result, he was aware that the sole issue in this appeal was whether the district court abused its discretion by denying permissive intervention. But Mr. Squire failed to make *any* argument on appeal related to that issue. Therefore, this appeal was doomed to fail and served only to unreasonably and vexatiously delay resolution of this historic class action settlement. *See* 28 U.S.C. § 1927; *Hilmon Co. (V.I.) Inc. v. Hyatt Int'l*, 899 F.2d 250, 254 (3d Cir. 1990).

Second, Mr. Squire represented HIFF in previous federal court lawsuits raising the same legal claims that HIFF attempted to raise in this case. Thus, Mr. Squire also was aware that, even if the district court had granted HIFF the right to intervene, HIFF's arguments were frivolous because they were barred by *res judicata*.

Finally, Mr. Squire brought this appeal after his law license was indefinitely suspended and while he was "forbidden to appear on behalf of another before *any* court" by the Supreme Court of Ohio. (App. Doc. 1341103 at 4) (emphasis added). Mr. Squire has since filed a petition for a writ of certiorari in the Supreme

Court, apparently unconcerned with wasting even further judicial resources on this frivolous appeal. The Supreme Court has not docketed that petition. Indeed, the petition was returned because of various defects. (*See* Exhibit D.) Imposing sanctions against Mr. Squire as well as his clients not only compensates Plaintiffs for the expenses and costs they unjustly incurred in this frivolous appeal, but also helps ensure that Mr. Squire does not attempt to further represent clients in frivolous litigation in violation of this Court's and the Ohio Supreme Court's suspension orders.

CONCLUSION

Plaintiffs respectfully request that the Court enter an order awarding Plaintiffs their attorneys' fees and costs in the amount of \$69,226.47 jointly and severally against Appellants Harvest Institute Freedmen Federation, LLC, Leatrice Tanner-Brown, and William Warrior, and against their counsel, Percy Squire.

Respectfully submitted,

/s/ Adam H. Charnes
Adam H. Charnes
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April 10, 2012

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2012, I filed a copy of the foregoing
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS with the clerk
of court using the CM/ECF system and served a copy by first class mail on the
following:

Percy Squire
PERCY SQUIRE CO., LLC
341 S. Third Street, Suite 101
Columbus, Ohio 43215

Thomas M. Bondy
Brian P. Goldman
UNITED STATES DEPARTMENT OF JUSTICE
Appellate Staff, Civil Division
950 Pennsylvania Ave., N.W.
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Robert E. Kirschman, Jr.
John J. Siemietkowski
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Commercial Litigation Branch, Civil Division
P.O. Box 875, Ben Franklin Station
Washington, D.C. 20044

/s/ Adam H. Charnes
Adam H. Charnes
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EXHIBIT A

No. 11-5158

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ELOUISE PEPION COBELL, *et al.*,
Plaintiffs-Appellees,

HARVEST INSTITUTE FREEDMEN FOUNDATION, *et al.*,
Movants-Appellants,

v.

KENNETH LEE SALAZAR, *et al.*,
Defendants-Appellees.

DECLARATION OF ADAM H. CHARNES

1. I am class counsel for the plaintiffs in this action, in conjunction with other attorneys at Kilpatrick Townsend & Stockton LLP (formerly Kilpatrick Stockton LLP) (the "Firm"), including Elliott Levitas, William Dorris, David Smith and Keith Harper, and with co-counsel Dennis M. Gingold and Thaddeus Holt.
2. I had primary responsibility at the Firm for responding to the appeal in this matter by the Appellants Harvest Institute Freedmen Federation, LLC, Leatrice Tanner-Brown and William Warrior (collectively "HIFF").
3. During the course of the appeal, two partners, three associates and two paralegals associated with Kilpatrick Townsend performed services on behalf of

the Plaintiff class. I have attached hereto as Exhibit 1 a list of the attorney's names, positions, current hourly rates and length of experience. Attached as Exhibit 2 is a list of the paralegal's names, positions and current hourly rates. Attached as Exhibit 3 are biographical descriptions of class counsel with the Firm who worked on the HIFF appeal.

4. The Firm has policies and procedures to ensure accurate records are maintained of work performed on client matters. Attorneys, paralegals and other staff are required to record their time and enter it, currently on a weekly basis, into the Firm's electronic recordkeeping system. The Firm closes those time entries on a monthly basis and a record of those entries, and any expenses charged to the client, are provided to the supervising attorney to review.

5. Exhibit 4 reflects time spent on this litigation by Kilpatrick Townsend attorneys and paralegals billed at current rates. The time entries for Kilpatrick Townsend attorneys and employees as reflected on this list were carefully reviewed by both the supervising partner and the individual timekeeper for accuracy. Rates charged by the Firm for its attorneys, paralegals and other staff are determined on an annual basis by the Firm's Operating Committee. That Committee reviews reports and studies of prevailing rates for attorneys and legal staff to ensure that fees charged are reasonable and in accordance with the legal market in which the attorney or other employee works. Prevailing rates are

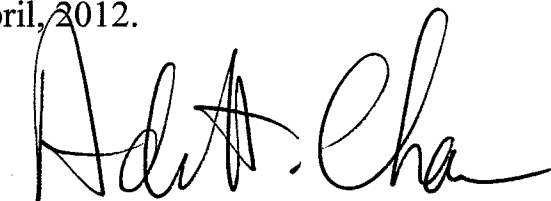
ascertained by reviewing annual independent third party surveys of law firms similar to our firm in every region in the United States. Citibank and Wells Fargo are two examples of firms that produce these survey data. The rates for attorneys and other staff reflected in Exhibit 1 and Exhibit 2 for Kilpatrick Townsend attorneys and staff are reasonable based on the experience and expertise of the individual performing those services.

6. A total of 130.2 hours were expended in defending the HIFF appeal by Kilpatrick Townsend attorneys and paralegals. Over 75% of the work performed was by associates and paralegals with lower hourly rates. The work of our co-counsel Dennis Gingold and Mr. Geoffrey Rempel brings the total hours worked to 142.6. (*See Exhibit 5.*) The value of those services provided by Kilpatrick Townsend attorneys and paralegals, based on the Firm's current billing rates, is \$54,892.00. When including the work performed by Mr. Gingold and Mr. Rempel, the total value of services rendered is \$65,237.00. (*See Exhibit 5.*)

7. During the course of the appeal, the firm advanced expenses which were reasonably necessary for defending the appeal. The total value of those expenses is \$3,989.47. Attached hereto as Exhibit 6 is a summary of the expenses advanced by the Firm.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 10th day of April, 2012.

A handwritten signature in black ink, appearing to read "Adam H. Charnes". The signature is written in a cursive style with a large initial "A" and "C".

ADAM H. CHARNES

**EXHIBIT 1 TO
DECLARATION OF ADAM H. CHARNES
KILPATRICK TOWNSEND ATTORNEYS**

Name	Title	Year First Admitted to Bar	Rate
Charnes, Adam H.	Partner	1993	\$570
Dietz, Richard R.	Associate	2002	\$400
Pearl, Michael Alexander	Associate	2007	\$390
Smith, David C.	Partner	1984	\$550
Webb, Thurston	Associate	2009	\$285

**EXHIBIT 2 TO
DECLARATION OF ADAM H. CHARNES
KILPATRICK TOWNSEND NON-ATTORNEYS**

Name	Title	Rate
Chick, Shawn R.	Paralegal	\$210
Dawson, Kathy J.	Paralegal	\$230

**EXHIBIT 3 TO
DECLARATION OF ADAM H. CHARNES
BIOGRAPHICAL DESCRIPTIONS OF
KILPATRICK CLASS COUNSEL WORKING ON HIFF APPEAL**

Adam H. Charnes – Mr. Charnes is a partner with Kilpatrick. He graduated summa cum laude from Princeton University in 1988 and magna cum laude from Harvard Law School in 1991. He clerked for the Honorable J. Harvie Wilkinson, III, on the U.S. Court of Appeals for the Fourth Circuit and Justice Anthony M. Kennedy on the United States Supreme Court. He was licensed in the State of Pennsylvania (currently inactive) in 1993, the District of Columbia in 1994 and the State of North Carolina in 2003. He was admitted to practice before the United States Supreme court in 1997 and the United States Court of Appeals for the D.C. Circuit in 1993, among others. From 2002 – 2003 he was the Principal Deputy Assistant Attorney General for the Office of Legal Policy at the United States Department of Justice. He was awarded the Attorney General’s Distinguished Service Award in July 2003. He currently practices principally in the area of complex commercial litigation. Over the years he has worked on the *Cobell* litigation on appellate matters. For several years he has been recognized in *The Best Lawyers in America* for Appellate Law and Commercial Litigation as well as being listed in *Chambers USA: America’s Leading Lawyers for Business* in the area of General Commercial Litigation.

David C. Smith – Mr. Smith is a partner with Kilpatrick. He graduated cum laude from Wake Forest University in 1981 and cum laude from Wake Forest University School of Law in 1984. He has practiced law since 1984 and is licensed in the States of North Carolina, Maine, Maryland and the District of Columbia. He has worked on the *Cobell* litigation since March 2005. He is also admitted to practice before the Supreme Court of the United States, the United States Court of Appeals for the DC Circuit, the United States Court of Appeals for the Fourth Circuit, the federal district courts in the State of North Carolina, the federal district court for the District of Columbia and the Federal Court of Claims. He practices principally in the areas of Complex Business Litigation and Native American Affairs. He has been recognized in *The Best Lawyers in America* for Commercial Litigation for many years. He serves as an adjunct professor of law at Wake Forest University School of Law and Washington and Lee University School of Law where he teaches Native American Law.

**EXHIBIT 4 TO
DECLARATION OF ADAM H. CHARNES**

**HOURS WORKED AND VALUE OF THOSE SERVICES BY KILPATRICK
TOWNSEND ATTORNEYS AND STAFF**

Name	Hours	Amount
Charnes, Adam H.	21	\$11,970.00
Dietz, Richard R.	69.1	\$27,640.00
Pearl, Michael Alexander	13.9	\$5,421.00
Smith, David C.	10.9	\$5,995.00
Webb, Thurston	7.4	\$2,109.00
Chick, Shawn R.	3.0	\$630.00
Dawson, Kathy J.	4.9	\$1,127.00
	130.2	\$54,892.00

DATE	NAME	HOURS	AMOUNT	DESCRIPTION
6/10/2011	Dennis Gingold	1.0	\$ 925.00	Prepare draft I, opposition to HIFF motion for certification of interlocutory appeal.
6/10/2011	Dennis Gingold	0.3	\$ 277.50	Prepare draft I, proposed order re same.
6/10/2011	Dennis Gingold	1.3	\$ 1,202.50	Review Squire disciplinary docs re opposition brief.
6/10/2011	Dennis Gingold	0.1	\$ 92.50	Revise draft III, opposition brief.
6/10/2011	Dennis Gingold	0.1	\$ 92.50	Telcom. Kirschman re DOJ 6th Circuit response to HIFF.
6/10/2011	Dennis Gingold	0.2	\$ 185.00	Telcom. Kirschman re Squire.
6/17/2011	David C. Smith	0.2	\$ 110.00	Review research by Mr. Dietz regarding appeal by Harvest Institute and emails regarding same.
6/17/2011	Dennis Gingold	0.3	\$ 277.50	Review HIFF notice of appeal; issues re same.
6/17/2011	Michael Alexander Pearl	0.4	\$ 156.00	Review notice of appeal filed by Harvest Institute.
6/17/2011	Richard D. Dietz	3.5	\$ 1,400.00	Research regarding appeal from denial of intervention (3.0); email correspondence regarding same (0.5).
6/28/2011	David C. Smith	0.2	\$ 110.00	Discussions regarding Harvest Institute appeal.
6/29/2011	David C. Smith	0.1	\$ 55.00	Discussions with Mr. Charnes and Mr. Dorris regarding Harvest Institute appeal.
6/30/2011	Adam H. Charnes	1.6	\$ 912.00	Review Government's appellate brief in the Harvest Institute appeal and motion to intervene filed in Cobell (0.8); analysis of possible motion to dismiss interlocutory appeal (0.3); conference with Mr. Dietz regarding same (0.3); email to government counsel regarding same (0.2).
6/30/2011	Richard D. Dietz	2.5	\$ 1,000.00	Research regarding right to appeal denial of permissive intervention (2.1); discuss same with Ms. Winters (.4).
7/1/2011	Richard D. Dietz	2.5	\$ 1,000.00	Review case law regarding appealability of denial of permissive intervention (2.0); review D.C. Circuit rules for motions practice (0.5).
7/6/2011	Shawn R. Chick	0.2	\$ 42.00	Emails to B. Winters and telephone call to Mr. Bertschi regarding Harvest Institute filings.
7/19/2011	Richard D. Dietz	2.0	\$ 800.00	Review research regarding appeals from denial of permissive intervention (1.5); draft email insert to government civil appellate team regarding motion to dismiss (0.5).
7/22/2011	Adam H. Charnes	0.4	\$ 228.00	Prepare for and attend telephone conference with DOJ appellate lawyers regarding appeal issues.
7/22/2011	David C. Smith	0.1	\$ 55.00	Discussions with Mr. Charnes regarding Harvest Institute appeal.
7/22/2011	Richard D. Dietz	0.5	\$ 200.00	Review research regarding appeals from denial of permissive intervention (0.1); conference call with government attorneys (0.4).
8/1/2011	Adam H. Charnes	2.0	\$ 1,140.00	Revise and edit motion to dismiss appeal.
8/1/2011	Michael Alexander Pearl	1.0	\$ 390.00	Conference with Mr. Gingold regarding Harvest Institute.
8/1/2011	Richard D. Dietz	4.5	\$ 1,800.00	Draft motion to dismiss Harvest Institute appeal (2.5); research regarding same (2.0).
8/2/2011	Richard D. Dietz	5.2	\$ 2,080.00	Draft motion to dismiss Harvest Institute appeal (4.2); review documents from previous Harvest Institute lawsuits (1.0).
8/2/2011	Shawn R. Chick	0.9	\$ 189.00	Confer with Mr. Smith regarding Scheduling Order for Appeal, emails and telephone call with Mr. Dietz, telephone call with Ms. Gracey regarding appeal timelines, enter case information for appeal in docketing system. calendar deadlines and attend to matters regarding same (0.6); update and prepare files for correspondence, pleadings, fees & expenses, and appeal materials (0.3).

DATE	NAME	HOURS	AMOUNT	DESCRIPTION
8/3/2011	Adam H. Charnes	3.0	\$ 1,710.00	Revise and edit motion to dismiss appeal.
8/3/2011	Richard D. Dietz	5.0	\$ 2,000.00	Draft and revise motion to dismiss Harvest Institute appeal (3.5); research regarding standing (1.0); review Harvest Institute motions and pleadings (0.5).
8/4/2011	Adam H. Charnes	2.5	\$ 1,425.00	Revise and edit motion to dismiss appeal; communications regarding same.
8/4/2011	Kathy J. Dawson	3.1	\$ 713.00	Continue preparation of Entries of Appearance for attorneys (1.0); phone calls to U.S. Court of Appeals for the District of Columbia Circuit with questions as needed (0.3); confer with Mr. Dietz regarding same (0.2); research PACER and DeskSite for Parties, Rulings and Related Cases Disclosure Statement previously filed (1.6).
8/4/2011	Richard D. Dietz	4.2	\$ 1,680.00	Revise motion to dismiss Harvest Institute appeal (3.2); prepare and review entry of appearance and certificate of interested parties forms (1.0).
8/5/2011	David C. Smith	1.0	\$ 550.00	Review and revise brief in support of Motion to Dismiss Harvest Institute appeal.
8/5/2011	Richard D. Dietz	3.2	\$ 1,280.00	Draft and revise motion to dismiss Harvest Institute appeal (2.7); discuss same with Mr. Smith and Mr. Levitas (0.5).
8/8/2011	David C. Smith	0.2	\$ 110.00	Assist Mr. Dietz with issues on Harvest Institute appeal.
8/9/2011	Adam H. Charnes	1.0	\$ 570.00	Revise and edit motion to dismiss Harvest Institute appeal.
8/10/2011	Adam H. Charnes	1.0	\$ 570.00	Address numerous issues regarding appellate strategy.
8/10/2011	Richard D. Dietz	1.5	\$ 600.00	Revise motion to dismiss Harvest Institute appeal (1.0); email correspondence regarding appeal strategy (0.5).
8/11/2011	David C. Smith	0.7	\$ 385.00	Review and revise final draft of motion to dismiss appeal of Harvest Institute.
8/11/2011	Dennis Gingold	0.5	\$ 462.50	Review/revise HIFF motion to dismiss.
8/14/2011	Michael Alexander Pearl	1.2	\$ 468.00	Multiple conferences with Mr. Gingold and Mr. Harper regarding appellate court issues with Harvest Institute.
8/15/2011	Adam H. Charnes	2.5	\$ 1,425.00	Revise and edit motion to dismiss appeal; conferences with Mr. Dietz regarding same.
8/15/2011	Michael Alexander Pearl	1.6	\$ 624.00	Prepare for and participate in conference call with Mr. Charnes, Mr. Gingold, and Mr. Harper regarding the appellate issues for the Harvest Institute appeal.
8/22/2011	Richard D. Dietz	1.0	\$ 400.00	Revise motion to dismiss Harvest Institute appeal.
8/24/2011	Michael Alexander Pearl	1.1	\$ 429.00	Conference with Mr. Gingold regarding Harvest Institute appellate issues.
8/24/2011	Michael Alexander Pearl	1.5	\$ 585.00	Review appellate briefing drafts regarding Harvest Institute.
8/24/2011	Richard D. Dietz	0.8	\$ 320.00	Research regarding standing to object to class settlement (0.4); revise motion to dismiss Harvest Institute appeal (0.4).
8/25/2011	Adam H. Charnes	2.0	\$ 1,140.00	Revise and edit motion to dismiss; review motions for bond; miscellaneous strategy issues regarding appeal.
8/25/2011	David C. Smith	1.1	\$ 605.00	Review order and docket (0.1); review final draft of motion to dismiss Harvest Institute appeal (1.0).
8/25/2011	Dennis Gingold	0.3	\$ 277.50	Review final motion for summary disposition re HIFF Appeal.
8/25/2011	Richard D. Dietz	0.7	\$ 280.00	Revise motion to dismiss Harvest Institute appeal.

DATE	NAME	HOURS	AMOUNT	DESCRIPTION
8/26/2011	Richard D. Dietz	2.5	\$ 1,000.00	Review motion to dismiss or for summary disposition (0.7); prepare same for filing and assemble exhibits (1.0); revise table of authorities (0.3); prepare certificate of interested parties (0.5).
8/29/2011	David C. Smith	0.4	\$ 220.00	Review government's motion to dismiss.
8/29/2011	Geoffrey Rempel	0.9	\$ 427.50	Review HIFF papers.
8/29/2011	Kathy J. Dawson	1.8	\$ 414.00	Proofread brief on Motion to Dismiss (0.6); research PACER and pull docket filings as needed for exhibits to brief (0.9); prepare pdf's of same to send to Ms. Marshall (0.3).
8/29/2011	Richard D. Dietz	1.2	\$ 480.00	Review motion to dismiss Harvest Institute appeal and exhibits (0.5); prepare and electronically file same (0.7).
8/30/2011	Richard D. Dietz	4.5	\$ 1,800.00	Draft motion to expedite appeal.
9/1/2011	David C. Smith	0.2	\$ 110.00	Discussions regarding request from Harvest Institute.
9/1/2011	Dennis Gingold	0.5	\$ 462.50	Telcom. Levitas re HIFF request for additional time.
9/2/2011	David C. Smith	0.3	\$ 165.00	Review filings by Harvest Institute.
9/2/2011	Dennis Gingold	0.2	\$ 185.00	Telcom. Levitas re HIFF request for enlargement of time to respond to Ct. App. Motion to Dismiss.
9/2/2011	Shawn R. Chick	0.3	\$ 63.00	Receive filing notification for Harvest Institute appeal, download Motion of Appellants Harvest Institute Extension for Response to Motions for Summary Affirmance, email to litigation team, update case file.
9/9/2011	David C. Smith	1.0	\$ 550.00	Conference call regarding status of appeal.
9/9/2011	Michael Alexander Pearl	1.1	\$ 429.00	Conference with Mr. Gingold, Mr. Rempel and Mr. Harper regarding appellate issues and briefing.
9/9/2011	Richard D. Dietz	1.0	\$ 400.00	Conference call regarding status of appeal.
9/16/2011	Shawn R. Chick	1.6	\$ 336.00	Review Harvest Institute appellate order, email to Ms. Marshall regarding upcoming deadlines, emails and confer with Ms. Gracey regarding docketing issues and attend to matters regarding same.
9/22/2011	David C. Smith	0.6	\$ 330.00	Review response by Harvest Institute to Motion to Dismiss and email to Mr. Charnes (0.5); discussions regarding response (0.1).
9/22/2011	Dennis Gingold	1.0	\$ 925.00	Review/markup HIFF brief in opposition to motion to dismiss.
9/22/2011	Michael Alexander Pearl	2.3	\$ 897.00	Review and analyze recent opposition filed by Harvest Institute.
9/23/2011	David C. Smith	0.2	\$ 110.00	Discussions regarding Harvest Institute motion.
9/23/2011	Michael Alexander Pearl	1.1	\$ 429.00	Conference with Mr. Gingold regarding Harvest Institute opposition brief.
9/26/2011	Adam H. Charnes	1.0	\$ 570.00	Miscellaneous issues regarding Harvest Institute appeal and motion for extension of page limits.
9/26/2011	David C. Smith	0.1	\$ 55.00	Review motion from Harvest Institute, discussion with Mr. Gingold and Mr. Rempel.
9/26/2011	Dennis Gingold	0.1	\$ 92.50	Review HIFF request for counsel to consent to untimely motion for additional pages to respond to motion to dismiss.
9/26/2011	Dennis Gingold	0.1	\$ 92.50	Review HIFF motion for additional pages.
9/26/2011	Dennis Gingold	0.1	\$ 92.50	Review corrected HIFF motion.
9/26/2011	Richard D. Dietz	6.5	\$ 2,600.00	Draft opposition to Harvest Institute's motion to exceed page limits.
9/27/2011	Adam H. Charnes	1.5	\$ 855.00	Review miscellaneous emails regarding strategy (0.5); revise and edit response to motion for additional pages (0.5); consider miscellaneous strategy issues (0.5).
9/27/2011	David C. Smith	0.4	\$ 220.00	Review and revise response to Harvest Institute.
9/27/2011	Dennis Gingold	0.2	\$ 185.00	Review/revise draft II, opposition to HIFF motion for additional pages.

DATE	NAME	HOURS	AMOUNT	DESCRIPTION
9/27/2011	Geoffrey Rempel	0.4	\$ 190.00	Review HIFF opp to mot to dismiss.
9/27/2011	Michael Alexander Pearl	1.3	\$ 507.00	Review and revise opposition to Harvest Institute motion for additional pages, recirculate to litigation team.
9/27/2011	Richard D. Dietz	4.5	\$ 1,800.00	Review and revise opposition to Harvest Institute's motion to exceed pages (4.0); prepare and electronically file same (0.5).
11/4/2011	David C. Smith	0.1	\$ 55.00	Review order in Harvest Institute and discussions regarding same.
11/4/2011	Geoffrey Rempel	0.5	\$ 237.50	Review HIFF-related communications and related docs.
11/4/2011	Michael Alexander Pearl	0.5	\$ 195.00	Conference with Mr. Gingold and Mr. Harper regarding Squire suspension.
11/7/2011	Thurston Webb	5.8	\$ 1,653.00	Research issues pertinent to response brief before the D.C. Circuit (5.5); conference with Mr. Dietz on how to proceed with Harvest Institute appeal (0.3).
11/9/2011	David C. Smith	1.2	\$ 660.00	Review Harvest Institute filing and review Squire suspension order and correspondence regarding brief and order.
11/9/2011	Dennis Gingold	0.3	\$ 277.50	Review Squire suspension order re HIFF appeal.
11/9/2011	Michael Alexander Pearl	0.8	\$ 312.00	Conference with Mr. Gingold regarding suspension of opposing counsel and ramifications for the appeal.
11/9/2011	Richard D. Dietz	2.5	\$ 1,000.00	Review Harvest Institute's revised response brief.
11/10/2011	Thurston Webb	0.5	\$ 142.50	Edit and finalize notice dealing with attorney Squire.
11/15/2011	Adam H. Charnes	2.0	\$ 1,140.00	Revise and edit reply in support of motion to dismiss the Harvest Institute appeal.
11/15/2011	Richard D. Dietz	8.8	\$ 3,520.00	Draft reply in support of motion to dismiss Harvest Institute appeal.
11/15/2011	Thurston Webb	0.3	\$ 85.50	Review Harvest Institute's brief.
11/16/2011	Adam H. Charnes	0.5	\$ 285.00	Revise and edit reply brief in support of Harvest Institute motion to dismiss appeal.
11/16/2011	David C. Smith	1.2	\$ 660.00	Review and revise reply to Harvest Institute brief and correspondence with Mr. Charnes in regard thereto (.50); review and provide comments on reply in Harvest Institute appeal (.70).
11/16/2011	Dennis Gingold	0.3	\$ 277.50	Review/revise HIFF appellate reply.
11/16/2011	Dennis Gingold	0.1	\$ 92.50	Telecom. Charnes re same.
11/16/2011	Thurston Webb	0.6	\$ 171.00	Research issues related to Harvest Institute appeal.
11/21/2011	Dennis Gingold	0.3	\$ 277.50	Review government's reply re motion to dismiss HIFF.
11/21/2011	Geoffrey Rempel	0.4	\$ 190.00	Review HIFF filing.
11/23/2011	David C. Smith	1.5	\$ 825.00	Review Government's brief in Harvest Institute (1.0); emails with Mr. Charnes regarding brief (0.5).
11/23/2011	Thurston Webb	0.2	\$ 57.00	Review briefs filed by the Government in support of motion to dismiss Harvest Institute.
12/29/2011	Dennis Gingold	0.1	\$ 92.50	Review Court of Appeals order dismissing HIFF appeal.
12/29/2011	Dennis Gingold	0.1	\$ 92.50	Telcom. Levitas re HIFF order.
1/9/2012	David C. Smith	0.1	\$ 55.00	Review filing by Harvest Institute .
1/9/2012	Dennis Gingold	0.1	\$ 92.50	Telcom. Pearl re en banc petition.
1/9/2012	Dennis Gingold	0.2	\$ 185.00	Telcom. Pearl re en banc petition.
1/9/2012	Dennis Gingold	0.3	\$ 277.50	Discussion Rempel re above.
1/9/2012	Geoffrey Rempel	0.3	\$ 142.50	Disc w/ DG, AP re status and strategy and related prep and HIFF's appeal.
1/9/2012	Richard D. Dietz	0.5	\$ 200.00	Review Harvest Institute petition for rehearing and rehearing en banc.
1/11/2012	Dennis Gingold	0.1	\$ 92.50	Telcom. Levitas re HIFF/Squire issues re en banc petition.

DATE	NAME	HOURS	AMOUNT	DESCRIPTION
3/1/2012	Dennis Gingold	0.2	\$ 185.00	Review court of appeals orders re HIFF 1) denying appellant's motion for panel reconsideration and 2) denying appellant's motion for en banc review.
3/1/2012	Dennis Gingold	0.3	\$ 277.50	Telcoms. Squire re HIFF issues, e.g., potential cert petition and suspension of license.
3/1/2012	Dennis Gingold	0.4	\$ 370.00	Telcoms. Charnes re above.
3/1/2012	Dennis Gingold	0.8	\$ 740.00	Telcoms. Pearl re above.
		142.6	\$ 65,237.00	Total

EXHIBIT 6 TO DECLARATION OF ADAM H. CHARNES

KILPATRICK TOWNSEND EXPENSES

Date	Name	Quantity	Rate	Amount	Description
6/17/2011	Sheron D. Murray	2	0.15	\$ 0.30	Document Reproduction
6/17/2011	Richard D. Dietz	1	1,134.16	\$ 1,134.16	Westlaw On-Line Legal Research
6/30/2011	Richard D. Dietz	1	265.86	\$ 265.86	Westlaw On-Line Legal Research
8/1/2011	Richard D. Dietz	1	719.16	\$ 719.16	Westlaw On-Line Legal Research
8/2/2011	Shawn R. Chick	59	0.15	\$ 8.85	Document Reproduction
8/2/2011	Shawn R. Chick	126	0.15	\$ 18.90	Document Reproduction
8/3/2011	Richard D. Dietz	1	645.75	\$ 645.75	Westlaw On-Line Legal Research
8/4/2011	Kathy J. Dawson	2	0.15	\$ 0.30	Document Reproduction
8/15/2011	Michael Alexander Pearl	1	1,078.22	\$ 1,078.22	Westlaw On-Line Legal Research
8/29/2011	Richard D. Dietz	25	0.15	\$ 3.75	Document Reproduction
8/29/2011	Cynthia M. Marshall	59	0.15	\$ 8.85	Document Reproduction
9/26/2011	Richard D. Dietz	37	0.15	\$ 5.55	Document Reproduction
9/27/2011	Richard D. Dietz	1	96.52	\$ 96.52	Westlaw On-Line Legal Research
9/27/2011	Cynthia M. Marshall	4	0.15	\$ 0.60	Document Reproduction
9/27/2011	Richard D. Dietz	18	0.15	\$ 2.70	Document Reproduction
				\$ 3,989.47	Total

EXHIBIT B

No. 11-5158

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ELOUISE PEPION COBELL, *et al.*,
Plaintiffs-Appellees,

HARVEST INSTITUTE FREEDMEN FEDERATION, *et al.*,
Movants-Appellants,

v.

KENNETH LEE SALAZAR, *et al.*,
Defendants-Appellees.

DECLARATION OF DENNIS M. GINGOLD

1. My name is Dennis M. Gingold. I am a member in good standing of the Bar of this Court, the Bar of the United States District Court for the District of Columbia, and the Bar of the United States Supreme Court. I am also admitted to practice law and I am in good standing in the District of Columbia, New Jersey, and Colorado (inactive) and in various other federal trial and appellate courts.

2. I am lead counsel for plaintiffs in Cobell v. Salazaar, No. 1:96 CV 01285, an action in equity that has been in litigation in the United States District Court for the District of Columbia and this Court since June 10, 1996.

3. I make this declaration in support of the Plaintiffs'-Appellees' request for fees and costs pursuant to 28 U.S.C. §§ 1912 and 1927 and Rule 38 of the Federal Rules of Appellate

Procedure.

Professional Information

4. I have been a member of the bar and in good standing since 1974 (New Jersey by examination).

5. Cases that I have developed and led for major clients have been tried and argued successfully on the merits in various federal courts, including the United States Supreme Court.

6. For 28 years, I have been recognized as one of the top 20 banking lawyers in the United States. I am also recognized as one of the top civil litigators in this country. See, e.g., National Law Journal, December 1983; The American Lawyer, February 2010. In 1995, immediately prior to accepting the representation of the Cobell plaintiffs, I was identified as one of nine individuals – and the only lawyer in private practice – who would have the most influence on banking in 1996. American Banker Washington Watch, December 1995. However, I suspended my banking practice and accepted the Cobell engagement because of the urgency and compelling nature of the human issues at state.

7. From 1976 through 1995, first as a Treasury Department lawyer and thereafter in private practice, I specialized in complex, cutting-edge domestic banking and financial matters, including the development of bundled financial products and institutional mechanisms to deliver financial services more effectively in an increasingly competitive market. Following my entry into private practice in 1980, my clients included major national and international commercial banks, regional commercial banks and holding companies, merchant banks, commercial leasing companies, and life insurance companies.

8. Furthermore, I designed and implemented the strategy and led the legal team that neutralized interstate banking barriers, using the “non-bank bank” to avoid geographical constraints, by defeating the Independent Bankers Association of America in the 7th Circuit and the Board of Governors of Federal Reserve System in the U.S. Court of Appeals for the 10th Circuit. The 10th Circuit decision was affirmed without dissent in 1985 by the United States Supreme Court in Dimension Financial Corporation v. Board of Governors of the Federal Reserve System. Interstate constraints promulgated by the Federal Reserve Board in Regulation Y were struck down and interstate banking evolved into what it is today.

9. I designed the strategy and led the legal team in a hostile takeover of Baltimore Bancorp, then a publicly held parent of a multi-billion dollar federally insured depository institution, defeating the anti-takeover defenses of Sullivan & Cromwell in the 4th Circuit and completing acquisition of control for the insurgents within six months.

10. At the request of the District Attorney for New York County, I provided counsel to the DA in his assessment, investigation, and prosecution of fraud and corruption in the management and operation of First American Banks through the Bank of Credit and Commerce International (“BCCI”).

11. I designed and defended the institutional mechanism relied on by the U.S. Comptroller of the Currency to approve bank of deposit powers for general business corporations organized in accordance with D.C. law, which allowed such companies to engage in banking business, the deposits of which are insured by the FDIC, at the same time the companies remained exempt from ownership, product, and geographical restrictions imposed by the Federal Reserve Board under the Bank Holding Company Act of 1956, as amended), e.g., Treasury

Bank.

12. Finally, I created and designed a tax-deferred, annuitized core commercial bank deposit, which was insured by the FDIC and approved by the U.S. Comptroller of the Currency.

Governing Hourly Rate

13. My current hourly rate is \$925.00, which is the minimum rate that I charge and am paid for professional services. That is consistent with rates charged by, and paid currently to, attorneys whose major clients engage them for similarly complex and important banking and financial matters. Available time for such engagements is limited, however, because Ms. Cobell, from the outset, recognized and understood many of the difficulties in this litigation and requested that I undertake no other representation if there is any possibility that such representation would interfere with that which must be done to conduct the most effective prosecution of this case. I do not discount my current rate. Nor is it otherwise negotiable (downward). Nor is any portion of the rate deferred or contingent on an event or occurrence. Success bonuses, if any, would be added to the base rate, depending on results achieved in any such engagement.

Time Records

14. I maintain time records in annual, hardcopy diaries and electronically in a Microsoft Excel software file. Contemporaneously with each particular identified task, activity, or event, I enter a description of specific matter(s) or task(s) undertaken and performed; time expended to the tenth of an hour; and the identity of individuals or entities relevant to the referenced matter(s) or task(s).

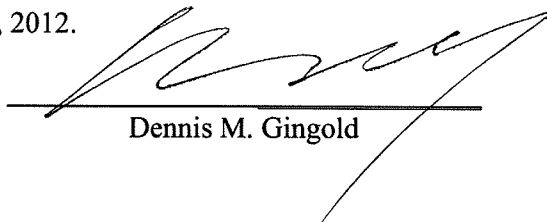
15. From the aforementioned diaries, at the close of each business day, I enter my

time electronically into a software file exclusive of confidential and privileged information that is noted in my diaries. My time entries are included in Class Counsel's Combined Time Records, which are submitted to this Court in support of Plaintiffs-Appellees fee and expense request. To the extent information is not available or is unreadable to me in the diaries, I did not enter into it in the electronic format and it is not included in Plaintiffs'-Appellees' fee and expense request. Further, I excluded from this request, all time relevant to my preparation of this declaration and my review and revision of the motion that this declaration supports.

16. My time records reflect actual recorded time. I have not modified or otherwise manipulated my time records to conform my entries to those of co-counsel or Mr. Rempel. Differences with respect to individuals identified and time recorded by co-counsel and me during conference calls, in meetings or on various matters may reflect differences in the amount of time each person had participated in such calls, meetings, or matters. For example, from time to time, participants would join conference calls and meetings in progress and withdraw from conference calls and meetings prior to their conclusion. Such withdrawals would be announced or unannounced. Other differences may reflect an inadvertent omission to record time in whole or part due to a particularly heavy work-load at the time, which required immediate attendance in meetings or required an immediate refocus on the preparation, review and revision of various matters related to this litigation. Still other differences may reflect the fact that individuals on conference calls did not always identify themselves or actively participate in such calls.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 6, 2012.



Dennis M. Gingold

EXHIBIT C

No. 11-5158

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ELOUISE PEPION COBELL, *et al.*,
Plaintiffs-Appellees,

HARVEST INSTITUTE FREEDMEN FEDERATION, *et al.*,
Movants-Appellants,

v.

KENNETH LEE SALAZAR, *et al.*,
Defendants-Appellees.

DECLARATION OF GEOFFREY REMPEL

1. My name is Geoffrey Rempel. I am a Certified Public Accountant and I am engaged as a member of plaintiffs' litigation team in Cobell v. Salazaar, No. 1:96 CV 01285, an action in equity that has been in litigation in the United States District Court for the District of Columbia and this Court since June 10, 1996. I have been involved in this matter since 1996.
2. I make this declaration in support of the Plaintiffs'-Appellees' request for fees and costs pursuant to 28 U.S.C. §§ 1912 and 1927 and Rule 38 of the Federal Rules of Appellate Procedure.

Time Records

3. I maintain time records in an electronic spreadsheet file that is dedicated solely to recording and tracking my Cobell time. The entries submitted to this Court in support of

Plaintiffs'-Appellees' request reflect the day a particular task or service was rendered; a description of that task or service and the amount of time incurred. I maintain these records in tenths of an hour and no task covers time for more than one day.

4. My time records reflect actual recorded time. I have not modified or otherwise manipulated my time records to conform my entries to those of co-counsel or Mr. Gingold. I am precise and diligent in recording my time in this case and my records state the actual time expended on a particular task. I did not include non-productive, wasteful or duplicative time.
5. The time spent on telephone calls, telephone conference calls and meeting with other attorneys was not synchronized or orchestrated. Differences in recorded time among team members may reflect differences in the time of participation on calls or meetings, time spent preparing for a meeting or call, or time spent compiling my notes or other information following a meeting or call.

Governing Hourly Rate

6. My current hourly rate is \$475.00. This rate is consistent with the current market conditions in Washington, D.C. area for litigation professionals with similar experience who are involved in complex litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 9, 2012.

A handwritten signature in black ink, appearing to read 'Geoffrey Rempel', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke.

Geoffrey Rempel

EXHIBIT D

Adam H. Charnes
1001 W. Fourth Street
Winston-Salem, NC 27101

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

April 5, 2012

Percy Squire
Percy Squire Co., LLC
341 S. Third Street,
Suite 101
Columbus, OH 43215

RE: Harvest Institute, et al. v. U.S., et al.
(USADC No. 11-5158), (USC13 No. 2010-5104)

Dear Mr. Squire:

Upon further review of the above-entitled petition, it appears that you are seeking review of two different orders from two different courts.

If you are attempting to do this, you must submit two separate petitions. Rule 12.4.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Sincerely,
William K. Suter, Clerk
By:

Clayton R. Higgins, Jr.
(202) 479-3019

Enclosures

cc: Adam H. Charnes
Dennis M. Gingold
Keith M. Harper
David Cventry Smith
William E. Dorris
Earl Old Person
Donald B. Verrilli, Jr.

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

March 20, 2012

Percy Squire
Percy Squire Co., LLC
341 S. Third Street,
Suite 101
Columbus, OH 43215

RE: Harvest Institute, et al. v. U.S., et al.
(USADC No. 11-5158)

Dear Mr. Squire:

Returned are 39 copies of the petition for writ of certiorari in the above-entitled case postmarked on March 13, 2012 and received on March 19, 2012, which fails to comply with the Rules of this Court.

Question(s) presented must appear on the very first page of the petition. Rule 14.1(a).

The second cover page must be removed from the petition. The questions presented for review must appear on the first page immediately following the cover of the petition. Rule 14.1(a).

An attorney seeking to file a document in this Court in a representative capacity must first be admitted to practice before this Court. Rule 9.1.

Kindly correct the petition so that it complies in all respects with the Rules of this Court and return it to this Office promptly so that it may be docketed. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Three copies of the corrected petition must be served on opposing counsel. Rule 29.3.

This office shall retain one copy of the petition and your check in the amount of \$300.00 in expectation of timely receipt of a properly prepared petition.

Sincerely,
William K. Suter, Clerk
By:

Clayton R. Higgins, Jr.
(202) 479-3019

Enclosures