



THE TRAGEDY OF EXCLUSION

BLACK FARMERS

THEY WERE NOT NOTIFIED

THEY WERE DOUBLY BETRAYED

ORAL AND WRITTEN TESTIMONY

OF

THOMAS BURRELL

PRESIDENT

**BLACK FARMERS AND AGRICULTURALISTS
ASSOCIATION, INCORPORATED (TM)**

TO

**THE UNITED STATES HOUSE OF
REPRESENTATIVES
HOUSE JUDICIARY COMMITTEE
CONSTITUTION SUBCOMMITTEE
HONORABLE STEVE CHABOT, CHAIRMAN
“NOTICE PROVISIONS OF PIGFORD V. VENEMAN”**

November 18, 2004

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NOVEMBER 18, 2004

TO THE HONORABLE MEMBERS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES, CHAIRMAN JAMES
SENSENBRENNER, RANKING MEMBER JOHN CONYERS, AND
CONSTITUTION SUBCOMMITTEE CHAIRMAN STEVE CHABOT,
HONORABLE BOBBY SCOTT, RANKING MEMBER AND THE HOUSE

JUDICIARY COMMITTEE AND CONSTITUTION SUBCOMMITTEE MEMBERS , ON BEHALF OF THE BFAA., INC. BOARD OF DIRECTORS, BFAA, INC. STATE PRESIDENTS, MEMBERS OF BFAA, INC, THE THOUSANDS OF BLACK FARMERS DENIED RELIEF UNDER THE FLAWED *PIGFORD* CONSENT DECREE, TRACTS A & B, THE 70,000 BLACK FARMERS DESIGNATED AS LATE FILERS, THE THOUSANDS OF POTENTIAL CLASS MEMBERS AND THEIR HEIRS IN THE NEW BLACK FARMERS CLASS ACTION LAWSUIT FILED LAST MONTH, [BFAA, INC., ET AL V. VENEMAN, ET AL.](#), WE, RESPECTFULLY, WHAT TO THANK EACH AND EVERY ONE OF YOU FOR YOUR OBVIOUSLY SINCERE EFFORTS TO MAKE RIGHT THE WRONGS PERPETRATED BY THE USDA, THE DEPARTMENT OF JUSTICE AND OUR OWN CLASS COUNSEL, AL. PIRES, AGAINST BLACK FARMERS ACROSS THIS COUNTRY.

BEFORE GOING FORWARD, HOWEVER, WE WOULD BE REMISS IF WE DO NOT ADDRESS THE INTRODUCTORY STATEMENTS MADE BY THE HONORABLE CHAIRMAN CHABOT AND OTHER COMMITTEE MEMBERS AT THE INITIATION OF THESE HEARINGS ON SEPTEMBER 28, 2004. MR. CHAIRMAN, YOUR COMMENTS WERE NOTHING SHORT OF MAGNIFICANT, SUBSTANTIVE AND SENSITIVE TO THE ISSUES FACING NOT ONLY BLACK FARMERS, BUT ALSO ALL AMERICANS, REGARDLESS OF RACE, COLOR, CREED, NATIONAL ORIGIN OR PREVIOUS CONDITION OF SERVITUDE, WHO DESERVE, WITHOUT DOUBT, THE PROMISES AND PROTECTIONS OF THE UNITED STATES CONSTITUTION. MR. CHAIRMAN, WE HAVE NOT HEARD OR READ A MORE PROFOUND CIVIL RIGHTS STATEMENT SINCE THE MID-SIXTIES. YOU SHOULD KNOW THAT BFAA, INC. HAS ADOPTED YOUR INTRODUCTORY STATEMENT AS

OUR THEME FOR JUSTICE! MR. SCOTT, SIR, WITHOUT YOUR COMMITMENT TO A SMALL GROUP OF BLACK FARMERS IN RICHMOND, VA. ALMOST A YEAR AGO TO THE DAY, THESE HEARINGS WOULD NOT HAVE MATERIALIZED. MR. SCOTT, YOU MADE YOUR INTRODUCTORY STATEMENT IN RICHMOND WHEN YOU SAID, "I INTEND TO CALL FOR AN INVESTIGATION OF PIGFORD BY THE HOUSE JUDICIARY COMMITTEE." AND HERE WE ARE, TODAY. THANK YOU, SIR.

THE OUTSTANDING PERFORMANCE OF ALL THE SUBCOMMITTEE MEMBERS IN THE SEPTEMBER 28TH HEARING SENT A RESOUNDING, VIBRATING MESSAGE ACCROSS THIS COUNTRY, A STRONG MESSAGE HEARD BY THE USDA, THE DOJ, THE COURTS, CLASS COUNSEL, BLACK FARMERS AND ALL AMERICANS. THE MESSAGE IS – REGARDLESS OF PARTY – THE CONGRESS WILL NOT TOLERATE THIS CONTINUING INJUSTICE, OPPRESSION, DEPRIVATION AND DEGRADATION AGIANST BLACK FARMERS OR ANY OTHER SEGMENT OF THIS OUR FREE SOCIETY.

WHILE WE ARE KEENLY AWARE THAT THIS SUBCOMMITTEE IS EXPLORING THE FAILURES OF THE PIGFORD CONSENT DECREE AND MORE SPECIFICALLY, PARAGRAPH FOUR, THE NOTICE PROVISIONS OF THE PIGFORD CONSENT DECREE, WE FEEL COMPELLED TO PRESENT TO YOU EVIDENCE THAT THE PROBLEM –THE BLACK FARMER / USDA SAGA - IS FAR MORE IN DEPTH AND PERVASIVE THAN THE USDA, DEPARTMENT OF JUSCTICE AND USDA ASSISTANT SECRETARY FOR CIVIL RIGHTS VERNON PARKER WOULD WANT YOU TO KNOW.

MY TESTIMONY, THEREFOR, IS DIVIDED IN TO TWO PARTS. PART ONE IS MY ORAL TESTIMONY AND PART TWO IS MY

WRITTEN TESTIMONY. THE WRITTEN TESTIMONY IS ATTACHED HERE, AND WE RESPECTFULLY REQUEST THAT THE WRITTEN TESTIMONY BE PLACED INTO THE RECORD.

ORAL TESTIMONY

A. THE DISTRICT OF COLUMBIA APPELLATE COURT CAPTURED, MORE SUCCINCTLY THAN ANYONE ELSE, THE PROBLEM WITH THE PIGFORD LAWSUIT WHEN IT SAID, BLACK FARMERS HAVE BEEN THE VICTIMS OF DOUBLE BETRAYAL – FIRST BY THE DEPARTMENT OF AGRICULTURE AND THEN BY THEIR OWN LAWYERS. THIS STATEMENT CRYSTALIZES ALL THE PROBLEMS WE HAVE FACED IN THE LAST FORTY YEARS UP TO TODAY. THE ESSENTIAL ELEMENTS OF THIS BETRAYAL CAN BE TRACED THROUGH THE ENTIRE PIGFORD PROCESS. 1. THE DOJ, USDA AND CLASS COUNSEL NEGOTIATED A SETTLEMENT, THE CONSENT DECREE, IN A BACK ROOM IN WHICH THERE WAS NO BLACK FARMERS PRESENT. WE THINK THIS WAS BY DESIGN NOT BY ACCIDENT OR INNOCENT OVERSIGHT. WE WERE NOT INVITED TO OUR OWN DEMISE.

2. THE DOJ, USDA AND CLASS COUNSEL NEGLECTED TO GIVE DIRECT NOTICE TO BLACK FARMER CUSTOMERS, NAMES, ADDRESSES AND PHONE NUMBERS MAINTAINED BY THE FARM SERVICE AGENCY AND THE CENTRAL RECORDS OFFICE IN ST. LOUIS, MISSOURI.

3. THE NOTICE JOB WAS FARMED OUT TO A COMPANY THAT DID NOT KNOW OR COMPLETELY MISUNDERSTOOD THE COMMUNICATIONS INFRASTRUCTURE IN AMERICA'S BLACK COMMUNITIES, THE CHURCHES, BLACK REGIONAL AND LOCAL

NEWSPAPERS AND BLACK RADIO. MILLIONS OF DOLLARS WERE SPENT THAT RENDERED LITTLE RESULT AS EVIDENCED BY THE FACT THAT THERE WERE MORE THAN 70,000 LATE FILERS.

4. CLASS COUNSEL CONFUSED MANY BLACK FARMERS BY HAVING VERY YOUNG STUDENTS FILL OUT THE CLAIM FORMS AND BY MIS-INFORMING BLACK FARMERS THAT TRACT A WAS AUTOMATIC AND STATEMENTS LIKE, YOU WOULD BE A FOOL TO OPT BECAUSE GOING TRACT A IS LIKE TAKING CANDY FROM A BABY.

5. CLASS COUNSEL, EVEN AFTER THE POOR NOTICE, SET UP A ONE-ON-ONE CLAIM STRUCTURE THAT REQUIRED THE BLACK FARMER TO PROVIDE THE NAME OF A SIMILARLY WHITE FARMER.

6. THE DOJ AND CLASS COUNSEL WERE AWARE THAT THE OFFICE OF CIVIL RIGHTS SPENT NEARLY \$600,000 ON GATHERING, ORGANIZING AND BATE STAMPING THOUSANDS OF BLACK FARMERS FILES. YET, THE DOJ NEVER REPORTED THE AVAILABILITY OF THESE FILES TO THE COURT, AND CLASS COUNSEL NEVER PICKED THE FILES UP EVEN AFTER BEING INFORMED AND NOTIFIED THAT THE FILES WERE READY TO BE RETRIEVED.

7. CLASS COUNSEL WAIVED DISCOVERY, DISMISSING EVIDENCE THAT PLAUSIBLY WOULD HAVE HELPED THE BLACK FARMERS, INDIVIDUALLY.

8. EVEN AFTER THOSE THAT WERE NOTIFIED, CLASS COUNSEL APPROVED THE CONSENT DECREE AGREEMENT WITHOUT ATTEMPTING TO GET CONSENT OR A CONSENSUS FROM BLACK FARMERS.

9. CLASS COUNSEL IGNORED THE OBJECTIONS OF THOUSANDS OF BLACK FARMERS AT THE FAIRNESS HEARINGS.

10. AND NOW, CLASS COUNSEL IS FIGHTING HIS OWN CLIENTS, AND THE DOJ AND THE USDA ARE HELPING HIM BY OPPOSING EVERY LEGAL AND LEGISLATIVE EFFORT TO MAKE RIGHT THE WRONGS THAT THEY ALL KNOW EXISTS.

IN CONCLUSION, WE SEEK THE HELP OF THIS CONSTITUTION SUBCOMMITTEE, IN ITS OVERSIGHT RESPONSIBILITIES, TO HELP WITH NEW LEGISLATION THAT WILL MAKE RIGHT THAT WHICH IS WRONG – TO GIVE BLACK FARMERS THE JUSTICE THEY DESERVE AND TO GIVE THE COURTS THE LEGAL AUTHORITY TO RE-OPEN THE PROCESS SO THAT THE NEW CLASS ACTION LAWSUIT, BFAA, INC, ET AL V. VENEMAN, ET AL. CAN REMEDEY THE FAILURES OF PIGFORD AND TO ALLOW THIS SAD CHAPTER IN OUR DEMOCRACY TO BE BURIED AS IT SHOULD BE.

THANK YOU.

-TOM BURRELL,
PRESIDENT, BFAA, INC.

THE END

WRITTEN TESTIMONY

BELOW

LETTER SENT TO AL PIRES



August 7, 2004

Mr. Alexander Pires, Co-Lead Class Counsel **By FAX , CMRRR & E-MAIL**
Mr. David Frantz, Named Partner
Conlon, Frantz, Phelan & Pires
1818 North 18th Street, NW, Suite 700
Washington, D.C. 20036

Mr. Philip Frass, Co-Lead Class Counsel **By FAX, CMRRR & E-MAIL**
Hogan and Hartson
555 13th Street, NW
Washington, D.C.

Mr. J. L. Chestnut, Co-Lead Class Counsel **By FAX, CMRRR & E-MAIL**
Chestnut Sanders Sanders Pettaway Campbell and Albright
One Union Street
Selama, Alabama 36702-1290

Mr. Othello Cross
Cross, Kerney and McKissic
PO Box 6606
Pine Bluff, Arkansas 71611

By FAX, CMRRR & E-MAIL

REF: *PIGFORD V. VENEMAN, 97-1978 (PLF); BREWINGTON V. VENEMAN: 98-1693 (PLF); NOTICE OF TERMINATION; Demand for Statement of Attorneys' Fees Amount Paid and Reimbursed Costs with Breakdown by Law Firms*

Gentlemen:

This serves as official notice to you Class and Co-Class Counsel, that, on behalf of the entire, BFAA, Inc. membership, all Pigford prevailing and non-prevailing claimants and late filers denied participation in the lawsuit, approximately 100,000 class members, your services are hereby immediately terminated.

The reasons for the termination include but are not limited to the following:

- (1) Failure to conduct discovery pursuant to the Federal Rules of Civil Procedure in the best interest of the class members and to provide the evidence necessary to substantiate their claims when said information was available and discoverable.
- (2) Failure to provide adequate notice to putative class members resulting in approximately 70,000 such individuals being denied access to damages incurred as a result of the USDA's admitted discrimination
- (3) Failure to get consent and permission from named class plaintiffs, or any other class members, before entering into the Pigford Consent Decree, which was opposed by named plaintiffs and representatives of thousands of class members.
- (4) Failure to follow the demands of black farmers and named plaintiffs at the fairness hearing not to approve the Consent Decree.
- (5) Failure to seek forward looking injunctive relief in the Consent Decree as noted by Judge Paul Friedman.

- (6) Failure to provide judicial relief to stop the USDA from continued discrimination as noted by Judge Paul Friedman.
- (7) Entering into an agreement to defend the Consent Decree above the objections and to the detriment of all class members creating an irreversible conflict of interest
- (8) Being sanctioned with monetary, penalties by the court for ineffective assistance of counsel and poor performance relating to missed deadlines, etc.
- (9) Being accused by the DC Appellate Court for virtual, near malpractice in the handling of black farmer claims and dual betrayal, with the USDA, of black farmers.
- (10) Entering, on information and belief, into a secret, "confidential settlement agreement," on payment of attorneys fees to you and other co-class counsels, with the Department of Justice attorneys hiding, ostensibly, the amount paid your law firms for representation of the class and not disclosing to your clients the exact amount paid and to whom. Your law firm has refused every single request for public disclosure or disclosures to your clients of how much you and other co-counsels were paid.
- (11) Filing a Motion to Strike the Motion to Modify the Consent Decree, Writ of Mandamus and Request for hearing in direct contravention of a request by nearly 4000 class members not to file and to withdraw the Motion to Strike.
- (12) Failing to file a Motion to Withdraw your opposition to the Motion to Modify after direct conversation between Mr. David Frantz and BFAA, Inc. President Tom Burrell in which Mr. Burrell demanded that you do on behalf of your clients, the class members. Your law firm outright refused the demand and indicated that BFAA members were not class members.
- (13) Ignoring your direct conflict of interest by taking a direct opposite and very public position of your clients' legal interest in violation of the Rules of Professional Ethics and the Disciplinary Rules for Lawyers, federal and state.
- (14) Making public statements to the media in direct conflict of what legal steps your clients have demanded you take in connection with all the recent pleadings filed by your clients in court, etc., etc, etc.
- (15) Failing to institute review and decision time limits on the monitor review process resulting in a two-year extension of the Monitor, to which you agreed with opposing counsel, and resulting in years of delay to prevailing

track B class members whose claims were appealed by either the government or the class members themselves. Said failure has been to the detriment to the prevailing class members in that the funds and injunctive awarded have been delayed to the extent of continuing financial, emotional and physical injury damages.

Your clients, hereby, demand that you prepare and present to them, by pleading to the court, **“NOTICE OF TOTAL AMOUNT OF AND BREAKDOWN OF ATTORNEYS FEES PAID PLAINTIFFS’ COUNSEL”** within ten (10) days of this letter.

Your clients demand that you file a pleading to the court, **“NOTICE OF TERMINATION BY CLIENTS”**, with a copy of this letter attached, within ten (10) days of this letter.

You are, hereby, noticed that a certified copy of this letter is being forwarded for disciplinary action, to the DC Bar Grievance Committee and to any state bar associations in which all counsel are licensed specifically as complaint of your and all other co-counsels’ violations of the Rules of Professional Ethics,

Gentlemen, you have harmed thousands of black farmers by your poor and disgraceful performance, your possible violations of law, and your possible legal mal-practice. The damages are continuing and irreversible.

Finally, we suggest that you forward this letter to your legal malpractice insurance carrier.

Sincerely yours,

Thomas Burrell, President
BFAA, Inc.

C: Judge Paul L Friedman,
United States District Judge for the District of Columbia
DC Bar Grievance Committee
James W. Myart, Jr., BFAA General Council

v.

VENEMAN

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§
§

98Cv01693 (PLF)

**-PETITION, DECLARATION AND RESOLUTION-
FORMAL COMPLAINT OF
ATTORNEY MISCONDUCT AND LEGAL MALPRACTICE
AGAINST AL PIRES, PHIL FRASS AND ALL OTHER CLASS CO-COUNSEL**

WHEREAS, *Pigford v. Veneman* has failed to protect the constitutional and statutory civil rights of over 80,000 Black Farmers;

WHEREAS, *Pigford v. Veneman* has been a dismal failure and failed, according to Judge Paul Friedman, to (1) provide for forward looking injunctive relief to prevent further discrimination as admitted by the USDA in the CRAT Report, (2) structure or restructure the racist county committee system;

WHEREAS, Al Pires’ failure to provide for forward looking injunctive relief to prevent further discrimination against black farmers has resulted in the USDA’s boldness in dismissing, without justification or legal basis, approximately 3000 black farmer administrative cases;

WHEREAS, the USDA Office of Inspector General, the U.S. Civil Rights Commission, the Equal Employment Opportunity Commission and the Environmental Working Group have all released reports delineating continued, unabated discrimination by the USDA against black farmers;

WHEREAS the USDA Office of Inspector General, the U.S. Civil Rights Commission, the Equal Employment Opportunity Commission and the Environmental Working Group have suggested collusive efforts by USDA and DOJ officials to undermine civil rights at the USDA, to obstruct justice and to undermine “**the historic civil rights settlement for black farmers**” under *Pigford*;

WHEREAS, the *Pigford* Consent Decree, the settlement of the case, was negotiated by Class Counsel Al Pires, Phil Frass¹ and other co-class counsel and

¹ THIS PETITION AND RESOLUTION APPLIES, JOINTLY AND SEVERALLY, TO THE CONLON, FRANZ, PHELAN AND PIRES LAW FIRM, PHIL FRASS AND DAVID FRANTZ, CO-

entered into above the written and verbal objections of named plaintiffs and other Black Farmers, putative members of the class as evidenced in the record of the proceedings;

WHEREAS, Class Counsel Al Pires has committed the following unethical and possible legal malpractice acts:

Failure to conduct discovery pursuant to the Federal Rules of Civil Procedure in the best interest of the class members and to provide the evidence necessary to substantiate their claims when said information was available and discoverable;

Failure to provide adequate notice to putative class members resulting in approximately 70,000 such individuals being denied access to damages incurred as a result of the USDA's admitted discrimination;

Failure to get consent and permission from named class plaintiffs, or any other class members, before entering into the **Pigford** Consent Decree, which was opposed by named plaintiffs and representatives of thousands of class members;

Failure to follow the demands of black farmers and named plaintiffs at the fairness hearing not to approve the Consent Decree;

Failure to seek forward-looking injunctive relief in the Consent Decree as noted by Judge Paul Friedman;

Failure to provide judicial relief to stop the USDA from continued discrimination as noted by Judge Paul Friedman;

Entering into an agreement to defend the Consent Decree above the objections and to the detriment of all class members creating an irreversible conflict of interest;

Being sanctioned with monetary, penalties by the court for ineffective assistance of counsel and poor performance relating to missed deadlines, etc;

Being accused by the DC Appellate Court for virtual, near malpractice in the handling of black farmer claims and dual betrayal, with the USDA, of black farmers;

LEAD COUNSELS, AND ALL CO-CLASS COUNSEL WHO SIGNED THE PIGFORD CONSENT DECREE AND PARTICIPATED IN THE PIGFORD LAW SUIT TO ITS CONCLUSION AND IMPLEMENTATION OF THE CONSENT DECREE.

Entering, on information and belief, into a secret, “confidential settlement agreement,” on payment of attorneys fees to you and other co-class counsels, with the Department of Justice attorneys hiding, ostensibly, the amount paid your law firms for representation of the class and not disclosing to your clients the exact amount paid and to whom. Your law firm has refused every single request for public disclosure or disclosures to your clients of how much you and other co-counsels were paid;

Filing a Motion to Strike the Motion to Modify the Consent Decree, Writ of Mandamus and Request for hearing in direct contravention of a request by nearly 4000 class members not to file and to withdraw the Motion to Strike;

Failing to file a Motion to Withdraw your opposition to the Motion to Modify after direct conversation between Mr. David Franz and BFAA, Inc. President Tom Burrell in which Mr. Burrell demanded that you do on behalf of your clients, the class members. Your law firm outright refused the demand and indicated that BFAA members were not class members;

Ignoring your direct conflict of interest by taking a direct opposite and very public position of your clients’ legal interest in violation of the Rules of Professional Ethics and the Disciplinary Rules for Lawyers, federal and state;

Making public statements to the media in direct conflict of what legal steps your clients have demanded you take in connection with all the recent pleadings filed by your clients in court, etc., etc., etc.;

Failing to institute review and decision time limits on the monitor review process resulting in a two-year extension of the Monitor, to which you agreed with opposing counsel, and resulting in years of delay to prevailing track B class members whose claims were appealed by either the government or the class members themselves. Said failure has been to the detriment to the prevailing class members in that the funds and injunctive awarded have been delayed to the extent of continuing financial, emotional and physical injury damages;

Ignoring his clients’ demand that he prepare and present to them, by pleading to the court, **“NOTICE OF TOTAL AMOUNT OF AND BREAKDOWN OF ATTORNEYS FEES PAID PLAINTIFFS’ COUNSEL”** within ten (10) days of this letter;

Ignoring his clients demand that he file a pleading to the court, **“NOTICE OF TERMINATION BY CLIENTS;”** and,

WHEREAS, Attorneys Charles Ogletree, Harvard School of Law, and Dennis Sweet, Sweet & Freeze, PC, attorneys involved in the negotiation of the Consent

Decree have indicated that they would not sign the Consent Decree. The Consent Decree subsequently approved by Judge Paul Friedman because it was not the final negotiated Consent Decree that was to be presented to the Court for approval. According to Mr. Ogletree and Mr. Sweet, the draft Consent Decree that they had agreed to included stringent time limits on the implementation process, injunctive relief to insure that the USDA could not discriminate against black post **Pigford** and other protections for the Black Farmer Class Members. Mr. Ogletree and Mr. Sweet have stated that, if asked by the Court, each would restate the serious allegations here;

WHEREAS, Al Pires has, in an effort to have our lawyer, James W. Myart, Jr., disbarred and silenced, filed malicious and untrue Texas Bar Association complaints against BFAA, INC. General Counsel James W. Myart, Jr.;

WHEREAS, Al Pires has filed a malicious, unconstitutional Motion to Enjoin James Myart and Tom Burrell from speaking publicly about his mishandling of the Pigford lawsuit;

WHEREAS, Al Pires has maliciously and callously accused BFAA, INC. of fraud, theft and misrepresentation;

WHEREAS, Al Pires has attempted to close down the bfaa.net website, the major vehicle for knowledge and information to Black Farmers;

WHEREAS, Al Pires made, under oath, contradictory statements to and possibly committed perjury during the House Judiciary Committee Constitution Sub-committee on September 28, 2004 dealing with the Implementation of the **Pigford** Consent Decree;

WHEREAS, Al Pires' conduct before the during the House Judiciary Committee Constitution Sub-committee on September 28, 2004 was rude, condescending and unbecoming of an officer of the Court; and

WHEREAS, Judge Paul Friedman, United States District Judge, has written a letter to Mr. Tom Burrell, President, BFAA, INC., indicating that BFAA, INC should file our written complaints against Al Pires and other class counsel with the DC Bar Grievance and Disciplinary Committees,

NOW THEREFOR BE IT RESOLVED that we, the undersigned, individually and collectively do, hereby and by copy hereof to the appropriate tribunals, file this petition, declaration and resolution as a formal complaint of misconduct by Al Pires and other class counsel as above-stated with the DC Bar Grievance and Disciplinary Committees and any other judicial tribunals provided for in the Local Rules of the United States District Court of Columbia, DC Circuit

BE IT FURTHER RESOLVED that we authorize and otherwise direct BFAA, INC.'S General Counsel James W. Myart, Jr. to file this file this petition, declaration and resolution in the proceedings of the Pigford matter in order to dispel any notion by the Court or anyone else that we, individually and collectively, do not support the pending Motions to Modify the Consent Decree, Request for Writ of Mandamus and Emergency Hearing and to Disqualify Counsel;

BE IT FURTHER RESOLVED that we authorize and otherwise direct BFAA, INC.'S General Counsel James W. Myart, Jr. to file this file this petition, declaration and resolution in the proceedings of the Pigford matter in direct and express opposition to Al Pires' Motion to Enjoin James Myart and Tom Burrell, a motion we assert violates the FIRST AMENDMENT protection of free speech and makes scandalous allegations against James Myart, Tom Burrell, BFAA, INC. and all of us; and

BE IT FURTHER AND FINALLY RESOLVED that we pray the Honorable Judge Paul Friedman issue judgment in favor of the black farmers, to wit:

- (1) Modifying the Consent Decree to insure equity for all black farmers;
- (2) Issuing a Writ of Mandamus against the Ann Veneman, Secretary of Agriculture;
- (3) Referring, pursuant to the DC Local Rules, the matter of Class Counsel's misconduct and possible legal malpractice to the appropriate District of Columbia judicial and bar tribunals;
- (4) Denying the Motion to Enjoin James Myart and Tom Burrell;
- (5) Ordering the establishment of a litigation team to immediately take over the litigation of the entire matter; and
- (6) For other relief to which we may, through counsel, show ourselves entitled.

DECLARANTS, PETITIONERS AND RESOLVERS SAYETH FURTHER NOT

DATED: OCTOBER 9, 2004



CERTIFICATION

I, THOMAS BURRELL, DO HEREBY CERTIFY, UNDER THE PENALTIES OF PERJURY, THAT THE ABOVE PETITION, DECLARATION AND RESOLUTION, FORMAL COMPLAINT OF ATTORNEY MISCONDUCT AND LEGAL MALPRACTICE AGAINST AL PIRES, PHIL FRASS AND ALL OTHER CLASS CO-COUNSEL WAS ACCEPTED BY ACCLAMATION BY THE UNDERSIGNED INDIVIDUAL BLAK FARMERS AND PUTATIVE MEMBERS OF THE PIGFORD v. VENEMAN LAWSUIT IN THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF COLUMBIA COURT OF THE HONORABLE PAUL L. FRIEDMAN IN THE CITY OF BIRMINGHAM, ALABAMA on October 9, 2004.

/s/ _____
Thomas Burrell, President
Black Farmers and Agriculturalists Association

SIGNATURES ATTACHED IN ORIGINAL DOCUMENT

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Attorney discusses 1999 consent decree and farmers' rights

By: Bob Darden, Staff Writer

11/14/2004

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Speaker says not enough black farmers, heirs were notified about settlement money

Black farmers and their families from across Mississippi came to the Leflore County Civic Center Saturday to learn about their rights and possible claims of discrimination at the hands of the U.S. Department of Agriculture.

The meeting, sponsored by the Black Farmers and Agriculturists Inc. of Memphis, focused on the April 14, 1999 consent decree issued by Judge Paul Friedman in the U.S. District Court for the District of Columbia.

Advertisement

Under the decree, known as the Pigford decree, black farmers and their heirs who could document discrimination by the Department of Agriculture were awarded settlements of \$50,000 each.

As a result of the decree, a total of 13,000 defendants were awarded monetary damages.

James Myart Jr., the general counsel for the association, said the court's initial settlement was not adequate. He faulted the consent decree for not notifying all black farmers and their heirs throughout the country.

"For black farmers and their heirs, justice is just around the corner," he said. "You all have heard a lot about this lawsuit, the Pigford lawsuit, which was supposed to pay black farmers real money. It has failed."

Myart said problems with the consent decree had little to do with the amount of money actually awarded.

"It's not about money. We've been broke for 300 years. What it is about is respect. What it is about is equality. What it is about is justice. Not just for us, but for everybody," he said.

The association, which has 10,000 members nationwide, has already filed an amended motion to modify the Pigford consent decree, essentially asking that the proceedings start over because the original decree was flawed, Myart said.

He said such a motion is difficult because Friedman would have to rewrite his previous opinion and most judges are reluctant to do that.

If the motion is denied, Myart said he will petition the U.S. Court of Appeals and, if necessary, the U.S. Supreme Court.

"I'm going to look Clarence Thomas right in the eye and tell him on this one, he's got to do the right thing," he said.

Help for black farmers is on the way in the form of a congressional hearing scheduled for Thursday in Washington, where Thomas Burrell, president of the association, will testify before the House Judiciary Committee.

Saturday's meeting was intended to bring farmers and their heirs up to speed and help the case for legal action, Burrell said.

Lack of timely notice from the government is just one problem with the present consent decree, he said.

"We're not giving you advice. We're giving you information. A lot of people didn't get their money because they didn't know about it."

Congress appropriated about \$3 billion to settle the discrimination claims of black farmers, but most of that money has not been paid out, Burrell said.

"Black folks don't know the lawsuit exists. Probably every white farmer in this county knows about that lawsuit. Black folk don't know anything about it," he said.

Burrell said there were four categories of farmers and their families that are affected by the consent decree:

- Farmers and their heirs who received compensation.
- Farmers and their heirs who were denied compensation.
- "Late filers," which Burrell estimated at around 81,000.
- Those farmers and their heirs not involved in the original lawsuit.

In the decree, the lawsuit was limited to those farmers who were in business from January 1981 through December 1996. People who attempted to farm and their heirs also qualify.

Burrell said under the 14th amendment to the U.S. Constitution, all black farmers and their heirs, should have been notified of the settlement.

"We're not saying you'll get \$50,000. What we are saying is you ought to have had the chance," he said.

The association has been holding weekend meetings across the country. In

January, they will tour Florida, Georgia, North Carolina and Louisiana, Burrell said.

He said the scrutiny the consent decree is receiving from Congress is very encouraging.

"The Constitution is on our side. The Congress is on our side. We think the judge, who is the guardian of the Constitution, is on our side. We're asking him to do what's right," he said.

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OVERVIEW

I. GOVERNMENT MIS-CONDUCT IN BLACK FARMER SAGA APPLIED ACROSS THE BOARD

You should know that the Department of Justice attorneys, lead by Michael Sitcov, Chief, DOJ Federal Programs Branch, representing the Secretary, and the USDA OGC attorneys Nancy Bryson, appointed General Counsel, and J. Michael Kelly, career Deputy General Counsel, have, through their conduct, engaged in a hideous, collusive effort to deny all black farmers, not just those in the ***Pigford*** class, but also the Black Farmer administrative complainants utilizing, to their detriment, the intentionally ineffective and benign USDA Office of Civil Rights Complaint process as delineated in 7 CFR §§ 2.28, 15.52 et seq., black farmers who have individual lawsuits filed against the

Secretary and the putative class members of the **BFAA, INC., et al v. VENEMAN, et al.** Black Farmers Class Action lawsuit which is the exact same lawsuit as **Pigford** except for the time limits, January 1, 1997 thru August 30, 2004, as opposed to the time limit cutoff in **Pigford**, December 31, 2004. Essentially the **BFAA, INC., et al v. VENEMAN, et al.**, and Black Farmer class action law suit picks up where **Pigford** left off. Secretary Ann Veneman, Assistant Secretary Vernon Parker and the Department of Justice and the USDA Office of General attorneys have employed the same conduct to all the non-**Pigford** complainants, USDA administrative complainants, individual Black Farmer Plaintiffs with individual cases pending in federal court, and potential members of the new **BFAA, INC., et al v. VENEMAN, et al.** class members as meticulously described in the [Environmental Working Group](#) report, **“OBSTRUCTION OF JUSTICE: USDA UNDERMINES HISTORIC CIVIL RIGHTS SETTLEMENT FOR BLACK FARMERS.”** (The same conduct applies to the employee discrimination complainants, literally thousands of employees who, too, suffer from the intentionally ineffective and benign USDA Office of Civil Rights Complaint process.)

II. DOJ ATTORNEYS ACCUSED OF OBSTRUCTION OF JUSTICE: JUDGE EMMETT SULLIVAN REFERS MATTER TO DC BAR GRIEVANCE COMMITTEE

You are advised that the Native-American class action lawsuit, **Keepseagale, et al. v. Veneman**, 99Cv03199, before the Honorable Judge Emmett Sullivan is only one of such law suits precipitated by the **Pigford** Black Farmer Class Action Law Suit, the other having been filed by Hispanic and Women Americans. The same Class Counsel and DOJ Attorneys, supervised by Mr. Michael Sitcov, Chief, DOJ Federal Programs Branch and other DOJ subordinate lawyers are involved in all such cases. Because of unethical conduct, possible obstruction of Justice and tampering with witnesses, We filed a Motion for [Sanctions](#), against Michael Sitcov. Judge Sullivan, angered by the conduct of Michael Sitcov referred the matter the subject of the Motion for Sanctions to the DC Bar Disciplinary and Grievance Committee.

In our opinion, the DOJ attorneys' conduct complained in the Motion for Sanctions is typical of the same conduct prevalent in the **Pigford, BFAA, inc.**, individual lawsuits, the USDA Office of Civil Rights administrative process and the Office of General Counsel attorneys' historical effort to destroy civil rights at the USDA. Further, the DOJ and OGC attorneys' conduct in **Keepseagale, et al. v. Veneman** is indicative and consistent with that exact conduct described in Environmental Working Group report, **“OBSTRUCTION OF JUSTICE: USDA UNDERMINES HISTORIC CIVIL RIGHTS SETTLEMENT FOR BLACK FARMERS.”**

III. GOVERNMENT AND PIGFORD CLASS COUNSEL, TOGETHER, OPPOSE MOTION TO MODIFY CONSENT DECREE

On behalf of thousands of denied **Pigford** Black Farmers, We filed a Motion to Modify the Consent Decree, Request for Writ of Mandamus and Request for Expedited Ruling on. We subsequently filed an [Amended Motion to Modify the Consent Decree, Request for Writ of Mandamus and Request for Expedited Ruling.](#)

The Department of Justice attorneys filed a Motion to Strike the Motion to Modify the Consent Decree, Request for Writ of Mandamus and Request for Expedited Ruling.

Additionally, **Pigford** Class Counsel Al Pires filed, to the amazement of his clients and in direct opposition of his clients, a Motion to Strike the Motion and Amended Motion to Modify the Consent Decree, Request for Writ of Mandamus and Request for Expedited Ruling. **Pigford** class members instructed Class Counsel Al Pires not to object to the Motion or the Amended to Modify the Consent Decree, Request for Writ of Mandamus and Request for Expedited Ruling. (See FN 6a). Class Counsel Al Pires did not carry through his clients' written, expressed instruction. The **Pigford** class members terminated or attempted to terminate Class Counsel for his arrogant refusal to follow their written expressed instruction and demanded he present the termination letter to Judge Paul Friedman. The [letter](#) also demanded that Class Counsel Al Pires file a pleading with the Court detailing the amount of money he and all other co-counsel earned in the **Pigford** case. (See FN 6b) Class Counsel Al Pires refused to do so. (See FN 6c)

Again to the utter dismay of the **Pigford** black farmers, Class Counsel Al Pires then filed a Motion to Enjoin James W. Myart Jr. and **Pigford** complainant Tom Burrell from [speaking publicly](#) about his mishandling of the **Pigford** law suit, an arrogant attempt to deny the **Pigford** class members their FIRST AMENDMENT Constitutional rights. That matter is pending before the Court of Judge Paul Friedman.

The **Pigford** class members filed a [Motion to Disqualify Class Counsel Al Pires.](#) The Motion is pending before the Court.

Pigford class members were shocked at Class Counsel Al Pires' testimony and conduct before the committee. As a result of Class Counsel Al Pires' testimony and conduct before the committee, the **Pigford** Class Members filed a [Motion to Stay all Proceedings](#) in the Court until such time that a transcript of the September 28th Hearing could be presented to the Court to prove contradictions and possible untruths stated, under oath, by Al Pires and to show the court that Al Pires stated that he is not opposed to Modification of the Consent Decree, such testimony being in direct contradiction to his opposition pleadings filed by him in the **Pigford** case. That matter is pending ruling of Judge Paul Friedman as of this writing.

IV. USDA OFFICE OF CIVIL RIGHTS OPERATES UNDER KNOWN CONFLICT OF INTEREST

Assistant Secretary Vernon Parker recently hired Ms Sahdna True, former Deputy Assistant General Counsel for Civil Rights, as the new Director of the Office of Civil Rights above, on information and belief, Ms. Arlean Leland's (Deputy General Counsel for Civil Rights) objection and legal advise that Ms. True had a legal conflict of interest in assuming the role as Director of OCR. The legal conflict of interest arises from the fact that as the Assistant Deputy General Counsel for Civil Rights, Ms. True, charged with defending Secretary Veneman and the Assistant Secretary Parker against every formal and informal discrimination complaint filed, is imputed with knowledge of every single such complaint. As Director of the Office of Civil Rights, Ms. True is now charged with the responsibility of issuing Final Agency Decisions on every complaint of which she acquired knowledge as a supervising lawyer defending against same. That is an illegal conflict of interest prohibited by law and regulation.

Secretary Veneman and Assistant Secretary Veneman had express knowledge of this conflict of interest over a year ago when Assistant Secretary Parker placed Ms. True in an acting position of Director of the Office of Civil Rights. A Report by the EEOC, The Hayden Report, pointed the conflict out in its statutorily required review of the USDA Office of Civil Rights.

Further, We informed Secretary Veneman and Assistant Secretary Veneman of the obvious conflict of interest when over a year ago; We sent a letter of protest to them outlining in detail the conflict of interest. Unfortunately, my letter was ignored.

V. USDA DELAY IN INDIVIDUAL LAWSUITS

In spite of the major, wholesale criticisms of the USDA as seen in major publications throughout the United States, the USDA continues resisting fair-play and equity for black farmers. Over a year ago, several Black Farmers filed individual law suits against the USDA for continued civil rights violations. The USDA and their government attorneys have yet to even file answers to the law suits; and, in fact, they have employed every legal technicality to delay the judicial process and to avoid sitting down to at least discuss, in mediation, the cases, all such cases raising exactly the same issues as raised in **PIGFORD** and then some. A recent meeting with Assistant Secretary Vernon Parker and his government attorney reveals the exact same kind of bait and switch conduct as related in the Environmental Working Group report, **"OBSTRUCTION OF JUSTICE: USDA UNDERMINES HISTORIC CIVIL RIGHTS SETTLEMENT FOR BLACK FARMERS."**

VI. NEED FOR AND REQUEST TO EXPAND SCOPE OF HEARING AND CONGRESSIONAL INVESTIGATION

Based on the breadth and depth of the issues relating to Black Farmers:

- A.** the continued, unbridled actions of the Department of Justice and US Attorney lawyers representing the United States;
- B.** the dubious actions of the Office of General Counsel attorneys Nancy Bryson in possibly interfering with the civil rights of Black Farmers in violation of 42 USC § 1985(3) and committing obstruction of justice with the intent to deny black farmers payment of compensatory damages pursuant to the Equal Credit Opportunity Act;
- C.** the actions, contradictory testimony and possible perjury of Class Counsel Al Pires;
- D.** the intentional non-functioning of the USDA Office of Civil Rights underlying the black farmers request to the Court for issuance of A Writ of Mandamus and the fact that Assistant Secretary Vernon Parker, on or about August 30, 2003, arbitrarily and capriciously dismissed, without legal authority or justification, approximately 3000 administrative complaints of discrimination filed by Black Farmers;
- E.** the fact that Department of Justice attorneys Michael Sitcov were referred by federal Judge Emmett Sullivan to the DC Bar Grievance Committee for possibly obstructing justice and tampering with witnesses in the Native-American Class Action Lawsuit, a law suit exactly like, in law and facts, the **PIGFORD** except that the ***Kepseegale*** law suit involves Native-Americans suffering the same type of discrimination suffered by Black Farmers;
- F.** the apparent efforts of the USDA and the DOJ to now delay the swift resolution of the ***BFAA, INC., et al v. VENEMAN, et al.*** Black Farmers Class Action Lawsuit; and
- G.** the recent actions of Secretary Ann Veneman, Assistant Secretary Vernon Parker and US Attorneys representing them to deny individual plaintiffs, Robert and Laverne Williams, Estate of Howard Coats, Connie Grant and family, Dexter and Phyllis Davis, Michael Stovall, George and Phyllis Hilderbrandt, James Dismukes, George Hall, Rodney Bradshaw, or any other black farmer with a individual discrimination lawsuit against the United States any federal district court in the United States as well as any USDA employee. i.e. Ava Marshall of Virginia and M. Mobley of Washington, D.C., who has filed a law suit because of racial discrimination and the failure of the Office of Civil Rights to perform its administrative functions.

VI. CONCLUSION

This appears to be the only appropriate manner in which to conclude my testimony: My conclusion follows:

“Forty acres and a mule” The historical basis of the preceding phrase, the United States government’s 19th century **promise** to the Freedmen, the former slaves and their heirs, has a 21st century life, a life laced with government-sanctioned deprivation of our country’s cherished civil rights and liberties as delineated in the Bill of Rights (**It is well established that the US Constitution Bill of Rights constitute two types of individual protections - civil rights and civil liberties. Civil Rights are those rights that the government is obligated to protect between parties. Civil Liberties are those same exact rights but the government is prohibited from infringing upon. (Citation omitted) The USDA fails, intentionally and with malice, at both).**

The United States, as admitted by its Secretary of Agriculture, Ann Veneman, has systemically and relentlessly exercised despicable and repugnant discrimination against Black Farmers resulting in pain, suffering, distress, land loss and death to Black Farmers that tried and, today, try to etch out a living on the land in their guaranteed pursuit of life, liberty, happiness and ownership of property. Even more, the United States government and its USDA officials at the very top rung have engaged and continue to engage in an institutional and insidious racism and conspiracy to interfere with the Black American Farmers’ civil rights and liberties.

To this day, the **promise** remains elusive for all Black Americans, Black American Farmers and their heirs, merely because of their race, Black.

The racial hatred and animus perpetrated by the USDA, dubbed, **“The Last Plantation,”** persist like a plague. USDA officials at the very top rung, through intention, deceit, passivity, inaction and benign neglect, have knowingly allowed and even encouraged top government administrators and lawyers as well as local federal Farm Service Agency officials across this land to trample on the civil rights of the Class Representatives and to make a mockery of our precepts of freedom. USDA officials at the very top rung, individually and jointly, knew or should have known that these blatant violations of law run rampant throughout every single agency in the mammoth USDA, **“The Last Plantation.”** USDA officials at the very top rung have admitted their misdeeds and overt violations of law. Yet, they continue their terror against Black Farmers with an indescribable callous disregard, all in the face of judicial, legislative and public scrutiny.

This testimony and the several Black Farmer class action and individual lawsuits is made and have been brought to dispel the notion that the United States government and its USDA officials can further employ a repugnant racial animus in denying any American citizens, in this matter, Black Farmers and their heirs, the benefits of any federal program or activity on the basis of their race, **BLACK**, and to vindicate all the black farmers and their heirs’ rights as guaranteed by the UNITED STATES CONSTITUTION.

The Congress and the Courts must act sooner rather than later or black farmers will be an extinct species in this our land of opportunity where the pursuit

of happiness equality and freedom for Black Americans, Black Farmers and the heirs of Black Farmers is a distant dream .

Thank you

/S/

Thomas Burrell

DECLARATION:

I declare under the penalties of perjury that the above and foregoing testimony and the facts stated therein or true and correct to the best of my knowledge.

DATE: November 16, 2004

/s/ _____

Thomas Burrell