

[Fees Must Be Allocated Between Successful and Unsuccessful Claims](#)

Posted on May 15, 2009 by [Gary A. Bresee](#)

May 13, 2009

Covington & Burling Stumbles in Fee Fight with Government

Yesterday a federal judge tripped up Covington & Burling's efforts to collect \$192,000 in legal fees from the government for its work in a major class action.

The case, known as the Pigford litigation, dates back to 1997, when a group of black farmers sued the U.S. Department of Agriculture for allegedly denying them farm loans on the basis of their race. The government settled, and created an administrative system to pay \$50,000 plus debt and tax relief to each farmer who could prove they had suffered discrimination.

Of the 22,700 farmers who filed, a group of 172 were given permission to sue the government for more. Covington was brought in by the court and the other lawyers to help handle a number of those cases.

One of Covington's clients, Robert Holmes, was awarded \$300,000 in 2007 (his hearing was in 2002). In February 2008, Covington filed a fee request under the Equal Credit Opportunity Act and Equal Access to Justice Act. The government challenged it, noting that Holmes had brought 11 distinct claims, and only 5 of which were successful. Covington, they said, was billing for claims they had lost, and which were unrelated to the ones Holmes had won — a no-no under the statute.

Yesterday, Judge Paul Friedman of the U.S. District Court for the District of Columbia of Columbia agreed, writing that each of Holmes' claims were based on a separate set of facts, and were therefore unrelated. His ruling sends Covington and the government back to the negotiating table. But while the government was the clear victor, the skirmish wasn't a total loss for the firm.

"[T]he Court does not mean to endorse "a mathematical approach" to calculating a reasonable fee," Friedman wrote. "The Court recognizes – as the USDA seems to concede – that simply reducing Covington's fee by a fraction corresponding to the number of unsuccessful claims is not likely to result in a fair and reasonable fee for Covington's service."

According to its fee request, the majority of those services were delivered by a former Covington associate, Rebecca Woods. The firm billed a total of 1,100 hours for the Holmes case, 79 % were logged by Woods.

Earlier this week, The National Law Journal [spotlighted](#) the newest round of black farmers litigation, which was meant to compensate the people who were shut out of the Pigford settlement. Notably, the lawyers in that round of litigation have been maneuvering to get paid by their clients – not the government.