

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

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ELOUISE PEPION COBELL, et al.,)
)
Plaintiffs,)
)
v.)
)
GALE A. NORTON, Secretary of the Interior, et al.,)
)
Defendants.)
_____)

Case No. 1:96CV01285 (RCL)
(Judge Lamberth)

**INTERIOR DEFENDANTS' MOTION FOR
REIMBURSEMENT OF IMPROPER SPECIAL MASTER FEES**

Interior Defendants respectfully request reimbursement of certain fees paid to Alan L. Balaran in his capacity as Special Master on the ground that those fees were improperly billed to Defendants. Defendants were afforded no opportunity to object to the Special Master's compensation requests before the Court ordered that they be paid. As ordered by the Court, Defendants have already paid the full amount of each of the Special Master's invoices received to date and, therefore, request that the Court direct the Special Master to reimburse all improperly billed amounts.¹

As discussed in more detail below, Interior Defendants object to paying for (1) what appears to be the Special Master's research of issues and drafting of memoranda or opinions regarding matters directed to and properly resolved by the Court; (2) unauthorized IT security-related work performed by the Special Master; (3) work performed by unidentified assistants employed by the Special Master; (4) the Special Master's review of transcripts, briefs,

¹ In accordance with Local Rule 7.1(m), counsel for Defendants consulted with counsel for Plaintiffs regarding this motion. Plaintiffs' counsel stated that they oppose this motion.

correspondence, and other documents relating to matters not referred to him; and (5) time billed for reviewing briefs not yet filed.

BACKGROUND

The Court appointed Special Master Balaran pursuant to Federal Rule of Civil Procedure 53 to “oversee the discovery process and administer document production, compliance with court orders, and related matters.” Order of February 24, 1999 at 1. The February 24 Order identifies specific tasks that the Special Master is to perform and makes clear that “[a]ny information reported to the court by the special master shall also be reported to counsel for the parties.” *Id.* at ¶ 8. On September 17, 2002, the Court confined Special Master Balaran’s authority to oversee the discovery process to “issues related to IT security, records preservation and retention, the Department of the Treasury, and Paragraph 19 documents.” Cobell v. Norton, 226 F. Supp. 2d 1, 159 (D.D.C. 2002).

The Court’s February 24, 1999 appointment order requires the Defendants to compensate the Special Master “for all expenses incurred in connection with the appointment.” *Id.* at ¶ 1. Special Master Balaran’s practice has been to submit a monthly invoice to this Court in connection with his monthly report, and this Court has typically issued an order a few days later ordering Defendants to pay the full amount shown on the bill.² Neither the February 24, 1999 appointment order nor any of the orders requiring Defendants to pay the Special Master provides any mechanism for challenging the Special Master’s invoices.

² During the twelve-month period ending September 30, 2003, Defendants paid the Special Master and his experts a total of \$1,934,309.35 (\$557,194.65 for professional fees; \$19,174.57 for expenses; and \$1,357,940.13 for retained experts).

On August 12, 1999, the Court authorized the Special Master to “oversee the Interior Department’s retention and protection from destruction of IIM records,” to “recommend to the Department that it take reasonable steps to protect IIM records found to be in jeopardy of destruction” and to “recommend to the Court such remedial action as he deems appropriate pursuant to Rule 53.” Order Regarding Interior Department IIM Records Retention at 2 (Aug. 12, 1999). The Court also provided the Special Master with similar authority to oversee the Department of the Treasury’s “retention and protection from destruction of IIM records,” while recognizing that Treasury’s July 6, 1999 stipulation and its interactions with the Archivist of the United States provided Treasury with additional flexibility regarding the handling of its records. Order Regarding Treasury Department IIM Records Retention at 2 (Aug. 12, 1999). Neither of the August 12, 1999 orders purported to extinguish the Special Master’s obligations under the February 24, 1999 Order or Rule 53.³

On December 17, 2001, the Court entered its Consent Order Regarding Information Technology Security, which directed the Special Master to review certain plans and conduct certain inquiries with regard to security of individual Indian trust data in computer systems. The Court stayed its December 17, 2001 Order on July 28, 2003. Preliminary Injunction at 5 (July 28, 2003).

On September 17, 2002, the Court referred to the Special Master, for reports and recommendations, two of Plaintiffs’ motions seeking to hold “37 non-party individuals” in

³ Based on serious concerns arising from the Special Master’s conduct under these grants of authority, Interior Defendants filed a Motion For An Order Directing The Special Master To Conform His Conduct To Limits Stated By The Court Of Appeals; To Vacate Or Clarify Existing Orders As Appropriate; And To Act On This Motion On An Expedited Basis on September 24, 2003.

contempt and to hold Interior Defendants and their counsel in contempt for allegedly destroying e-mail. See Cobell v. Norton, 226 F. Supp. 2d at 162-63. Petitions to recuse the Special Master in the contempt-related proceedings, filed by certain of these non-party individuals, are pending before the Court of Appeals.

On November 5, 2002, the Court directed the Special Master to investigate allegations by Native American Industrial Distributors, Inc. (“NAID”) that Interior concealed certain information from the Court. The Special Master’s extraordinary conduct in that investigation is the subject of Interior Defendants’ pending disqualification motion. See Interior Defendants’ Motion To Disqualify Special Master Balaran (May 29, 2003).

In its decision of July 18, 2003, the Court of Appeals clarified the limits on the role of a Special Master in this litigation. See Cobell v. Norton, 334 F.3d 1128 (D.C. Cir. 2003). As the court explained, a master is not a “roving federal district court,” id. at 1143, empowered to initiate inquiries into matters that he perceives to be of concern, assemble evidence outside the structure of adversary litigation, and present findings and conclusions of law arrived at by procedures unknown to our judicial system.

ARGUMENT

I. Interior Defendants Should Be Reimbursed For Payments Made To The Special Master For Substantive Work On Matters Not Referred To Him, Including Research And Drafting Of Memoranda, Reports, Or Opinions Regarding Matters Directed To And Properly Resolved By The Court.

The Special Master’s compensation should be limited to work on matters that have been properly referred to him; he should not be compensated for work he undertakes on matters that are not before him. The Special Master’s invoices demonstrate that he has billed Defendants significant sums for work performed on at least four matters that were not referred to him, but

were directed to, and properly resolved by, the Court. Defendants should not have been required to pay for such work.

Under Rule 53, “[a] reference to a master shall be the exception and not the rule,” Fed. R. Civ. P. 53(b), and the master’s power is “[s]ubject to the specifications and limitations stated in the order,” Fed. R. Civ. P. 53(c). Interior Defendants are not aware of any order referring the four matters discussed below to the Special Master. Nor does Rule 53 support the proposition that the Special Master can perform substantive work on issues that have not been referred to him and expect to be reimbursed by Defendants for such work.⁴

Moreover, as reflected in the invoices excerpted below, it appears that the Special Master has billed Defendants substantial sums for drafting opinions and performing legal research for the Court. In our judicial system, these functions are funded by legislative appropriations; the costs are not borne by the litigants. Even if the Special Master could properly perform the work of the Court – which he cannot – Defendants should not be compelled to pay for it. Furthermore, to the extent the Special Master assisted the Court by providing information or drafting memoranda or opinions related to the matters discussed below, Defendants did not receive copies of the materials provided to the Court in violation of both the February 24, 1999 Order appointing the Special Master, which mandates that “[a]ny information reported to the court by the special master shall also be reported to counsel for the parties,” Order at ¶ 8 (Feb. 24, 1999), and the requirement in Rule 53(e) that “[t]he master shall prepare a report upon the matters submitted to the master by the order of reference” and that “[u]nless otherwise directed by the

⁴ Inasmuch as these matters were never referred to the Special Master, Interior Defendants do not here address whether such issues properly could be so referred.

order of reference, the master shall serve a copy of the report on each party.” Fed. R. Civ. P. 53(e)(1). None of the subsequent orders concerning the Special Master’s authority exempts him from providing copies to the parties of all information provided to the Court. To the extent that the Special Master provided materials to the Court on these matters, the parties had no opportunity to address or respond to any of those materials and thus had no way to guard against the risk that the materials contained substantive extra-record material that may have influenced the ultimate decisions of the Court.

1. Six Documents Attached To Seventh Report of the Court Monitor

On May 2, 2002, former Court Monitor Joseph Kieffer filed the Seventh Report of the Court Monitor (“Seventh Report”). Attached to the Seventh Report were six documents apparently acquired directly from the Department of the Interior that Interior Defendants believed to be privileged (“Six Documents”). On May 16, 2002, Interior Defendants filed their response to the Seventh Report and moved to file under seal a portion of their response that discussed the Six Documents on the ground that the documents were protected by the attorney-client privilege and work product doctrine. See Motion To File Under Seal Portion Of Response To Seventh Report Of Court Monitor That Discuss [sic] Privileged Materials (filed May 16, 2002). On May 31, 2002, Interior Defendants moved for a protective order regarding the Six Documents. See Interior Defendants’ Motion For Protective Order Regarding Privileged Documents Referenced In The Seventh Report Of The Court Monitor (filed May 31, 2002). The Court granted these motions on March 3, 2003.

Although the Court did not refer these motions to the Special Master or otherwise advise the parties that the Special Master would be involved in the Court’s consideration of the motions,

the Special Master charged Defendants twice for reviewing Defendants' Motion for Protective Order (once in June 2002 and again in July 2002), and then began to bill Defendants for substantive work on these motions in October 2002. The Special Master sought and received compensation in the amount of \$7,240 for his work ("ALB") and that of his assistant ("SEG") on this matter:

Invoice 5 June 4, 2002			Hours Rate	Amount
6/3/2002	ALB	Review Interior Defendants' Motion for Protective Order regarding Privileged Documents Referenced in the Seventh Report of the Court Monitor	0.30 200.00/hr.	60.00
Invoice 11 July 31, 2002			Hours Rate	Amount
7/3/2002	ALB	Review Interior Defendants' Motion for Protective Order regarding Privileged Documents referenced in the Seventh Report of the Court Monitor; Memorandum in support thereof	0.30 200.00/hr.	60.00
Invoice 18 Nov. 1, 2002			Hours Rate	Amount
10/24/2002	ALB	Review Arguments relating to protective order for documents attached to Court Monitor's Report	2.20 200.00/hr.	440.00
10/25/2002	ALB	Draft Report regarding privileged documents in Court Monitor Seventh Report; review case law concerning privileges	4.80 200.00/hr.	960.00
10/25/2002	SEG	Review documents related to Seventh Report of the Court Monitor/Research waiver of privilege	4.20 100.00/hr.	420.00
10/27/2002	ALB	Draft Opinion regarding Motion for Protective Order regarding documents attached to Seventh Report of Court Monitor	2.50 200.00/hr.	500.00
10/28/2002	SEG	Review attachments to Court Monitor Reports for privileged documents; research waiver of attorney-client privilege	7.60 100.00/hr.	760.00
10/29/2002	ALB	Draft Opinion regarding Court Monitor's seventh report documents and plaintiffs' Motion for sanctions, motion for leave to file under seal	2.90 200.00/hr.	580.00
10/29/2002	SEG	Research Attorney-Client Privilege issues	4.00 100.00/hr.	400.00

10/31/2002	SEG	Research Waiver of Attorney-Client Privilege and draft file memo regarding same	5.00 100.00/hr.	500.00
Invoice 20 Dec. 2, 2002			Hours Rate	Amount
11/1/2002	SEG	Draft memo on attorney-client privilege	0.50 100.00/hr.	50.00
11/12/2002	SEG	Research government waiver of attorney-client privilege	0.80 100.00/hr.	80.00
11/12/2002	ALB	Draft Opinion regarding Interior's Motion for Protective Order concerning attachments to Court Monitor's Seventh Report	5.40 200.00/hr.	1,080.00
11/13/2002	ALB	Draft Opinion regarding Motion for Protective Order for attachments to C.M.'s 7th Report	2.00 200.00/hr.	400.00
11/13/2002	SEG	Research Government attorney-client privilege	1.80 100.00/hr.	180.00
11/18/2002	ALB	Draft Report for Court concerning attachments to C.M. Report	1.60 200.00/hr.	320.00
11/20/2002	SEG	Edit opinion regarding six documents in Seventh Report of Court Monitor; draft opinions regarding sealing response to Seventh Report of Court Monitor	2.50 100.00/hr.	250.00
11/21/2002	SEG	Edit Opinion regarding six documents in Seventh Report of Court Monitor; draft opinions regarding motions to seal response to Seventh Report of Court Monitor	1.50 100.00/hr.	150.00
11/22/2002	SEG	Review Opinion regarding Six Documents in Seventh Report of Court Monitor	0.50 100.00/hr.	50.00
TOTAL				7,240.00

2. Recusal Motions

Beginning on October 29, 2002, private counsel for several individual government employees filed motions with this Court seeking recusal of the Court, the Special Master, and/or the Special Master-Monitor from further participation in the contempt-related proceedings pending before the Special Master as a result of the Court's September 17, 2002 Order (collectively "Recusal Motions"). On January 17, 2003, this Court issued an order denying the

Recusal Motions. Many of the individuals subsequently filed petitions for mandamus in the Court of Appeals, which are pending.

Although the Court did not refer any aspect of the Recusal Motions to the Special Master, or otherwise advise the parties that the Special Master would be involved in the Court's consideration of the motions, and although the Recusal Motions were filed by non-parties, the Special Master began to bill Defendants for substantive work apparently relating to the Recusal Motions in November 2002. The Special Master sought and received compensation from Defendants in the amount of \$8,170 for his work ("ALB") and that of his assistant ("SEG") on this matter.⁵

Invoice 20 Dec. 2, 2002			Hours Rate	Amount
11/18/2002	SEG	Review Recusal Memos; draft file memo	1.40 100.00/hr.	140.00
11/19/2002	SEG	Review Recusal Memos; draft file memo	.50 100.00/hr.	50.00

⁵ Because the Court did refer to Special Master Balaran the Plaintiffs' show cause motion as to these individuals, and because some of the motions sought his recusal, Defendants do not at this time object to the Special Master's charges for "reviewing" recusal motions on December 9, 2002 (\$140 to "Review Babbitt, Leshy, Cohen and Blackwell's Reply in support of Motion for Recusal" and \$500 to, among other things, "Review . . . Michael Carr Reply Brief to the Plaintiffs' Consolidate [sic] Motion for Recusal; Phillip Brooks Reply to Plaintiffs' Consolidated Opposition to Recusal Motions"), December 12, 2002 (\$280 to "Review Phillip Brooks' Reply to Plaintiffs' Consolidated Opposition to Recusal Motions"), December 19, 2002 (\$60 to "Review Anne Shields' Reply to Plaintiffs' Consolidated Opposition to the Various Motions to Recuse"), December 27, 2002 (\$40 to "Review Motion for recusal and disqualification or, in the alternative, to take discovery regarding ex parte communications by S. McCarthy" and \$20 to "Review Motion for Recusal by K. Rossman"), or December 30, 2002 (\$20 to "Review Swanson's motion for disqualification of Special Master et al and/or to take discovery regarding ex-parte communications).

Invoice 22 Jan. 3, 2002			Hours Rate	Amount
12/1/2002	ALB	Draft Memo regarding recusal of court officers; ex parte contacts	4.50 200.00/hr.	900.00
12/1/2002	ALB	Draft Memo regarding recusal of court officers; ex parte contacts	3.00 200.00/hr.	600.00
12/3/2002	ALB	Draft memorandum of points and authorities regarding recusal of Special Master et al.	4.90 200.00/hr.	980.00
12/4/2002	ALB	Review proposed amendments to federal rules regarding Special Masters and ex-parte contacts	3.30 200.00/hr.	660.00
12/5/2002	ALB	Draft memorandum of points and authorities regarding recusal of Special Master et al.; review proposed federal rules and advisory committee notes; case law and law reviews	6.70 200.00/hr.	1,340.00
12/7/2002	ALB	Draft memorandum of points and authorities regarding recusal of Special Master et al. - consult with M. Ferrell regarding outstanding law reviews	6.00 200.00/hr.	1,200.00
12/10/2002	ALB	Draft Opinion regarding Recusal of Court Officers; Privilege questions	4.00 200.00/hr.	800.00
12/11/2002	SEG	Assist with drafting of recusal motion opinion	1.40 100.00/hr.	140.00
12/13/2002	SEG	Draft Recusal motion sections	1.60 100.00/hr.	160.00
12/14/2002	SEG	Research recusal order issues	3.40 100.00/hr.	340.00
12/15/2002	SEG	Research Recusal Order Issues	3.00 100.00/hr.	300.00
12/15/2002	ALB	Draft Opinion regarding Recusal	2.80 200.00/hr.	560.00
TOTAL				8,170.00

3. Privilege Motions

The Special Master issued a recommended Opinion and Order (filed May 12, 1999) concerning the application of the attorney-client privilege, work product doctrine, and the deliberative process privilege in this case. The Court neither acted upon nor addressed the

Special Master's ruling until it issued its February 5, 2003 ruling on the deliberative process privilege, which adopted one part of the Special Master's May 12, 1999 opinion.

On November 5, 2002, Defendants filed their Motion And Memorandum For Protective Order Regarding Application Of Attorney-Client Privilege And Work-Product Doctrine. The Court ruled on this motion on December 23, 2002. In its Memorandum and Order, the Court stated that “[b]ecause neither party has filed a motion pursuant to Rule 53(e)(2) of the Federal Rules of Civil Procedure, the issue of the binding effect of the May 12, 1999 Opinion of Special Master Balaran regarding attorney-client privilege, work product, and the deliberative process privilege is not properly before the Court.” Memorandum and Order at 15 n.10 (Dec. 23, 2003).

Plaintiffs promptly filed a consolidated motion to adopt the Special Master's May 12, 1999 Opinion, to compel the testimony of certain deponents, and for sanctions pursuant to Federal Rule of Civil Procedure 37(a)(4)(A).⁶ In a Memorandum Opinion and Order entered February 5, 2003, the Court adopted the conclusions in the Special Master's May 12, 1999 Opinion regarding the work product doctrine, but did not adopt the Special Master's conclusions regarding the attorney-client privilege (which the Court determined were superseded by its December 23, 2002 Memorandum and Order) or the Special Master's conclusions regarding the deliberative process privilege (which the Court determined were superseded by the February 5, 2003 Memorandum Opinion).

⁶ See Plaintiffs' Consolidated (1) Motion For Order Pursuant To Fed. R. Civ. P. 53(A)(2) Adopting Special Master Balaran's May 11, 1999 [sic] Opinion And Order Holding That The Deliberative Process Privilege And Work Product Doctrine Will Not Shield From Disclosure Material Related To The Administration Of The IIM Trust, (2) Motion To Compel Testimony Of Deponents Defendants Directed Not To Answer Questions On The Basis Of Deliberative Process Privilege, (3) Motion For Sanctions Pursuant To Rule 37(4)(A), And Memorandum Of Points And Authorities In Support Of Said Motions (filed Dec. 30, 2002).

Although the Special Master's role with regard to this matter should have concluded with the filing of his recommended opinion on May 12, 1999, and the Court did not advise the parties that the Special Master would be further involved in the Court's own consideration of the matter, the Special Master began to bill Defendants for substantive work apparently regarding the privilege issues pending before the Court shortly after Defendants filed their November 5, 2002 Motion And Memorandum For Protective Order Regarding Application Of Attorney-Client Privilege And Work-Product Doctrine. The Special Master sought and received compensation in the amount of \$7,420 for his work ("ALB") and that of his assistant ("SEG") on this matter:

Invoice 20 Dec. 2, 2002			Hours Rate	Amount
11/8/2002	SEG	Research attorney-client privilege in fiduciary capacity	4.00 100.00/hr.	400.00
11/11/2002	ALB	Review defendants' Motion regarding privilege; draft opinion regarding same	2.50 200.00/hr.	500.00
11/15/2002	ALB	Review Defendants' Motion and Memorandum for protective order regarding attorney-client and work-product privileges - memo to file	0.30 200.00/hr.	60.00
11/22/2002	ALB	Review Plaintiffs' opposition to Defendants' Motion for Protective Order regarding application of attorney-client privilege and work-product doctrine and letters from M. Brown to D. Gottesman regarding production of documents	0.30 200.00/hr.	60.00
11/26/2002	ALB	Research and draft paper for court regarding attorney-client privileges in the context of fiduciary/trust relationship	5.50 200.00/hr.	1,100.00
11/27/2002	ALB	Review Defendants' Rep[[]]y regarding Protective Order regarding application of Attorney-Client Privilege and work product doctrine; reply to opposition to Defendants' motion to strike comments on S.M.-M's 10/2/02 report and recommendation	0.60 200.00/hr.	120.00
Invoice 22 Jan. 3, 2003			Hours Rate	Amount
12/12/2002	SEG	Edit privilege opinion	2.40 100.00/hr.	240.00
12/13/2002	ALB	Draft opinion regarding applicability of privileges	2.90 200.00/hr.	580.00

12/16/2002	ALB	Draft memorandum of points and authorities regarding application of privileges in the context of fiduciary relationships	2.50 200.00/hr.	500.00
12/19/2002	ALB	Draft memorandum of points and authorities regarding application of privileges in the context of fiduciary relationships	5.80 200.00/hr.	1,160.00
Invoice 24 Feb. 2, 2003			Hours Rate	Amount
1/9/2003	ALB	Prepare additional memoranda regarding attorney client/work product and deliberative process privileges	6.50 200.00/hr.	1,300.00
1/10/2003	ALB	Prepare additional memoranda regarding attorney client/work product and deliberative process privileges	7.00 200.00/hr.	1,400.00
TOTAL				7,420.00

4. Court's Consideration of Special Master's Anti-Reprisal Opinion

On April 9, 2001, Plaintiffs filed their Motion For Order To Show Cause Why Secretary Norton And Her Counsel Should Not Be Held In Contempt And For Sanctions For Violating The Special Master's February 8, 2001 Order And The Court's Orders Of February 24, 1999 And August 12, 1999 ("Plaintiffs' Show Cause Motion"). The Special Master issued two opinions (an "Opinion" dated October 1, 2001, and a "Supplemental Opinion" dated October 28, 2001) recommending that the Court grant Plaintiffs' Show Cause Motion. On October 15, 2001, Interior Defendants urged the Court not to adopt the Special Master's recommendation in their Response Of Department Of The Interior To Special Master's Recommendation Dated October 1, 2001, Regarding Plaintiffs' Motion For Order To Show Cause. On November 12, 2002, the Court rejected the Special Master's recommendation and denied Plaintiffs' Show Cause Motion. See Memorandum and Order (Nov. 12, 2002).

Although the Special Master's role with regard to Plaintiffs' Show Cause Motion should have concluded with the filing of his recommendations in October 2001, and the Court did not

advise the parties that the Special Master would be further involved in the Court's own consideration of the matter, the Special Master began to bill Defendants for substantive work on an "Anti-Reprisal Opinion" in October 2002, shortly before the Court issued its November 12, 2002 Memorandum and Order. The Special Master sought and received compensation in the amount of \$4,000 for his work ("ALB") and that of his assistant ("SEG") on this matter:

Invoice 18 Nov. 1, 2002			Hours Rate	Amount
10/4/2002	SEG	Begin review of documents related to show cause motion for violating anti-reprisal order	0.60 100.00/hr	60.00
10/5/2002	SEG	Draft opinion regarding show cause order for anti-reprisal order	2.40 100.00/hr	240.00
10/7/2002	SEG	Draft Anti-Reprisal Order Opinion	2.50 100.00/hr	250.00
10/8/2002	SEG	Research contempt issues in Anti-Reprisal Order opinion	6.00 100.00/hr	600.00
10/9/2002	SEG	Draft Anti-Reprisal Order Opinion	4.50 100.00/hr	450.00
10/10/2002	SEG	Draft Anti-Reprisal Order Opinion	1.30 100.00/hr	130.00
10/11/2002	SEG	Research issues for Anti-Reprisal Order opinion	5.20 100.00/hr	520.00
10/11/2002	ALB	Draft Report to Assist Court regarding Anti-Reprisal Order	2.50 200.00/hr	500.00
10/14/2002	SEG	Draft Anti-Reprisal Order Opinion	2.20 100.00/hr	220.00
10/16/2002	SEG	Review Anti-Reprisal Order opinion	0.70 100.00/hr	70.00
10/17/2002	SEG	Edit Anti-Reprisal Order Opinion	0.80 100.00/hr	80.00
10/17/2002	ALB	Finalize draft for court's review of Anti-Reprisal Order	1.00 200.00/hr	200.00
10/18/2002	SEG	Review response to Anti-Reprisal Order opinion	0.20 100.00/hr	20.00

10/20/2002	ALB	Draft memorandum relating to Anti-Reprisal Order	2.50 200.00/hr	500.00
10/21/2002	SEG	Edit Anti-Reprisal Order Opinion	1.30 100.00/hr	130.00
10/22/2002	SEG	Edit Anti-Reprisal Order Opinion	0.30 100.00/hr	30.00
TOTAL				4,000.00

5. Relief Required

Interior Defendants are not aware of any order referring the matters described above to the Special Master, and should not be required to pay the Special Master for work he undertakes (or his assistants undertake) on matters that are not referred to him, but directed to, and properly resolved by, the Court itself. Interior Defendants specifically request that the Court direct the Special Master to reimburse them \$7,240 for amounts improperly billed for work on motions related to the Six Documents attached to the Seventh Report of the Court Monitor, \$8,170 for amounts improperly billed for work on the Recusal Motions, \$7,420 for amounts improperly billed for work on the privilege motions filed in late 2002, and \$4,000 for amounts improperly billed for work on an “Anti-Reprisal Opinion.” In addition, Interior Defendants request that the Court direct the Special Master to reimburse them for amounts paid for work on any other matter not expressly referred to the Special Master.

II. Interior Defendants Should Be Reimbursed For Payments Made To The Special Master For Unauthorized IT Security-Related Work.

The Court’s December 17, 2001 Consent Order Regarding Information Technology Security authorized the Special Master to review certain plans and conduct certain inquiries with regard to security of individual Indian trust data in computer systems. The Court stayed this

Order on July 28, 2003. Preliminary Injunction at 5 (July 28, 2003). In its accompanying Memorandum Opinion, the Court made clear that “[h]enceforth, instead of relying upon the Special Master to determine whether the Interior Department’s systems either are secure from unauthorized Internet access or do not house or afford access to trust data, the Court will make such determinations directly.” Memorandum Opinion at 33 (July 28, 2003). Thus, as of July 28, 2003, the Special Master was without authority to perform IT security-related work.

Nonetheless, the Special Master continued to seek compensation from Defendants for such work, and has been paid \$4,700 for IT security-related work performed after July 28, 2003:

Invoice 45 Sept. 17, 2003			Hours Rate	Amount
8/4/2003	ALB	Review Motion for Protective Order regarding IT certifications	0.20 200.00/hr.	40.00
8/6/2003	ALB	Review Interior Defendants’ Motion for Protective Order regarding IT materials - memo to file	0.30 200.00/hr.	60.00
8/13/2003	ALB	Review Interior Defendants’ Office of the Inspector General’s Submissions in Compliance with Preliminary Injunction	1.00 200.00/hr.	200.00
8/18/2003	ALB	Review Plaintiffs’ Opposition to Interior Secretary Norton and Martin’s Motion for Protective Order	0.50 200.00/hr.	100.00
8/20/2003	ALB	Review Preliminary Injunction Justification for Bureau of Land Management; National Business Center - draft memo	3.50 200.00/hr.	700.00
8/21/2003	ALB	Review Interior Defendants’ Submissions in Compliance with Preliminary Injunction including Declaration of Associate Deputy Secretary Cason; Tipton memo and attachments; Declaration of SAIC representative Hart Rossman; OIG’s Mary Adler & CIO; BOR Deputy Commissioner and Preliminary Justification; Trust Enterprise Architecture - Trust Systems Internet Connectivity Report (8/11/03)	6.50 200.00/hr.	1,300.00

8/25/2003	ALB	Review Interior Defendants' Submissions in Compliance with Preliminary Injunction including Declaration of Associate Deputy Secretary Cason; Tipton memo and attachments; Declaration of SAIC representative Hart Rossman; OIG's Mary Adler & CIO; BOR Deputy Commissioner and Preliminary Justification; Trust Enterprise Architecture - Trust Systems Internet Connectivity Report (8/11/03); Preliminary Injunctions Justification for BIA (OIEP and 11 PC Workstations); Preliminary Injunction Justification for NPS; Preliminary Injunction Justification and certifications for OSM; Preliminary Injunction Justification regarding Office of Planning and Performance Management; Draft Memo setting out comments and findings.	5.50 200.00/hr.	1,100.00
8/26/2003	ALB	Review Preliminary Injunction Justification for OST (including Swimmer declarat[i]on); U.S. Fish and Wildlife; U.S. Geological Survey; Minerals Management Service	5.30 200.00/hr.	1,060.00
8/28/2003	ALB	Review Plaintiffs' Comments On Norton and Martin's violation of PI	0.70 200.00/hr.	140.00
TOTAL				4,700.00

Interior Defendants cannot be required to compensate the Special Master for work he is no longer authorized to perform. Accordingly, Interior Defendants request that the Court direct the Special Master to reimburse them \$4,700 for amounts improperly billed for IT security-related work after July 28, 2003, and direct the Special Master to cease such unauthorized work.

III. Interior Defendants Should Be Reimbursed For Payments Made To The Special Master For Work Performed By Unidentified Assistants.

The Special Master has ignored requests by Defendants that he disclose the names, backgrounds, and professional affiliations of assistants who, as indicated by his own invoices, assist him in drafting his reports and recommendations. See Letter from Tracy L. Hilmer, Trial Attorney, Department of Justice, to Alan L. Balaran, Special Master (June 6, 2003) (Exhibit 1); Letter from Tracy L. Hilmer, Trial Attorney, Department of Justice, to Alan L. Balaran, Special Master (July 9, 2003) (Exhibit 2). The Special Master's unwillingness to disclose such

information is of particular concern in light of his conduct in failing to disclose his employment of a former NAID official to assist with his investigation of allegations made by NAID. See Interior Defendants' Motion To Disqualify Special Master Balaran (May 29, 2003). Defendants are entitled to make an informed determination as to whether the employment of any of the Special Master's assistants raises any conflict of interest or is otherwise objectionable, and whether the hourly fees charged are appropriate in light of an individual's experience and training. Interior Defendants should not be required to compensate the Special Master for the work of unidentified assistants.

In addition, Interior Defendants object to paying \$60 an hour for the Special Master's assistants – regardless of their background, training, or experience – to “input data.” As reflected in the tables below, the Special Master has billed Defendants over \$28,000 for more than 470 hours of time his assistants have apparently spent “inputting data” from boxes of documents produced to the Special Master pursuant to his NAID investigation. A search of the employment listings at www.washingtonpost.com reveals that the prevailing market rate for performing this type of work is between \$9 and \$11 per hour. See Exhibit 3 (containing sample listings for data entry jobs).

1. “AW”

The Special Master has billed Defendants \$22,552 for work performed by an individual identified only as “AW,” who has apparently been assisting the Special Master with contempt matters. Although Defendants specifically requested on June 6, 2003, and July 9, 2003, that the Special Master provide the identity of “AW,” as well as his or her legal qualifications and other

affiliations, the Special Master has provided no information. Nonetheless, the Special Master has sought and received compensation for the following work performed by "AW":

Invoice 39 June 2, 2003			Hours Rate	Amount
5/14/2003	AW	Review contempt motions and transcripts regarding Named Individuals - e-mail contempt	3.70 175.00/hr.	647.50
5/16/2003	AW	Review contempt motions and transcripts regarding Named Individuals - e-mail contempt	1.20 175.00/hr.	210.00
5/19/2003	AW	Review contempt motions and transcripts regarding Named Individuals - e-mail contempt	2.50 175.00/hr.	437.50
5/20/2003	AW	Draft summary of claims and defenses	2.00 175.00/hr.	350.00
5/21/2003	AW	Draft summary of claims and defenses; legal research of the law of contempt	6.70 175.00/hr.	1,172.50
5/22/2003	AW	Review more pleadings of parties; draft summary of claims and defenses	6.80 175.00/hr.	1,190.00
5/23/2003	AW	Draft summary of claims and defenses; review pleadings of the parties	4.00 175.00/hr.	700.00
5/27/2003	AW	Review more pleadings of parties; draft summary of claims and defenses	4.50 175.00/hr.	787.50
5/28/2003	AW	Draft summary of claims and defenses	4.30 175.00/hr.	752.50
5/29/2003	AW	Draft summary of claims and defenses	4.00 175.00/hr.	700.00
Invoice 42 July 1, 2003			Hours Rate	Amount
6/2/2003	AW	Review transcript of oral argument; summarize arguments in draft	2.50 150.00/hr.	375.00
6/3/2003	AW	Review oral argument transcript, draft summary of arguments for use in draft opinion	3.70 150.00/hr.	555.00
6/4/2003	AW	Review briefs for Named Individual Cohen	5.20 150.00/hr.	780.00
6/11/2003	AW	Research – criminal contempt	2.00 150.00/hr.	300.00
6/12/2003	AW	Research – criminal contempt	3.00 150.00/hr.	450.00

6/14/2003	AW	Legal Research – criminal contempt	2.70 150.00/hr.	405.00
6/15/2003	AW	Legal Research – civil contempt	3.00 150.00/hr.	450.00
6/16/2003	AW	Legal Research – civil contempt	2.30 150.00/hr.	345.00
6/18/2003	AW	Legal Research – civil contempt	1.80 150.00/hr.	270.00
6/19/2003	AW	Legal Research – fraud on court; orders	2.50 150.00/hr.	375.00
Invoice 44 Aug. 4, 2003			Hours Rate	Amount
7/1/2003	AW	Legal Research	3.00 150.00/hr.	450.00
7/2/2003	AW	Draft report on motion for contempt	2.40 150.00/hr.	360.00
7/3/2003	AW	Legal Research	2.50 150.00/hr.	375.00
7/3/2003	AW	Draft report on contempt motion	4.40 150.00/hr.	660.00
7/4/2003	AW	Draft report on contempt motion	4.00 150.00/hr.	600.00
7/4/2003	AW	Legal Research	3.83 150.00/hr.	574.50
7/5/2003	AW	Draft report on contempt motion	8.70 150.00/hr.	1,305.00
7/6/2003	AW	Legal Research	3.50 150.00/hr.	525.00
7/6/2003	AW	Draft	3.30 150.00/hr.	495.00
7/7/2003	AW	Conference with Special Master on draft	0.80 150.00/hr.	120.00
7/14/2003	AW	Legal Research	3.00 150.00/hr.	450.00
7/14/2003	AW	Draft report on contempt motion	1.70 150.00/hr.	255.00
7/14/2003	AW	Draft report on contempt motion	2.50 150.00/hr.	375.00

7/18/2003	AW	Legal Research	2.30 150.00/hr.	345.00
7/18/2003	AW	Draft report on contempt	5.80 150.00/hr.	870.00
7/21/2003	AW	Draft report on contempt motion	3.80 150.00/hr.	570.00
7/22/2003	AW	Draft report on contempt motion	1.60 150.00/hr.	240.00
7/23/2003	AW	Draft report on contempt motion	2.00 150.00/hr.	300.00
7/26/2003	AW	Draft report on contempt motion	2.00 150.00/hr.	300.00
7/27/2003	AW	Draft report on contempt motion	4.50 150.00/hr.	675.00
7/28/2003	AW	Draft report on contempt motion	4.20 150.00/hr.	630.00
7/29/2003	AW	Draft report on contempt motion	3.00 150.00/hr.	450.00
7/31/2003	AW	Draft report on contempt	2.50 150.00/hr.	375.00
TOTAL				22,552.00

2. “JW”

The Special Master has billed Defendants \$16,429.50 for work performed by an individual identified only as “JW,” who has apparently been assisting the Special Master with contempt and other matters. Although Defendants specifically requested on June 6, 2003, and July 9, 2003, that the Special Master provide the identity of “JW,” as well as his or her legal qualifications and other affiliations, the Special Master has provided no information. Nonetheless, the Special master has sought and received compensation as reflected in the following table for the work of “JW.” Furthermore, it appears that on at least one occasion the Special Master double-billed Defendants for work performed by “JW.” The Special Master’s

August 4, 2003 invoice contains two identical line items, each billing Defendants \$525 for 8.75 hours of work performed by "JW" on July 14, 2003.

Invoice 39 June 2, 2003			Hours Rate	Amount
4/23/2003	JW	An[aly]sis of Contract OST02CT0010 and Binder Review	1.00 135.00/hr.	135.00
5/12/2003	JW	Research Case law related to contempt individual/official capacity - draft section for e-mail opinion	6.00 135.00/hr.	810.00
5/13/2003	JW	Research Case law related to contempt individual/official capacity/necessity for specificity in pleadings - draft section for e-mail opinion	4.08 135.00/hr.	550.80
5/14/2003	JW	Draft portion of contempt opinion related to sovereign immunity	3.50 135.00/hr.	472.50
5/15/2003	JW	Review case law related to weight associated with Special Master Orders and contempt	6.40 135.00/hr.	864.00
5/26/2003	JW	Assist with drafting of Contempt opinion	8.00 135.00/hr.	1,080.00
5/27/2003	JW	Assist with drafting of Contempt opinion	6.70 135.00/hr.	904.50
5/28/2003	JW	Assist with editing of first draft of contempt opinion	3.50 135.00/hr.	472.50
Invoice 44 Aug. 4, 2003			Hours Rate	Amount
7/9/2003	JW	Began inputting data from Box 1 of NAID Production	9.00 60.00/hr.	540.00
7/10/2003	JW	Continue inputting data from Box 1 of NAID Production	5.00 60.00/hr.	300.00
7/10/2003	JW	Inputting information of NAID Production from Word document into Excel spreadsheet	3.00 60.00/hr.	180.00
7/11/2003	JW	Inputting information of NAID Production from Word document into Excel spreadsheet	2.00 60.00/hr.	120.00
7/14/2003	JW	Input data from Box 1 of NAID Production	8.75 60.00/hr.	525.00
7/14/2003	JW	Input data from Box 1 of NAID Production	8.75 60.00/hr.	525.00
7/15/2003	JW	Input data from Box 1 of NAID production into Excel Spreadsheet	2.25 60.00/hr.	135.00

7/15/2003	JW	Reviewed spreadsheet with Box 2 inventory of NAID Production	0.25 60.00/hr.	15.00
7/15/2003	JW	Researched issues related to San Juan Basin pipelines ⁷	2.50 60.00/hr.	150.00
7/15/2003	JW	Continued researching issues related to San Juan Basin pipelines	1.25 60.00/hr.	75.00
7/15/2003	JW	Input data from Box 1 of NAID Production	1.75 60.00/hr.	105.00
7/16/2003	JW	Continue researching issues relating to San Jaun [sic] Basin pipelines	1.00 60.00/hr.	60.00
7/16/2003	JW	Completed inputting data from box 1 of NAID production	7.00 60.00/hr.	420.00
7/17/2003	JW	Began inputting data from Box 3 of NAID Production	8.50 60.00/hr.	510.00
7/18/2003	JW	Continue inputting data from Box 3 of NAID Production	7.00 60.00/hr.	420.00
7/21/2003	JW	Input data from Box 3 of NAID production	8.00 60.00/hr.	480.00
7/22/2003	JW	Input data from Box 3 of NAID production	8.50 60.00/hr.	510.00
7/23/2003	JW	Continue inputting data from Box 3 of NAID production	8.50 60.00/hr.	510.00
7/24/2003	JW	Continue inputting data from Box 3 of NAID Production	6.50 60.00/hr.	390.00
7/24/2003	JW	Edit Site Visit Report to the Eastern Region Navajo Office	2.00 60.00/hr.	120.00
7/25/2003	JW	Make corrections to Site Visit Report	1.00 60.00/hr.	60.00
7/25/2003	JW	Input data from Box 3 of NAID production	7.00 60.00/hr.	420.00
7/28/2003	JW	Completed inputting data from Box 3 of NAID production	8.50 60.00/hr.	510.00
7/29/2003	JW	Begin inputting data from Box 5 of NAID production	8.00 60.00/hr.	480.00

⁷ Interior Defendants are unaware of any “issues related to San Juan Basin pipelines” referred to the Special Master.

7/30/2003	JW	Continue inputting data from Box 5 of NAID production	8.00 60.00/hr.	480.00
7/31/2003	JW	Continue inputting data from Box 5 of NAID production	8.00 60.00/hr.	480.00
8/1/2003	JW	Continue inputting data from Box 5 of NAID production	8.50 60.00/hr.	510.00
Invoice 46 Sept. 17, 2003			Hours Rate	Amount
8/4/2003	JW	Review and site [sic] check Site Visit Report of the Special Master	7.42 60.00/hr.	445.20
8/4/2003	JW	Continue inputting data from Box 5 of NAID Production	2.50 60.00/hr.	150.00
8/5/2003	JW	Site [sic] check Site Visit Report of the Special Master	3.00 60.00/hr.	180.00
8/5/2003	JW	Continue inputting data from Box 5 of NAID Production	5.50 60.00/hr.	330.00
8/6/2003	JW	Complete inputting data from Box 5 of NAID Production	8.50 60.00/hr.	510.00
8/7/2003	JW	Began inputting data from Box 6 of NAID Production, and trained new employee on how to enter data	8.25 60.00/hr.	495.00
TOTAL				16,429.50

3. “GB”

With his invoice dated August 4, 2003, the Special Master began to bill Defendants for work performed by an individual identified only as “GB.” The Special Master’s invoices do not reveal the identify, qualifications, or other affiliations of “GB.” To date, the Special Master has sought and received compensation in the amount of \$13,935 for the following work performed by “GB”:

Invoice 44 Aug. 4, 2003			Hours Rate	Amount
7/10/2003	GB	Input Data from Box 2 of NAID production.	6.00 60.00/hr	360.00

7/11/2003	GB	Input Data from Box 2 of NAID production.	7.50 60.00/hr.	450.00
7/14/2003	GB	Input Data from Box 2 of NAID production.	6.00 60.00/hr.	360.00
7/15/2003	GB	Input Data from Box 2 of NAID production.	6.50 60.00/hr.	390.00
7/16/2003	GB	Input Data from Box 2 of NAID production.	7.25 60.00/hr.	435.00
7/17/2003	GB	Input Data from Box 2 of NAID production.	8.00 60.00/hr.	480.00
7/18/2003	GB	Input Data from Box 2 of NAID production.	6.50 60.00/hr.	390.00
7/21/2003	GB	Continue inputting Data from Box 2 of NAID production.	7.00 60.00/hr.	420.00
7/22/2003	GB	Continue inputting Data from Box 2 of NAID production.	7.00 60.00/hr.	420.00
7/23/2003	GB	Continue inputting Data from Box 2 of NAID production.	7.50 60.00/hr.	450.00
7/24/2003	GB	Continue inputting Data from Box 4 of NAID production.	3.50 60.00/hr	210.00
7/25/2003	GB	Continue inputting Data from Box 4 of NAID production.	6.50 60.00/hr	390.00
7/28/2003	GB	Continue inputting Data from Box 4 of NAID production.	7.50 60.00/hr	450.00
7/29/2003	GB	Continue inputting Data from Box 4 of NAID production.	7.50 60.00/hr	450.00
7/30/2003	GB	Continue inputting Data from Box 4 of NAID production.	5.00 60.00/hr	300.00
7/31/2003	GB	Continue inputting Data from Box 4 of NAID production.	7.50 60.00/hr	450.00
8/1/2003	GB	Continue inputting Data from Box 4 of NAID production.	7.50 60.00/hr	450.00
Invoice 46 Sept. 17, 2003			Hours Rate	Amount
8/5/2003	GB	Continue inputting Data from Box 4 of NAID production.	5.50 60.00/hr	330.00
8/6/2003	GB	Continue inputting Data from Box 4 of NAID production.	5.50 60.00/hr	330.00

8/7/2003	GB	Continue inputting Data from Box 4 of NAID production.	6.50 60.00/hr	390.00
8/8/2003	GB	Continue inputting Data from Box 4 of NAID production.	6.50 60.00/hr	390.00
8/11/2003	GB	Input Data from Box 7 of NAID Production.	6.50 60.00/hr	390.00
8/12/2003	GB	Input Data from Box 7 of NAID Production.	5.50 60.00/hr	330.00
8/13/2003	GB	Continue inputting Data from Box 7 of NAID production.	5.50 60.00/hr	330.00
8/14/2003	GB	Continue inputting Data from Box 7 of NAID production.	6.50 60.00/hr	390.00
8/15/2003	GB	Continue inputting Data from Box 7 of NAID production.	7.50 60.00/hr	450.00
8/18/2003	GB	Continue inputting Data from Box 7 of NAID production.	7.50 60.00/hr	450.00
8/19/2003	GB	Assist w/preparation of site visit report of the special master for filing w/the Court.	5.50 60.00/hr	330.00
8/19/2003	GB	Continue inputting Data from Box 7 of NAID Production.	1.00 60.00/hr	60.00
8/20/2003	GB	Assist w/preparation of site visit report of the Special Master.	3.50 60.00/hr	210.00
8/20/2003	GB	Continue inputting Data from Box 7 of NAID production.	3.50 60.00/hr	210.00
8/21/2003	GB	Continue inputting Data from Box 7 of NAID production.	4.50 60.00/hr	270.00
8/22/2003	GB	Continue inputting Data from Box 7 of NAID Production.	4.50 60.00/hr	270.00
8/25/2003	GB	Continue inputting Data from Box 7 of NAID Production.	6.50 60.00/hr	390.00
8/26/2003	GB	Finish inputting Data from Box 7 of NAID Production. Begin inputting Data from Box 9 of NAID Production.	6.50 60.00/hr	390.00
8/27/2003	GB	Continue inputting Data from Box 9 of NAID Production.	6.50 60.00/hr	390.00
8/28/2003	GB	Continue inputting Data from Box 9 of NAID Production.	6.50 60.00/hr	390.00
8/29/2003	GB	Continue inputting Data from Box 9 of NAID Production.	6.50 60.00/hr	390.00
TOTAL				13,935.00

4. “MK”

With his invoice dated September 17, 2003, the Special Master began to bill Defendants for work performed by an individual identified only as “MK.” The Special Master’s invoices do not reveal the identify, qualifications, or other affiliations of “MK.” To date, the Special Master has sought and received compensation in the amount of \$5,625 for the following work performed by “MK”:

Invoice 46 Sep. 17, 2003			Hours Rate	Amount
8/11/2003	MK	Input Data from Box 6 of NAID production.	5.50 60.00/hr	330.00
8/12/2003	MK	Input Data from Box 6 of NAID Production.	7.50 60.00/hr.	450.00
8/13/2003	MK	Finish inputting Data from Box 6 of NAID production. Begin inputting Data from Box 8 of NAID production.	7.50 60.00/hr.	450.00
8/14/2003	MK	Continue inputting Data from Box 8 of NAID production.	7.50 60.00/hr.	450.00
8/15/2003	MK	Continue inputting Data from Box 8 of NAID production.	7.50 60.00/hr.	450.00
8/18/2003	MK	Continue inputting Data from Box 8 of NAID production.	7.50 60.00/hr.	450.00
8/19/2003	MK	Assist w/preparation of site visit report of the Special Master.	5.00 60.00/hr.	300.00
8/19/2003	MK	Continue inputting Data from Box 8 of NAID production.	2.50 60.00/hr.	150.00
8/20/2003	MK	Assist w/preparation of site visit report of the Special Master. Hand deliver same to Judge's chambers (N/C)	4.00 60.00/hr.	240.00
8/20/2003	MK	Continue inputting Data from Box 8 of NAID production.	4.00 60.00/hr.	240.00
8/21/2003	MK	Continue inputting Data from Box 8 of NAID Production.	6.25 60.00/hr	375.00
8/22/2003	MK	Continue inputting Data from Box 8 of NAID Production.	6.50 60.00/hr	390.00
8/26/2003	MK	Continue inputting Data from Box 8 of NAID Production.	7.50 60.00/hr	450.00

8/27/2003	MK	Continue inputting Data from Box 8 of NAID Production. Begin inputting Data from Box 10 of NAID Production.	7.50 60.00/hr	450.00
8/28/2003	MK	Continue inputting Data from Box 10 of NAID production.	7.50 60.00/hr	450.00
TOTAL				5,625.00

5. Relief Required

Interior Defendants should not be required to compensate the Special Master for the work of unidentified assistants. Interior Defendants are unable to determine whether the employment of the individuals identified only as “AW,” “JW,” “GB,” and “MK” raises any conflict of interest or is otherwise objectionable, or whether the rates charged are reasonable in light of these individuals’ experience and training. The rate charged for “inputting data” – \$60 per hour – appears grossly excessive under any standard. See Exhibit 3. On at least one occasion, as noted above, it appears that the Special Master double-billed Defendants for the work of an assistant.

Interior Defendants request that the Court direct the Special Master to reimburse them \$22,552 for amounts improperly billed for the work of “AW,” \$16,429.50 for amounts improperly billed for the work of “JW,” \$13,935 for amounts improperly billed for the work of “GB,” and \$5,625 for amounts improperly billed for the work of “MK.” In addition, Interior Defendants request that the Court direct the Special Master to immediately inform the parties of the identities, qualifications, and current and prior affiliations of “AW,” “JW,” “GB,” and “MK,” as well as any individuals he has employed in the past or employs in the future to assist him.

IV. Interior Defendants Should Be Reimbursed For Payments Made To The Special Master For Reviewing Trial Transcripts, Briefs, Correspondence Or Other Documents Relating To Matters Not Referred To Him.

The Special Master has repeatedly billed Defendants for time spent reviewing transcripts, briefs, correspondence, and other documents concerning matters that have not been referred to him. For example, as documented in the table below, although the Special Master had no role in the Phase 1.5 trial, he billed Defendants in excess of \$14,000 for reviewing the Phase 1.5 trial testimony. In the last twelve months alone, Defendants have paid at least \$35,860 for the Special Master's review of documents relating to matters outside the scope of his reference:⁸

Invoice 15 Oct. 4, 2002			Hours Rate	Amount
9/2/2002	ALB	Review consolidated Reply to Interior's Opposition to Unseal Document filed by Court Monitor	0.20 200.00/hr.	40.00
9/2/2002	ALB	Review Plaintiffs' Fourth Notice of Supplemental Authority in support of Plaintiffs' Findings and Conclusions of Law Submitted With Respect to the Second Contempt Trial	0.40 200.00/hr.	80.00
9/3/2002	ALB	Review Plaintiffs' Fourth Notice of Supplemental Authority in support of Plaintiffs' Findings of Fact and Conclusions of Law Submitted With Respect to Second Contempt Trial	2.60 200.00/hr.	520.00
9/5/2002	ALB	Review Plaintiffs' Fifth Notice of Suppleme[n]tal Authority in Support of Plaintiffs' Findings and Conclusions of Law Submitted with Respect to the Second Contempt Trial	0.30 200.00/hr.	60.00
9/13/2002	ALB	Review Notice to the Court	0.10 200.00/hr.	20.00
9/16/2002	ALB	Review Interior Defendants' Motion and Supporting Memorandum for Order Permitting the Provision of Copies of Historical Statements of Account to Class Counsel	0.50 200.00/hr.	100.00
9/23/2002	ALB	Review Defendants' Reply to Plaintiffs' Opposition to Motion for Leave to File Surreply	0.20 200.00/hr.	40.00
9/23/2002	ALB	Review Interior Defendants' Opposition to Plaintiffs' Consolidated Motion for a Temporary Restraining Order and Preliminary Injunction	0.30 200.00/hr.	60.00

⁸ This table excludes entries to which Defendants object in Sections I and II, above.

9/25/2002	ALB	Review Motion of Intertribal Monitoring Association for Indian Trust Funds For Leave to File Amicus Curiae Brief Regarding Appointment of a Receiver	1.20 200.00/hr.	240.00
9/25/2002	ALB	Review Interior Defendants' Motion for Adjustment of the Court Monitor's August 2002 Compensation Request	0.50 200.00/hr.	100.00
Invoice 20 Dec. 2, 2002			Hours Rate	Amount
11/1/2002	ALB	Review Interior's Statement regarding discovery	0.30 200.00/hr.	60.00
11/1/2002	ALB	Review In[t]erior defendants' comments and objections to 10/18/02 report and recommendation of the SM-M regarding motions to compel and Motions to stay discovery and rule 11 proceedings; motion for modification of protective order	0.50 200.00/hr.	100.00
11/6/2002	ALB	Review Defendants' Motion to Strike Plaintiffs' Comments on SM-M's 10/2/02 Report and Recommendation	0.20 200.00/hr.	40.00
11/13/2002	ALB	Review Joint Opposition to Plaintiffs' Motion for enlargement of time; Warshawsky letter regarding scans; Plaintiffs' Second R[e]ply in support of public disclosure of attachment C; time sheets of senior OST personnel; defendants' unopposed motion to file Interior's response under seal; Court's opinion concerning plaintiffs' requests for fees; review Sessions documents produced in response to request ⁹	5.80 200.00/hr.	1,160.00
11/15/2002	ALB	Review Interior Defendants' Supplemental Opposition to Plaintiffs' Motion for a Preliminary Injunction regarding Historical Statements of Account	0.30 200.00/hr.	60.00
11/18/2002	ALB	Review Interior defendants' reply to plaintiffs' opposition to motion for reconsideration concerning order granting attorneys' fees	0.20 200.00/hr.	40.00
11/21/2002	ALB	Review Plaintiffs' consolidated opposition to defendants' motion to strike comments regarding references to Attachment C	0.20 200.00/hr.	40.00
11/21/2002	ALB	Review Plaintiffs' opposition to defendants' motion to strike comments re: SM-M's 10/2/02 pleading	0.10 200.00/hr.	20.00

⁹ Although some of the documents the Special Master billed Defendants for reviewing on November 13, 2002 may be related to matters within the scope of his reference, the Special Master's invoice does not indicate the amount of time apportioned to reviewing individual documents.

11/25/2002	ALB	Review correspondence between Gingold and Lawrence regarding appeal and Si[e]mietkowski regarding "undue delay in compliance"	0.40 200.00/hr.	80.00
11/26/2002	ALB	Review correspondence between Harper and DOJ regarding deposition schedule for named plaintiffs	0.10 200.00/hr.	20.00
11/27/2002	ALB	Review Interior Defendants' Motion to Adjust C.M[.]'s 10/02 compensation	0.20 200.00/hr.	40.00
11/27/2002	ALB	Review Interior's Motion and memorandum for expedited consideration of Motion for Order adopting SMM's recommendations regarding named plaintiffs	0.30 200.00/hr.	60.00
11/27/2002	ALB	Review letter regarding proposed dates for named-plaintiff depositions	0.10 200.00/hr.	20.00
11/27/2002	ALB	Review Interior's reply to Plaintiffs' opposition to motion for expedited consideration regarding SMM's recommendation concerning production of documents	0.20 200.00/hr.	40.00
Invoice 22 Jan. 3, 2003			Hours Rate	Amount
12/4/2002	ALB	Review Interior's Brief in Opposition to Restrictions on Deposition Witnesses	0.30 200.00/hr.	60.00
12/9/2002	ALB	Review Plaintiffs' Reply to Defendants' Sequestration Brief; review DOI Internet Reconnection Status Report; Status of Estimated Oil and Gas Recoupment; Michael Carr Reply Brief to the Plaintiffs' Consolidate[d] Motion for Recusal; Phillip Brooks Reply to Plaintiffs' Consolidated Opposition to Recusal Motions; DOI OTR Labatt Work Plan; Interior'[s] Response and Objections to SM-M Recommendation regarding Production of Documents ¹⁰	2.50 200.00/hr.	500.00
12/12/2002	ALB	Review Interior Defendants' Opposition to Plaintiffs' Consolidated Supplemental Reply in Support of a Motion for a Preliminary Injunction Regarding Historical Statement of Account	0.30 200.00/hr.	60.00
12/12/2002	ALB	Review Interior Defendants' Response and Objections to the Report and Recommendation of the Special Master-Monitor	0.10 200.00/hr.	20.00
12/14/2002	ALB	Review Defendants' Motion for Protective Order regarding deposition of Erwin and Edwards	1.50 200.00/hr.	300.00

¹⁰ Although some of the documents the Special Master billed Defendants for reviewing on December 9, 2002 may be related to matters within the scope of his reference, the Special Master's invoice does not indicate the amount of time apportioned to reviewing individual documents.

12/18/2002	ALB	Review Defendants' Opposition to Plaintiffs' Application for Attorneys' Fees and Expenses Related to the Second Contempt Trial	0.50 200.00/hr.	100.00
12/20/2002	ALB	Review Defendants' Objections to Plaintiffs' Notice of Rule 30(b)(6) deposition of Electronic Data Systems Corp.	0.20 200.00/hr.	40.00
12/23/2002	ALB	Review Court's Opinion regarding referral to grievance committee	1.20 200.00/hr.	240.00
12/26/2002	ALB	Review Notice of Supplemental Information in Support of this Court's December 23, 2002 referral	0.10 200.00/hr.	20.00
Invoice 24 Feb. 2, 2003			Hours Rate	Amount
1/8/2003	ALB	Review Interior's Motion for reconsideration of order prohibiting communications with class members; response and objections to report and recommendation regarding sequestration	1.70 200.00/hr.	340.00
1/15/2003	ALB	Review Plaintiffs' Notice of Supplemental Authority in Support of Plaintiffs' Compliance Action Plan Together with Applicable Trust Standards (1/6/03)	0.20 200.00/hr.	40.00
1/16/2003	ALB	Review Interior's Opposition to Consolidated Motions regarding Old Person and to Protective Order; opposition to remove Old Person as class member and for expedited consideration of the above	1.00 200.00/hr.	200.00
1/18/2003	ALB	Review Response to Interior's request for Production of documents	3.60 200.00/hr.	720.00
1/29/2003	ALB	Review Reply Brief in Support of Consolidated Motion to Modify or Stay Production of 12/23/02; Reply in Support of Named Class Plaintiffs to Withdraw	0.70 200.00/hr.	140.00
1/29/2003	ALB	Review Response to Interior's Motion for Expedited Consideration; Motion to Compel Earl Oldperson	0.10 200.00/hr.	20.00
1/30/2003	ALB	Review Notice of Errata regarding Plaintiffs' Opposition to Interior Defendants' Motion for reconsideration of Order prohibiting Communications with Class Members	0.20 200.00/hr.	40.00
1/30/2003	ALB	Review Interior Defendants' Motion to Strike Untimely Motions	0.20 200.00/hr.	40.00
1/31/2003	ALB	Review Interior Defendants' Motion for Leave to Supplement Their Motion and Supplement to Motion for a Protective Order as to Discovery by the Special Master-Monitor	0.60 200.00/hr.	120.00
1/31/2003	ALB	Review Plaintiffs' Opposition to the "Fiduciary Obligations Compliance Plan"	0.40 200.00/hr.	80.00

Invoice 29 Mar. 2, 2003			Hours Rate	Amount
2/2/2003	ALB	Review Defendants' Corrected Memorandum in Support of Partial Summary Judgment Regarding Statute of Limitations and Laches; Motion for Partial Summary Judgment that Interior's Historical Accounting Plan Comports with Their Obligation to Perform an Accounting	3.50 200.00/hr.	700.00
2/2/2003	ALB	Review Motion for Amicus and to Appear pro hac vice	1.60 200.00/hr.	320.00
2/4/2003	ALB	Review Plaintiffs' Notice of Supplemental Authority in Support of Plaintiffs' Compliance Action Plan	0.30 200.00/hr.	60.00
2/4/2003	ALB	Review Defendants' Corrected Memorandum of Points and Authorities in Support of Motion for Partial Summary Judgment	1.60 200.00/hr.	320.00
2/12/2003	ALB	Review Defendants' R[e]ply in Support of Motion for Expedited Consideration and Motion to Compel Plaintiff Earl Old Person	0.20 200.00/hr.	40.00
2/13/2003	ALB	Review Plaintiffs' Reply and Opposition to Reply regarding Motion for order directing defendants to rescind notice sent to 1200 juvenile trust beneficiaries; opposition to defendants' motion for authority to communicate with class members regarding the historical statements of account	0.30 200.00/hr.	60.00
2/13/2003	ALB	Review Defendants' Reply in Support of Motion for Authority to communicate with class members regarding historical accounting	0.20 200.00/hr.	40.00
2/13/2003	ALB	Review Defendants' Motion for Partial Summary Judgment that Interior's Accounting Plan Comports with Their Obligation to Perform an Accounting and Supporting Memorandum of Points and Authorities	3.50 200.00/hr.	700.00
2/14/2003	ALB	Review Defendants' Opposition to NCAI Motion to file Amicus	0.30 200.00/hr.	60.00
2/14/2003	ALB	Review Defendants' Motion for Enlargement of Time regarding Opposition to NCAI amicus; and opposition to Plaintiffs' Motions for enlargements of time to respond to Defendants' Motions for Partial Summary Judgment	0.20 200.00/hr.	40.00
2/15/2003	ALB	Review Defendants' Motion to file documents under seal (Iudicello and Sapi[e]nza Declarations and attachments thereto)	1.60 200.00/hr.	320.00
2/16/2003	ALB	Review Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment as to Non-Settlement of Accounts	0.80 200.00/hr.	160.00

2/16/2003	ALB	Review Plaintiffs' Statement of Need pursuant to Memorandum and Order dated February 5, 2003 and attachments thereto	1.00 200.00/hr.	200.00
2/16/2003	ALB	Review Defendants' Motion for Partial Summary Judgment that Interior's Trust Plan Comports with its Obligation to Perform Accounting	1.50 200.00/hr.	300.00
2/17/2003	ALB	Review Defendants' Opposition to Plaintiffs' Motion for protective order directing defendants to rescind notice sent to 1200 trust beneficiaries	0.40 200.00/hr.	80.00
2/17/2003	ALB	Review Defendants' Reply in support of Motion for expedited consideration and motion to compel testimony	0.30 200.00/hr.	60.00
2/17/2003	ALB	Review Motion for leave to supplement motion and supplement to motion for protective order as to discovery by SM-M concerning deposition questioning	0.60 200.00/hr.	120.00
2/21/2003	ALB	Review Defendants' Notice of Appeal	0.10 200.00/hr.	20.00
2/21/2003	ALB	Review Defendants' Request for Production of Documents dated 2/21/03	0.20 200.00/hr.	40.00
2/21/2003	ALB	Review Defendants' Motion to File Under Seal Declaration of Bernhardt	0.20 200.00/hr.	40.00
2/21/2003	ALB	Review Court's Memorandum Opinion dated February 5, 2003 regarding plaintiffs' consolidated motion regarding privilege, to compel testimony and for sanctions	2.00 200.00/hr.	400.00
2/24/2003	ALB	Review Reply to Government's Opposition to Amicus Brief	0.20 200.00/hr.	40.00
2/25/2003	ALB	Review Plaintiffs' Opposition to Defendants' Motion to Strike Scandalous Material pursuant to Fed.R.Civ.P. 12(f)	0.40 200.00/hr.	80.00
2/25/2003	ALB	Review Defendants' Reply Brief regarding 12(f) filing	0.20 200.00/hr.	40.00
2/26/2003	ALB	Review Plaintiffs' Opposition to Gale Norton's and Aureen Martin's Motion to File Under Seal Bernhardt Declaration	0.20 200.00/hr.	40.00
2/26/2003	ALB	Review Defendants' Opposition to Plaintiffs' Motion to Strike Defendants' Motion for Partial Summary Judgment regarding Statute of Limitations and Laches	0.20 200.00/hr.	40.00
2/26/2003	ALB	Review Defendants' Notice of Filing of Amended Certificates of Service of Papers Related to Partial Summary Judgment concerning Statute of Limitations and Laches	0.10 200.00/hr.	20.00
2/27/2003	ALB	Review Interior's Motion and Memorandum for Enlargement regarding Bert Edwards	0.60 200.00/hr.	120.00

2/27/2003	ALB	Review Interior's Motion for Enlargement to File[] Detail[e] Summary of Responses of Witnesses had Privilege not been asserted	0.10 200.00/hr.	20.00
2/27/2003	ALB	Review Interior's Notice of Filing of Declarations of Erwin, Griles, and Cason	1.30 200.00/hr.	260.00
2/27/2003	ALB	Review Defendants' Reply Memorandum in Support of Motion for Protective Order as to Discovery by SM-M and as to Rule announced by SM-M concerning deposition questioning	0.40 200.00/hr.	80.00
2/28/2003	ALB	Review Defendants' Motion to Substitute Declaration of Donna Erwin	0.50 200.00/hr.	100.00
2/28/2003	ALB	Review Interior's Motion to substitute Declaration of Griles, Cason and Swimmer	1.50 200.00/hr.	300.00
2/28/2003	ALB	Review Mark Brown letter to Stemplewicz (DOJ) regarding Defendants' Rule 26 filing	0.10 200.00/hr.	20.00
Invoice 35 April 1, 2003			Hours Rate	Amount
3/3/2003	ALB	Review Plaintiffs' Notice of Supplemental Authority in Support of Motion for Order to Show Cause Why Interior and Edwards should not be held in contempt	0.30 200.00/hr.	60.00
3/5/2003	ALB	Review Defendants' Expert Reports provided by J.S. (DOJ)	1.50 200.00/hr.	300.00
3/5/2003	ALB	Review Plaintiffs' Expert Reports	2.00 200.00/hr.	400.00
3/11/2003	ALB	Review appellate brief/opposition and reply	2.20 200.00/hr.	440.00
3/11/2003	ALB	Review Opposition to Motion to Assign Mandamus to Appellate Panel	0.30 200.00/hr.	60.00
3/11/2003	ALB	Review Angel and Lasater Reports (w/out attachments)	1.80 200.00/hr.	360.00
3/11/2003	ALB	Review Defendants' reply regarding Attachment C (.3) Motion to file (.2); M[otion for enlargement regarding B. Edwards (.2); Motion for Protective Order rega[r]ding Mineral Act (.3); and Motion regarding E&Y report (.6)	1.30 ¹¹ 200.00/hr.	260.00

¹¹ The Special Master billed \$320 for 1.6 hours to review the documents listed in this line item, but Interior Defendants do not object to the .3 hours (\$60) the Special Master billed for reviewing the "Motion for Protective Order rega[r]ding Mineral Act," as this motion was pending before him.

3/13/2003	ALB	Review Motion for Expedited Consideration of Interior Defendants' Motion for Leave to Provide [C]ongress a Summary Version of the Ernst and Young Report ¹²	2.00 200.00/hr.	400.00
3/13/2003	ALB	Review Plaintiffs' Notice of Supplemental Authority in Support of Plaintiffs' Plan for Determining Accurate Balances in the Individual Indian trust	0.10 200.00/hr.	20.00
3/14/2003	ALB	Review Motion by Gale Norton for Enlargement of Time to Respond to Motion for Order to Show Cause regarding B[e]rt Edwards	0.20 200.00/hr.	40.00
3/14/2003	ALB	Review Interior's Notice of Filing of Newell's expert report	2.00 200.00/hr.	400.00
3/14/2003	ALB	Review Defendants' Unopposed Motion to File Expert Report of Joseph R. Rosenbaum under seal and attachments thereto	0.60 200.00/hr.	120.00
3/15/2003	ALB	Review Interior Defendants' Response to NAIC [sic] Amicus Brief	0.30 200.00/hr.	60.00
3/17/2003	ALB	Review Plaintiffs' Notice of Supplemental Information in support of opposition to motion to adjust SM-M fee	0.20 200.00/hr.	40.00
3/17/2003	ALB	Review Motion to Continue Motions for summary Judgment and affidavit i[n] support thereof; notice of filing of amended certificate of service; opposition to Plaintiffs' Motions to treat as conceded and strike as untimely motion for partial summary judgment	1.50 200.00/hr.	300.00
3/20/2003	ALB	Review Defendants' Motion for reconsideration of sanctions in light of CM-M decision to release privileged documents	0.30 200.00/hr.	60.00
3/20/2003	ALB	Review Plaintiffs' Opposition to Bentzen's Motion for Protective Order to Quash Subpoena and other relief and attachments	0.40 200.00/hr.	80.00
3/20/2003	ALB	Review Brown-Quinn correspondence regarding expert opinion/production of documents	0.10 200.00/hr.	20.00

¹² Defendants note that their Motion For Expedited Consideration Of Interior Defendants' Motion For Leave To Provide Congress A Summary Version Of The Ernst & Young Report is two paragraphs in length. Even if the Special Master also reviewed Interior Defendants' concurrently filed motion for leave (also two paragraphs in length) and the attached summary version of the Ernst & Young Report (four pages in length), charging Defendants \$400 for that review is grossly excessive, even if such billing was otherwise appropriate. This is particularly egregious when the Special Master billed Defendants \$120 for reviewing the same document(s) two days earlier, on March 11, 2003.

3/20/2003	ALB	Review Plaintiffs' Notice of Supplemental Authority in Support of Plaintiffs' Plan for Determining Accurate Balances	0.30 200.00/hr.	60.00
3/20/2003	ALB	Review Motion to Substitute Declaration of D. Erwin and attachments thereto	0.50 200.00/hr.	100.00
3/20/2003	ALB	Review Motion for Enlargement regarding Bert Edwards and attachments thereto	0.60 200.00/hr.	120.00
3/20/2003	ALB	Review Motion to substitute declarations of Griles, Cason and Swimmer in support of assertions of deliberative process privileges	0.60 200.00/hr.	120.00
3/20/2003	ALB	Review Filings regarding statute of limitations and laches	0.30 200.00/hr.	60.00
3/21/2003	ALB	Review Motion for expedited consideration and clarification regarding contact of Plaintiff Old Person	0.40 200.00/hr.	80.00
3/25/2003	ALB	Review Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Con[s]olidated Motions regarding concession as to summary judgment, untimely opposition to P's Motion for Partial Summary Judgment and for enlargement of time to reply to opposition brief (+ attached affidavits); consolidated opposition to Norton's Motion for enlargement of time to respond to Ps' Motion for Order to Show Cause regarding contempt for Edwards and request for expedited consideration; Ds' Reply Memorandum in further support of Motion for Leave to provide Congress with Summary Versions of E&Y Report	1.60 200.00/hr.	320.00
3/26/2003	ALB	Review Interior Defendants' Motion and Supporting Memorandum for Reconsideration of 3/11/03 Memo granting plaintiffs' request for sanctions pursuant to 56(g)	0.70 200.00/hr.	140.00
3/27/2003	ALB	Review Interior Defendants' Motion to File Under Seal Memo to Strike Plaintiffs' References to and Quotation of the Content of Attachment "C"; and Motion to Strike Order to Show Cause regarding Bert Edwards, Historical Accounting Plan and Notice of Violation	0.50 200.00/hr.	100.00
3/27/2003	ALB	Review Plaintiffs' Notice of Filing Exhibit 1 in support of opposition to Secretary Norton's Memorandum	0.20 200.00/hr.	40.00
3/27/2003	ALB	Begin Review of Interior's opposition to Plaintiffs' Motion for Order to Show Cause why Edwards Should not be held in Civil and Criminal Contempt; and Motion by Secretary Norton (in her individual capacity) regarding same	1.80 200.00/hr.	360.00
3/29/2003	ALB	Review Interior Defendants' Opposition to Show Cause Motion regarding B. Edwards and attachments; Opposition to Plaintiffs' Motion to Continue Ds' Motion for Summary Judgment Pursuant to Fed.R.Civ.P. 56(f) and to Enlarge (w/out attachments[])	2.60 200.00/hr.	520.00

Invoice 37 May 6, 2003			Hours Rate	Amount
4/1/2003	ALB	Review Interior's Unopposed Motion for Leave to Substitute Original Expert Rebuttal Report of Lasater; to file under seal Defendants' Objections to report and recommendat[io]n of Special Master Monitor on Motion to Unseal Document Filed Under Seal by Court Monitor	1.60 200.00/hr.	320.00
Invoice 39 June 2, 2003			Hours Rate	Amount
5/5/2003	ALB	Review Plaintiffs-Appellees' Motion to Modify Stay	0.20 200.00/hr.	40.00
5/5/2003	ALB	Review Plaintiffs' Motion to Dismiss Consolidated Appeals	0.20 200.00/hr.	40.00
5/6/2003	ALB	Review Defendants' Rebuttal to Plaintiffs' Review of Facts and Further Statement of Facts	0.20 200.00/hr.	40.00
5/7/2003	ALB	Review Plaintiffs' -Appellees' Motion to Dismiss Consolidated Appeals	0.20 200.00/hr.	40.00
5/7/2003	ALB	Review Plaintiffs' Opposition to D's Motion in Limine with Regard to Expert Testimony and Report in Support of Plaintiffs' Plan for Determining Accurate Balances in the Individual Indian Trust	0.20 200.00/hr.	40.00
5/7/2003	ALB	Review Interior Defendants' Objections to and Motion to Quash Plaintiffs' Subpoena of May 1, 2003	0.30 200.00/hr.	60.00
5/8/2003	ALB	Review Interior's Motion to require compliance with Court's Orders Concerning Attachment C	0.20 200.00/hr.	40.00
5/9/2003	ALB	Review Interior Defendants' Motion for Expedited Consideration of Certain Pre-Trial Motions; Reply in Support of Motion for Partial Summary Judgement that Trust Plan Comports with Obligation to Perform Accounting; that Historical Accounting Plan comports with obligations; to File Under Seal Papers Related to Partial Summary Judgment regarding SOL and Laches; opposition and Reply thereto; Rebuttal to Plaintiffs' Review of Defendants' Facts regarding SOL and Laches; Notice of Filing of Redacted version in support of Partial Summary Judgment; Reply in Support of Motion for Reconsideration of 3/11/03 M&O regarding Sanctions; Plaintiffs' Opposition to Motion for Partial Summary Judgment that Trust Management Plan Co[m]ports with Obligations and Opposition to Motion for Partial Summary Judgment regarding Historical Accounting Plan; Motion for Leave to File Supplemental Authority in Support of Motion to Strike request for Personal Sanctions	8.60 200.00/hr.	1,720.00

5/9/2003	ALB	Review Motion for Reconsideration of D's Motion in Limine to Exclude Expert Testimony of Homan as Other than a Rebuttal Witness	0.30 200.00/hr.	60.00
5/12/2003	ALB	Review Supplemental Appellate Authority	0.10 200.00/hr.	20.00
5/13/2003	ALB	Review Interior's Motion to Defer Ruling on Plaintiffs' Application for Fees	0.30 200.00/hr.	60.00
5/22/2003	ALB	Review Reply to Motion to Dismiss ¹³	0.20 200.00/hr.	40.00
5/27/2003	ALB	Review Interior Defendants' Reply Memorandum in Further Support of Their Motion to Defer Ruling on Plaintiffs' Application for Fees and Expenses	0.20 200.00/hr.	40.00
Invoice 42 July 1, 2003			Hours Rate	Amount
6/7/2003	ALB	Review Transcript of first day's opening and first second and third days of Homan testimony	4.50 200.00/hr.	900.00
6/8/2003	ALB	Review Days 4 and 5 of Homan direct and cross	3.70 200.00/hr.	740.00
6/9/2003	ALB	Review end of Homan testimony and Fitzgerald testimon[y] (days 7 & 8[])	4.20 200.00/hr.	840.00
6/10/2003	ALB	Review Hammond and Fasold (days 9-12)	5.60 200.00/hr.	1,120.00
6/14/2003	ALB	Review testimony of John Wright, Landy Stinnett and Alan Graham McQuillan (through day 15)	4.80 200.00/hr.	960.00
6/14/2003	ALB	Review Brief regarding admissibility of depositions of defendants' experts as party admissions	0.30 200.00/hr.	60.00
6/15/2003	ALB	Review Duncan testimony (days 16, 17 and 18)	3.70 200.00/hr.	740.00
6/16/2003	ALB	Review oral argument requesting judgment; and Langbein testimony (direct and cross)	3.00 200.00/hr.	600.00
6/16/2003	ALB	Review Defendants' Opposition Brief regarding admissibility of depositions of defendants' experts as party admissions	0.20 200.00/hr.	40.00
6/17/2003	ALB	Review transcript testimony of Associate Deputy Secretary Cason and Michelle Herman (days 21-24[])	4.00 200.00/hr.	800.00

¹³ The Special Master's invoice contains insufficient detail for Interior Defendants to identify the brief described generically as "Reply to Motion to Dismiss."

6/18/2003	ALB	Review testimony of Brunner and Rosenbaum (through day 26 (before Angel))	4.60 200.00/hr.	920.00
6/20/2003	ALB	Review Angel testimony (up to day 29)	5.00 200.00/hr.	1,000.00
6/22/2003	ALB	Review Newell testimony (days 21 and 22)	3.50 200.00/hr.	700.00
6/23/2003	ALB	Review Interior defendants' motion to reconsider admissibility of defense exhibits 105-111	0.20 200.00/hr.	40.00
6/23/2003	ALB	Review testimony of Herman and Brunner	3.30 200.00/hr.	660.00
6/25/2003	ALB	Review testimony of Rosenbaum	4.60 200.00/hr.	920.00
Invoice 44 Aug. 4, 2003			Hours Rate	Amount
7/2/2003	ALB	Review Newell and Lassiter testimony	1.50 200.00/hr.	300.00
7/3/2003	ALB	Review Swimmer testimony	3.50 200.00/hr.	700.00
7/6/2003	ALB	Review Swimmer testimony	4.50 200.00/hr.	900.00
7/7/2003	ALB	Review testimony of Ross Swimmer	2.30 200.00/hr.	460.00
7/8/2003	ALB	Review Swimmer testimony; extract issues related to leases and "fair market value"	4.50 200.00/hr.	900.00
7/9/2003	ALB	Review Duncan testimony	3.00 200.00/hr.	600.00
7/16/2003	ALB	Review Plaintiffs' Counterdesignations of Deposition Testimony and Defendants' Response thereto	1.50 200.00/hr.	300.00
7/18/2003	ALB	Review response to Court's Inquiries During Closing Arguments	0.20 200.00/hr.	40.00
7/23/2003	ALB	Review Jacobs' Motion for Leave to File Amicus Curiae Pro Se and Defendants' Opposition Thereto	0.60 200.00/hr.	120.00
7/25/2003	ALB	Review Petitioners' Motion for Scheduling Order to Govern fur[th]er Proceedings	0.30 200.00/hr.	60.00
Invoice 46 Sept. 17, 2003			Hours Rate	Amount
8/4/2003	ALB	Review Eddie Jacobs' Reply Memorandum to opposition to Motion for Leave to File Amicus Curiae	1.00 200.00/hr.	200.00

8/13/2003	ALB	Review Federal Government's Motion for Voluntary Dismissal of Consolidated Claims	0.20 200.00/hr.	40.00
8/15/2003	ALB	Review Defendants' Proposed Findings of Fact and Conclusions of Law Following Phase 1.5 Trial	3.40 200.00/hr.	680.00
8/18/2003	ALB	Review Plaintiffs' Opposition to Interior Defendants' Motion and Memorandum to Require Plaintiffs to Comply with Court's Orders Concerning "Attachment C"	0.20 200.00/hr.	40.00
8/18/2003	ALB	Review Plaintiffs' Motion to Strike Portions of Defendants' Proposed Findings of Fact[]	0.20 200.00/hr.	40.00
8/24/2003	ALB	Review Plaintiffs'-Appelle[e]s' R[e]sponse for voluntary dismissal	0.20 200.00/hr.	40.00
8/28/2003	ALB	Review Reply to Eddie Jacobs' Brief/Argument in Support of Motion for Leave to File Amicus	0.20 200.00/hr.	40.00
TOTAL				35,860.00

The Special Master is, of course, free to review the briefs, trial transcripts, or any other documents filed on the public record in this case, but it is inappropriate to bill Defendants for doing so when those documents relate to matters outside the scope of his reference. Therefore, at a minimum, Interior Defendants request that the Court direct the Special Master to reimburse Defendants for the \$35,860 that the Special Master has been paid during the last twelve months for reviewing briefs, transcripts, correspondence, and other documents regarding matters not referred to him. In addition, Defendants request that the Court direct the Special Master to immediately cease billing Defendants for reviewing transcripts, pleadings, correspondence, or other documents that relate to matters not referred to him.

V. Interior Defendants Should Not Be Required To Pay The Special Master For Reviewing Briefs Not Yet Filed.

The Special Master's invoice for services performed during August, 2003 (dated September 17, 2003) sought reimbursement for reviewing two briefs that had not yet been filed:

8/11/2003	ALB	Review Non-Party Michael Carr's Motion to Quash Plaintiffs' Notice of Deposition and for a protective Order to prevent discovery relating to contempt charges	1.50 200.00/hr.	300.00
8/14/2003	ALB	Review Interior Defendants' Motion for Protective Order and Motion to Quash Plaintiffs' Notice of Deposition and request for production directed to non-party Michael Carr	1.50 200.00/hr.	300.00
TOTAL				600.00

Non-Party Michael Carr's Motion To Quash Plaintiffs' Notice Of Deposition And For A Protective Order To Prevent Discovery Relating To Contempt Charges was filed on September 10, 2003. Interior Defendants' Motion For Protective Order And Motion To Quash Plaintiffs' Notice Of Deposition And Request For Production Of Documents Directed To Non-Party Michael Carr And Defendants was filed on September 11, 2003. Interior Defendants request that the Court direct the Special Master to reimburse them \$600 for these improper charges.

CONCLUSION

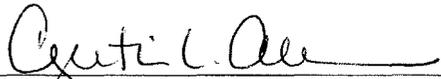
For these reasons, Interior Defendants respectfully request that the Court direct the Special Master to: (1) reimburse Interior Defendants \$7,240 for amounts improperly billed for work on motions related to the Six Documents attached to the Seventh Report of the Court Monitor, \$8,170 for amounts improperly billed for work on the Recusal Motions, \$7,420 for amounts improperly billed for work on the privilege motions filed in late 2002, and \$4,000 for amounts improperly billed for work on an "Anti-Reprisal Opinion," and reimburse them for amounts paid for work on any other matter not expressly referred to the Special Master; (2) reimburse Interior Defendants \$4,700 for amounts improperly billed for IT security-related work after July 28, 2003 and cease such unauthorized work immediately; (3) reimburse Interior Defendants \$22,552 for amounts improperly billed for the work of his unidentified assistant "AW," \$16,429.50 for amounts improperly billed for the work of his unidentified assistant "JW,"

\$13,935 for amounts improperly billed for the work of his unidentified assistant "GB," and \$5,625 for amounts improperly billed for the work of his unidentified assistant "MK"; (4) immediately inform the parties of the identities, legal qualifications, and affiliations of "AW," "JW," "GB," "MK," as well as any individuals he has employed in the past or employs in the future to assist him; (5) reimburse Interior Defendants at least \$35,860 for amounts improperly billed for reviewing briefs, transcripts, correspondence, and other documents regarding matters not referred to him and immediately cease billing Defendants for such review; (6) reimburse Interior Defendants \$600 for amounts improperly billed in August 2003 for reviewing Non-Party Michael Carr's Motion To Quash Plaintiffs' Notice Of Deposition And For A Protective Order To Prevent Discovery Relating To Contempt Charges, filed September 10, 2003, or Interior Defendants' Motion For Protective Order And Motion To Quash Plaintiffs' Notice Of Deposition And Request For Production of Documents Directed To Non-Party Michael Carr And Defendants, filed September 11, 2003.

Dated: October 3, 2003

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Associate Attorney General
PETER D. KEISLER
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director



SANDRA P. SPOONER
Deputy Director
D.C. Bar No. 261495
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CYNTHIA L. ALEXANDER
Trial Attorney

Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)
)
Plaintiffs,)
)
v.)
)
GALE A. NORTON, Secretary of the Interior, et al.,)
)
Defendants.)
_____)

Case No. 1:96CV01285
(Judge Lamberth)

ORDER

Upon consideration of Interior Defendants' Motion For Reimbursement Of Improper Special Master Fees and any responses thereto, it is hereby

ORDERED that Interior Defendants' motion is GRANTED. The Special Master shall:

(1) reimburse Interior Defendants in the amount of \$26,830 for fees billed by the Special Master for substantive work on matters not referred to the Special Master, including research and drafting of memoranda, reports, or opinions regarding matters directed to and properly resolved by the Court;

(2) reimburse Interior Defendants in the amount of \$4,700 for fees billed by the Special Master for IT security-related work after July 28, 2003, and cease work on IT security matters immediately;

(3) reimburse Interior Defendants in the amount of \$58,541.50 for fees billed by the Special Master for work performed by assistants whose identities, qualifications, and current and prior affiliations have not been disclosed to the parties;

(4) immediately inform the parties of the identities, qualifications, and current and prior

affiliations of assistants referred to as "AW," "JW," "GB," and "MK" in the Special Master's invoices and any other individuals the Special Master has employed in the past or employs in the future to assist him;

(5) reimburse Interior Defendants in the amount of \$35,860 for fees billed by the Special Master for reviewing briefs, transcripts, correspondence, and other documents regarding matters not referred to him and immediately cease billing for such work;

(6) reimburse Interior Defendants in the amount of \$600 for fees billed by the Special Master for reviewing briefs not yet filed.

SO ORDERED this ____ day of _____, 2003.

ROYCE C. LAMBERTH
United States District Judge



U.S. Department of Justice

Civil Division

MFH:THilmer
DJ: 145-7-1468

Atty: Tracy L. Hilmer
Tel: (202) 307-0474
Post Office Box 261
Benjamin Franklin Station
Washington, D.C. 20044

June 6, 2003

By Facsimile (202)986-8477

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave., NW
12th Floor
Washington, DC 20006

Re: *Cobell v. Norton*, Civ. Action No. 96-1285 (RCL) (D.D.C.)

Dear Mr. Balaran:

In reviewing the compensation request attached as Exhibit 5 to your May 2003 Report, we noted that you seek payment for work performed by individuals identified only as "JW" and "AW." These individuals are apparently assisting you with the backup tape contempt matter that was argued before you on April 23 and 25, 2003. As you know, the government has in the past raised objections to proposals to "subcontract" work on the contempt matters that the Court has referred to you as the Special Master. In order that we may determine whether the employment of "JW" and "AW" raises any conflict of interest issues or is otherwise objectionable, we request that you inform us of the identities of these individuals, their legal qualifications and any affiliations they may have other than their employment by you in this matter.

Thank you for your attention to this matter.

Sincerely,

Tracy L. Hilmer
Trial Attorney
Commercial Litigation Branch

cc: Attached service list

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	1640	
CONNECTION TEL		99868477
CONNECTION ID	ALAN BALARAN	
ST. TIME	06/06 14:11	
USAGE T	01'34	
PGS. SENT	6	
RESULT	OK	

FROM: Department of Justice
Civil Division
Cobell Litigation Support

Fax No. (202)353-3303
Voice No. (202)307-3013



SENT BY: John O'Connor

TO: Alan Balaran

FAX No. 202.986.8477

NUMBER OF PAGES SENT (INCLUDING COVER PAGE): 6

SPECIAL INSTRUCTIONS: Tracy Hilmer letter of 06/06/03 re: May report



U.S. Department of Justice

Civil Division

MFH:THilmer
DJ: 145-7-1468

Atty: Tracy L. Hilmer
Tel: (202) 307-0474

Post Office Box 261
Benjamin Franklin Station
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July 9, 2003

By Facsimile (202)986-8477

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave., NW
12th Floor
Washington, DC 20006

Re: Cobell v. Norton, Civ. Action No. 96-1285 (RCL) (D.D.C.)

Dear Mr. Balaran:

On June 6, 2003, I sent you a letter requesting information about two individuals identified only by the initials "JW" and "AW" who were listed in the invoice included in your May 2003 Report as having assisted you with the backup tape contempt matter. Possibly, my letter went astray in the press of other business. I am attaching a copy of it to this letter. We noted that "AW" was listed again in the invoice included in your June 2003 Report. At this time, we again request the information sought in my June 6, 2003 letter.

Thank you for your attention to this matter.

Sincerely,

Tracy L. Hilmer
Trial Attorney

Commercial Litigation Branch

cc: Attached service list

EXHIBIT 2

Defs' Motion for Reimbursement
of Improper Special Master Fees



U.S. Department of Justice

Civil Division

MFH:THilmer
DJ: 145-7-1468

Atty: Tracy L. Hilmer
Tel: (202) 307-0474
Post Office Box 261
Benjamin Franklin Station
Washington, D.C. 20044

June 6, 2003

By Facsimile (202)986-8477

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave., NW
12th Floor
Washington, DC 20006

Re: *Cobell v. Norton*, Civ. Action No. 96-1285 (RCL) (D.D.C.)

Dear Mr. Balaran:

In reviewing the compensation request attached as Exhibit 5 to your May 2003 Report, we noted that you seek payment for work performed by individuals identified only as "JW" and "AW." These individuals are apparently assisting you with the backup tape contempt matter that was argued before you on April 23 and 25, 2003. As you know, the government has in the past raised objections to proposals to "subcontract" work on the contempt matters that the Court has referred to you as the Special Master. In order that we may determine whether the employment of "JW" and "AW" raises any conflict of interest issues or is otherwise objectionable, we request that you inform us of the identities of these individuals, their legal qualifications and any affiliations they may have other than their employment by you in this matter.

Thank you for your attention to this matter.

Sincerely,

Tracy L. Hilmer
Trial Attorney
Commercial Litigation Branch

cc: Attached service list

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO	1720	
CONNECTION TEL		99868477
CONNECTION ID	ALAN BALARAN	
ST. TIME	07/09 16:42	
USAGE T	01'35	
PGS. SENT	6	
RESULT	OK	



U.S. Department of Justice

Civil Division

MPH:THilmer
 DJ: 145-7-1468

Atty: Tracy L. Hilmer
 Tel: (202) 307-0474

Post Office Box 261
 Benjamin Franklin Station
 Washington, D.C. 20044

July 9, 2003

By Facsimile (202)986-8477

Alan L. Balaran, Esq.
 Special Master
 1717 Pennsylvania Ave., NW
 12th Floor
 Washington, DC 20006

Re: *Cobell v. Norton*, Civ. Action No. 96-1285 (RCL) (D.D.C.)

Dear Mr. Balaran:

On June 6, 2003, I sent you a letter requesting information about two individuals identified only by the initials "JW" and "AW" who were listed in the invoice included in your May 2003 Report as having assisted you with the backup tape contempt matter. Possibly, my letter went astray in the press of other business. I am attaching a copy of it to this letter. We noted that "AW" was listed again in the invoice included in your June 2003 Report. At this time, we again request the information sought in my June 6, 2003 letter.

Thank you for your attention to this matter.

Sincerely,

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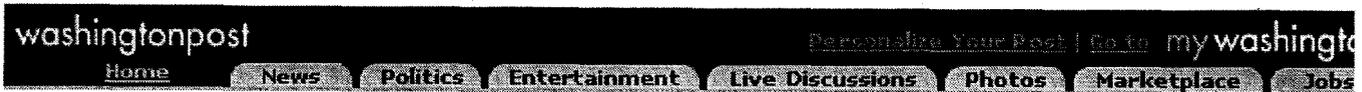
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 Talk to Post columnist [Mary Ellen Slayter](#), Thurs. at 2 pm ET.

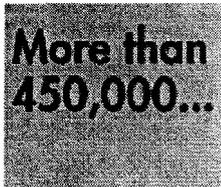
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Company Name: SEI Inc.
Job Title: Data Entry Clerk III
Job Status: Full-time Regular
Job Code: Not Listed
Industry: Government Contractor
Job Function: Administrative / Gen Office
Job Division: Not Listed
Education: High School
Years Experience Desired: general exp
Salary: \$10.58 per hour
Location: Washington, DC
Contact E-Mail: resume@sei-inc.com
Contact Information: Please send your resume and references in confidence to:
 SEI Inc. Attn: Cory Wessel
 220 University Blvd
 Harrisonburg, VA 22801
 Fax: 540-432-9430
 E-mail: resume@sei-inc.com
 http://www.sei-inc.com
 EOE/AA
Date Posted: 9/9/03

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Full Text

Two Data Entry Clerks Needed in DC

SEI Technology, a subsidiary of SEI Inc., is looking to fill two Data Entry Clerk III positions at our Washington D.C. office. Responsibilities include:

- *Inputs data from source documents into a keyboard-controlled data entry device.
- *Extracts, cross references, and prepares data for entry.
- *Compiles and summarizes data and performs mathematical computations.
- *Develops charts, graphs, and other statistical reports.
- *Maintains files and records. Transcribes, deciphers, and codes alphanumeric data from source documents and verifies data for accuracy

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and completeness.

*Works under the supervision of a Data Entry Clerk I.

*Process incoming file requests in a timely manner.

*Reconcile information in paper files against the database record to ensure accuracy and completeness.

*Upload Scanners into RAFACS and FIPS program successfully and accurately.

Must possess a High School Diploma or GED.

Candidate must also be able to successfully pass a DOJ Security Clearance and drug screen.

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on October 3, 2003 I served the foregoing *Defendants' Motion for Reimbursement of Improper Special Master Fees* by facsimile in accordance with their written request of October 31, 2001 upon:

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

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

By Facsimile and U.S. Mail upon:

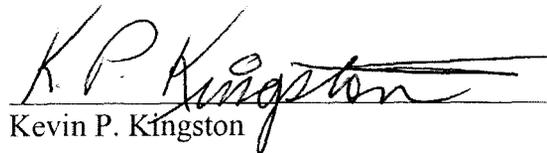
Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W., 13th Floor
Washington, D.C. 20006
(202) 986-8477

Per the Court's Order of April 17, 2003,
by Facsimile and by U.S. Mail upon:

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

By U.S. Mail upon:

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


Kevin P. Kingston