

U.S.C.A. NO. 13-11720-AA

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

JOHN HITHON , *Appellant*

v.

TYSON FOODS, INC., *Appellee.*

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION
DC Dkt. No. 4:96-cv-3257-RRA**

**BRIEF OF *AMICUS CURIAE* BY NATIONAL EMPLOYMENT
LAWYERS ASSOCIATION IN SUPPORT OF REVERSAL**

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Appeal No.: 13-11720-AA

JOHN HITHON v. TYSON FOODS, INC.

**CORPORATE DISCLOSURE STATEMENT AND STATEMENT
PURSUANT TO FRAP 29(C)(5)**

Pursuant to Federal Rule of Appellate Procedure 29(c), *Amicus curiae* hereby provide the following disclosure statements:

National Employment Lawyers Association is a professional association. It does not have any corporate parent. It does not have any stock, and therefore no publicly held company owns 10% or more of the stock of the association.

Pursuant to Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3, counsel for *amicus* certifies that, in addition to the persons and entities identified in the Certificate of Interested Persons and Corporate Disclosure Statement provided by Appellants/Plaintiffs in their initial brief, the following persons and entities have an interest in the outcome of this case.

Richard R. Renner, attorney for *Amicus Curiae*

Margaret A. Harris, attorney for *Amicus Curiae*

National Employment Lawyers Association

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), *amicus* state that no party's counsel authored the brief in whole or in part; no party's counsel contributed money that was intended to fund preparing or submitting the brief; and

no person other than *amicus curiae* or their counsel contributed money that was intended to fund preparing or submitting the brief.

Respectfully Submitted,

By: /s/ Margaret A. Harris

Margaret A. Harris, one of the attorneys for amicus

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INTEREST OF *AMICUS CURIAE*

The National Employment Lawyers Association (“NELA”) is the largest professional membership organization in the country comprised of lawyers who represent workers in labor, employment, and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA and its 68 circuit, state, and local affiliates have a membership of over 3,000 attorneys who are committed to working on behalf of those who have been treated illegally in the workplace. To ensure that the rights of working people are protected, NELA has filed numerous *amicus curiae* briefs before the U.S. Supreme Court and other federal appellate courts. NELA’s *amicus* briefs address the proper interpretation of federal civil rights and worker protection laws. NELA also undertakes continuing legal education programs and advocacy on behalf of workers throughout the United States.

Amicus has filed amicus briefs in the U.S. Supreme Court on many occasions, including those filed in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. ----, 132 S. Ct. 694 (2012); *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007); *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *Burlington Northern & Santa Fe Railway Co. v. White*, 126 S. Ct. 1671 (2006); *Pennsylvania State Police v. Suders*, 542 U.S. 129

(2004); *Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002); *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000); and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). It has also filed amicus briefs in this Court, including those in *Scantland v. Jeffrey Knight, Inc.*, 721 F.3d 1308 (11th Cir. 2013) and *Strong v. KIMC Investments, Inc.*, 472 Fed. Appx. 886 (11th Cir. July 3, 2012).

The attorney fees provisions of statutes such as Title VII are essential to ensuring that low-wage workers with relatively small claims can enforce their rights. These provisions allow counsel, especially solo practitioners or small firm attorneys, to take cases they could not afford to do on a contingency basis where the potential recovery is so limited. Attorneys' fees provisions aid clients in obtaining experienced counsel in complex and lengthy litigation. NELA has an interest in this case because of its implications for individuals who seek meaningful access to justice in employment cases.

NELA seeks to participate in this appeal because its members and staff screen large numbers of potential administrative and judicial cases per year. Both potential clients and the potential attorneys they contact know that civil rights litigation requires a multi-year commitment. And, the vast majority of potential clients are unable to pay anything resembling a commercial fee. In making decisions whether to continue representing employees confronting workplace

discrimination or retaliation, and which employees they can represent, plaintiffs' attorneys need a clear understanding of what courts will award if they prevail. A rate that discounts their time to an increasing degree the longer the matter drags on provides a built-in headwind to potential clients seeking counsel, a built-in disincentive for the attorneys Congress sought to encourage, and a built-in subsidy for civil rights violators from plaintiffs' attorneys.

STATEMENT OF ISSUES

1. Whether the district court's decision is contrary to the Congressional mandate that fee awards in civil rights cases be such as to attract capable counsel.
2. Whether the district court violated its obligation under the law to base its decision on a meaningful, objective basis.
3. Whether the district court's decision is facially unjust and constitutes an abuse of discretion.
4. Whether the district court's decision will operate to discourage competent counsel from undertaking the representation of individuals seeking to vindicate their civil rights without the ability to pay those attorneys, and thereby increase the likelihood of significantly multiplying the number of pro se plaintiffs seeking relief in the federal judicial system.

SUMMARY OF ARGUMENT

In order to attract competent counsel to represent individuals aggrieved by unlawful discrimination in employment – whether it be under Title VII or other civil rights laws – prevailing plaintiffs must be awarded attorneys' fees in an amount that is sufficient to induce capable attorneys to undertake their

representation. The district court abused its discretion by reducing the fees requested by 80% and provides no meaningful, objective reason for that decision. The award is vastly disproportionate to the number of hours other courts found both reasonable and compensable in other civil rights cases, which involved much less time to complete.

If allowed to stand, the decision below will make counsel harder to obtain for victims of civil rights violations with meritorious claims, and the difficulties will be greatest for those—even those with claims of great merit—who are poor and cannot afford to pay much as the case goes along. If this court were to affirm, then civil rights enforcement could easily be relegated to those young lawyers who have not yet figured out that the promise of a reasonable fee award means something substantially less than the prevailing market rate times the hours reasonably expended.

ARGUMENT

A. The Guiding Standard for Fee Awards is “What is Necessary to Attract Capable Counsel Without Subsidizing the Legal Profession”?

Citing to the legislative history of Title VII, the Supreme Court noted in 1968 that "it was evident that enforcement [of Title VII's prohibition against employment discrimination] would prove difficult and that the Nation would have to rely in part upon private litigation as a means of securing broad compliance with

the law." *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 401 (1968). And it was thus necessary to encourage the private bar to undertake these cases. After all, a successful plaintiff achieves a goal that both serves individual justice and vindicates a policy that Congress considered "of the highest priority." *Id.* at 402. To encourage individuals to avail themselves of the remedies established in Title VII and seek judicial relief so as to bring an end to racist practices in the workplace, Congress enacted a provision to allow for an award of counsel fees against the law-breaking parties. *Id.*

The purpose of § 1988 is to ensure effective access to the judicial process for people with civil rights grievances. *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983). To facilitate those individuals' effective access to the judicial system, it is necessary that they be represented by competent counsel. The primary means by which that goal can be met, of course, is that counsel be compensated sufficiently for their work. The very touchstone of fee awards is to compensate those who prevail in an amount necessary to attract capable counsel. As noted in 1986, "[A] 'reasonable' fee is a fee that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case." *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986). "[I]f plaintiffs ... find it possible to engage a lawyer based on the statutory assurance that he will be

paid a ‘reasonable fee,’ the purpose behind the fee-shifting statute has been satisfied. *Perdue v. Kenny A.*, 559 U.S. 542, 552 (2010) (citations omitted).

While the statute itself does not provide a specific definition of what constitutes a “reasonable” fee, opinions by the Supreme Court, as well as the legislative history of the statute, provide that guidance. In *Blum v. Stenson*, for example, the Court rejected an argument that attorney's fees for nonprofit legal service organizations should be based on cost. 465 U.S. 886, 895 (1984). It noted that the amount to be awarded under § 1988 should be governed by the same standards that prevail “in other types of equally complex Federal litigation, such as antitrust cases....” *Id.* at 893-894 (*citing* S. Rept. No. 94-1011, p. 6 (1976), U.S. CODE CONG. & ADMIN. NEWS 1976, pp. 5908, 5913); *see also* H.R. Rep. No. 94-1558, p. 8 (1976).

While the district court does have discretion in determining the amount to award as a reasonable fee, that discretion is not limitless – and “the prevailing party ‘should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.’” *Blanchard v. Bergeron*, 489 U.S. 87, 89 n.1 (1989) (*citing* *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983)). *See also* *Yule v. Jones*, 766 F.Supp.2d 1333 (N.D. Ga. 2010) (*citing* *Solomon v. City of Gainesville*, 796 F.2d 1464, 1466 (11th Cir.1986)).

B. The Supreme Court Holds That the Lodestar Method is Presumptively Reasonable, and Objectively Supportable

The Supreme Court has long advised that the lodestar – the “product of reasonable hours times a reasonable rate” – “is presumed to be the reasonable fee contemplated by [42 U.S.C.] § 1988.” *Blum*, 465 U.S. at 897. There is, in fact, “[a] strong presumption that the lodestar figure ... represents a ‘reasonable’ fee,” which “is wholly consistent with the rationale behind the usual fee-shifting statute.” *Delaware Valley*, 478 U.S. at 565.

Although the lodestar method is not perfect, it has, in the Supreme Court’s words, “several important virtues.” *Perdue v. Kenney A.*, 559 U.S. 542, 551-552 (2010). One advantage is that it relies upon “the prevailing market rates in the relevant community.” *Id.* (citing *Blum v. Stenson*, 465 U.S. 886, 895 (1984)). This aspect of the lodestar method “produces an award that roughly approximates the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable rate.” *Id.* The second virtue of the lodestar method is that it is “readily administrable” and “objective,” and thus “cabins the discretion of trial judges, permits meaningful judicial review, and produces reasonably predictable results.” *Id.* (internal quotations and citations omitted). *See also Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988) (the advantage of the lodestar

approach is that "it produces a more objective estimate and [thus] ought to be a better assurance of more even results.").

In its fee award to Hithon's counsel, the district court acknowledged that it was to be guided by applicable Supreme Court law, and the law of this Circuit, and apply the lodestar method so as to reach a reasonable fee. Dkt. 478 at 9-10. But, in calculating what would have been the presumptively reasonable award of fees by following the lodestar method, it seriously departed from its acknowledged duty to "give principled reasons" for its decisions. *Id.* Its analysis began as one would anticipate. It reviewed Hithon's fee petition and, after considering Tyson's response in opposition, it identified specific, identifiable time entries that it found problematic. *See id.* at 28-41. It criticized Hithon's counsel for, for example, seeking an award of fees for what it characterized as "numerous hours ... spent on interviews and depositions of the other plaintiffs and on hours concerning unsuccessful claims." *Id.* at 28-32.¹ The district court also prepared a four-page list of time entries it found to be insufficiently detailed. *Id.* at 33-36. And it prepared a three-page list of tasks that it identified as being improperly clerical. *Id.* at 36-38. Despite its apparent ability to identify the time entries it found objectionable, it

¹ While the district court stated that the itemized time slips it listed in this category of improper charges were but "a small sampling of the improper/inappropriate time entries claimed by the plaintiff," *id.* at 28 n.13, the fact that the list extended to four pages of the Order belies that conclusory assessment.

nonetheless made a global cut of all hours submitted for all professional services by eighty percent (80%). *Id.* at 28. It did not explain how it arrived at this figure, or how it chose this figure over various alternative numbers such as 10%, 25%, or even 40%.

This is the very type of ill-advised judgment the Supreme Court rejected in *Perdue*. There, the Supreme Court considered and rejected the district court's decision to enhance the fees calculated in accordance with the lodestar method by a magnitude approximating the number the district court in the instant case used to cut the plaintiff's recoverable hours. That enhancement was seventy-five percent (75%) (as compared to an 80% reduction by this district court). The Court rejected the enhancement because that court failed to provide a fact-based, objective justification for that large enhancement:

The court increased the lodestar award by 75% but, as far as the court's opinion reveals, this figure appears to have been essentially arbitrary. Why, for example, did the court grant a 75% enhancement instead of the 100% increase that respondents sought? And why 75% rather than 50% or 25% or 10%?

559 U.S. at 557. The district court made the same error when deciding to reduce Hithon's counsel's fees by an arbitrary 80%.

In *Perdue*, the effect of the enhancement awarded increased the top rate for the attorneys to more than \$866 an hour. The district court, however, failed to

explain why this rate should be awarded, much less point to anything in the record that showed that this rate was appropriate for the relevant market. *Id.*

Showing a similar lack of objectivity, and going in the opposite direction, the district court in the instant case issued an opinion that decreased the top rate for Hithon's lead counsel, Alicia Haynes, to \$ 60.25! As shown in the plaintiff's revised summary of hours, he sought compensation for a total of 2,687.50 hours that Ms. Haynes spent on the litigation (after she excluded altogether 1,500 hours for work on unsuccessful claims and unsuccessful plaintiffs, Dkt. 431-8 at 7, and after post-submission deletions of 82.75 hours). Dkt. 477-1 at 27. But, it then awarded, without any objective justification, only 434.37 hours for Ms. Haynes services. Dkt. 478 at 45. This was an 84% reduction in the hours sought for lead counsel's time in a case that spanned 17 years!

The abuse of discretion is further demonstrated by an analysis of the effective hourly rate awarded to lead counsel. Given the dollar amount that the district court found appropriate to award for Ms. Haynes' services over the 17-year history of this case, its decision effectively cut lead counsel's hourly rate to \$60.60.² Nowhere in the district court's Order is there any explanation as to why this rate should be awarded, much less any citation to any evidence in the record

² This figure begins with the fee awarded for Ms. Haynes' services – \$162,888.75 (Dkt. 478 at 45) which is divided by the total hours Hithon sought to recover for her services – 2,687.50 (Dkt. 477-1 at 27.) The hours sought excluded the 1,500 hours Ms. Haynes identified and excluded as time spent on unsuccessful claims, and claims of unsuccessful plaintiffs. (Dkt. 328-1 at 7.)

that showed that this rate was appropriate for the relevant market. *Cf. Perdue*, 559 U.S. at 557 (no explanation for why the fee was enhanced by 75% as opposed to any other number).

C. The Fees Awarded Are Grossly Disproportionate to Those in Cases Requiring Far Less Time, and Far Fewer Years

The district court's abuse of discretion, and the injustice of its fee award, is further demonstrated by a comparison to fee awards in other civil rights cases. In total, the district court decided to compensate Hithon's successful counsel for only 490.92 hours. Dkt. 478 at 45-46. The period of time for which this award was rendered litigation spanned 17 years – from the filing of the case on December 16, 1996, (Dkt. 1), to the date of its Order, March 19, 2013 – or 196 months. An analysis of decisions when other courts have determined the number of hours reasonably necessary and compensable in civil rights cases puts this district court's decision in stark perspective.

In a case litigated for 44 months from the time of filing until the award of fees after a successful jury verdict in a lawsuit challenging the police department's failure to offer the female officer a detective's position because of her gender, for example, the district court found that 1,780.20 hours of counsel's time were

reasonable and compensable. *Lewallen v. City of Beaumont*, 2009 WL 2175637 (E.D. Tx. July 20, 2009), *aff'd*, 394 Fed. App'x 38 (5th Cir. 2010).³

Here is an abbreviated table of other, select cases identifying the number of months between the dates on which each was filed to the date of the district court's decision as to the number of hours spent by plaintiff's counsel that were reasonably spent and thus compensable:

Case:	No. Months	No. Hours
<i>Hithon v. Tyson</i>	196 months	490.92
<i>Reinforcing Ironworkers Union Local 416</i> , 2013 WL 4506447 (D. Nev. Aug. 23, 2013)	28 months	391.75
<i>Bass v. Dellagicoma</i> , 2013 WL 3336760 (D.N.J. June 28, 2013)	39 months	627.65
<i>Lambert v. Fulton County</i> , 151 F.Supp.2d 1364 (N.D. Ga. 2000), <i>aff'd</i> , 253 F.3d 588 (11th Cir. 2000), <i>cert. denied</i> , 122 S.Ct. 2361 (2002)	44 months	2,299.50 ³
<i>Durham v. Jones</i> , 2012 WL 3985224 (D. Md. Sept. 10, 2012)	20 months	429.60
<i>Hickey v. Columbus Consol. Gov't</i> , 2011 WL 1314762 (M.D. Ga. March 10, 2011)	45 months	739.17 ⁴

³ As is evident by the date of the district court's award, the number of hours found compensable did not include any time counsel spent successfully defending the verdict on appeal to the U.S. Court of Appeals.

⁴ The number of hours excludes time spent when the matter was appealed to the U.S. Court of Appeals for the Eleventh Circuit. Due to the mostly adverse ruling by this Court, the plaintiff deleted billing for the time spent on appeal.

<i>Hilburn v. New Jersey Dep't of Corr.</i> , 2012 WL 3864951 (D.N.J. Sept. 5, 2012)	56 months	1,041.50
<i>Gurung v. Malhotra</i> , 851 F. Supp. 2d 583, 598 (S.D.N.Y. 2012).	20 months	818.82
<i>Villegas v. Metro. Gov't of Davidson County</i> , 2012 WL 4329235 (M.D. Tenn. Sept. 20, 2012)	42 months	1,653.27
<i>Pruett v. Harris County Bail Bond Bd.</i> , 593 F.Supp.2d 944, 948 (S.D.Tex.2008)	63 months	1,317 ^s

Further details about these decisions are provided in the table attached hereto as Attachment A.

D. A Failure to Compensate Plaintiffs' Counsel Adequately for Representing Individuals with Employment Cases Creates a Barrier to Adequate Representation of Most Plaintiffs.

Amicus believes that plaintiffs will face increased difficulty in obtaining capable counsel if counsel will receive compensation that does not adequately compensate them for the years of professional services spent in the representation of individuals who are without means to pay attorneys' fees on an hourly basis. The operation of a law office is expensive, with regular outlays for rent, utilities, libraries, access to WestLaw or LEXIS, salaries for staff, and something on which the attorney can live. These must be paid, or the attorney will also have to borrow

^s The number of hours awarded includes one appeal to the U.S. Court of Appeals for the Fifth Circuit.

in order to finance the continuation of his or her cases until those cases are resolved and result in fee awards. The position taken by the district court, and advocated by Tyson, creates two barriers to adequate representation of employment plaintiffs.

First, the practice of employment law is complex enough to be a specialty of its own, and counsel who devote their professional services to this field can provide services more efficiently, and with more value, than counsel who simply dabble in the field. If plaintiffs' counsel are not compensated adequately for the time spent during the inherently lengthy course of litigation, with the objectively derived lodestar as the presumptively appropriate fee award, this area of practice will not retain the capable counsel it now has, victims of discrimination and retaliation will find it even more difficult to retain capable counsel, and defendants will, ironically, have to pay even larger fee awards as the remaining less capable counsel have to re-invent the wheel time after time. It might be thought that counsel can support cases that will bear long-delayed fruit by taking on other work. However, that is only practical if the other work is not similarly handicapped, i.e., outside the area of employment law. Diversification of this kind would necessarily diminish the level of expertise brought to the field by plaintiffs' counsel, a loss that cannot be of benefit either to their clients or to the courts who must adjudicate these cases. And, even assuming all this could be accomplished, this would simply

take what should be an expense to discriminating and retaliatory defendants who have lost on the merits, and transfer this expense to the other clients of plaintiff's counsel, who would then have to pay higher hourly fee rates in order to support this subsidy to discriminating and retaliatory defendants. No policy in reason or law supports such a result.

Second, the knowledge that the plaintiff and his or her counsel's economic hardship will increase with delay may encourage some defendants to refuse early and reasonable settlement offers and demand that their counsel engage in "Stalingrad defenses" in the hope that financial exhaustion will force acceptance of an unreasonable settlement or even abandonment of the cause.

"The right to representation by counsel is not a formality. . . . It is of the essence of justice." *Kent v. United States*, 383 U.S. 541, 561 (1966). With a case that has as much notoriety as this one – especially with the notable , the fee award will resonate widely among lawyers who might take up the cause of enforcing Title VII and other Civil Rights Laws. If this Court were to affirm, then civil rights enforcement will be relegated to those young lawyers who have not yet figured out that the statutory promise of a reasonable fee is illusory in this Circuit. The consequence of this reputation will be an increase in *pro se* litigation.

E. The High Rate of Pro Se Case Filings in the District Courts Makes it Critical That Awards Be Sufficient to Attract Capable Counsel.

The attached statistical charts were downloaded from the web site of the Administrative Office of the United States Courts on October 8, 2013. Table C-13⁶ shows that, in the district courts of the Eleventh Circuit, there were 25,038 civil, non-prisoner cases filed in the year preceding September 30, 2012 (the latest table publicly available), and that 3,624 of them – 14.5 percent of the total – were filed *pro se*. This is greater than the national average of 12 percent.

Table C-13 does not break down the subject matter of the suits in question, but Table C-3⁷ shows that there were 21,235 private civil cases (excluding 5,296 prisoner petitions) filed in this Circuit's district courts in the twelve months ending September 30, 2012 (the latest table publicly available). Of these, 4,879 were civil rights cases and 4,129 were labor cases, a category including the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* Thus, 9,008 of the 21,285 non-prisoner private civil cases were civil rights or labor cases. This is 42.3 percent – over 4 in 10 of the total private civil non-prisoner cases. It seems reasonable to conclude that a substantial number of the civil rights and labor cases are filed *pro se*.

⁶ Table C-13 is attached as Attachment B.

⁷ Table C-3 is attached as Attachment C.

Pro se filings consume disproportionately large amounts of judicial resources, and are growing. Judicial Conference of the United States, Committee on Court Administration and Case Management, Civil Litigation Management Manual (2d ed. 2010), Chapter 7, Part D (Pro Se Cases), states at 136:

Cases involving a *pro se* litigant present special challenges for several reasons, not the least of which is your obligation to ensure equal justice for litigants who may have little understanding of legal procedure or the law. At each stage in the case, you may need to take actions not required in cases in which all parties are represented by counsel.

Pro se employment discrimination cases are unfortunately common. Thus the reduction of a fee request by an exorbitant 80 percent does not serve the statutory purpose of making competent counsel available. It instead deters competent counsel from taking employment discrimination cases, thus exacerbating the existing problem the courts face in the high numbers of *pro se* litigants.

CONCLUSION

The district court's fee award constitutes an abuse of discretion. It fails to achieve the goal of reasonably compensating counsel who represent those who seek to enforce their civil rights. It stands, not to ensure effective access to the judicial process for people with civil rights grievances, but instead to discourage competent counsel from assisting those individuals – thus presenting the risk of a

further increase of *pro se* plaintiffs presenting their civil rights cases to the judiciary.

Respectfully submitted,

**NATIONAL EMPLOYMENT
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/s/ Richard R. Renner

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List of Attachments

- A. Spreadsheet Analysis of Selected District Court Cases Awarding Fees
- B. Table C-13, Administrative Office of the United States Courts
- C. Table C-3, Administrative Office of the United States Courts

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29 and Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,976 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Corel WordPerfect X3 in 14 point Times New Roman.

/s/ Margaret A. Harris

Attorney for Amicus Curiae, National
Employment Lawyers Association

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October 2013, the foregoing Brief of the National Employment Lawyers Association As Amicus Curiae in Support of Plaintiff-appellant was filed electronically pursuant to Circuit Rule 25 and that service was thereby effected electronically upon counsel of record.

/s/ Richard R. Renner

			Total Hours
<i>Lewallen v. City of Beaumont</i> , 2009 WL 2175637 (E.D. Tx. July 20, 2009), <i>aff'd</i> , 394 Fed. App'x 38 (5th Cir. 2010).	gender discrimination promotion/assignment to detective	44 months; 4-1/2 days trial (appellate hours not included)	1,780.20
<i>Reinforcing Ironworkers Union Local 416</i> , 2013 WL 4506447 (D. Nev. Aug. 23, 2013)	race discrimination HWE and job assignments, 6 of 13 plaintiffs prevailed	28 months; 3-1/2 days trial	391.75
<i>Bass v. Dellagicoma</i> , 2013 WL 3336760 (D.N.J. June 28, 2013)	Unlawful imprisonment, excessive force	39 months; 11 days trial	627.65
<i>Lambert v. Fulton County</i> , 151 F.Supp.2d 1364 (N.D. Ga. 2000), <i>aff'd</i> , 253 F.3d 588 (11th Cir. 2000), <i>cert. denied</i> , 122 S.Ct. 2361 (2002)	race discrimination	41 months, 2 week trial	2,299.55
<i>Durham v. Jones</i> , 2012 WL 3985224 (D. Md. Sept. 10, 2012)	first amendment, termination	20 months; 4 days trial	429.6
<i>Hickey v. Columbus Consol. Gov't</i> , 2011 WL 1314762 (M.D. Ga. March 10, 2011)	race discrimination, retaliation	45 months, 1 appeal to 11th Circuit (appellate hours not included)	739.1
<i>Hilburn v. New Jersey Dep't of Corr.</i> , 2012 WL 3864951 (D.N.J. Sept. 5, 2012)	first amendment, termination	56 months; 12 Days trial	1,041.50
<i>Gurung v. Malhotra</i> , 851 F. Supp. 2d 583, 598 (S.D.N.Y. 2012).	FLSA failure to pay all hours worked	20 months; default judgment	818.82
<i>Villegas v. Metro. Gov't of Davidson Cnty.</i> , 2012 WL 4329235 (M.D. Tenn. Sept. 20, 2012)	due process, first amendment, fourth amendment	42 months; 2 day trial	1,653.27
<i>Pruett v. Harris County Bail Bond Bd.</i> , 593 F.Supp.2d 944, 948 (S.D.Tex.2008)	first amendment challenge to state statute	63 months, 1 appeal to 5th Circuit	1,317

Table C-13. Civil Pro Se And Non-Pro Se Filings, by District, During the 12-Month Period Ending September 30, 2012

Circuit and District	Total Civil Cases			Prisoner Petitions			Nonprisoner Petitions		
	Total Civil Cases	Pro Se Cases	Non-Pro Se Cases	Total Cases	Pro Se Cases	Non-Pro Se Cases	Total Cases	Pro Se Cases	Non-Pro Se Cases
TOTAL	278,442	77,703	200,739	54,300	50,844	3,456	224,142	26,859	197,283
DC	2,264	679	1,585	339	196	143	1,925	483	1,442
1ST	5,922	1,020	4,902	596	504	92	5,326	516	4,810
ME	431	98	333	64	58	6	367	40	327
MA	2,888	561	2,327	308	251	57	2,580	310	2,270
NH	501	121	380	73	62	11	428	59	369
RI	966	89	877	49	46	3	917	43	874
PR	1,136	151	985	102	87	15	1,034	64	970
2ND	23,218	5,605	17,613	3,445	3,211	234	19,773	2,394	17,379
CT	2,001	506	1,495	285	263	22	1,716	243	1,473
NY,N	1,902	685	1,217	524	503	21	1,378	182	1,196
NY,E	6,586	1,427	5,159	782	732	50	5,804	695	5,109
NY,S	10,581	2,382	8,199	1,407	1,296	111	9,174	1,086	8,088
NY,W	1,842	528	1,314	408	382	26	1,434	146	1,288
VT	306	77	229	39	35	4	267	42	225
3RD	38,776	6,394	32,382	4,847	4,460	387	33,929	1,934	31,995
DE	1,704	369	1,335	247	240	7	1,457	129	1,328
NJ	8,585	1,880	6,705	1,414	1,300	114	7,171	580	6,591
PA,E	23,060	2,171	20,889	1,500	1,335	165	21,560	836	20,724
PA,M	2,635	1,205	1,430	1,059	1,011	48	1,576	194	1,382
PA,W	2,551	727	1,824	613	564	49	1,938	163	1,775
VI	241	42	199	14	10	4	227	32	195
4TH	24,463	8,283	16,180	6,486	6,157	329	17,977	2,126	15,851
MD	3,929	1,351	2,578	799	772	27	3,130	579	2,551
NC,E	2,192	1,179	1,013	1,101	993	108	1,091	186	905
NC,M	1,427	868	559	785	766	19	642	102	540
NC,W	1,453	570	883	468	405	63	985	165	820
SC	3,772	1,637	2,135	1,285	1,249	36	2,487	388	2,099
VA,E	3,319	1,447	1,872	1,043	996	47	2,276	451	1,825
VA,W	1,256	705	551	591	588	3	665	117	548
WV,N	672	275	397	210	201	9	462	74	388
WV,S	6,443	251	6,192	204	187	17	6,239	64	6,175

Table C-13. (September 30, 2012—Continued)

Circuit and District	Total Civil Cases			Prisoner Petitions			Nonprisoner Petitions			Total Cases	Non-Pro Se Cases	Pro Se Cases	Non-Pro Se Cases
	Total Civil Cases	Pro Se Cases	Non-Pro Se Cases	Total Cases	Pro Se Cases	Non-Pro Se Cases	Total Cases	Pro Se Cases	Non-Pro Se Cases				
5TH	29,377	8,943	20,434	6,911	6,651	260	22,466	2,292	20,174				
LA,E	3,050	646	2,404	517	488	29	2,533	158	2,375				
LA,M	865	337	528	272	266	6	593	71	522				
LA,W	3,125	872	2,253	751	731	20	2,374	141	2,233				
MS,N	780	242	538	202	200	2	578	42	536				
MS,S	1,994	696	1,298	570	559	11	1,424	137	1,287				
TX,N	6,776	1,863	4,913	1,366	1,320	46	5,410	543	4,867				
TX,E	3,480	1,176	2,304	981	958	23	2,499	218	2,281				
TX,S	5,887	1,847	4,040	1,228	1,162	66	4,659	685	3,974				
TX,W	3,420	1,264	2,156	1,024	967	57	2,396	297	2,099				
6TH	26,027	5,979	20,048	4,319	3,967	352	21,708	2,012	19,696				
KY,E	1,445	351	1,094	300	290	10	1,145	61	1,084				
KY,W	1,399	322	1,077	237	228	9	1,162	94	1,068				
MI,E	5,789	1,394	4,395	952	860	92	4,837	534	4,303				
MI,W	1,954	932	1,022	814	739	75	1,140	193	947				
OH,N	7,993	792	7,201	532	496	36	7,461	296	7,165				
OH,S	2,674	636	2,038	379	325	54	2,295	311	1,984				
TN,E	1,673	415	1,258	328	308	20	1,345	107	1,238				
TN,M	1,626	539	1,087	391	358	33	1,235	181	1,054				
TN,W	1,474	598	876	386	363	23	1,088	235	853				
7TH	22,158	5,363	16,795	3,823	3,531	292	18,335	1,832	16,503				
IL,N	10,654	2,068	8,586	1,286	1,120	166	9,368	948	8,420				
IL,C	1,341	616	725	513	492	21	828	124	704				
IL,S	3,615	459	3,156	421	401	20	3,194	58	3,136				
IN,N	1,720	494	1,226	336	315	21	1,384	179	1,205				
IN,S	2,585	857	1,728	682	654	28	1,903	203	1,700				
WI,E	1,319	469	850	314	293	21	1,005	176	829				
WI,W	924	400	524	271	256	15	653	144	509				
8TH	14,762	4,446	10,316	3,085	2,814	271	11,677	1,632	10,045				
AR,E	2,011	886	1,125	797	759	38	1,214	127	1,087				
AR,W	1,168	787	381	223	219	4	945	568	377				
IA,N	522	142	380	140	115	25	382	27	355				
IA,S	777	285	492	254	220	34	523	65	458				
MN	3,406	549	2,857	320	304	16	3,086	245	2,841				
MO,E	2,678	702	1,976	507	472	35	2,171	230	1,941				
MO,W	2,828	697	2,131	509	490	19	2,319	207	2,112				
NE	733	172	561	179	86	93	554	86	468				
ND	265	73	192	53	52	1	212	21	191				
SD	374	153	221	103	97	6	271	56	215				

Table C-13. (September 30, 2012—Continued)

Circuit and District	Total Civil Cases			Prisoner Petitions			Nonprisoner Petitions		
	Total Civil Cases	Pro Se Cases	Non-Pro Se Cases	Total Cases	Pro Se Cases	Non-Pro Se Cases	Total Cases	Pro Se Cases	Non-Pro Se Cases
9TH	48,123	17,400	30,723	11,198	10,552	646	36,925	6,848	30,077
AK	320	103	217	56	28	28	264	75	189
AZ	4,055	1,952	2,103	1,483	1,420	63	2,572	532	2,040
CA,N	7,145	2,324	4,821	1,376	1,315	61	5,769	1,009	4,760
CA,E	5,403	2,930	2,473	2,327	2,246	81	3,076	684	2,392
CA,C	15,739	4,964	10,775	2,594	2,414	180	13,145	2,550	10,595
CA,S	3,481	1,504	1,977	1,098	1,065	33	2,383	439	1,944
HI	764	241	523	118	111	7	646	130	516
ID	718	292	426	220	204	16	498	88	410
MT	683	272	411	234	215	19	449	57	392
NV	2,909	1,050	1,859	600	553	47	2,309	497	1,812
OR	2,338	552	1,786	399	333	66	1,939	219	1,720
WA,E	976	288	688	167	164	3	809	124	685
WA,W	3,534	920	2,614	521	480	41	3,013	440	2,573
GUAM	25	5	20	4	4	0	21	1	20
NMI	33	3	30	1	0	1	32	3	29
10TH	11,068	3,031	8,037	2,005	1,865	140	9,063	1,166	7,897
CO	3,435	1,016	2,419	665	646	19	2,770	370	2,400
KS	1,767	499	1,268	350	339	11	1,417	160	1,257
NM	1,311	372	939	242	222	20	1,069	150	919
OK,N	758	279	479	98	91	7	660	188	472
OK,E	536	117	419	101	98	3	435	19	416
OK,W	1,540	349	1,191	315	257	58	1,225	92	1,133
UT	1,431	311	1,120	169	155	14	1,262	156	1,106
WY	290	88	202	65	57	8	225	31	194
11TH	32,284	10,560	21,724	7,246	6,936	310	25,038	3,624	21,414
AL,N	4,419	1,015	3,404	769	745	24	3,650	270	3,380
AL,M	1,178	701	477	482	477	5	696	224	472
AL,S	811	317	494	221	219	2	590	98	492
FL,N	1,963	852	1,111	682	667	15	1,281	185	1,096
FL,M	7,690	2,489	5,201	1,917	1,823	94	5,773	666	5,107
FL,S	8,133	1,714	6,419	1,162	1,058	104	6,971	656	6,315
GA,N	5,533	2,218	3,315	993	962	31	4,540	1,256	3,284
GA,M	1,421	636	785	515	506	9	906	130	776
GA,S	1,136	618	518	505	479	26	631	139	492

**Table C-3.
U.S. District Courts—Civil Cases Commenced, by Nature of Suit and District,
During the 12-Month Period Ending September 30, 2012**

Circuit and District	Total Civil Cases	U.S. Cases										Social Security	All Other				
		Total U.S. Civil Cases	Contract Property	Real Property	Tort Action	Civil Rights	Motions to Vacate Sentence	Prisoner Petitions			Habeas Corpus Alien Detainee			Forfeitures and Penalties	Labor Suits		
								Habeas Corpus General	Death Penalty	Prison Civil Rights						Prison Condition	Mandamus and Other
TOTAL	278,442	47,692	3,367	1,217	2,090	1,692	8,499	2,922	3	875	339	355	744	2,298	459	17,645	5,187
DC	2,264	1,153	58	10	56	178	29	75	-	122	14	34	-	18	6	32	521
1ST	5,922	1,057	55	23	91	48	156	19	-	12	1	4	27	103	19	324	175
ME	431	128	3	4	4	7	15	-	-	1	-	-	-	9	1	73	11
MA	2,888	426	21	7	37	18	50	17	-	10	1	3	25	16	8	105	108
NH	501	126	4	2	8	6	12	2	-	-	-	-	1	21	1	49	20
RI	966	83	12	1	8	2	10	-	-	1	-	-	-	6	3	27	13
PR	1,136	294	15	9	34	15	69	-	-	-	-	1	1	51	6	70	23
2ND	23,218	3,543	366	87	213	127	407	75	-	47	4	43	67	219	123	1,244	521
CT	2,001	325	6	8	27	18	46	12	-	6	-	3	1	27	11	100	60
NY,N	1,902	675	211	-	17	9	51	-	-	4	-	-	-	24	4	345	10
NY,E	6,586	927	81	15	92	45	94	30	-	12	2	19	3	50	91	205	188
NY,S	10,581	984	29	5	57	47	171	26	-	17	2	19	17	54	14	299	227
NY,W	1,842	539	38	32	19	7	42	6	-	8	-	1	46	58	1	254	27
VT	306	93	1	27	1	1	3	1	-	-	-	1	-	6	2	41	9
3RD	38,776	3,457	166	170	154	147	404	608	1	220	6	21	96	97	26	1,028	313
DE	1,704	80	1	-	9	3	16	-	-	-	-	-	-	4	-	41	6
NJ	8,585	1,187	118	18	67	48	90	343	-	68	-	17	27	45	14	192	140
PA,E	23,060	796	16	17	41	52	171	18	-	4	-	2	1	4	7	361	102
PA,M	2,635	800	13	54	9	13	63	222	1	148	2	2	67	11	-	175	20
PA,W	2,551	558	17	69	25	28	57	25	-	-	4	-	1	30	5	259	38
VI	241	36	1	12	3	3	7	-	-	-	-	-	-	3	-	-	7
4TH	24,463	5,213	72	29	193	137	2,200	350	-	73	44	93	24	283	18	1,378	319
MD	3,929	804	25	5	54	38	165	2	-	3	-	17	4	105	7	252	127
NC,E	2,192	1,125	17	1	13	13	479	177	-	13	34	48	-	75	1	226	28
NC,M	1,427	677	1	-	6	10	514	32	-	-	3	-	-	20	1	82	8
NC,W	1,453	495	5	1	10	10	292	2	-	-	-	1	-	17	-	148	9
SC	3,772	704	9	10	31	15	285	10	-	7	2	1	-	32	-	280	22
VA,E	3,319	588	6	6	42	40	213	34	-	8	4	12	19	15	4	98	87
VA,W	1,256	443	2	2	6	4	165	42	-	17	1	10	-	2	2	177	13
WV,N	672	147	5	-	10	5	45	14	-	7	-	1	1	6	2	42	9
WV,S	6,443	230	2	4	21	2	42	37	-	18	-	3	-	11	1	73	16

Table C-3. (September 30, 2012—Continued)

Circuit and District	Total Private Civil Cases	Contract	Real Property	FELA ¹	Marine Personal Injury	Motor Vehicle Personal Injury	Other Personal Injury ²	Other Tort Actions	Private Cases					Prisoner Petitions			Intellectual Property	Labor Suits	All Other
									Civil Rights	Habeas Corpus General	Death Penalty	Conditions and Civil Rights	Mandamus and Other						
TOTAL	230,750	25,346	11,743	356	1,255	3,329	50,399	3,877	36,013	15,929	186	23,896	552	11,637	18,981	27,251			
DC	1,111	101	30	2	-	22	101	26	233	35	-	26	4	98	127	306			
1ST	4,865	780	820	12	48	65	544	118	818	146	-	222	9	313	417	553			
ME	303	48	4	-	5	5	30	9	91	13	-	35	-	18	21	24			
MA	2,462	468	144	10	37	21	238	78	378	95	-	99	8	251	268	367			
NH	375	63	42	-	1	13	30	11	75	20	-	37	1	16	19	47			
RI	883	86	514	-	-	3	88	10	57	8	-	30	-	10	38	39			
PR	842	115	116	2	5	23	158	10	217	10	-	21	-	18	71	76			
2ND	19,675	2,333	165	92	51	373	1,315	347	4,818	745	1	2,027	29	1,059	2,615	3,705			
CT	1,676	294	20	12	8	25	182	41	466	57	-	160	-	69	122	220			
NY,N	1,227	102	7	2	-	19	112	22	256	168	-	301	-	37	79	122			
NY,E	5,659	423	76	25	24	183	358	82	1,646	196	-	419	7	154	1,003	1,063			
NY,S	9,597	1,365	48	52	19	115	483	184	2,115	218	1	916	20	758	1,331	1,972			
NY,W	1,303	107	9	1	-	22	157	8	285	95	-	209	1	31	69	309			
VT	213	42	5	-	-	9	23	10	50	11	-	22	1	10	11	19			
3RD	35,319	2,390	347	57	45	532	18,027	397	3,930	1,159	21	2,305	6	1,605	1,696	2,802			
DE	1,624	99	12	1	1	8	71	11	124	62	3	165	1	824	25	217			
NJ	7,398	918	93	16	27	195	1,504	143	1,096	227	-	641	1	375	997	1,165			
PA,E	22,264	908	78	33	7	224	16,188	185	1,689	438	13	853	-	296	371	981			
PA,M	1,835	218	83	3	1	75	108	31	415	208	3	341	2	31	91	225			
PA,W	1,993	220	25	4	6	26	109	24	571	222	2	301	1	79	209	194			
VI	205	27	56	-	3	4	47	3	35	2	-	4	1	-	3	20			
4TH	19,250	2,119	323	9	46	320	6,791	267	2,382	1,185	7	2,359	151	570	1,118	1,603			
MD	3,125	435	74	1	11	120	335	83	474	99	-	402	107	159	356	469			
NC,E	1,067	128	20	-	8	16	64	17	227	116	1	233	-	46	41	150			
NC,M	750	94	13	-	-	4	39	12	176	90	-	145	1	45	35	96			
NC,W	958	256	29	2	-	8	59	20	185	38	1	129	5	59	36	131			
SC	3,068	427	31	-	13	84	267	54	660	338	2	628	12	44	312	196			
VA,E	2,731	445	79	1	12	35	184	41	420	290	2	442	19	183	220	358			
VA,W	813	94	29	-	-	18	70	12	115	107	1	247	1	16	48	55			
WV,N	525	110	39	1	2	17	66	10	47	74	-	65	3	14	16	61			
WV,S	6,213	130	9	4	-	18	5,707	18	78	33	-	68	3	4	54	87			

Table C-3. (September 30, 2012—Continued)

Circuit and District	Total Civil Cases	Total U.S. Civil Cases	U.S. Cases											Social Security	All Other		
			Contract	Real Property	Tort Action	Civil Rights	Motions to Vacate Sentence			Prisoner Petitions			Habeas Corpus Alien Detainee			Forfeitures and Penalties	Labor Suits
							Habeas Corpus General	Death Penalty	Prison Civil Rights	Prison Condition	Mandamus and Other						
5TH	29,377	4,165	302	42	193	144	1,050	546	-	87	12	19	114	227	25	876	528
LA,E	3,050	210	15	7	43	17	38	3	-	3	-	1	-	2	2	48	31
LA,M	865	74	4	1	8	1	18	1	-	-	-	-	-	5	1	19	16
LA,W	3,125	385	9	4	22	8	60	66	-	23	4	3	47	6	-	122	11
MS,N	780	111	3	2	4	2	22	-	-	-	-	-	-	3	1	60	14
MS,S	1,994	234	17	5	13	13	38	44	-	-	5	1	-	16	2	60	20
TX,N	6,776	862	21	5	17	32	195	79	-	20	1	9	13	17	4	235	214
TX,E	3,480	512	4	5	13	7	88	199	-	12	1	1	-	26	1	131	24
TX,S	5,887	943	212	7	26	32	301	24	-	12	1	1	15	64	6	119	123
TX,W	3,420	834	17	6	47	32	290	130	-	17	-	3	39	88	8	82	75
6TH	26,027	4,503	476	259	118	104	613	98	-	38	34	9	27	200	53	2,150	324
KY,E	1,445	512	2	113	16	7	57	64	-	21	32	1	2	9	8	164	16
KY,W	1,399	252	9	56	8	11	31	1	-	1	1	-	-	8	5	96	25
MI,E	5,789	1,195	374	44	22	12	76	6	-	-	-	2	14	63	8	485	89
MI,W	1,954	261	5	9	4	9	53	8	-	-	-	-	4	8	2	147	12
OH,N	7,993	746	21	4	24	18	80	11	-	12	1	3	5	39	14	475	39
OH,S	2,674	653	10	7	13	27	64	3	-	1	-	3	2	33	13	416	61
TN,E	1,673	339	-	20	8	6	131	-	-	-	-	-	-	15	-	145	14
TN,M	1,626	295	42	3	16	12	43	2	-	2	-	-	-	5	3	132	35
TN,W	1,474	250	13	3	7	2	78	3	-	1	-	-	-	20	-	90	33
7TH	22,158	2,888	172	175	121	108	409	77	-	15	40	11	8	148	30	1,250	324
IL,N	10,654	1,070	128	17	70	54	115	5	-	4	11	10	6	28	10	372	240
IL,C	1,341	257	5	42	4	3	59	5	-	-	2	-	-	17	1	107	12
IL,S	3,615	259	3	60	11	2	43	39	-	8	1	1	1	9	3	64	14
IN,N	1,720	400	6	33	6	11	56	-	-	1	-	-	-	34	8	232	13
IN,S	2,585	451	16	16	16	16	63	6	-	2	26	-	-	16	3	257	14
WI,E	1,319	225	6	2	7	8	41	1	-	-	-	-	1	1	1	127	12
WI,W	924	226	8	5	7	14	32	21	-	-	-	-	-	25	4	91	19
8TH	14,762	4,056	61	75	106	88	596	121	1	36	56	14	26	129	23	2,472	252
AR,E	2,011	630	12	1	9	14	30	38	-	10	41	-	-	5	2	458	10
AR,W	1,168	604	11	2	12	7	47	-	-	1	-	-	-	12	1	493	18
IA,N	522	248	6	10	2	9	55	-	-	1	-	1	-	13	-	144	7
IA,S	777	274	4	16	5	4	101	4	-	-	-	-	2	13	3	112	10
MN	3,406	348	8	13	9	16	64	26	-	13	4	-	20	20	3	81	71
MO,E	2,678	590	5	3	22	17	115	7	-	3	-	8	-	13	6	360	31
MO,W	2,828	1,017	3	1	20	7	94	40	1	6	11	2	-	23	3	743	63
NE	733	186	8	15	9	6	44	3	-	-	-	2	4	23	5	45	22
ND	265	65	2	14	2	2	24	-	-	-	-	-	-	5	-	8	8
SD	374	94	2	-	16	6	22	3	-	2	-	1	-	2	-	28	12

Table C-3. (September 30, 2012—Continued)

Circuit and District	Total Private Civil Cases	Private Cases										Intellectual Property	Labor Suits	All Other		
		Total Private Civil Cases	Contract	Real Property	FELA ¹	Marine Personal Injury	Motor Vehicle Personal Injury	Other Personal Injury ²	Other Tort Actions	Civil Rights	Habeas Corpus General				Death Penalty	Conditions and Civil Rights
5TH	25,212	3,220	1,863	42	461	651	5,366	479	2,851	2,315	33	2,686	49	1,698	1,291	2,207
LA,E	2,840	428	38	14	303	170	595	138	321	307	1	157	7	45	87	229
LA,M	791	117	6	-	9	59	145	9	122	58	1	193	1	9	24	38
LA,W	2,740	178	35	1	61	91	1,328	119	213	190	2	350	6	13	82	71
MS,N	669	116	15	-	5	24	102	5	160	96	1	83	-	6	12	44
MS,S	1,760	331	35	-	10	90	347	22	293	121	2	355	4	13	56	81
TX,N	5,914	541	626	5	-	45	2,187	53	495	522	13	503	11	168	273	472
TX,E	2,968	237	209	13	5	65	134	30	251	320	4	350	6	1,096	100	148
TX,S	4,944	927	493	2	68	75	385	72	605	433	6	430	5	204	473	766
TX,W	2,586	345	406	7	-	32	143	31	391	268	3	265	9	144	184	358
6TH	21,524	2,196	795	32	41	308	6,598	299	3,245	1,538	28	1,904	30	598	1,502	2,410
KY,E	933	129	33	3	5	51	293	16	112	58	-	62	3	13	66	89
KY,W	1,147	167	16	-	16	55	309	31	162	60	-	137	6	29	100	59
MI,E	4,594	730	440	6	11	46	238	69	728	558	-	291	5	210	375	887
MI,W	1,693	150	88	4	1	10	52	12	242	176	-	571	2	47	85	253
OH,N	7,247	308	88	7	1	31	5,059	54	418	261	6	144	9	119	280	462
OH,S	2,021	268	34	7	2	24	155	63	562	189	10	106	1	96	253	251
TN,E	1,334	161	25	4	1	34	207	26	323	61	2	133	1	18	93	245
TN,M	1,331	153	25	1	1	30	123	17	353	87	2	255	-	29	156	99
TN,W	1,224	130	46	-	3	27	162	11	345	88	8	205	3	37	94	65
7TH	19,270	1,662	1,738	34	13	175	3,869	273	3,240	994	1	2,254	14	845	2,070	2,088
IL,N	9,584	980	1,379	7	6	47	937	130	1,648	246	-	881	8	569	1,406	1,340
IL,C	1,084	87	67	3	2	10	56	12	205	62	-	383	2	30	95	70
IL,S	3,356	66	238	8	4	29	2,446	15	107	38	-	289	1	7	52	56
IN,N	1,320	127	5	8	-	30	205	25	416	145	-	134	-	26	113	86
IN,S	2,134	190	28	3	-	50	134	18	528	331	1	253	-	70	241	287
WI,E	1,094	117	9	3	1	6	52	55	217	126	-	143	2	71	106	186
WI,W	698	95	12	2	-	3	39	18	119	46	-	171	1	72	57	63
8TH	10,706	1,402	305	35	7	160	2,090	245	1,795	665	6	1,549	15	366	766	1,300
AR,E	1,381	126	16	12	-	24	73	21	287	155	2	520	1	11	79	54
AR,W	564	89	8	1	-	12	60	16	114	21	1	153	-	8	24	57
IA,N	274	40	1	-	-	6	32	9	51	19	-	63	1	13	10	29
IA,S	503	82	10	2	-	6	28	15	103	30	-	117	-	15	36	59
MN	3,058	337	148	2	-	11	857	70	444	60	-	130	3	150	224	622
MO,E	2,088	266	35	2	4	39	483	46	316	149	3	217	5	83	217	223
MO,W	1,811	253	64	5	1	31	453	37	285	148	-	204	3	48	129	150
NE	547	92	14	7	2	12	42	18	114	38	-	87	1	27	35	58
ND	200	59	8	4	-	4	26	6	30	16	-	13	-	2	4	28
SD	280	58	1	-	-	15	36	7	51	29	-	45	1	9	8	20

Table C-3. (September 30, 2012—Continued)

Circuit and District	Total Civil Cases	Total U.S. Civil Cases	U.S. Cases												Social Security	All Other	
			Contract	Real Property	Tort Action	Civil Rights	Motions to Vacate Sentence			Prisoner Petitions			Habeas Corpus Alien Detainee	Forfeitures and Penalties			Labor Suits
							Habeas Corpus General	Death Penalty	Prison Civil Rights	Prison Condition	Mandamus and Other						
9TH	48,123	9,594	1,214	146	531	359	1,237	363	-	124	70	62	142	468	91	3,579	1,208
AK	320	89	2	1	18	1	24	2	-	-	-	-	-	4	3	23	11
AZ	4,055	1,255	35	15	54	44	480	86	-	20	69	9	40	47	4	275	77
CA,N	7,145	801	214	17	51	76	38	8	-	9	-	1	8	29	18	126	206
CA,E	5,403	776	15	14	39	26	59	59	-	59	-	3	6	63	4	345	84
CA,C	15,739	3,234	885	45	125	79	121	173	-	31	1	3	35	124	28	1,134	450
CA,S	3,481	700	21	7	69	41	275	17	-	2	-	41	2	63	1	81	80
HI	764	100	2	7	19	14	14	1	-	1	-	-	-	9	4	6	23
ID	718	117	3	6	10	5	22	-	-	-	-	-	-	9	-	33	29
MT	683	161	3	7	15	4	61	-	-	1	-	-	-	8	2	37	23
NV	2,909	263	7	5	32	18	41	4	-	-	-	1	2	32	1	66	54
OR	2,338	644	10	8	20	16	29	-	-	1	-	2	-	30	8	457	63
WA,E	976	452	3	3	20	8	28	1	-	-	-	-	-	11	1	365	12
WA,W	3,534	992	14	11	57	27	43	12	-	-	-	2	49	38	15	630	94
GUAM	25	7	-	-	-	-	2	-	-	-	-	-	-	1	2	1	1
NMI	33	3	-	-	2	-	-	-	-	-	-	-	-	-	-	-	1
10TH	11,068	2,310	62	134	106	79	308	72	-	6	30	6	34	164	15	1,061	233
CO	3,435	423	10	12	26	15	35	10	-	1	12	1	-	23	3	200	75
KS	1,767	531	6	55	7	18	73	54	-	1	18	5	-	58	3	205	28
NM	1,311	300	8	5	25	15	53	5	-	-	-	-	30	57	3	72	27
OK,N	758	228	3	8	10	6	27	-	-	1	-	-	-	5	2	149	17
OK,E	536	230	7	4	11	1	8	-	-	-	-	-	-	2	-	189	8
OK,W	1,540	306	18	16	15	12	41	2	-	1	-	-	-	9	2	161	29
UT	1,431	228	8	33	10	11	44	-	-	1	-	-	4	6	1	71	39
WY	290	64	2	1	2	1	27	1	-	1	-	-	-	4	1	14	10
11TH	32,284	5,753	363	67	208	173	1,090	518	1	95	28	39	179	242	30	2,251	469
AL,N	4,419	710	4	5	13	32	53	47	-	4	-	-	120	18	1	396	17
AL,M	1,178	221	3	1	9	10	47	-	-	-	-	1	-	7	-	132	11
AL,S	811	187	4	4	2	2	64	-	-	-	-	-	-	12	-	93	6
FL,N	1,963	399	5	4	16	14	80	35	-	-	11	1	19	49	3	154	8
FL,M	7,690	1,684	38	24	64	36	235	166	-	68	12	9	-	24	12	861	135
FL,S	8,133	1,282	232	18	39	47	338	144	1	5	1	21	5	32	8	226	165
GA,N	5,533	775	62	5	42	20	162	43	-	16	2	7	-	65	2	250	99
GA,M	1,421	222	7	3	12	5	32	1	-	1	-	-	35	19	1	91	15
G,A,S	1,136	273	8	3	11	7	79	82	-	1	2	-	-	16	3	48	13

Table C-3. (September 30, 2012—Continued)

Circuit and District	Total Private Civil Cases	Private Cases										Intellectual Property	Labor Suits	All Other		
		Total Private Civil Cases	Contract	Real Property	FELA ¹	Marine Personal Injury	Motor Vehicle Personal Injury	Other Personal Injury ²	Other Tort Actions	Civil Rights	Habeas Corpus General				Death Penalty	Conditions and Civil Rights
9TH	38,529	4,222	3,821	18	126	188	2,379	860	5,863	4,402	42	4,668	88	3,040	2,806	6,006
AK	231	49	5	-	13	3	37	5	48	22	-	8	-	4	15	22
AZ	2,800	395	131	2	-	22	159	43	438	233	7	533	6	158	155	518
CA,N	6,344	539	595	-	12	11	554	144	793	557	7	741	7	540	779	1,065
CA,E	4,627	244	310	1	2	9	152	54	1,130	914	5	1,215	7	135	113	336
CA,C	12,505	1,219	1,694	5	18	51	660	341	1,521	1,594	17	616	3	1,578	869	2,319
CA,S	2,781	306	228	2	3	4	155	70	309	378	1	372	10	257	89	597
HI	664	102	52	-	13	2	58	42	168	17	-	84	1	27	44	54
ID	601	86	44	1	-	3	40	5	123	84	2	111	1	12	37	52
MT	522	119	26	-	-	12	46	5	64	73	-	94	5	7	23	48
NV	2,646	394	397	2	1	31	213	52	417	237	2	311	2	117	174	296
OR	1,694	234	198	3	2	16	104	17	376	124	1	197	45	80	132	165
WA,E	524	54	9	1	-	6	40	8	114	37	-	101	-	5	29	120
WA,W	2,542	466	132	1	61	18	156	71	347	131	-	283	1	120	344	411
GUAM	18	6	-	-	1	-	2	1	4	1	-	1	-	-	-	2
NMI	30	9	-	-	-	-	3	2	11	-	-	1	-	-	3	1
10TH	8,758	1,380	173	17	1	218	829	161	1,959	631	8	888	22	446	444	1,581
CO	3,012	376	45	8	-	26	174	46	527	246	-	358	2	218	140	846
KS	1,236	185	13	-	-	35	120	29	319	72	-	124	3	39	110	187
NM	1,011	144	15	1	-	33	85	24	380	56	-	97	1	15	26	134
OK,N	530	119	3	1	-	17	62	5	172	48	-	19	3	9	36	36
OK,E	306	66	3	3	-	12	31	2	61	44	1	47	1	3	13	19
OK,W	1,234	230	31	1	-	46	168	27	295	122	7	131	11	31	37	97
UT	1,203	215	55	1	1	15	154	24	167	24	-	95	1	129	75	247
WY	226	45	8	2	-	34	35	4	38	19	-	17	-	7	15	15
11TH	26,531	3,541	1,363	6	416	317	2,490	405	4,879	2,114	39	3,008	135	999	4,129	2,690
AL,N	3,709	411	35	-	-	31	662	17	673	190	3	351	1	20	1,117	198
AL,M	957	103	9	-	-	28	60	11	227	101	3	281	49	5	36	44
AL,S	624	146	12	-	17	14	44	7	140	55	-	102	-	6	42	39
FL,N	1,564	138	56	-	1	32	52	8	508	243	1	288	4	79	93	61
FL,M	6,006	847	142	-	24	67	466	70	1,040	744	18	632	33	293	909	721
FL,S	6,851	1,115	87	-	368	19	439	157	1,189	330	7	297	13	377	1,530	923
GA,N	4,758	546	934	2	1	74	511	112	737	280	3	451	29	198	317	563
GA,M	1,199	136	50	3	-	35	201	10	189	107	1	335	3	15	49	65
GA,S	863	99	38	1	5	17	55	13	176	64	3	271	3	6	36	76

¹ FELA = Federal Employers Liability Act.

² Includes cases filed in previous years as consolidated cases that thereafter were severed into individual cases.