

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:96CV01285
	)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior,	)	
<u>et al.</u> ,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS’ OBJECTIONS TO PLAINTIFFS’ REQUEST  
FOR ATTORNEY’S FEES AND EXPENSES PURSUANT TO  
THE COURT’S FEBRUARY 5, 2003 RULING**

In its February 5, 2003 ruling, this Court imposed sanctions under Fed. R. Civ. P. 37 upon certain of defendants’ counsel because the Court found they had improperly asserted the attorney-client privilege as to a question plaintiffs had posed to then-Acting Special Trustee Donna Erwin during her December 20, 2002 deposition. *Cobell v. Norton*, 213 F.R.D. 16 (2003) (the “Feb. 5, 2003 Order”). Specifically, the Court ordered defense counsel to pay plaintiffs for two categories of fees and expenses: (1) “all reasonable expenses, including attorney’s fees, incurred in making plaintiffs’ motion to compel” Donna Erwin to respond the question as to which the privilege had been asserted and (2) “all reasonable expenses, including attorney’s fees, incurred as a result of having to re-depose Donna Erwin.” *Id.* at 32.

On November 15, 2004, plaintiffs filed a “Report on the Status of the Evidence Concerning Defendants’ and the Department of Justice’s Misrepresentations to this Court on December 13 and December 17, 2003 and Request for Attorney’s Fees with Respect Thereto” (Plaintiffs’ “Report”).

The title of the filing itself reveals that the plaintiffs have grossly misconstrued the scope of the Feb. 5, 2003 Order. Defendants have moved to strike the “Report” which was both unauthorized and improper, and any fees associated with the generation of the “Report” should be disallowed. *See* Defendants’ Motion to Strike Plaintiffs’ “Report” Regarding the Erwin Scheduling Matter and Defendants’ Memorandum of Points and Authorities in support thereof (both filed Nov. 29, 2004) (collectively, “Defendant’s Motion to Strike”). While plaintiffs’ fee petition should have been limited to the two categories of work set out in the Feb. 5, 2003 Order, plaintiffs have submitted a petition for fees far beyond that authorized by the Court. Plaintiffs’ claim of \$162,761.52, representing some 468 hours, for a motion to compel on a single unanswered deposition question and the re-posing of that question is facially excessive. Not only do plaintiffs seek fees for categories beyond those for which the Court imposed sanctions, but they seek fees for four different individuals, including three attorneys, for obviously duplicative and non-productive work.

### **Background**

In early December 2002, plaintiffs sought to take the deposition of Donna Erwin, who was then the Acting Special Trustee, as part of the preparation for Trial 1.5. The government sought to defer Ms. Erwin’s deposition, and that of Bert Edwards, until after January 6, 2003, the date the Court had assigned for the government to file its historical accounting plan. As grounds for the motion, the government argued that Ms. Erwin was intensely involved in the creation of the plans and had certain personal obligations in late December 2002 that would make it overly burdensome for her to be deposed before January 6, 2003. The Court held a hearing on the matter on December 13, 2002. A

misunderstanding between government counsel and Donna Erwin and her staff resulted in inaccurate information concerning Ms. Erwin's plans to be in Washington, DC prior to January 6, 2003 being given to the Court at the December 13 hearing. The Court ordered Ms. Erwin to submit to deposition the week following the December 13 hearing, but directed that the deposition be conducted in Albuquerque, New Mexico, where Ms. Erwin resided. Following a subsequent hearing before the Court on December 17, 2002 at which government counsel attempted to explain the misunderstanding regarding Ms. Erwin's schedule, Ms. Erwin was deposed by plaintiffs in Washington, DC on December 20, 2002. Ms. Erwin was not called to appear in person as a witness by either side at Trial 1.5.

Plaintiffs began the December 20, 2002 deposition of Ms. Erwin at approximately 10:30 am and agreed to conclude questioning by 4:30 pm so that Ms. Erwin could make her flight back to Albuquerque. Dec. 20, 2002 Erwin Dep. at 4 (Exhibit A). Shortly before 4:30, having apparently concluded their questioning of Ms. Erwin regarding Trial 1.5 issues, plaintiffs' counsel asked Ms. Erwin regarding the December 13 and 17, 2002 hearings: "And you believe your attorneys have been fully truthful with the Court?" *Id.* at 284; *see also id.* at 289 (noting time of 4:38 pm). Government counsel asserted a privilege and, after a conference with Ms. Erwin, directed her not to answer the question.<sup>1</sup>

On or about January 1, 2003, plaintiffs filed a motion to compel Ms. Erwin to answer the question. Defendants filed an opposition to the motion on January 15, 2003, and plaintiffs filed their reply on January 28, 2003. On February 5, 2003, the Court granted the motion. The Court also

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<sup>1</sup>Plaintiffs' counsel asked variations on this same question in the ensuing minutes and were met with the same objection by government counsel.

awarded plaintiffs sanctions for reasonable attorney's fees and costs incurred in presenting the motion to compel and in re-deposing Ms. Erwin upon the matter she had been directed not to answer. *Cobell v. Norton*, 213 F.R.D. 16, 32-33 (D.D.C. 2003) (the "Feb. 5, 2003 Order"). The Court did not in that order or subsequently authorize or direct the plaintiffs or anyone else to file a "report" regarding the Erwin scheduling matter.

Ms. Erwin retained personal counsel and submitted to re-deposition on February 12 and 13, 2003. She was re-deposed again on October 14, 2004, pursuant to the Court's September 2, 2004 Memorandum and Order at 7 ("Sept. 2, 2004 Order").

### **Argument**

The Court's Feb. 5, 2003 Order very clearly limited plaintiffs' fee award to time and expenses for the motion to compel and to re-deposing Ms. Erwin on the question about whether she believed the government's attorneys had made misrepresentations to the Court in the December 13 and 17, 2002 hearings. The purpose of the sanctions award was to compensate plaintiffs, as the successful moving party, for "the reasonable expenses incurred in making the motion, including attorney's fees. . . ." Fed. R. Civ. P. 37(a)(4)(A). The rule does not provide for punitive damages, and this Court never indicated that it intended to impose any sanctions beyond those authorized by the rule.

#### **A. Application of Legal Standards to Plaintiffs' Petition**

This Court has previously held that "[t]he proper method of awarding attorneys' fees for a violation of Rule 37 is the lodestar method in which the court multiplies a reasonable hourly rate by a reasonable number of hours expended." *Cobell v. Norton*, 231 F. Supp. 2d 295, 300 (D.D.C.

2002). As the fee applicants, plaintiffs bear the burden of establishing that their petition is limited to the scope of the Court's award and is otherwise reasonable. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (“[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.”); *American Petroleum Inst. v. EPA*, 72 F.3d 907, 915 (D.C. Cir. 1995); *In re North*, 59 F.3d 184, 189 (D.C. Cir. 1995); *Cobell*, 231 F. Supp. 2d at 300.

Applying these criteria, as explained below, defendants submit that plaintiffs' fee award should be limited to \$14,428.00.

### **1. Hourly Rates**

Plaintiffs seek fees for their counsel at hourly rates that comport with the *Laffey Matrix*<sup>2</sup>, and defendants do not object to these rates in the computation of the fee award. However, because plaintiffs could have – and should have – completed their re-deposition of Ms. Erwin upon the question that was the subject of their motion to compel in February 2003, defendants submit that plaintiffs' counsel's hourly rates should be those set forth by the *Laffey Matrix* in effect from June 1, 2002 through May 31, 2003. That Matrix is attached as Exhibit J. Accordingly, defendants do not object to the following hourly rates for plaintiffs' counsel:

Mark Brown:	\$370
Dennis Gingold:	\$370
Keith Harper:	\$265

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<sup>2</sup>As this Court has previously observed, 231 F. Supp. 2d at 302, the matrix first developed in *Laffey v. Northwest Airlines*, 746 F.2d 4 (D.C. Cir. 1984), and updated in subsequent years has been accepted in this Circuit as an appropriate standard for prevailing market rates in this community. *Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995).

Defendants do, however, object to the rates sought for non-attorney Geoffrey Rempel. While the Court has previously awarded plaintiffs fees for Mr. Rempel based upon his qualifications as a certified public accountant (“CPA”), it is clear from the records submitted in the present petition that Mr. Rempel performed no work for which accounting expertise was required, but rather performed paralegal and clerical type work. Accordingly, if the Court awards plaintiffs any compensation at all for Mr. Rempel’s work<sup>3</sup>, it should be at the paralegal rate set forth by the June 2002-May 2003 *Laffey* Matrix – i.e., \$100.

## **2. Hours Expended**

In addressing a previous fee request made under Rule 37 in this case, this Court observed that “[a] near ‘but for’ relationship must exist between the Rule 37 violation and the activity for which fees and expenses are awarded.” *Cobell*, 231 F. Supp. 2d at 303-04, quoting *Cobell v. Babbitt*, 188 F.R.D. 122, 127 (D.D.C. 1999). Thus, the Court held that plaintiffs could “recover for expenses that directly arise from [the activity for which sanctions were imposed], not for expenses incurred while engaged in other matters.” *Cobell*, 231 F. Supp. 2d at 304. Accordingly, plaintiffs’ fee award should be limited to (a) a reasonable number of hours expended upon the preparation of their motion to compel and their reply to the defendants’ opposition to the motion, as well review of the Court’s Feb. 5, 2003 Order, and (b) a reasonable number of hours to re-depose Ms. Erwin upon the question she was directed not to answer and some time for follow up. *See* Sept. 2, 2004 Order at 4 (“The February 2003 opinion granted plaintiffs prospective relief in the form of a second deposition of Ms. Erwin, and

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<sup>3</sup>As discussed further below, Mr. Rempel’s work for which plaintiffs seek compensation here was not within the scope of the Court’s fee award and/or was duplicative or unnecessary.

compensatory relief in the form of sanctions for having to redepose Ms. Erwin and file a motion to compel. *Cobell v. Norton*, 213 F.R.D. at 28, 32. Plaintiffs have received all of the relief to which they are entitled.”).

However, in the current petition, plaintiffs seek fees for activities that are far beyond the scope of the Court’s Feb. 5, 2003 Order and for activities they clearly would have engaged in whether or not defense counsel had interposed the privilege objection that was overruled in that Order. These sorts of activities do not meet the “but for” test, and no fees should be allowed for them, as explained further below.

**(a) Reasonable Time Expended on Motion to Compel**

A summary of the fees plaintiffs seek for work that “directly arise[s] from” their motion to compel Ms. Erwin to respond to the question as to which the privilege had been asserted is set forth below.<sup>4</sup>

Defendants do not object to the fees sought for Mr. Harper’s work on the motion to compel, as it appears from the records that he was the principal drafter of the motion and the reply, and his total time expended on preparing the motion, reviewing the opposition and preparing the reply, and reviewing the Court’s opinion (37.9 hours) is reasonable.

Defendants also do not object to a reasonable amount of time for another of plaintiffs’ counsel – either Mr. Brown or Mr. Gingold, but not both – to review and comment upon Mr. Harper’s draft briefs. Mr. Brown spent 1.166 hours reviewing the motion to compel, and 3.25 hours reviewing the

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<sup>4</sup>A detailed compilation of plaintiffs’ petition for fees related to this activity is set out in Exhibit B.

reply and discussing it with Mr. Harper. Defendants believe this time is reasonable. Defendants also do not object to an award to Mr. Brown for one hour to review the Court's Feb. 5, 2003 Order (the same amount of time charged by Mr. Harper), since Mr. Brown took the December 20, 2002 and the February 2003 depositions of Ms. Erwin.<sup>5</sup>

Defendants object to the time charged for Mr. Gingold's participation in the motion to compel. Mr. Harper was an attorney with approximately 9 years of experience, including 7 years on this case, at the time he prepared the motion and reply (Harper Dec. ¶¶ 1, 8), and he therefore did not require supervision by two senior attorneys. *See Davis County Solid Waste Mgmt. and Energy Recovery Special Service Dist. v. EPA*, 169 F.3d 755, 761 (D.C. Cir. 1999) (per curiam) (reducing fee request for duplication of effort, including multiple attorneys reviewing and editing briefs); *Role Models America, Inc. v. Brownlee*, 353 F.3d 962, 972 (D.D.C. 2004) (criticizing fee application for including billings for three senior attorneys). The motion to compel did not address any special or complicated legal questions that required multiple senior attorneys to review it. Accordingly, Mr. Gingold's review of the motion to compel was duplicative of Mr. Brown's and should not be included in the fee award. If plaintiffs wish, in the alternative to seek compensation for Mr. Gingold's review of the motion to compel (totaling 3.5 hours on January 1, 2003) and conferences with Mr. Harper regarding the motion

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<sup>5</sup>In two entries for February 5, 2003, Mr. Brown charged for reading **two** opinions that the Court issued that day and for conferring with Mr. Harper "re: strategy" for a total of 2.25 hours. *See* Exhibit B. Because it is unclear how much of these activities "directly ar[o]se from" the motion to compel Ms. Erwin's testimony, and it is plaintiffs' burden to establish their entitlement to fees, we submit that it is appropriate for the Court to limit plaintiffs' request in this regard to one hour for Mr. Brown's review of the ruling on the motion to compel. *See Role Models America, Inc. v. Brownlee*, 353 F.3d 962, 970-71 (D.D.C. 2004) (noting difficulties presented when time records lump multiple tasks together).



(totaling 1.1 hours on December 21, 2002, December 26, 2002 and January 1, 2003), defendants would not object so long as they do not also obtain fees for Mr. Brown’s review of the same motion on December 30, 2002 and January 1, 2003 (totaling 1.166 hours). This alternative calculation is shown in the second table below.

Accordingly, defendants submit that plaintiffs’ fee award concerning the motion to compel should be computed as follows:

Attorney	Rate	Hours	Fee
Keith Harper	\$265	37.9	\$10,043.50
Mark Brown	\$370	5.416	\$ 2,003.92
<b>TOTAL</b>		43.316	\$12,047.42

**OR**

Attorney	Rate	Hours	Fee
Keith Harper	\$265	37.9	\$10,043.50
Mark Brown	\$370	4.25	\$ 1,572.50
Dennis Gingold	\$370	4.6	\$ 1,702.00
<b>TOTAL</b>		46.75	\$13,318.00

**(b) Reasonable Time to Re-Depose Ms. Erwin**

Ms. Erwin was directed not to answer a single question (whether she believed defendants’ attorneys had been “entirely truthful” to the Court in the December 13 and 17, 2002 hearings) and a

variation on that question (whether she believed defendants' attorneys had made any "misrepresentations" to the Court at those hearings). The plaintiffs themselves acknowledged in their motion to compel that this question had been posed "near[] the close of the deposition for that day. . . ." Plaintiffs' Motion to Compel at 3. Ms. Erwin had already sat through 6 hours of deposition when the question arose, and the Rules limited plaintiffs to 7 hours in a single day, absent leave of Court. Fed. R. Civ. P. 30(d)(2). Thus, allowing one hour for lunch, plaintiffs could not have deposed Ms. Erwin on December 20, 2002 for more than an additional two hours even if no objection had been interposed. Indeed, after the Court granted the motion to compel, two hours should have been more than sufficient for plaintiffs to re-pose the question as to which the objection had been made and to conduct reasonable follow up. Further, no additional preparation should have been needed simply to re-pose the same question plaintiffs' counsel had already asked Ms. Erwin on December 20, 2002.<sup>6</sup>

Defendants do not object to time expended in February 2003 to arrange the date for the re-deposition with government counsel and with Ms. Erwin's private counsel, although we believe these arrangements could have been accomplished in no more than one hour in total.<sup>7</sup> Accordingly, plaintiffs should be awarded a maximum of two hours of Mr. Brown's time to re-pose the question allowed by

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<sup>6</sup>As noted above, defendants do not object to an award of one hour each for Mr. Harper and Mr. Brown to review the Court's Feb. 5, 2003 Order so that they would be aware of the scope of the Court's ruling. Review of the Order should have been sufficient preparation for the re-deposition of Ms. Erwin.

<sup>7</sup>Mr. Gingold apparently undertook to arrange the deposition date. *See* Exhibit B (Gingold entries for 2/5/03 and 2/6/03). Since his hourly rate is the same as Mr. Brown's, defendants have no objection to compensating plaintiffs for one hour of Mr. Gingold's time in this regard.

the Feb. 5, 2003 Order and one hour to arrange the re-deposition, for a total of \$1,110.00 (\$370/hour x 3 hours).<sup>8</sup>

\* \* \*

Accordingly, plaintiffs' total fee award under the Court's Feb. 5, 2003 Order should be no more than \$14,428.00 (\$13,318.00 + \$1,110.00)

**B. The Court Should Deny the Remainder of Plaintiffs' Petition Because It Seeks Fees for Matters That Did Not "Directly Arise" From Defense Counsel's Privilege Objection.**

Plaintiffs wish to charge defense counsel with costs having nothing to do with the privilege asserted at the end of the December 20, 2002 Erwin deposition or the subsequent motion to compel. Plaintiffs seek compensation for activities relating to the scheduling and taking of Ms. Erwin's December 20, 2002 deposition – all activities that occurred before the privilege had even been asserted. Those activities, aggregated in Exhibit C, cannot possibly be deemed to have arisen from the privilege assertion or the motion to compel. These activities total 83.043 hours, and plaintiffs' request of \$27,809.91 (at 2002-03 rates) for these activities should be denied in total.

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<sup>8</sup>Defendants acknowledge that in prior rulings involving fee awards under Rule 37, this Court has held that across-the-board percentage reductions for entire fee awards are the preferred practice in this Circuit for challenging fee petitions on grounds of excessive time expenditure. *Cobell*, 231 F. Supp. 2d at 305; *Cobell v. Babbitt*, 188 F.R.D. 122, 126 (D.D.C. 1999). In this opposition, however, defendants are making specific objections to specific time entries, and accordingly, we do not propose an across-the-board percentage cut.

Plaintiffs also seek compensation in connection with document requests that they elected to serve with their notices of deposition upon Ms. Erwin and her assistant, Michelle Singer, after this Court's Feb. 5, 2003 Order was issued. *See* Exhibit E. Time spent on these document requests cannot be compensable because plaintiffs have failed to show a "but for" connection between the defendants' objection at the Dec. 20, 2002 deposition of Ms. Erwin and the document requests. At the time plaintiffs originally posed their question to Ms. Erwin on Dec. 20, 2002, they did not have any of the documents they subsequently requested, and indeed they had not even issued a request for those documents. The privilege assertion did not somehow prevent plaintiffs from asking Ms. Erwin about the documents, because plaintiffs had not yet requested them. Accordingly, there is no "but for" connection between the privilege assertion and the document requests. Rather, it appears that plaintiffs' counsel issued the document requests as part of plan to further "investigate" the Erwin scheduling issue after the Court had already ruled upon their motion to compel. Plaintiffs' election to expand the scope of their inquiry was theirs alone: the Court did not direct or authorize them to do this<sup>9</sup>, and it did not include their work on the document requests within the scope of the Rule 37 sanctions order. Defendants responded to the document requests, and plaintiffs never filed any challenge to those responses. Accordingly, compensation sought by plaintiffs for time spent preparing the document requests and reviewing the responses (8.216 hours) should be denied.

Likewise, the time sought by plaintiffs for activities in connection with Michelle Singer's deposition (a total of 25.2 hours) are not compensable under the Feb. 5, 2003 Order. *See* Exhibit F.

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<sup>9</sup>Indeed, as argued in Defendants' Motion to Strike, plaintiffs were legally disqualified from acting in the capacity of a special master or special prosecutor in an investigation of their opposing counsel. The Court so held in its Sept. 2, 2004 Order at 4-5.

Plaintiffs never sought to depose Ms. Singer before the issuance of the Feb. 5, 2003 Order, and defendants never objected to producing her. Accordingly, there is no basis to include work associated with her deposition in the Rule 37 fee award, and plaintiffs cannot be compensated for these activities.

As noted above, defendants' objection at the Dec. 20, 2002 deposition prevented plaintiffs from questioning Ms. Erwin about the scheduling issue for, at most, two additional hours. At the re-deposition in February 2003, however, plaintiffs decided to depose Ms. Erwin on a variety of matters that had nothing to do with the subject of their motion to compel, including Trial 1.5 issues, the scope of a fiduciary's privileges, and the deliberative process privilege. Both government counsel and Ms. Erwin's personal attorney urged plaintiffs' counsel to restrict their questioning to the matter covered by the Feb. 5, 2003 Order or at least to complete questioning on that matter first before moving on to other topics, but plaintiffs' counsel refused, and the then-Special Master Monitor did not direct them to proceed as suggested. Exhibit A at 503-08 (Feb. 12, 2003); 543-44; 711-12 (Feb. 13, 2003); *see also* Exhibit A at 813-16 (Oct. 14, 2004 Dep.) (colloquy between Ms. Erwin's personal counsel, Mr. Reynolds, and plaintiffs' counsel, Mr. Brown, referencing earlier depositions). Additionally, plaintiffs' counsel spent substantial time both in the two February 2003 deposition sessions and in the October 2004 session questioning Ms. Erwin about documents that had been produced pursuant to the document requests issued after the Feb. 5, 2003 Order. While defendants did not object to the questioning concerning the produced documents, that questioning certainly did not have a "but for" connection to the privilege assertion because, as noted above, plaintiffs had not even issued the document requests at the time defendants interposed the privilege objection at the Dec. 20, 2002 deposition. Significantly, plaintiffs did not even get around to re-posing the particular question that had

been the subject of their motion to compel until well into the second session with Ms. Erwin on February 13, 2004. *See* Exhibit A at 627-28; 645-55. Because plaintiffs could have accomplished the limited re-deposition for which they received the sanctions award in less than half a day in February 2003, the Court should not allow plaintiffs compensation for any time expended in arranging, preparing for and taking the third day of deposition in October 2004.<sup>10</sup> Defense counsel cannot be held liable for plaintiffs' lengthy circumnavigation of the single issue as to which the Court had ordered relief.

Plaintiffs' counsel also seek substantial compensation for "strategizing" and "preparing" for Ms. Erwin's two deposition sessions in February 2003. As noted above, no preparation was required simply to re-pose the question the Court had directed Ms. Erwin to answer in its Feb. 5, 2003 Order, other than reading the Order itself. The "strategizing", "discussing" and "preparing" activities appear related to plaintiffs' decision to question Ms. Erwin about other matters and about the documents that had been produced. Accordingly, plaintiffs have failed to prove that time spent on these activities "ar[ose] directly from" the privilege assertion at the Dec. 20, 2002 deposition, and they should not receive compensation for it. Certainly, plaintiffs have not demonstrated why three lawyers (Messrs. Brown, Gingold and Harper) were needed to "prepare" to ask Ms. Erwin the single question she had

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<sup>10</sup>On October 14, 2004, plaintiffs held their third session with Ms. Erwin on the scheduling issue after the Court, having reviewed the transcripts from the two February 2003 sessions, *sua sponte* afforded them a final day of deposition with Ms. Erwin. Sept. 2, 2004 Order at 6, 7. Again, plaintiffs' counsel took well over an hour before finally asking the question defense counsel had objected to at the Dec. 20, 2002 deposition. Exhibit A at 804 (showing start time of 10:03 am); 856 (showing a break from 11:13 to 11:15); 871 (questions regarding whether government counsel were "forthcoming" with the Court at the December 2002 hearings). The time objected to on this ground is included in Exhibit D and totals over 35 hours (Brown entries from 10/10/04 through 10/14/04, totaling over 33 hours; Gingold entries from 9/8/04 to 9/24/04, totaling 1.7 hours), an astounding figure for a deposition that lasted under four hours and should not have been necessary at all. Exhibit A at 938 (showing concluding time of 1:33 pm).

previously been directed not to answer, or why Mr. Harper was needed at the deposition.<sup>11</sup> In short, the time records and transcripts make clear that plaintiffs' counsel did not intend to limit their interrogation of Ms. Erwin to the question the Court had compelled her to answer in the Feb. 5, 2003 Order. That was plaintiffs' choice, and they cannot look to defense counsel to compensate them for it.

Finally, plaintiffs seek a total of \$37,432.99, representing 96.988 hours at 2002-03 rates, spent by three attorneys compiling and reviewing their "Report on the Status of the Evidence Concerning Defendants' and the Department of Justice's Misrepresentations to this Court on December 13 and December 17, 2003[sic]" – a document which the Court did not ask for, which does not comport with the Federal Rules of Civil Procedure, and which represents a biased "investigation" that plaintiffs' counsel were legally ineligible to undertake against their adversaries in this civil case. *See* Defendants' Motion to Strike. Time related to this activity is assembled in Exhibit H. Plaintiffs' unilateral decision to prepare and file this report is no different from the show cause motion that this Court found outside its Rule 37 order in *Cobell*, 231 F. Supp. 2d at 304. Whether or not the Court grants the Defendants' Motion to Strike plaintiffs' "Report", it is clear that plaintiffs may not be compensated under Rule 37 for generating it.

The balance of the activities for which plaintiffs seek remuneration do not bear a clear "but for" relationship to the two activities for which the Court awarded fees in the Feb. 5, 2003 Order. As noted

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<sup>11</sup>Time entries objected to on this ground are also included in Exhibit D and total almost 129 hours. Further, defendants object to all the time sought by plaintiffs for Mr. Rempel's activities. Mr. Rempel was not involved in any way in the motion to compel, and it is clear from his time entries that his work was either duplicative of the attorneys' work or simply cannot be said to have "directly arise[n] from" the privilege assertion and the Court's directive that Ms. Erwin submit to re-deposition upon the question she had been directed not to answer.

above, plaintiffs bear the burden of demonstrating their entitlement to the fees they seek. The activities as to which plaintiffs have failed to make adequate proof are set forth in Exhibit G, and plaintiffs should not receive compensation for those items.<sup>12</sup>

**C. Fee Petition**

Plaintiffs are entitled to reasonable compensation for preparing their fee petition. However, plaintiffs clearly seek too much in this regard.<sup>13</sup> The only work for which the Court ordered Rule 37 sanctions was clearly delimited by date (from the day after Ms. Erwin's December 20, 2002 deposition until the filing of plaintiffs' reply brief on January 28, and then time to review the Court's Feb. 5, 2003 Order and to set up and retake Ms. Erwin's deposition pursuant to the Order). Had plaintiffs' counsel limited themselves to the actual scope of the Court's Feb. 5, 2003 Order, it would not have required a total of over 37 hours by three attorneys and one paralegal to compile and edit the compensable time.

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<sup>12</sup>Numerous items included in other exhibits also fall into this category. For example, plaintiffs should not be compensated for "summariz[ing] Erwin deposition transcripts" because they would have done that in preparation for Trial 1.5 whether or not Ms. Erwin had answered the question as to which privilege was asserted. *See* Exhibit H (Brown entries for 5/21/03 and 5/22/03). Likewise, there has been no showing as to why research regarding "Chinese Walls", conducted after Ms. Erwin's redeposition in February 2003, had anything to do with the question the Court had compelled her to answer in the Feb. 5, 2003 Order. *See* Exhibit D (Brown entries for 2/18/03, 2/19/03, 3/3/03). Similarly, plaintiffs seek compensation for Mr. Brown's three conversations with a court reporter in late December 2002 regarding the Erwin deposition. *See* Exhibit G (totaling .916 hours). But plaintiffs present no evidence that these calls were particularly related to the motion to compel as opposed to the other activities relating to the preparation of the historical accounting plan and Trial 1.5. Also, it is not clear why plaintiffs' counsel should be compensated for discussing the "Erwin situation" with Eloise Cobell when it is unclear that those conversations were limited to the motion to compel and the redeposition of Ms. Erwin upon the one question she had been directed not to answer, as opposed to discussions regarding questions on other, non-compensable matters. *See* Exhibit D (Gingold entry for 1/9/03); Exhibit G (Brown entry for 1/17/03; Gingold entries for 2/5/03 and 2/11/03).

<sup>13</sup>Plaintiffs' request for fees in connection with preparing their fee petition are assembled in Exhibit I.



Likewise, plaintiffs' counsel have already prepared and submitted declarations concerning their qualifications and rates in connection with earlier fee petitions in this case. It should not have taken them multiple hours to update those declarations for purposes of this petition.

Further, plaintiffs should have asked Ms. Erwin in February 2003 the question the Court had compelled her to answer in its Feb. 5, 2003 Order. For whatever reason, they did not do so. Certainly, there was nothing preventing them from asking that question in the two sessions they had with Ms. Erwin at that time. It was also plaintiffs' decision to wait more than 20 months to file their fee petition. Defendants should not be charged a higher rate simply because of plaintiffs' delay. Accordingly, the rates that should apply to plaintiffs' fees on fees award should be those set out in the 2002-03 *Laffey* Matrix (Exhibit J).

Consistent with this Court's method in *Cobell*, 231 F. Supp. 2d at 307, plaintiffs' request for fees incurred in preparing their fee petition should be reduced in the same proportion as that between their non-compensable time and their compensable time. This method results in a reduction to 10.63% of the total hours plaintiffs seek for their fee petition (37.131 hours), for a total of 3.95 hours, as shown below:

$$\frac{\text{Total Compensable Hours} = 49.75^{14}}{\text{Total Hours Sought} = 468.224^{15}} = 10.63\%$$

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<sup>14</sup>This figure represents the 46.75 hours shown in the second table in Part A(2)(a) above added to the three hours set forth in Part A(2)(b).

<sup>15</sup>This figure is derived from adding together the hours reported by Messrs. Brown, Gingold, Harper and Rempel in the fee petition.

Multiplying the reduced hours (3.95) by the rate of the highest billers for the appropriate time period (\$370) yields a maximum award of \$1,461.50 for plaintiffs' attorneys' work on the fee petition.

**Conclusion**

For the reasons set forth above, plaintiffs should receive a maximum of \$15,889.50 (\$14,428.00 + \$1,461.50) for work "directly aris[ing] from" the motion to compel and the Court's Feb. 5, 2003 Order allowing re-deposition of Ms. Erwin upon the question as to which the Court found the privilege had improperly been asserted, including reasonable fees for preparing their fee petition.

Respectfully submitted,

PETER D. KEISLER  
Assistant Attorney General

STUART E. SCHIFFER  
Deputy Assistant Attorney General

MICHAEL F. HERTZ  
Director

/s/ Tracy L. Hilmer  
Dodge Wells  
D.C. Bar No. 425194  
Tracy L. Hilmer  
D.C. Bar No. 421219  
Attorneys  
Commercial Litigation Branch  
Civil Division

P.O. Box 261  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 307-0474

DATED: December 14, 2004

CERTIFICATE OF SERVICE

I hereby certify that, on December 14, 2004 the foregoing *Defendants' Objections to Plaintiffs' Request for Attorney's Fees and Expenses Pursuant to the Court's February 5, 2003 Ruling* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)  
Blackfeet Tribe  
P.O. Box 850  
Browning, MT 59417  
Fax (406) 338-7530

/s/ Kevin P. Kingston  
Kevin P. Kingston

Transcript of the Testimony of:  
**DONNA ERWIN**

**Date:** December 20, 2002

**Case:** CORBELL v DEPT. OF INTERIOR

**NEAL R. GROSS & CO., INC.**  
1323 Rhode Island Ave., NW  
Washington, DC 20005-3701

202.234.4433  
fax 202.387.7330  
info@nealrgross.com

1 P-R-O-C-E-E-D-I-N-G-S

2 (10:35 a.m.)

3 Whereupon,

4 DONNA ERWIN

5 was called as a witness by counsel for the plaintiffs

6 and, having been first duly sworn, was examined and

7 testified as follows:

8 MR. BROWN: Good morning, Ms. Erwin. My

9 name is Mark Brown. I am one of the attorneys for the

10 plaintiffs. I apologize for our late start here. You

11 need to catch a plane and be out of here at 4:30. Is

12 that right?

13 THE WITNESS: Yes.

14 MR. BROWN: All right. We are going to do

15 our best to accommodate you.

16 MS. SPOONER: We really appreciate that.

17 Can I have a moment to put a couple of

18 things on the record?

19 MR. BROWN: Sure.

20 MS. SPOONER: First is to thank you for

21 agreeing to start earlier, although I know that wasn't

22 the detail there, and for agreeing to let Ms. Erwin

1 THE WITNESS: Yes.

2 By MR. BROWN:

3 Q And you believe your attorneys have been  
4 fully truthful with the Court?

5 MS. SPOONER: I'm going to object on that  
6 on the grounds that it's protected by the attorney-  
7 client privilege.

8 MR. BROWN: It can't possibly be.

9 MR. KIEFFER: It's her belief she has  
10 about her attorneys. It's not whether her attorney  
11 said --

12 MS. SPOONER: Yes, except that we've had  
13 a number of discussions about that and I don't  
14 believe, as with Ms. Skobell, when Mr. Gingold made  
15 objections that she can properly separate her  
16 discussions with her attorneys from her beliefs.

17 MR. GINGOLD : We're dealing with a  
18 finding by the Court that Ms. Erwin deliberately  
19 deceived the Court. That's a finding of fraud with no  
20 exceptions to privilege to the extent it exists  
21 applies here in the --

22 MS. SPOONER: Absolutely not. I'm

1 THE WITNESS: No.

2 MR. BROWN: Who is your personal counsel?

3 THE WITNESS: I am just in the process of  
4 discussing with someone.

5 MR. BROWN: So you have not obtained  
6 personal counsel?

7 THE WITNESS: I've not obtained personal  
8 counsel. I am in the process.

9 MR. BROWN: Okay. Ms. Erwin, don't you  
10 have the opportunity to do that.

11 MS. SPOONER: Ms. Erwin has to go. It's  
12 now 4:37 by my clock.

13 MR. BROWN: Well, we've taken that break,  
14 so I want to finish that line of questions.

15 MS. SPOONER: We were 5 minutes on that  
16 break. It's now 4:38 by my clock.

17 MR. BROWN: Are you instructing her not to  
18 answer any further questions?

19 MS. SPOONER: What other lines of  
20 questioning do you have?

21 MR. BROWN: We're going to find out.

22 MS. SPOONER: No, given those certain



Transcript of the Testimony of:  
**DONNA ERWIN**

**Date:** February 12, 2003

**Case:** COBELL v DEPT. OF INTERIOR

**NEAL R. GROSS & CO., INC.**  
1323 Rhode Island Ave., NW  
Washington, DC 20005-3701

202.234.4433  
fax 202.387.7330  
info@nealrgross.com

1 record.

2 THE WITNESS: I don't believe that's what  
3 I testified that Ms. Singer said.

4 BY MR. BROWN:

5 Q How is that inaccurate?

6 A Ms. Singer made a general comment that she  
7 thought that as it dealt with records there were some  
8 problems there between the records in Justice. I have  
9 never had any. I have never had a problem with  
10 Justice Department up until this point.

11 MR. BROWN: I think we can probably break  
12 at this point.

13 MR. KIEFFER: Right now. What time do you  
14 want to start tomorrow morning?

15 MR. BROWN: 10:00 a.m.

16 MR. KIEFFER: She has a 6:00 p.m. plane  
17 which means she probably has to leave here about 4:30  
18 p.m. You understand the limitation on your time.

19 MR. BROWN: I understand that as to this  
20 subject matter.

21 MR. KIEFFER: Okay.

22 MR. WELLS: That's fine with me. I'm

1 going to have at least an hour and a half questions.

2 So I don't know if we start at 10:00 a.m., we'll be  
3 finished by 4:30 p.m. You might want to start  
4 earlier.

5 MR. KIEFFER: You're going to have  
6 questions after he's finished. It may mean you may  
7 have to come back another day then. I'm not going to  
8 limit his ability to cross examine her because you may  
9 have questions.

10 MR. WELLS: I understand that. If we're  
11 trying to get done, it should be everybody should have  
12 a fair shot while she's here. If it's that  
13 complicated, we could start as early as 8:00 a.m. to  
14 get this done.

15 MR. KIEFFER: And that's fine with me.

16 MR. HARPER: I don't want to start that  
17 early.

18 MR. WELLS: Okay.

19 MR. HARPER: If you want to start at 9:30  
20 a.m., that's fine.

21 MR. BROWN: Are you ruling that he  
22 absolutely has to ask his questions tomorrow?

1 MR. KIEFFER: No. I'm trying to  
2 accommodate both sides here. I want this on the  
3 record. We know Ms. Erwin has to leave at 4:30 p.m.  
4 from here.

5 MR. REYNOLDS: I'd like to interject  
6 another thought for what it's worth which is she has  
7 outside counsel to deal with but I think is this part  
8 of the deposition. If she comes back it could well be  
9 that it's not really something that's going to require  
10 outside counsel to be present because it's going to  
11 involve a whole lot of what's going on officially in  
12 this lawsuit that's not what I'm about. So my point  
13 is my strong preference would be to try to wind up a  
14 deposition if we can on this point which could save  
15 the Government money which I would hope they would  
16 want to do and also a lot of time and inconvenience if  
17 we could do it. If the rest of the deposition is  
18 going to relate to something having nothing to do with  
19 my involvement, to bring me back on another day just  
20 to tag on to that is not the best use of anybody's  
21 time or money.

22 MR. KIEFFER: Mr. Reynolds, it may not

1 have to do with the subject today but it's going to  
2 have to do with your client. So I would represent  
3 probably that you may want to be here but that's up to  
4 you obviously. But we have a limited amount of time.  
5 Now I know that at least Mr. Wells has signaled that  
6 he has about an hour and a half worth of questions.  
7 If you think you only have an hour and a half minus  
8 the time between 10:00 a.m. and 4:30 p.m., you only  
9 have questions for that amount of time, fine.

10 MR. HARPER: If the Government could say  
11 when they could make Ms. Erwin available for  
12 subsequent depositions regarding other subject  
13 matters, not regarding the scheduling issues that we  
14 have been discussing here today, but her role as  
15 Acting Special Trustee and specify by tomorrow, then  
16 we have no problem agreeing to date subsequent to  
17 continue the depositions.

18 MR. WELLS: I thought that we only had a  
19 limited amount of time, seven hours, and specifically  
20 for her that there was going to be some knowledge of  
21 the deposition. We're opening now for a second  
22 session.

1 MR. HARPER: Where was that ruling? That  
2 there were seven hours of deposition.

3 MR. KIEFFER: I've never said that on  
4 someone as significant as Ms. Erwin. In fact if I've  
5 said anything I'd say that the time would have to be  
6 longer. But I continue this deposition after the  
7 first day which was repeatedly delayed.

8 MR. HARPER: Can I raise one more issue,  
9 Mr. Kieffer? That is that we received these documents  
10 very late and we may be receiving additional documents  
11 that are related especially to this issue. After  
12 reviewing those documents there may very well be  
13 additional questions that we're going to have to ask  
14 Ms. Erwin regarding this and other subject matters.  
15 So I think that the notion that we can agree today to  
16 make tomorrow the last time we're going to depose her  
17 on this issue isn't reasonable given how this is  
18 playing out. Certainly we have extensive additional  
19 questions regarding her role in trust reform and in  
20 preparation for the trial 1.5 to commence on May 1,  
21 2003.

22 MR. KIEFFER: The only question that I

1 want to know from you is based on every accommodation  
2 that I'm trying to put forth for both parties. Do you  
3 want to start any earlier than 10:00 a.m.?

4 MR. BROWN: We can start at 9:30 a.m. but  
5 I still need to go through these documents.

6 MR. KIEFFER: You will have every  
7 opportunity to go through those documents as long as  
8 it takes you. If we have to continue the deposition  
9 until the documents are presented and you finished all  
10 your questions, we'll do that. So we will start at  
11 9:30 a.m.

12 THE WITNESS: And Your Honor, I assume  
13 we're going to end at 4:30 p.m.

14 MR. KIEFFER: She has a plane to catch at  
15 6:00 p.m. I haven't heard anybody say they want her  
16 to cancel that.

17 MR. BROWN: We made that accommodation for  
18 her.

19 MR. HARPER: Can I have one more thing on  
20 the record, Mr. Kieffer. That is there was an  
21 objection sustained regarding a question that we had  
22 asked but of course we are left in the dark as to why

Transcript of the Testimony of:  
**DONNA ERWIN**

**Date:** February 13, 2003

**Case:** COBELL v DEPT. OF INTERIOR

**NEAL R. GROSS & CO., INC.**  
1323 Rhode Island Ave., NW  
Washington, DC 20005-3701

202.234.4433  
fax 202.387.7330  
info@nealrgross.com



1 P-R-O-C-E-E-D-I-N-G-S

2 9:38 a.m.

3 COURT REPORTER: On the record. Ms.

4 Erwin, I want to advise you that you are still under

5 oath.

6 Whereupon,

7 DONNA ERWIN

8 was called as a witness and, having been previously

9 duly sworn, assumed the witness stand, was examined

10 and testified further as follows:

11 MR. KIEFFER: This is Joseph Kieffer the

12 Special Master. This is the second day of the

13 continuing deposition of Donna Erwin. I would like to

14 put one statement on the record here. Last night

15 there was some debate, discussion about when the

16 Government and Ms. Erwin's personal counsel would have

17 an opportunity to cross examine. I said something to

18 the effect that I was trying to accommodate both

19 parties. I did not mean to indicate that I thought

20 this deposition would be concluded today and that all

21 testimony would have to be taken today.

22 Obviously having read last night the

1 Q Before Thanksgiving?

2 A I don't know. I just know that somewhere  
3 I do have a message from Ross Swimmer that said please  
4 review this.

5 Q And he sent an attachment?

6 A I don't know if it's an attachment or it's  
7 within the e-mail.

8 Q But it's a section of the Plan?

9 A I don't know if it's a section of the Plan  
10 or regarding scheduling for the Plan. I would have to  
11 look. It is nothing that has trust data on it.

12 Q What do you define as Trust data?

13 MR. WELLS: I would object to the  
14 questions. This is outside the scope of the subject  
15 matter of this aspect of deposition. She has already  
16 said that the Swimmer e-mail had to do with the Plan  
17 and not with the controversy that we are here today  
18 for.

19 MR. KIEFFER: This deposition isn't  
20 limited to this. This is the continuing deposition of  
21 Donna Erwin concerning the Plan. Now there was a  
22 motion to compel about specific issues that she did

1 not want to answer in her deposition. But I haven't  
2 limited and the Court hasn't limited the nature of  
3 this deposition from the first day of that deposition.

4 MR. REYNOLDS: I understand that but I  
5 guess I would ask since you've said that she's going  
6 to be called back for continuing depositions on  
7 continuing matters that we have an interest in seeing  
8 if we can bring this particular deposition relating to  
9 this matter to a close at some reasonable point in  
10 time that we make some effort to confine the  
11 questioning that relates to this issue to the matter  
12 that's on the table. Otherwise we could go on for 15  
13 days if we open it up to allow for probing of a whole  
14 lot of other issues that might be relevant to a second  
15 or third deposition.

16 MR. KIEFFER: This is a continuing  
17 deposition that had no limitations on it. The  
18 questions that he is asking may well relate back to  
19 something that has to do with the communications with  
20 her attorneys and I'm going to allow him to go  
21 forward.

22 (Question read back.)

1 THE WITNESS: Thank you. (Perusing  
2 document.)

3 BY MR. BROWN:

4 Q Have you had a chance to review the  
5 document?

6 A Scanned it, yes.

7 Q Can you direct us to the representation in  
8 the transcript that upset you?

9 A Page 11. There's two places. There's  
10 several places, but let's start there.

11 Q Okay. Let's start there.

12 A Page 11, line 11, "Isn't that  
13 astonishing?" And Mr. Petrie says, "Your Honor, on  
14 one level, sort of" -- and maybe there was going to be  
15 further since he was interrupted, but it sounded like  
16 to me that he was confirming that was astonishing. On  
17 page 12 --

18 Q Wait a minute. It's astonishing that the  
19 news came from Mr. Harper?

20 A Yes.

21 Q Why does that upset you?

22 A Because it sounded like my counsel was

1 unaware of my travel schedule. Page 12 --

2 Q Is there a misrepresentation that Mr.  
3 Petrie made on page 11 that you can point to?

4 A No because I think he could have been  
5 interrupted when he says, "on one level." We are not  
6 sure what he was -- the continuation was.

7 Page 12.

8 Q Okay.

9 MR. WELLS: Is there a question? The  
10 question is, looking for misrepresentation. The term  
11 "misrepresentation" is argumentative and assumes facts  
12 not in evidence.

13 SPECIAL MASTER-MONITOR KIEFFER: All  
14 right. Let's try not to characterize a question as  
15 argumentative because it is probing, Mr. Wells. It  
16 wasn't an argumentative question. He is asking her  
17 what on page 12 she found upsetting and possibly  
18 misrepresentation. That's the outstanding question.

19 THE WITNESS: I am sorry. Page 11. At  
20 the top of page 11, bottom of page 10, starting with  
21 line 22, where he states that if these facts had been  
22 disclosed to him and Mr. Petrie says he fully agrees.

1           As you sat there, it was your belief that  
2 Mr. Petrie had led the court to believe that you had  
3 not been forthcoming, correct?

4       A    I believe that was that the court was left  
5 with that impression.

6       Q    And you believe that that was because of  
7 what Mr. Petrie said?

8       A    I believe that it was a combination of the  
9 Friday hearing and the court's understanding as we  
10 left the courtroom.

11      Q    And you were upset because Mr. Petrie  
12 didn't explain that you weren't involved, correct?

13      A    Yes.

14      Q    The reason you put "I" in quotation marks  
15 is to put the emphasis on the fact that the focus was  
16 unfairly on you?

17      A    Correct.

18      Q    Let's go down about halfway down the page,  
19 where it says, "To further the matter." I am going to  
20 ask you to identify in your statement what  
21 misrepresentations you believe are referenced here  
22 that Mr. Quinn made to the court.

1 A I don't --

2 MR. WELLS: Object to the form of the  
3 question. Lack of foundation, too.

4 THE WITNESS: I don't know where you are.  
5 I'm sorry.

6 MR. BROWN: I'm sorry. Halfway down.

7 THE WITNESS: Okay.

8 MR. BROWN: "To further the matter, when  
9 the court inquired about my leave, Mr. Quinn  
10 responded."

11 THE WITNESS: Everyone plans to continue  
12 work, yes.

13 BY MR. BROWN:

14 Q I would like you to read until the end of  
15 that paragraph and tell us what words in there you  
16 believe to be misrepresentations that you attribute to  
17 Mr. Quinn.

18 A I am not saying they are  
19 misrepresentations. I want to be clear on that  
20 because he does state that this is his understanding.  
21 So what I am saying is that I will read. And then we  
22 will -- you can ask your question.

1 Mr. Quinn responded, "Ms. Erwin plans to  
2 continue work. My understanding from her."

3 Q Is that a misrepresentation?

4 A "From her" disturbed me a bit because it  
5 tended to indicate that someone had spoken to me. "As  
6 if she can get" --

7 Q If that representation were interpreted by  
8 the court as such, it would be a misrepresentation,  
9 would it not?

10 MR. WELLS: I think she should be allowed  
11 to finish her answer.

12 MR. REYNOLDS: I am going to object to  
13 that question because she has already testified that  
14 she was not saying it was a misrepresentation since he  
15 has said it was his understanding.

16 SPECIAL MASTER-MONITOR KIEFFER: Well, he  
17 can count that.

18 MR. REYNOLDS: He certainly can, but he  
19 can't mischaracterize her testimony.

20 SPECIAL MASTER-MONITOR KIEFFER: All  
21 right. Fine. I am just letting you know I don't  
22 think he is. You asked her what do you --



1 MR. REYNOLDS: Then we have no problem.

2 SPECIAL MASTER-MONITOR KIEFFER: What does  
3 he think? What does he think or what does she think  
4 is wrong with that statement that Mr. Quinn made?

5 MR. REYNOLDS: Okay. Is that the pending  
6 question?

7 SPECIAL MASTER-MONITOR KIEFFER: Mr.  
8 Brown, ask your question.

9 BY MR. BROWN:

10 Q His statement to the court, you underlined  
11 "from her," correct?

12 (No response.)

13 BY MR. BROWN:

14 Q You have to answer audibly.

15 A Yes.

16 Q And you were calling that to the readers'  
17 attention, correct?

18 A Yes.

19 Q Because you consider it to be a misleading  
20 statement, correct?

21 A I considered it to be a statement that  
22 could be misinterpreted.

1 Q Did you not consider it to be misleading?

2 A I am not an attorney. So --

3 Q Attorneys aren't the only ones who could  
4 characterize things as misleading.

5 A I understand that. As I said, not that I  
6 thought it was a misrepresentation, not that I thought  
7 it was misleading. I thought that it could be  
8 misinterpreted.

9 Q Well, is it a true statement? Did he get  
10 that understanding from you?

11 A Not directly.

12 Q What is your definition of a  
13 misrepresentation?

14 A A misrepresentation would be something  
15 that was false or you were representing something that  
16 was not accurate.

17 Q And is it not accurate that he got that  
18 understanding from you?

19 A He probably is perceiving that that was  
20 like a fourth hand received from me. My concern would  
21 only be that it was not, again, interpreted to be  
22 directly from me.

1 Q What is your definition of misleading?

2 A Be led in the wrong direction.

3 Q From the truth?

4 A Yes.

5 Q Well, your definition of misrepresentation  
6 is false or not accurate. So let's take that. Let's  
7 go through this passage. And you tell me what  
8 statements in here you believe that Mr. Quinn made to  
9 the court or you understood Mr. Quinn to have made to  
10 the court on December 18th were misleading, were false  
11 or inaccurate.

12 SPECIAL MASTER-MONITOR KIEFFER: You mean  
13 December 13th?

14 MR. BROWN: I'm sorry. No. Let me  
15 rephrase the question.

16 BY MR. BROWN:

17 Q When you were sitting on December 18th  
18 writing this statement, I would like you to go through  
19 your language here and tell me what you believe then  
20 or believe now -- if there is a difference, please  
21 point it out to us -- what you considered to be false  
22 or not accurate?

1 MR. WELLS: Object. Lack of foundation.

2 Assumes facts not in evidence.

3 SPECIAL MASTER-MONITOR KIEFFER: She has

4 already stated what she thinks misrepresentation

5 means. It's false or inaccurate. Now he is asking

6 her what in this statement is false and inaccurate.

7 There is a foundation for it.

8 Go ahead, Mr. Brown.

9 BY MR. BROWN:

10 Q Ma'am?

11 A My understanding from her -- I'm not

12 saying that it is a misrepresentation. it was not

13 directly from me.

14 Q Is that false or inaccurate?

15 MR. WELLS: Objection. Compound.

16 BY MR. BROWN:

17 Q Is it your testimony that --

18 A It is inaccurate that it was directly from

19 me.

20 MR. REYNOLDS: Go off the record.

21 (Whereupon, the foregoing matter went off

22 the record briefly at 12:15 p.m.)

1 THE WITNESS: Am I reading again?

2 BY MR. BROWN:

3 Q You are reading. Read to yourself. And  
4 when you come to a passage that is what you believe to  
5 be a statement Mr. Quinn that is false or not  
6 accurate, please read it out loud to us.

7 MR. WELLS: Let me renew the objection as  
8 a compound question.

9 THE WITNESS: Two lines down, it says that  
10 the -- "I am taking my son to a special soccer  
11 recruiting event in Florida until the 30th. And then  
12 she would return back to the office."

13 BY MR. BROWN:

14 Q What is false or inaccurate about that?

15 A It is inaccurate that I was not -- my  
16 reservations for return was not until the 31st and  
17 that I had complications that might be going to Tulsa  
18 even. And so I was not -- did not expect to be back  
19 to the office until after the 1st of the year.

20 Q Keep going, please.

21 A Further down, it says, "As far as I  
22 understand, Your Honor, she does not plan to be in

1 Washington, D.C. at all until at least after January

2 6. I do not" -- he says he -- that's his

3 understanding, but that would never have been my

4 understanding.

5 Q So you consider it to be false or not

6 accurate?

7 A Not accurate, but it does state it is his

8 understanding. Again, as it states, again, I knew I

9 had reservations that indicated I would not be in the

10 office until after the first of the year. These

11 reservations were made on November the 16th, 2002.

12 Q I'm sorry?

13 A And that's accurate. That is just an

14 explanation of what I just -- reinforcing what I had

15 just said.

16 Q All right. Well, I was asking you to read

17 out loud what you consider to be inaccurate or false.

18 A I'm sorry. Okay.

19 Q So what you just read, you don't have a

20 problem with any of that?

21 A No.

22 Q Okay. Is there any other passage that you

1 consider to be false that is attributed to Mr. Quinn?

2 A No.

3 Q I'm sorry? No?

4 A Is that starting with the -- where did you

5 want me to start in this paragraph, please?

6 Q "To further the matter."

7 A Okay.

8 Q All the way to the end of that paragraph.

9 A I think that would be the only two items.

10 Q Do you interpret what is written here --

11 let me rephrase that.

12 Do you believe Mr. Quinn was suggesting

13 that you led him to believe that you wouldn't be in

14 Washington?

15 A That would be my reading.

16 Q And that was upsetting to you when you

17 learned about it?

18 A Yes.

19 Q Yes?

20 A Yes.

21 Q And is it your interpretation that the

22 underscored language from her is suggesting that he

1 talked to you?

2 A That would have been -- could have been an  
3 interpretation.

4 Q Isn't that the most likely interpretation  
5 in your mind?

6 A In my mind.

7 Q Now, these reservations being made in  
8 November 16, 2002 were for the Florida trip, correct?

9 A Correct.

10 Q When were your reservations made to come  
11 to D.C.?

12 A I had told my secretary once she knew they  
13 were at the J. W. Marriott. She would have made  
14 reservations both at the hotel -- and I don't know  
15 when she actually made those. The day we were told  
16 about them, I asked her to check on availability. So  
17 I don't know the exact dates that those were  
18 completed. I understood we had reservations.

19 Q When did you first learn you had  
20 reservations?

21 A What I normally do is I would tell her,  
22 "We're aware of this trip. Set up reservations." And



1 purpose of the litigation. And I think because of the  
2 intermingling of roles, particularly when you're  
3 dealing with counsel who's preparing her, who have  
4 been trust counsel, if I could use that term.

5 SPECIAL MASTER KIEFFER: That's why we had  
6 the voir dire. That's why I asked questions. That's  
7 why you asked questions. I could find nothing in what  
8 she said that indicated there was a mixing of roles  
9 here. Sometimes if you know someone is going to be  
10 deposed about something that's specific and technical,  
11 you can't use the normal litigation counsel you have  
12 because they don't have the background for it. This  
13 may have been one of those cases. Mr. Jensen did, but  
14 I'm willing if you want me to, to go in-camera on the  
15 record and have a full proffer of what discussions  
16 were and I'll rule on that. I don't think I have to,  
17 but I'm willing to do it.

18 MR. WELLS: Or if I could clear this  
19 procedure, we've already spent well over an hour on  
20 this particular meeting. I think, as I understand the  
21 ruling that was made last week is, discussions in any  
22 context that deal with her schedule or her planning

1 are not privilege, and as you've gone through his  
2 December 23rd opinion, discussions that deal with  
3 certain specified topics under certain conditions are  
4 privileged, and I suggest that you just stand on the  
5 prior ruling. If he wants to ask questions about  
6 planning and scheduling issues that may have been  
7 discussed at that meeting, and then move forward to  
8 other topics.

9           SPECIAL MASTER KIEFFER: Well, because of  
10 the nature of this particular deposition and the  
11 particular subjects, I'm giving broad latitude and can  
12 ask, because it might be related back to the questions  
13 that the judge granted the motion to compel on. If he  
14 wants to spend his time this way, that's up to him,  
15 but he's running out of time, at least today.

16           MR. BROWN: All right, Your Honor. Well,  
17 I'm going to have other questions on that, but in  
18 light of your ruling I will move on with that in mind,  
19 and we'll see if some of these other questions can  
20 flesh this out a little bit.

21           BY MR. BROWN:

22           Q At any time before the deposition started,

# Transcript of: **Donna Erwin**

**Date:** October 14, 2004

**Volume:**

**Case:** Cobell v. U.S. DOI

Neal R. Gross & Co., Inc.  
Phone: 202-234-4433  
Fax: 202-387-7330  
Email: [info@nealrgross.com](mailto:info@nealrgross.com)  
Internet: [www.nealrgross.com](http://www.nealrgross.com)

1 P-R-O-C-E-E-D-I-N-G-S

2 (10:03 a.m.)

3 WHEREUPON,

4 DONNA M. ERWIN

5 was called for examination by Counsel for the  
6 Plaintiff and, having been first duly sworn, was  
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BROWN:

10 Q Good morning, Ms. Erwin.

11 A Good morning.

12 Q When did you cease being Acting Special  
13 Trustee?

14 A March, approximately March of 2003.

15 Q Can you tell us what subsequent positions  
16 you've had since then?

17 A Acting Principal Deputy Special Trustee  
18 and Principal Deputy Special Trustee for American  
19 Indians.

20 Q Does Ms. Singer still work with you?

21 A Yes, she does.

22 Q I gather you've met with Mr. Reynolds in

1 area, that would have to be done at another time and  
2 another occasion with leave of court, because that's  
3 not the scope of what the Court granted for the  
4 purposes of this deposition.

5 MR. BROWN: Well, let me see if we can cut  
6 through all this. Back in December of '02, part of  
7 what we were -- and there were a number of  
8 interchanges on the record that Mr. Kieffer, the Court  
9 Monitor, ruled on. And at that time, issues related  
10 to Trial 1.5 were on the table and were being  
11 examined.

12 Obviously, those are not on the table  
13 anymore, so the scope is considerably narrower. But  
14 other than that, I don't read the Court's order as --  
15 as excluding anything but Trial 1.5-type questions.

16 For example, is it your position that  
17 questions relating to the December 13 or December 17,  
18 2002, hearings at which she was questioned on in that  
19 deposition that were scheduling-type questions in my  
20 mind, are those off limits in your mind?

21 MR. REYNOLDS: For this deposition they  
22 are, yes. This deposition is, in essence, a

1 continuation of a deposition that you scheduled and  
2 took in February. And the lines were drawn pretty  
3 clearly at that deposition and were stated on the  
4 record then without objection -- that the deposition  
5 was for the purpose of exploring precisely the  
6 conversations that Ms. Erwin had with Mr. Petrie, I  
7 think it was Mr. Quinn, Ms. Spooner, and others -- Ms.  
8 Singer -- as it related to the matter of scheduling  
9 her December 2002 deposition, because the issue had  
10 come up in colloquy with the Court in a way that the  
11 Court was of the view -- may have resulted in some  
12 misrepresentation to the Court.

13           And precisely because Plaintiffs were  
14 claiming there was misrepresentation made to the  
15 Court, the Court allowed for depositions to go into  
16 that discrete issue. And it was that discrete issue  
17 that was a subject of the deposition that you have  
18 asked to be continued, asked the Court to be  
19 continued, and the Court has agreed to continue it.

20           And at the time that this request was  
21 made, you asked whether you would be permitted to go  
22 beyond the scope of -- the narrower scope of the

1 earlier deposition, and the Court said no, that you  
2 would be limited to examine, to the extent you felt it  
3 necessary, further the matters that he had allowed you  
4 to examine initially in connection with this question  
5 of scheduling the deposition, and what colloquy or  
6 discussions and conversations were had in and around  
7 that time.

8 I think the Court is pretty clear on that.  
9 If you feel that there is a need to depose Ms. Erwin  
10 on other issues, and you are interested in doing so,  
11 that would be something that Mr. Wells can speak to  
12 and you -- you may have to go back to the Court to do  
13 it.

14 But it's clear to me that in terms of my  
15 representation of Ms. Erwin that the matters that she  
16 can be deposed on today are the matters that you have  
17 interrogated her on in the February deposition. And  
18 anything that might bear directly on that situation is  
19 certainly fair game for this deposition.

20 MR. BROWN: Okay. Well, at the end of  
21 that deposition, you made a request that we limit our  
22 questioning to things that you thought would pertain

1 to -- for which she would need personal counseling,  
2 and you were turned down by Mr. Kieffer.

3 I have no problem limiting this deposition  
4 to generally what you were trying to limit it to then.  
5 But the statement in the February 5, 2003, opinion of  
6 the Court is all questions related to the subject  
7 matter of those questions. Now, it's quite clear that  
8 the Court was very concerned about whether it had made  
9 -- a misrepresentation had been made to it.

10 Now, as long as -- I have no problem  
11 conceptually limiting the deposition to things that  
12 pertain to that, but I'm not going to have an  
13 artificial restriction on it. When I told you we were  
14 going to get out of here by 2:00 -- I hope to -- it  
15 was based on focusing on those types of questions, not  
16 Trial 1.5 questions, not Trial 2 questions. And I  
17 understand that.

18 But I understood you earlier to say that  
19 questions about the December 13, 2002, hearing, and  
20 the December 17, 2002, hearing are somehow beyond the  
21 scope of this deposition. Did I hear that correctly?

22 MR. WELLS: You're talking about the



1 that you answer that question insofar as it has to do  
2 with any conversations relating to the scheduling of  
3 your deposition back in December, that to the extent  
4 that there are conversations outside the area of your  
5 deposition and the issue that was before the Judge  
6 with regard to the conversations leading up to that  
7 deposition, I'm going to direct you not to answer.

8 THE WITNESS: Then I need to speak with  
9 you a second.

10 (Whereupon, the proceedings in the  
11 foregoing matter went off the record at  
12 11:13 a.m. and went back on the record at  
13 11:15 a.m.)

14 MR. REYNOLDS: Okay. Let's have the  
15 question read.

16 (Whereupon, the previous question was  
17 played back by the Court Reporter.)

18 MR. BROWN: I don't think that was the  
19 question, was it? No.

20 (Whereupon, the requested portion was  
21 played back by the Court Reporter.)

22 MR. REYNOLDS: Okay. Go -- right after

1 or should have gone into court on Tuesday and stated,  
2 'My understanding was inaccurate,' which in both cases  
3 would have been forthcoming and truthful." Do you see  
4 that statement?

5 A Yes.

6 Q Is it your position that Mr. Quinn was not  
7 forthcoming to the Court?

8 A I believe it would have eliminated the  
9 misunderstanding or the miscommunication that was  
10 there.

11 Q Do you believe he was not forthcoming with  
12 the Court?

13 A I believe that he didn't have all the --  
14 Mr. Quinn, are you asking?

15 Q Yes.

16 A I believe Mr. Quinn had the information,  
17 as Mr. Petrie stated on the 17th he had the  
18 information that he got directly from Mr. Petrie.

19 Q Do you believe Mr. Petrie was not  
20 forthcoming to the Court?

21 MR. WELLS: Are you talking about on the  
22 17th?

1 MR. BROWN: We'll stipulate that Ms. Erwin  
2 will have 30 days from receipt of the transcript by  
3 her counsel within which to review, make any changes,  
4 and sign. That also has to pertain to the other  
5 transcripts as well.

6 MR. REYNOLDS: Okay.

7 MR. BROWN: Okay? So --

8 MR. REYNOLDS: Sure.

9 MR. BROWN: -- all transcripts will be  
10 reviewed and signed within 30 days of the receipt of  
11 this transcript.

12 And Mr. Wells wants confirmation that this  
13 deposition is now concluded, and he shall have it.

14 MR. WELLS: Thank you.

15 (Whereupon, at 1:33 p.m., the taking of  
16 deposition in the above-entitled matter  
17 was concluded, signature NOT having been  
18 waived.)

19

20

21

22

## Exhibit B

<i>Date</i>	<i>Task</i>	<i>Hours</i>	<i>Fee</i>
<b>BROWN</b>			
12/30/2002	REVIEW ERWIN MOTION TO COMPEL	0.333	\$123.21
01/01/2003	REVIEW ERWIN MOTION TO COMPEL	0.833	\$308.21
01/28/2003	REVISE ERWIN MOTION TO COMPEL REPLY; TELEPHONE CONFERENCES	3.25	\$1,202.50
02/05/2003	REVIEW 2 COURT OPINIONS RE DELIBERATIVE PROCESS PRIVILEGE AND ERWIN MOTION TO COMPEL; OFFICE CONFERENCE WITH TEAM/KH RE STRATEGY	1.75	\$647.50
02/05/2003	REVIEW 2 COURT OPINIONS RE DELIBERATIVE PROCESS PRIVILEGE AND ERWIN MOTION TO COMPEL; UPDATE DEADLINES RE SAME	0.5	\$185.00
	<i>Subtotal</i>	<b>6.666</b>	<b>2,466.42</b>
<b>GINGOLD</b>			
12/21/2002	TELCOMS. HARPER RE ERWIN DEPOSITION TESTIMONY AND OBSTRUCTION BY SPOONER RE MISREPRESENTATIONS TO COURT ON ERWIN AVAILABILITY IN D.C.	0.4	\$148.00
12/26/2002	TELCOM. HARPER RE MOTION TO COMPEL ERWIN DEPOSITION	0.2	\$74.00
01/01/2003	REVIEW AND REVISE MOTION TO COMPEL AND PROPOSED ORDER.	3.5	\$1,295.00
01/01/2003	TELCOMS. HARPER RE SAME.	0.5	\$185.00
02/05/2003	TELCOM. BRAD REYNOLDS, ERWIN'S PRIVATE COUNSEL, RE SAME.	0.3	\$111.00
02/06/2003	TELCOMS. REYNOLDS RE ERWIN DEPOSITION ISSUES.	0.7	\$259.00
	<i>Subtotal</i>	<b>5.6</b>	<b>2,072.00</b>
<b>HARPER</b>			
12/31/2002	DRAFT MOTION TO COMPEL AND SANCTIONS FOR DEPOSITION OF ERWIN	6.5	\$1,722.50
01/01/2003	FINALIZE ERWIN MOTION TO COMPEL AND PROPOSED ORDER	2.3	\$609.50
01/01/2003	DRAFT MOTION TO COMPEL ERWIN DEPOSITION AND SANCTIONS PURSUANT TO RULE 37; REVIEW CASELAW AND TRANSCRIPTS FOR SAME; DISTRIBUTE FOR COMMENT	5.5	\$1,457.50
01/09/2003	TELEPHONE CALL TO MKB RE: ERWIN BRIEFING AND ADDITIONAL ARGUMENTS	0.3	\$79.50
01/23/2003	REVIEW DEFS' OPPOSITION BRIEF TO MPTION TO COMPEL TESTIMONY OF ERWIN RE: SCHEDULING ETC.	2	\$530.00
01/26/2003	DRAFT BEGIN DRAFTING REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL TESTIMONY OF ERTWIN	7	\$1,855.00
01/27/2003	DRAFT REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL TESTIMONY OF ERWIN	2.9	\$768.50
01/28/2003	PREPARATION FOR REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL TESTIMONY OF ERWIN	1.4	\$371.00
01/28/2003	FINALIZE REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL TESTIMONY OF ERWIN	9	\$2,385.00
02/05/2003	REVIEW OPINION ON ERWIN PRIVILEGE	1	\$265.00
	<i>Subtotal</i>	<b>37.9</b>	<b>10,043.50</b>
	<i>Total</i>	<b>50.166</b>	<b>14581.92</b>

## Exhibit B

*Tuesday, December 14, 2004*

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## Exhibit C

<i>Date</i>	<i>Task</i>	<i>Hours</i>	<i>Fee</i>
<b>BROWN</b>			
12/12/2002	REVIEW SPECIAL MASTER-MONITOR REPORT RE ERWIN DEPOSITION	0.5	\$185.00
12/13/2002	OFFICE CONFERENCE WITH TEAM RE STRATEGY RE COURT HEARING; PREPARE FOR AND ATTEND COURT HEARING RE DISCOVERY; OFFICE CONFERENCE WITH TEAM RE STRATEGY AT COURT HOUSE	1.666	\$616.42
12/13/2002	OFFICE CONFERENCE WITH TEAM/KH RE DISCOVERY STRATEGY	0.333	\$123.21
12/15/2002	PREPARE FOR ERWIN DEPOSITION	1.5	\$555.00
12/15/2002	PREPARE FOR ERWIN DEPOSITION; REVIEW PRIOR DEPOSITION TRANSCRIPT	2.166	\$801.42
12/15/2002	PREPARE FOR ERWIN DEPOSITION	3.083	\$1,140.71
12/16/2002	OFFICE CONFERENCE WITH TEAM RE TRIBAL TASK FORCE MEETING	0.25	\$92.50
12/16/2002	TELEPHONE CONFERENCE WITH KH/ TEAM RE ERWIN BEING IN DC	0.333	\$123.21
12/16/2002	TELEPHONE CONFERENCE WITH GMR/KH/DMG RE TRIBAL TASK FORCE; TELEPHONE CONFERENCE WITH KH RE ERWIN DEPO LOGISTICS	0.5	\$185.00
12/16/2002	PREPARE FOR ERWIN DEPOSITION	1.583	\$585.71
12/16/2002	PREPARE FOR ERWIN DEPOSITION	1.666	\$616.42
12/16/2002	PREPARE FOR ERWIN DEPOSITION	3.666	\$1,356.42
12/17/2002	PREPARE FOR AND ATTEND COURT HEARING RE DEPOS; OFFICE CONFERENCE WITH TEAM	1.25	\$462.50
12/17/2002	TELEPHONE CONFERENCE WITH EPC/TEAM RE ERWIN STATUS	0.5	\$185.00
12/17/2002	PREPARE FOR ERWIN DEPOSITION	2.416	\$893.92
12/17/2002	PREPARE FOR ERWIN DEPOSITION	0.333	\$123.21
12/17/2002	PREPARE FOR ERWIN DEPOSITION	2	\$740.00
12/18/2002	PREPARE FOR ERWIN DEPOSITION	3.666	\$1,356.42
12/18/2002	PREPARE LETTER TO PETRIE RE DEPO LOCATION CHANGE	0.333	\$123.21
12/19/2002	PREPARE FOR ERWIN DEPOSITION	4.75	\$1,757.50
12/19/2002	PREPARE FOR ERWIN DEPOSITION	3.583	\$1,325.71
12/19/2002	PREPARE FOR ERWIN DEPOSITION	1.666	\$616.42
12/20/2002	PREPARE FOR AND ATTEND ERWIN DEPO	8	\$2,960.00
	<i>Subtotal</i>	<b>45.743</b>	<b>16,924.91</b>

## Exhibit C

*Tuesday, December 14, 2004*

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## Exhibit C

<i>Date</i>	<i>Task</i>	<i>Hours</i>	<i>Fee</i>
<b>GINGOLD</b>			
12/12/2002	TELCOMS. HARPER RE DEFENDANTS' MOTION FOR PROTECTIVE ORDER RE ERWIN DEPOSITION.	0.3	\$111.00
12/13/2002	TELCOM. HARPER RE SAME.	0.1	\$37.00
12/13/2002	REVIEW MATERIALS IN PREPARATION FOR HEARING CONCERNING DEFENDANTS' EFFORTS TO BAR OR LIMIT DEPOSITION OF ERWIN TO ALBUQUERQUE DUE TO WHAT IS REPRESENTED TO THE COURT AND PLAINTIFFS AS HER INABILITY TO BE IN D.C. FOR DEPOSITION DUE TO SCHEDULE CONFLICTS.	1.2	\$444.00
12/13/2002	APPEAR IN COURT FOR HEARING RE SAME.	0.6	\$222.00
12/13/2002	MEET WITH HARPER, REMPEL RE SAME AND DEPOSITION ISSUES.	0.5	\$185.00
12/16/2002	TELCOMS. HARPER RE SAME, STRATEGY AND ACTION RE SAME.	1.1	\$407.00
12/16/2002	CONF CALLS HARPER, REMPEL AND BROWN RE ERWIN DEPOSITION ISSUES, ERWIN'S ATTENDANCE IN DC AT TRIBAL TASK FORCE MEETING..	0.6	\$222.00
12/17/2002	CONF CALL REMPEL, BROWN AND HARPER RE ERWIN HEARING ISSUES.	0.5	\$185.00
12/17/2002	APPEAR IN COURT RE SAME.	0.5	\$185.00
12/17/2002	TELCOMS. HARPER RE SAME, STRATEGY, ETC.	0.7	\$259.00
12/17/2002	TELCOM. COBELL RE ERWIN DEVELOPMENTS.	0.2	\$74.00
12/20/2002	ASSIST BROWN IN ERWIN DEPOSITION.	7.7	\$2,849.00
12/20/2002	TELCOM. HARPER RE SAME.	0.1	\$37.00
	<i>Subtotal</i>	<b>14.1</b>	<b>5,217.00</b>

## Exhibit C

## Exhibit C

<i>Date</i>	<i>Task</i>	<i>Hours</i>	<i>Fee</i>
<b>HARPER</b>			
12/03/2002	CONFERENCE WITH DG RE: DEPOSITIONS NEEDED PRIOR TO JANUARY 6TH; (TO BE CONTINUED)	0.3	\$79.50
12/06/2002	DRAFT NOTICE OF DEPOSITIONS FOR ERWIN, EDWARDS AND EDS	0.8	\$212.00
12/06/2002	CONFERENCE CALL WITH DEPOSITION SCHEDULE - NOTICE OF DEPOSITIONS	0.4	\$106.00
12/11/2002	TELEPHONE CALL FROM PETRIE; MEET AND CONFER RE: DEFS' MOTION FOR PROTECTIVE ORDER RE: EDWARDS ERWIN DEPOSITIONS: FILED WITH KIEFFER	0.2	\$53.00
12/12/2002	REVIEW RECORD IN PREP FOR ORAL ARGUMENT	1.4	\$371.00
12/12/2002	CONFERENCE CALL WITH MASTER MONITOR AND GOV COUNSEL RE: DEPOSITIONS OF ERWIN AND EDWARDS AND PREPARATION FOR SAME	1.6	\$424.00
12/13/2002	REVIEW CT ORDER ON DEPOSITIONS	0.2	\$53.00
12/13/2002	COURT APPEARANCE ORAL ARGUMENT RE: DEFS' MOTION FOR PROTECTIVE ORDER RE ERWIN AND EDWARDS; CONFER WITH CO COUNSEL PRE AND POST; CT DENIED MOTION	0.8	\$212.00
12/13/2002	PREPARATION OF ORAL ARGUMENT BEFORE JUDGE LAMBERTH ON ISSUE OF DEPOSITIONS	2	\$530.00
12/16/2002	CONFERENCE WITH DG RE: REMPEL ATTENDANCE AT MEETING WITH TRIBES	0.4	\$106.00
12/16/2002	TELEPHONE CALL TO REQUEST FOR HEARING AND DISCUSS WITH DG	0.3	\$79.50
12/16/2002	CONFERENCE WITH DG AND GR RE: ATTENDANCE OF ERWIN ACCORDING TO CASON; IPDATE ON MEETING	0.5	\$132.50
12/17/2002	COURT APPEARANCE DEF'S DECEPTION REGARDING ERWIN AND POST DISCUSSION	0.8	\$212.00
12/17/2002	PREPARATION FOR COURT APPEARANCE REGARDING DEFS' MISREPRESENTATIONS	1.5	\$397.50
<i>Subtotal</i>		<b>11.2</b>	<b>2,968.00</b>
<b>REMPEL</b>			
12/13/2002	PREPARE FOR AND ATTEND HEARING REGARDING DEPOSITION OF DONNA ERWIN AND OTHER TRIAL 1.5 WITNESSS.	1.3	\$292.50
12/13/2002	MEET W/ GINGOLD, HARPER RE ERWIN AND DEPOSITION ISSUES.	0.5	\$112.50
12/16/2002	ATTEND TRUST REFORM TASK FORCE MEETING. AT THIS HEARING I IDENTIFIED DONNA ERWIN AS BEING IN ATTENDANCE.	7	\$1,575.00
12/16/2002	CC W/ GINGOLD, HARPER RE STATUS OF TASK FORCE MEETING; SPECIFICALLY REGARDING ERWIN'S ATTENDANCE AT THE TASK FORCE MEETING. (2 CALLS)	0.6	\$135.00
12/16/2002	DRAFT DECLARATION REGARDING TASK FORCE MEETING AND ERWIN'S ATTENDANCE.	0.3	\$67.50
12/17/2002	CC W/ COBELL, GINGOLD, HARPER, BROWN RE STATUS OF TRIAL 1.5 PREPARATIONS AND HEARING REGARDING ERWIN.	0.5	\$112.50
12/17/2002	PREPARE FOR AND ATTEND HEARING.	0.8	\$180.00
12/20/2002	ATTEND ERWIN DEPOSITION (LEFT EARLY TO CONTINUE TRIAL 1.5 REPORT PREPARATIONS).	1	\$225.00
<i>Subtotal</i>		<b>12</b>	<b>2,700.00</b>
<i>Total</i>		<b>83.043</b>	<b>27809.91</b>

## Exhibit C

## Exhibit D

<i>Date</i>	<i>Task</i>	<i>Hours</i>	<i>Fee</i>
<b>BROWN</b>			
01/03/2003	OFFICE CONFERENCE WITH TEAM RE ERWIN DEPOSITION STRATEGY	0.333	\$123.21
01/30/2003	TELEPHONE CONFERENCE WITH MR. LEVITAS RE ERWIN PRIVILEGE ISSUE; OFFICE CONFERENCE WITH DMG	0.333	\$123.21
02/05/2003	OFFICE CONFERENCE WITH TEAM RE ERWIN STRATEGY	0.333	\$123.21
02/05/2003	PREPARE FOR ERWIN DEPOSITION	0.333	\$123.21
02/05/2003	PREPARE FOR ERWIN DEPOSITION	1.583	\$585.71
02/05/2003	PREPARE FOR ERWIN DEPOSITION	1.583	\$585.71
02/05/2003	TELEPHONE CONFERENCE WITH KH/TEAM RE ERWIN STRATEGY	0.166	\$61.42
02/05/2003	TELEPHONE CONFERENCES WITH KH/OFFICE CONFERENCE WITH TEAM RE SUBPENA OF ERWIN STRATEGY	0.333	\$123.21
02/06/2003	TELEPHONE CONFERENCE WITH KH/TEAM RE ERWIN DEFENSE; OCW DMG RE SAME	0.333	\$123.21
02/06/2003	TELEPHONE CONFERENCE WITH TEAM RE DEPO NOTICES; REVIEW SAME	0.583	\$215.71
02/06/2003	PREPARE FOR ERWIN DEPOSITION	1.166	\$431.42
02/06/2003	PREPARE FOR ERWIN DEPOSITION	1.083	\$400.71
02/08/2003	PREPARE FOR ERWIN DEPOSITION	1.25	\$462.50
02/10/2003	PREPARE FOR ERWIN DEPOSITION	3.416	\$1,263.92
02/11/2003	PREPARE FOR ERWIN DEPOSITION	3.083	\$1,140.71
02/11/2003	PREPARE FOR ERWIN DEPOSITION	3.333	\$1,233.21
02/11/2003	PREPARE FOR ERWIN DEPOSITION	3.833	\$1,418.21
02/12/2003	PREPARE FOR AND ATTEND DEPO OF ERWIN	5	\$1,850.00
02/12/2003	PREPARE FOR ERWIN DEPOSITION	2.75	\$1,017.50
02/12/2003	PREPARE FOR ERWIN DEPOSITION	3.833	\$1,418.21
02/13/2003	OFFICE CONFERENCE WITH KH RE ERWIN STRATEGY	0.333	\$123.21
02/13/2003	PREPARE FOR AND ATTEND DEPO OF ERWIN	6.833	\$2,528.21
02/13/2003	TELEPHONE CONFERENCE WITH DMG/KH RE ERWIN DEPO STRATEGY/ATTORNEY-CLIENT PRIVILEGE STRATEGY	1.083	\$400.71
02/15/2003	LEGAL RESEARCH RE ATTORNEY-CLIENT PRIVILEGE IN TRUST CONTEXT RE JENSEN RE MOTION TO COMPEL ERWIN TESTIMONY	2.75	\$1,017.50
02/15/2003	LEGAL RESEARCH RE ATTORNEY-CLIENT PRIVILEGE IN TRUST CONTEXT RE JENSEN RE MOTION TO COMPEL ERWIN TESTIMONY	2.25	\$832.50
02/16/2003	LEGAL RESEARCH RE ATTORNEY-CLIENT PRIVILEGE IN TRUST CONTEXT RE JENSEN RE MOTION TO COMPEL ERWIN TESTIMONY; PREPARE MEMORANDUM RE SAME	3.583	\$1,325.71
02/16/2003	LEGAL RESEARCH RE ATTORNEY-CLIENT PRIVILEGE IN TRUST CONTEXT RE JENSEN RE MOTION TO COMPEL ERWIN TESTIMONY	3.416	\$1,263.92
02/18/2003	LEGAL RESEARCH RE CHINESE WALLS RE ERWIN MOTION TO COMPEL	2.416	\$893.92
02/18/2003	LEGAL RESEARCH RE CHINESE WALLS RE ERWIN MOTION TO COMPEL	3.083	\$1,140.71
02/19/2003	LEGAL RESEARCH RE CHINESE WALLS RE ERWIN MOTION TO COMPEL	1.416	\$523.92
02/19/2003	PREPARE ERWIN MOTION TO COMPEL	2.916	\$1,078.92
02/20/2003	TELEPHONE CONFERENCE WITH KH RE ERWIN STRATEGY	0.333	\$123.21
02/20/2003	TELEPHONE CONFERENCE WITH TEAM/KH RE ERWIN STR/TRIAL	2	\$740.00
03/03/2003	LEGAL RESEARCH RE CHINESE WALLS	0.333	\$123.21
03/03/2003	REVIEW ERWIN TRANSCRIPT FOR NEXT SESSION OF HER DEPOSITION	3.25	\$1,202.50

## Exhibit D

*Tuesday, December 14, 2004*

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## Exhibit D

<i>Date</i>	<i>Task</i>	<i>Hours</i>	<i>Fee</i>
03/03/2003	REVIEW ERWIN DOCUMENTS FOR ERWIN/SINGER DEPO	1.666	\$616.42
03/11/2003	REVIEW ERWIN PRIVILEGE LOG LETTER	0.333	\$123.21
10/10/2004	OFFICE CONFERENCE WITH DMG RE ERWIN STRATEGY	0.333	\$129.87
10/10/2004	REVIEW ERWIN DEPOS IN PREPARATION FOR ERWIN DEPO	3.166	\$1,234.74
10/11/2004	LEGAL RESEARCH RE DELIBERATIVE PROCESS PRIVILEGE/PRIVILEGE ISSUES IN PREPARATION FOR ERWIN DEPO	1.583	\$617.37
10/11/2004	REVIEW COURT TRANSCRIPTS AND OPINIONS IN PREPARATION FOR ERWIN DEPO	1.666	\$649.74
10/11/2004	REVIEW ERWIN DEPOSITIONS IN PREPARATION FOR ERWIN DEPO	2.166	\$844.74
10/12/2004	REVIEW DOCS IN PREPARATION FOR ERWIN DEPO	2.916	\$1,137.24
10/12/2004	REVIEW ERWIN DEPOSITIONS IN PREPARATION FOR ERWIN DEPO	2.666	\$1,039.74
10/13/2004	PREPARE FOR ERWIN DEPO	2.416	\$942.24
10/13/2004	PREPARE FOR ERWIN DEPOSITION	3.916	\$1,527.24
10/13/2004	PREPARE FOR ERWIN DEPOSITION	4.333	\$1,689.87
10/14/2004	OFFICE CONFERENCE WITH RUTH HARGROW RE DEPOSITION EXHIBITS	0.333	\$129.87
10/14/2004	PREPARE FOR ERWIN DEPOSITION	2.833	\$1,104.87
10/14/2004	PREPARE FOR AND ATTEND ERWIN DEPOSITION	5	\$1,950.00
	<i>Subtotal</i>	<b>105.981</b>	<b>39,879.51</b>

## Exhibit D

## Exhibit D

<i>Date</i>	<i>Task</i>	<i>Hours</i>	<i>Fee</i>
<b>GINGOLD</b>			
01/09/2003	TELCOM. COBELL RE. ERWIN SITUATION.	0.5	\$185.00
01/14/2003	REVIEW/MARKUP DEFENDANTS' OPPOSITION TO MOTION TO COMPEL.	0.5	\$185.00
02/05/2003	OUTLINE NATURE AND SCOPE OF ERWIN DEPOSITION PER COURT	1.4	\$518.00
02/05/2003	REVIEW/MARKUP COURT MEMORANDUM AND ORDER RE ERWIN AND NEW DEPOSITION.	1	\$370.00
02/05/2003	TELCOMS. HARPER RE SAME AND ISSUES TO BE EXPLORED IN	1	\$370.00
02/06/2003	CONF CALL BROWN, REMPEL, HARPER RE SAME.	0.4	\$148.00
02/06/2003	REVIEW ERWIN CONTEMPT 1 TRIAL TESTIMONY (1.21.99), TRIAL 1 TESTIMONY (6.22-23.99), DEPOSITION TRANSCRIPT TO PREPARE QUESTIONS FOR 2.12.03 DEPOSITION RE 2.5.03 MEMORANDUM AND	9.9	\$3,663.00
02/06/2003	TELCOMS. HARPER RE ABOVE.	1.7	\$629.00
02/07/2003	CONTINUE REVIEW OF ERWIN LITIGATION TESTIMONY RE SAME.	7.9	\$2,923.00
02/08/2003	CONTINUE REVIEW OF ERWIN TESTIMONY RE SAME.	4.2	\$1,554.00
02/09/2003	CONTINUE REVIEW OF ERWIN TESTIMONY RE SAME.	3.2	\$1,184.00
02/11/2003	TELCOMS. REYNOLDS RE ERWIN DEPOSITION ISSUES.	0.2	\$74.00
02/11/2003	TELCOM. HARPER RE SAME.	0.4	\$148.00
02/11/2003	CONF CALL BROWN, HARPER, AND REMPEL RE SAME.	0.1	\$37.00
02/12/2003	TELCOMS. HARPER RE MEMORANDUM TO FILE RE SAME.	0.3	\$111.00
02/12/2003	TELCOM. LEVITAS RE SAME.	0.1	\$37.00
02/12/2003	DISCUSSION WITH REMPEL RE ERWIN MEMORANDUM RE AVAILABILITY FOR DEPOSITION IN WASHINGTON AND DECEPTION.	2	\$740.00
02/12/2003	CONF CALL BROWN, HARPER RE BROWN BRIEFING ON ERWIN	0.3	\$111.00
09/08/2004	TELCOM. REYNOLDS TO SET UP DATE FOR ERWIN DEPOSITION TO COMPLETED IN ACCORDANCE WITH NEW COURT ORDER.	0.3	\$117.00
09/23/2004	TELCOM. REYNOLDS TO WORK OUT DATE FOR ERWIN DEPOSITION AND AGREE TO JOINTLY REQUEST ENLARGEMENT OF TIME WITHIN WHICH TO COMPLETE SAME IN LIGHT OF TIME CONSTRAINT SET FORTH IN COURT ORDER.	0.2	\$78.00
09/24/2004	DRAFT JOINT RE SAME.	0.5	\$195.00
09/24/2004	TELCOMS. REYNOLDS RE SAME, COMMENTS, EDITS.	0.5	\$195.00
09/24/2004	TELCOM. HARPER RE SAME AND INFORMATION TO BE SOUGHT FROM ERWIN.	0.5	\$195.00
		<i>Subtotal</i>	<b>37.1 13,767.00</b>

## Exhibit D

## Exhibit D

<i>Date</i>	<i>Task</i>	<i>Hours</i>	<i>Fee</i>
<b>HARPER</b>			
02/05/2003	CONFERENCE WITH IIM TEAM REGARDING COURT'S OPINION ADDRESSING ISSUES RELATED TO ERWIN DEPOSITION SCHEDULING; DEPOSITION; NOTICE ETC.	1	\$265.00
02/05/2003	CONFERENCE CALL WITH DG RE: ERWIN DEPOSITION	0.5	\$132.50
02/06/2003	CONFERENCE WITH DG AND THEN MKB RE: RE-DEPOSITION OF DONNA ERWIN	0.6	\$159.00
02/07/2003	CONFERENCE WITH DG RE: ERWIN DEPOSITION AND WHO ELSE WE MAY NEED TO DEPOSE; PREPARE NOTICE FOR SPOONER; QUINN, PETRIE ETC.	1.5	\$397.50
02/08/2003	CONFERENCE WITH MKB RE: NECESSARY PREP FOR ERWIN DEPOSITION; QUESTIONS; DOCS TO REVIEW	0.3	\$79.50
02/09/2003	REVIEW ERWIN TRANSCRIPT FROM 12/20 IN PREP FOR ERWIN DEPOSITION; DISCUSS PRODUCTION OF DOCS WITH DG	1.2	\$318.00
02/10/2003	REVIEW MATERIAL RE: DONNA ERWIN DEPOSITION	1.4	\$371.00
02/10/2003	CONFERENCE CALL WITH MKB RE: PREPARATION FOR ERWIN DEPOSITION; DISCUSS SAME WITH DG	0.4	\$106.00
02/12/2003	APPEAR AT ERWIN DEPOSITION AND DISCUSSIONS WITH MKB IN PREPARATIONS THEREOF	4	\$1,060.00
02/13/2003	GENERAL DEPOSITION OF DONNA ERWIN RE: GOV'T	6	\$1,590.00
	<i>Subtotal</i>	<b>16.9</b>	<b>4,478.50</b>
<b>REMPEL</b>			
02/06/2003	CC W/ BROWN, REMPEL, HARPER RE ERWIN DEPOSITION AND MEMORANDUM AND ORDER.	0.4	\$90.00
02/11/2003	CC W/ BROWN, HARPER, GINGOLD REGARDING ERWIN DEPOSITION	0.1	\$22.50
02/12/2003	REVIEW ERWIN MEMORANDUM TO FILE REGARDING HER DECEMBER DEPOSITIONS AND CONVERSATIONS WITH HER ATTORNEYS.	0.5	\$112.50
02/12/2003	DISCUSS W/ GINGOLD RE ERWIN MEMORANDUM.	2	\$450.00
02/13/2003	CC W/ LITIGATION TEAM RE ERWIN.	1.2	\$270.00
08/19/2004	DRAFT, EDIT NOTICE REGARDING ERWIN TRANSCRIPT (IN RESPONSE TO COURT ORDER).	0.4	\$90.00
	<i>Subtotal</i>	<b>4.6</b>	<b>1,035.00</b>
	<i>Total</i>	<b>164.581</b>	<b>59160.01</b>

## Exhibit D

**Exhibit E**

<i>Date</i>	<i>Task</i>	<i>Hours</i>	<i>Fee</i>
<b>BROWN</b>			
02/05/2003	PREPARE DEMAND FOR PRODUCTION OF DOCUMENTS FOR ERWIN	0.916	\$338.92
	<i>Subtotal</i>	<b>0.916</b>	<b>338.92</b>
<b>HARPER</b>			
02/05/2003	DRAFT NOTICE OF DEPOSITION-ERWIN	0.8	\$212.00
02/05/2003	FINALIZE RE-DRAFT DEPOSITION NOTICE WITH REQUEST FOR PRODUCTION OF DOCUMENTS; INCLUDE EDITS FROM DG AND MKB; FINALIZE	1.5	\$397.50
02/11/2003	REVIEW DOCUMENTS PRODUCED IN PREP FOR ERWIN DEPOSITION	2	\$530.00
02/19/2003	PREPARATION OF REVIEW DOCUMENTS PRODUCED FOR ERWIN DEPOSITION	3	\$795.00
	<i>Subtotal</i>	<b>7.3</b>	<b>1,934.50</b>
	<i>Total</i>	<b>8.216</b>	<b>2273.42</b>

**Exhibit E**

*Tuesday, December 14, 2004*

*Page 1 of 1*

EXHIBIT E  
Defendants' Objections to Plaintiffs'  
Request for Attorney's Fees and  
Expenses Pursuant to the Court's  
February 5, 2003 Ruling

## Exhibit F

<i>Date</i>	<i>Task</i>	<i>Hours</i>	<i>Fee</i>
<b>BROWN</b>			
03/04/2003	PREPARE FOR AND ATTEND SINGER DEPO	4.5	\$1,665.00
		<i>Subtotal</i>	<b>4.5</b>
			<b>1,665.00</b>
<b>GINGOLD</b>			
02/15/2003	TELCOMS. HARPER RE SAME AND ISSUES RE SINGER DEPOSITION.	0.7	\$259.00
02/19/2003	TELCOMS. HARPER RE SAME.	0.2	\$74.00
02/19/2003	TELCOMS. REYNOLDS RE DATE, SCOPE OF SINGER DEPOSITION - TENTATIVELY SET FOR 2.27.03.	0.3	\$111.00
03/04/2003	TELCOM. HARPER RE SINGER DEPOSITION TESTIMONY ON THIS DATE.	0.3	\$111.00
		<i>Subtotal</i>	<b>1.5</b>
			<b>555.00</b>
<b>HARPER</b>			
02/06/2003	DRAFT AND DISTRIBUTE SINGER DEPOSITION NOTICE AND REQUEST FOR PRODUCTION	0.7	\$185.50
02/15/2003	PREPARATION FOR DEPOSITION OF MICHELE SINGER	2	\$530.00
02/18/2003	CONFERENCE WITH DG (3 TIMES) RE: SCHEDULING OF SINGER	0.5	\$132.50
02/21/2003	REVIEW MATERIAL IN PREP FOR DEPOSITION OF SINGER	2	\$530.00
03/03/2003	PREPARATION FOR DEPOSITION OF MICHELE SINGER; REVIEW DOCUMENTS; REVIEW TRANSCRIPT; DRAFT QUESTIONS	7	\$1,855.00
03/04/2003	APPEAR AT DEPOSITION OF MICHELE SINGER	7	\$1,855.00
		<i>Subtotal</i>	<b>19.2</b>
		<i>Total</i>	<b>25.2</b>
			<b>7308</b>

## Exhibit F

Tuesday, December 14, 2004

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## Exhibit G

<i>Date</i>	<i>Task</i>	<i>Hours</i>	<i>Fee</i>
<b>BROWN</b>			
12/23/2002	TELEPHONE CONFERENCES COURT REPORTER RE ERWIN TRANSCRIPT	0.333	\$123.21
12/26/2002	TELEPHONE CONFERENCE WITH COURT REPORTER RE ERWIN	0.25	\$92.50
12/27/2002	TELEPHONE CONFERENCES WITH ERWIN COURT REPORTER	0.333	\$123.21
01/17/2003	TELEPHONE CONFERENCE WITH EPC RE ERWIN	0.083	\$30.71
	<i>Subtotal</i>	<b>0.999</b>	<b>369.63</b>
<b>GINGOLD</b>			
02/05/2003	TELCOMS. COBELL RE SAME.	0.3	\$111.00
02/11/2003	TELCOM. COBELL RE SAME.	0.1	\$37.00
02/13/2003	TELCOM. LEVITAS RE SAME.	0.1	\$37.00
02/13/2003	CONF CALL BROWN, HARPER, REMPEL RE PRIVILEGE AND OTHER ISSUES THAT NEED TO BE ADDRESSED AS A RESULT OF LATEST ERWIN DEPOSITION.	1.2	\$444.00
02/17/2003	TELCOMS. REYNOLDS RE ERWIN, SINGER DEPOSITIONS.	0.2	\$74.00
	<i>Subtotal</i>	<b>1.9</b>	<b>703.00</b>
	<i>Total</i>	<b>2.899</b>	<b>1072.63</b>

## Exhibit G

*Tuesday, December 14, 2004*

*Page 1 of 1*

EXHIBIT G  
Defendants' Objections to Plaintiffs' Request  
for Attorney's Fees and Expenses Pursuant to  
the Court's February 5, 2003 Ruling

## Exhibit H

<i>Date</i>	<i>Task</i>	<i>Hours</i>	<i>Fee</i>
<b>BROWN</b>			
05/21/2003	SUMMARIZE ERWIN DEPOSITION TRANSCRIPTS	0.333	\$126.54
05/22/2003	SUMMARIZE ERWIN DEPOSITION TRANSCRIPTS	1.5	\$570.00
05/22/2003	SUMMARIZE ERWIN DEPOSITION TRANSCRIPTS	4.75	\$1,805.00
05/22/2003	SUMMARIZE ERWIN DEPOSITION TRANSCRIPTS	0.75	\$285.00
08/18/2004	REVIEW COURT ORDER RE ERWIN DEPO; REVIEW AND ANNOTATE DEPOSITION TRANSCRIPT	0.833	\$324.87
10/26/2004	LOAD ERWIN TRANSCRIPT INTO SUMMATION AND FORMAT	0.25	\$97.50
10/28/2004	PREPARE SUMMARY OF ERWIN EVIDENCE -- VOL II	0.333	\$129.87
10/29/2004	PREPARE SUMMARY OF ERWIN EVIDENCE -- VOL II	0.916	\$357.24
10/29/2004	OFFICE CONFERENCE WITH DMG/KH RE ERWIN APPLICATION	0.75	\$292.50
10/29/2004	PREPARE SUMMARY OF ERWIN EVIDENCE	2.416	\$942.24
10/29/2004	PREPARE SUMMARY OF ERWIN EVIDENCE -- VOL II	1.75	\$682.50
10/30/2004	PREPARE SUMMARY OF ERWIN EVIDENCE -- VOL II	3.583	\$1,397.37
10/30/2004	PREPARE LETTER TO OPPOSING COUNSEL RE PETRIE NOTES	0.333	\$129.87
10/31/2004	PREPARE SUMMARY OF ERWIN EVIDENCE -- VOL II & III	1.166	\$454.74
11/01/2004	OFFICE CONFERENCE WITH DMG; FINALIZE DODGE WELLS LETTER RE PETRIE NOTES; TELEPHONE CONFERENCE WITH NARF	0.583	\$227.37
11/03/2004	PREPARE SUMMARY OF ERWIN EVIDENCE	2.25	\$877.50
11/05/2004	PREPARE SUMMARY OF ERWIN EVIDENCE -- VOL III	3.5	\$1,365.00
11/05/2004	PREPARE SUMMARY OF ERWIN EVIDENCE	2.666	\$1,039.74
11/06/2004	PREPARE SUMMARY OF ERWIN EVIDENCE -- VOL III	2.916	\$1,137.24
11/08/2004	PREPARE SUMMARY OF ERWIN EVIDENCE -- VOL III	2.25	\$877.50
11/08/2004	PREPARE SUMMARY OF ERWIN EVIDENCE; SUMMARIZE ERWIN DEPOSITION TRANSCRIPT IV	3.166	\$1,234.74
11/09/2004	PREPARE SUMMARY OF ERWIN EVIDENCE	3.416	\$1,332.24
11/09/2004	TELEPHONE CONFERENCES RUTH; PREPARE SUMMARY OF ERWIN EVIDENCE; SUMMARIZE ERWIN DEPOSITION TRANSCRIPT IV	4.166	\$1,624.74
11/10/2004	PREPARE SUMMARY OF ERWIN EVIDENCE; REVIEW DOCUMENTS PRODUCED WITH RESPECT THERETO	2.333	\$909.87
11/11/2004	OFFICE CONFERENCE WITH DMG RE ERWIN MATTER	0.25	\$97.50
11/11/2004	PREPARE SUMMARY OF ERWIN EVIDENCE; REVIEW DOCUMENTS PRODUCED WITH RESPECT THERETO	4.083	\$1,592.37
11/12/2004	PREPARE SUMMARY OF ERWIN EVIDENCE; SINGER DEPOSITION	2.166	\$844.74
11/12/2004	PREPARE SUMMARY OF ERWIN EVIDENCE; SINGER DEPOSITION	2.5	\$975.00
11/13/2004	PREPARE SUMMARY OF ERWIN EVIDENCE; SINGER DEPOSITION	3.916	\$1,527.24
11/13/2004	OFFICE CONFERENCE WITH DMG RE ERWIN APPLICATION; INCORPORATE HIS CHANGES IN EVIDENTIARY SUMMARY	1.75	\$682.50
11/14/2004	PREPARE SUMMARY OF ERWIN EVIDENCE; SINGER DEPOSITION; OFFICE CONFERENCES WITH DMG; E-MAIL TO KH RE EVIDENCE	4.75	\$1,852.50
11/14/2004	FINALIZE AND CROSS-REFERENCE EVIDENTIARY SUMMARY	2.666	\$1,039.74
11/14/2004	PREPARE MEMORANDUM OF POINTS AND AUTHORITIES RE ERWIN	2.25	\$877.50
11/14/2004	PREPARE SUMMARY OF ERWIN EVIDENCE; SINGER DEPOSITION	2.333	\$909.87
11/15/2004	PREPARE MEMORANDUM OF POINTS AND AUTHORITIES RE ERWIN	2.333	\$909.87

## Exhibit H

*Tuesday, December 14, 2004*

*Page 1 of 2*

EXHIBIT H  
Defendants' Objections to Plaintiffs' Request  
for Attorney's Fees and Expenses Pursuant to  
the Court's February 5, 2003 Ruling

## Exhibit H

<i>Date</i>	<i>Task</i>	<i>Hours</i>	<i>Fee</i>
11/15/2004	FINALIZE AND CROSS-REFERENCE EVIDENTIARY SUMMARY	2.416	\$942.24
11/15/2004	PREPARE MEMORANDUM OF POINTS AND AUTHORITIES RE ERWIN; OFFICE CONFERENCES WITH RUTH RE EXHIBITS; OFFICE CONFERENCES WITH DMG RE EVIDENCE	3.166	\$1,234.74
	<i>Subtotal</i>	<b>81.488</b>	<b>31,706.99</b>
<b>GINGOLD</b>			
11/13/2004	REVIEW, REVISE SANCTIONS BRIEF RE SAME.	1.9	\$741.00
11/13/2004	DISCUSSION WITH BROWN RE BRIEF, CULPABILITY OF SPOONER, PETRIE, GRILES, CASON, JENSEN AND APPARENT IGNORANCE OF QUINN; ADVERSE INFERENCES RE PETRIE WARRANTED DUE TO HIS DESTRUCTION OF CRITICAL NOTES.	0.4	\$156.00
11/14/2004	REVIEW, REVISE SATURDAY, RED-LINED MKB BRIEF RE ERWIN	1.5	\$585.00
11/14/2004	TELCOMS. HARPER RE COMMENTS RE SAME.	0.4	\$156.00
11/14/2004	DISCUSSION BROWN RE SAME.	0.3	\$117.00
11/15/2004	REVIEW AND REVISE CURRENT DRAFTS OF REPORT ON STATUS OF EVIDENCE RE ERWIN, SUMMARIES, EVIDENTIARY EXHIBIT, AND DRAFT PROPOSED ORDER RE SAME.	5.2	\$2,028.00
	<i>Subtotal</i>	<b>9.7</b>	<b>3,783.00</b>
<b>HARPER</b>			
11/11/2004	RVW ERWIN DEPOSITION TRANSCRIPT FOR MOTION TO COMPEL SANCTIONS AWARD BRIEF; DISCUSS WITH DG	2.2	\$737.00
11/12/2004	RVW AND EDIT ERWIN DEPOSITION MEMORANDUM AND EVIDENTIARY STATEMENT; DISCUSS WITH DG AND MKB	3.6	\$1,206.00
	<i>Subtotal</i>	<b>5.8</b>	<b>1,943.00</b>
	<i>Total</i>	<b>96.988</b>	<b>37432.99</b>

## Exhibit H



## Exhibit I

<i>Date</i>	<i>Task</i>	<i>Hours</i>	<i>Fee</i>
<b>BROWN</b>			
10/27/2004	GATHER ERWIN TIME	1.083	\$422.37
10/27/2004	GATHER ERWIN TIME	2.666	\$1,039.74
10/28/2004	GATHER ERWIN TIME; PREPARE MKB AFFIDAVIT	2.416	\$942.24
11/15/2004	PREPARE MKB ERWIN AFFIDAVIT; GATHER TIME	3.666	\$1,429.74
	<i>Subtotal</i>	<b>9.831</b>	<b>3,834.09</b>
<b>GINGOLD</b>			
11/10/2004	TELCOM. HARPER RE ERWIN TIME, PREPARATION OF BRIEF RE SAME, FILING DEADLINE RE SAME.	0.2	\$78.00
11/10/2004	REVIEW, IDENTIFY TIME RECORDS RELEVANT TO PREPARATION OF SANCTIONS RE ERWIN.	5	\$1,950.00
11/10/2004	BEGIN SEGREGATION OF RELEVANT TIME AND RESTATE SAME ON SCHEDULE TO BE APPENDED TO AFFIDAVIT IN SUPPORT OF SANCTIONS TIME TO BE FILED.	2.5	\$975.00
11/11/2004	CONTINUE SEGREGATION AND RESTATEMENT OF RELEVANT TIME RE SAME.	0.3	\$117.00
11/13/2004	CONTINUE IDENTIFICATION AND SEGREGATION OF RELEVANT TIME, COMPARE TO TIME RECORDED RE REMPEL.	0.3	\$117.00
11/13/2004	BEGIN PREPARATION OF AFFIDAVIT RE SAME.	0.6	\$234.00
11/15/2004	DISCUSSIONS WITH BROWN RE SAME, SERVICE ISSUES PER ORDER.	1.2	\$468.00
11/15/2004	REVIEW TIME ENTRIES AND DISCUSS SAME WITH REMPEL RE RELEVANCE TO AND CONFORMITY WITH ERWIN SANCTIONS FEE	0.3	\$117.00
11/15/2004	REVISE DRAFT AFFIDAVIT IN SUPPORT OF SANCTIONS FEE APPLICATION.	1.8	\$702.00
11/15/2004	REVIEW REMPEL DRAFT AFFIDAVIT RE SAME.	0.1	\$39.00
11/15/2004	TELCOMS. HARPER RE SAME.	0.3	\$117.00
	<i>Subtotal</i>	<b>12.6</b>	<b>4,914.00</b>
<b>HARPER</b>			
11/12/2004	RVW TIME RECORDS TO CULL TIME RELATED TO MOTION TO COMPEL DEPOSITION AND RELATED MATTERS	2.2	\$737.00
11/14/2004	RVW FURTHER TIME RECORDS AND ERWIN DEPOSITION SANCTIONS BRIEF AND DISCUSS SAME WITH DG; REVIEW VARIOUS EMAILS FROM DG	2.3	\$770.50
11/15/2004	RVW AND EDIT ERWIN BRIEF AND FEES & EXPENSE STATEMENT; DRAFT AFFIDAVIT AND CALCULATE TIME; TIME REVIEW AND DISCUSS WITH CO-COUNSEL	5.2	\$1,742.00
	<i>Subtotal</i>	<b>9.7</b>	<b>3,249.50</b>
<b>REMPEL</b>			
11/13/2004	COMPILE, EDIT TIME IN ACCORDANCE WITH COURT'S ORDER.	1.5	\$337.50
11/14/2004	COMPILE, EDIT TIME IN ACCORDANCE WITH COURT'S ORDER.	1.5	\$337.50
11/15/2004	FINALIZE TIME. COMPARE TO GINGOLD TIME. DISCUSS W/	2	\$450.00
	<i>Subtotal</i>	<b>5</b>	<b>1,125.00</b>
	<i>Total</i>	<b>37.131</b>	<b>13122.59</b>

## Exhibit I

Tuesday, December 14, 2004

Page 1 of 1

EXHIBIT I  
Defendants' Objections to Plaintiffs' Request  
for Attorney's Fees and Expenses Pursuant  
to the Court's February 5, 2003 Ruling



# UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF COLUMBIA

555 4TH STREET, NW  
WASHINGTON, DC 20530  
(202) 514-7566

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## LAFFEY MATRIX 1992 - 2003

Years (Rate for June 1 - May 31, based on prior year's CPI-U)

Experience	92-93	93-94	94-95	95-96	96-97	97-98	98-99	99-00	00-01	01-02	02-03
20+ years	300	305	310	315	325	330	335	340	350	360	370
11-19 years	265	265	270	275	280	285	290	295	305	315	325
8-10 years	210	215	220	225	230	235	240	245	250	260	265
4-7 years	170	175	180	195	190	195	195	200	205	210	215
1-3 years	130	135	140	145	150	155	155	160	165	170	175
Paralegals & Law Clerk	75	75	80	80	80	85	85	90	90	95	100

### Explanatory Notes

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia. The matrix is intended to be used in cases in which a "fee-shifting" statute permits the prevailing party to recover "reasonable" attorney's fees. See, e.g., 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412 (b) (Equal Access to Justice Act). The matrix does not apply in cases in which the hourly rate is limited by statute. See 28 U.S.C. § 2412(d).
2. This matrix is based on the hourly rates allowed by the District Court in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is commonly referred to by attorneys and federal judges in the District of Columbia as the "Laffey Matrix" or the "United States Attorney's Office Matrix." The column headed "Experience" refers to the years following the attorney's graduation from law school. The various "brackets" are intended to correspond to "junior associates" (1-3 years after law school graduation), "senior associates" (4-7 years), "experienced federal court litigators" (8-10 and 11-19 years), and "very experienced federal court litigators" (20 years or more). See *Laffey*, 572 F. Supp. at 371.
3. The hourly rates approved by the District Court in *Laffey* were for work done principally in 1981-82. The Matrix begins with those rates. See *Laffey*, 572 F. Supp. at 371 (attorney rates) & 386 n.74 (paralegal and law clerk rate). The rates for subsequent yearly periods were determined by adding the change in the cost of living for the Washington, D.C. area to the applicable rate for the prior year, and then rounding to the nearest multiple of \$5 (up if within \$3 of the next multiple of \$5). The result is subject to adjustment if appropriate to ensure that the relationship between the highest rate and the lower rates remains reasonably constant. Changes in the cost of living are measured by the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.
4. Use of an updated *Laffey* Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the United States Attorney's Office as evidence of prevailing market rates for litigation counsel in the Washington, D.C. area. See *Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n. 14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996). Lower federal courts in the District of Columbia have used this updated *Laffey* Matrix when determining whether fee awards under fee-shifting statutes are reasonable. See, e.g., *Blackman v. District of Columbia*, 59 F. Supp. 2d 37, 43 (D.D.C. 1999); *Jefferson v. Milvets System Technology, Inc.*, 986 F. Supp. 6, 11 (D.D.C. 1997); *Ralph Hoar & Associates v. Nat'l Highway Transportation Safety Admin.*, 985 F. Supp. 1, 9-10 n.3 (D.D.C. 1997); *Martini v. Fed. Nat'l Mtg Ass'n*, 977 F. Supp. 482, 485 n.2 (D.D.C. 1997); *Park v. Howard University*, 881 F. Supp. 653, 654 (D.D.C. 1995).

EXHIBIT J  
Defendants' Objections to Plaintiffs' Request  
for Attorney's Fees and Expenses Pursuant  
to the Court's February 5, 2003 Ruling

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

ELOUISE PEPION COBELL, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:96CV01285
	)	(Judge Lamberth)
GALE NORTON, Secretary of the Interior, <u>et al.</u> ,	)	
	)	
Defendants.	)	

---

**ORDER**

This matter comes before the Court on the *Plaintiffs' Report on the Status of the Evidence Concerning Defendants' and the Department of Justice's Misrepresentations To this Court on December 13 and December 17, 2003 and For Attorney's Fees with Respect Thereto*, Dkt # 2762. Upon consideration of Plaintiffs' Statement, Defendants' Objections, any Reply thereto, the applicable law and the entire record of this case, it is hereby

ORDERED that Defendants shall, with in 20 days of this order, pay \$15,889.50 in reasonable Fees and Expenses pursuant to the Court's February 5, 2003 Memorandum and Order, Dkt # 1772.

SO ORDERED.

---

Hon. Royce C. Lamberth  
UNITED STATES DISTRICT JUDGE  
United States District Court for the  
District of Columbia

Date: \_\_\_\_\_

cc:

Michael F. Hertz  
Dodge Wells  
Tracy L. Hilmer  
Commercial Litigation Branch  
Civil Division  
P.O. Box 261  
Ben Franklin Station  
Washington, DC 20044  
Fax (202)616-3085

Sandra P. Spooner  
John T. Stemplewicz  
Commercial Litigation Branch  
Civil Division  
P.O. Box 875  
Ben Franklin Station  
Washington, D.C. 20044-0875  
Fax (202) 514-9163

Dennis M Gingold, Esq.  
Mark Brown, Esq.  
607 - 14th Street, NW, Box 6  
Washington, D.C. 20005  
Fax (202) 318-2372

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

Elliott Levitas, Esq.  
1100 Peachtree Street, Suite 2800  
Atlanta, GA 30309-4530

Earl Old Person (*Pro se*)  
Blackfeet Tribe  
P.O. Box 850  
Browning, MT 59417  
(406) 338-7530