

**CASE NO. 20-656**

**IN THE SUPREME COURT OF THE  
UNITED STATES**

**ROBERT KINGHORN,  
THE LAW OFFICES OF FREDERICK HUFF,**

**Petitioners,**

**v.**

**UNITED STATES,**

**Respondent.**

On Petition for Rehearing  
to the United States Court of Appeals  
for the Federal Circuit

**PETITION FOR REHEARING**

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**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

PETITION FOR REHEARING.....1

REASONS FOR GRANTING THE PETITION.....1

INTERVENTION AS OF RIGHT.....2

PERMISSIVE INTERVENTION.....2

CONCLUSION.....4

CERTIFICATE OF COUNSEL .....5

**TABLE OF AUTHORITIES**

**CASES**

*In re Sierra Club*,  
945 F.2d 776 (4<sup>th</sup> Cir. 1991) .....3

*Sierra Club v. Espy*,  
18 F.3d 1202 (5<sup>th</sup> Cir. 1994) .....3

**RULES OF THE SUPREME COURT**

Supreme Court Rule 44..... 1

**RULES OF THE FEDERAL RULES OF CIVIL PROCEDURE**

Rule 24(a), Federal Rules of Civil Procedure.....2

Rule 24(b), Federal Rules of Civil Procedure.....3, 4

**RULES OF THE COURT OF FEDERAL CLAIMS**

Rule 19, RCFC.....2, 3

Rule 20, RCFC.....3, 4

Rule 20(a)(1).....4

Rule 24, RCFC.....2

Rule 24(b), RCFC .....3, 4

### **PETITION FOR REHEARING**

Pursuant to Supreme Court Rule 44.1, Petitioners, Robert Kinghorn (Kinghorn) and the Law Office of Frederick Huff (Huff) respectfully petition for rehearing of this Court's January 11, 2021 denial of their Petition for Writ of Certiorari. Pursuant to Supreme Court Rule 44.1, this Petition for Rehearing is filed within 25 days of this Court's denial of the Petition for Writ of Certiorari.

### **REASONS FOR GRANTING THE PETITION**

The utility for granting interested parties' intervention into an existing case is well-recognized either as a matter of right or permissibly. However, the applicable standards of review vary wildly between the Federal Circuit Courts of Appeal. This disparity can unjustly deny the rights of interested parties, as occurred in the instant matter, thereby totally extinguishing any chance to protect the interveners' interests.

Here, Kinghorn and Huff's monetary interests in over \$7.5 million dollars of accruing post-judgment interest was totally extinguished by the denial of their intervention. Yet the Government had contractually agreed to pay costs, including interest which amount was judicial adjudicated by the January 13, 2009 Second Modified Amended Judgment of the United States District Court for the District of Colorado. The Government's obligation to pay interest was addressed and confirmed in the January 30, 2019 Judgment by the Court of Federal Claims.

Nevertheless, Kinghorn and Huff's Motions to Intervene were denied after a cursory review resulting in loss of their monetary interests in over \$7.5 million dollars in accruing post-judgment interest.

## I.

**INTERVENTION AS OF RIGHT**

Conceptually, intervention as a matter of right is intended to be mandatory. Rule 24(a),

Federal Rules of Civil Procedure states:

- a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:
  - (1) is given an unconditional right to intervene by a federal statute; or
  - (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Likewise, as addressed in the Rules of the United States Court of Federal Claims (RCFC), intervention as of right should be mandatory for interested parties like Kinghorn and Huff.

Rule 24, RCFC, states as follows:

- (B) Intervention of Right. On timely motion, the court must permit anyone to intervene who:
  - (1) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Rule 24, RCFC

Similarly, Rule 19, RCFC, Required Joinder of Parties, requires joinder when:

- (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
  - (i) as a practical matter impair or impeded the

person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Rule 19, RCFC

The conflict between the Federal Courts in addressing non-party interventions is highlighted by the disparity between *Sierra Club v. Espy*, 18 F.3d 1202 (5th Cir. 1994) "right to intervene is a legal issue that we review de novo", and *In re Sierra Club*, 945 F.2d 776 (4th Cir. 1991) "we review the denial of a motion for intervention on abuse of discretion grounds".

In addition, the Fourth and Fifth Circuits, both thoroughly analyzed the Interveners' interests at stake and other applicable factors in evaluating the Sierra Club's motions to intervene. Particularly instructive if applied to the present case, is the Fifth Circuit's teaching that:

The requirement of timeliness is not a tool of retribution to punish the tardy would-be intervener, but rather a guard against prejudicing the original parties by the failure to apply sooner. Federal Courts should allow intervention where no one would be hurt and greater justice could be attained.

*Espy*, 18 F.3d at 105. (Citations omitted)

In stark contrast and without any regard for Kinghorn and Huff's monetary interests, the instant Federal Circuit denied Kinghorn and Huff's interventions. Neither did the Federal Circuit consider any of the factors that should have been fully analyzed and properly evaluated. Instead, the Court focused exclusively on timeliness and declared it "dispositive". Accordingly, the Federal Circuit, in the present case, thereby imposed a total forfeiture that completely erased the Petitioners' \$7.5 million dollar monetary interests resulting in an inequitable travesty of justice.

#### **PERMISSIVE INTERVENTION**

If intervention as a matter of right is denied, then permissive intervention should be granted when parties have any cognizable interest. Rule 24(b), FRCP, states as follows:

- b) Permissive Intervention.
  - (1) In General. On timely motion, the court may permit anyone to intervene who:
    - (A) is given a conditional right to intervene by a federal statute; or
    - (B) has a claim or defense that shares with the main action a common question of law or fact.

Similarly, Rule 24(b) and Rule 20, RCFC, clearly recognize that permissive intervention should be permitted when parties have a common interest in the ongoing matter as Kinghorn and Huff do here. Rule 24(b), RCFC, states:

- (b) Permissive Intervention.
  - (1) In General. On timely motion, the court may permit anyone to intervene who: . . .
  - (B) has a claim or defense that shares with the main action a common question of law or fact.

Rule 24(b), RCFC

Likewise, Rule 20, RCFC, Permissive Joinder of Parties, also provides a basis to permissively address the interests of Kinghorn and Huff. Rule 20(a)(1) provides:

- (1) Plaintiffs. Persons may join in one action as plaintiffs if:
  - (A) they assert any right to relief jointly, severally, or in the alternative, with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
  - (B) any question of law or fact common to all plaintiffs will arise in the action.

Rule 20(a)(1), RCFC

Here, the monetary interests of Kinghorn and Huff in over \$7.5 million dollars was previously adjudicated. The accruing post-judgment interest should have at least supported

permissive intervention, if not intervention as a matter of right. However, the Federal Circuit Court disregarded permissive intervention entirely and unjustly, and inequitably imposed an over \$7.5 million dollar forfeiture on Kinghorn and Huff.

### **CONCLUSION**

Kinghorn and Huff respectfully request that this Court grant this Petition for Rehearing to address the disparity between the Federal Courts in addressing interventions and correct the forfeiture imposed on Kinghorn and Huff of over \$7.5 million dollars that has been extinguished as a result of the disparity.

### **CERTIFICATE OF COUNSEL**

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay.

/s/ Steven R. Schooley  
STEVEN R. SCHOOLEY