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2009-29987

POLICEMEN AND FIREMEN  
RETIREMENT SYSTEM OF THE  
CITY OF DETROIT, derivatively  
on behalf of Halliburton Company  
and KBR, Inc.

Plaintiff,

v.

ALBERT O. CORNELISON, JR., ROBERT L.  
CRANDALL, KENNETH T. DERR,  
CHARLES J. DIBONA, C. CHRISTOPHER  
GAUT, S. MALCOLM GILLIS, W. R.  
HOWELL, RAY L. HUNT, ANDREW R.  
LANE, DAVID J. LESAR, AYLWIN B.  
LEWIS, J. LANDIS MARTIN, JAY A.  
PRECOURT, DEBRA L. REED, C. J. SILAS,  
WILLIAM P. UTT, W. FRANK BLOUNT,  
LOREN K. CARROLL, JEFFREY E.  
CURTISS, JOHN HUFF, LESTER LYLES,  
and RICHARD J. SLATER,

Defendants,

and

HALLIBURTON COMPANY, and  
KBR, INC.

Nominal Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

JURY TRIAL DEMANDED

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW POLICEMEN AND FIREMEN RETIREMENT SYSTEM OF THE CITY OF DETROIT, Derivatively on Behalf of HALLIBURTON COMPANY AND KBR, INC., and files this its Original Petition, and would show unto the Court as follows:

I.

INTRODUCTION

1. Halliburton and its former subsidiary Kellogg, Brown, & Root, Inc., later known as Kellogg, Brown, and Root, LLC (collectively, along with their processors and successors, "KBR") (together with Halliburton, the "Companies") has operated as a criminal enterprise for the better part of a decade. Under defendants' watch, and supposedly under their control and supervision, the Companies were permitted to engage in conduct so notorious that the name "Halliburton" has become virtually synonymous with "corruption," just as Enron became the poster-child for fraud. The Companies' laundry list of misdeeds includes a staggering array of criminal activity, including:

- Perpetrating a multi-million dollar scheme to bribe Nigerian officials;
- Repeatedly abusing the public trust by overcharging the United States government for services it performed pursuant to government contracts;
- Accepting unlawful kickbacks;
- Exposing American troops to hazardous conditions and substantial bodily harm;
- Engaging in human trafficking; and
- Attempting to conceal a gang-rape of a company employee.

Plaintiff seeks by this action to hold Defendants responsible for the reign of terror their reckless failure to monitor the Companies' internal controls permitted to take place at the Companies.

2. In September 1998, Halliburton acquired Dresser Industries Inc. ("Dresser"), including Dresser's subsidiary, The M.W. Kellogg Company ("Kellogg"). Subsequently, Halliburton merged Kellogg with Halliburton's subsidiary Brown & Root Inc. to form KBR. Between 1998 and 2006, Halliburton exercised total control over KBR. Halliburton appointed its executives to KBR's board. Senior Halliburton officers hired and replaced KBR's senior officials. Additionally, KBR's financial statements were consolidated into Halliburton's financial statements and KBR's profits were booked as profits of Halliburton. Despite this total control, Halliburton wholly failed to establish internal controls to prevent unlawful activity at KBR.

3. As a result, KBR and its employees and agents engaged in a course of illegal conduct that includes bribery, gang rape, human trafficking, illegal operations in Iran, mishandling of toxic materials, and systematic overbilling. Far from having systems in place to detect and deter such illegal conduct, Halliburton retaliated against whistleblowers who attempted to disclose wrongdoing.

4. In the midst of KBR's criminal wrongdoing, Halliburton foisted KBR on the public. In 2006, Halliburton created KBR, Inc., which held Kellogg, Brown & Root, LLC as a subsidiary, and took KBR, Inc. public. After KBR was spun off in 2006, it continued to engage in systematic overcharging of the government for contract work in Iraq. KBR's new board did no better in adopting internal controls than Halliburton's officers and directors. Plaintiff, therefore, brings claims against directors of KBR for willfully failing to institute, administer or maintain adequate accounting and reporting controls to prevent illegal activity.

## II.

### DISCOVERY

5. Plaintiff requests this case be conducted under Level III discovery after an appropriate Docket Control Order is entered.

## III.

### THE PARTIES

6. Plaintiff Detroit Policemen and Firemen Retirement System is a defined benefit retirement system that provides retirement benefits for the police and firefighters of the City of Detroit. Plaintiff has been a shareholder of Halliburton continuously since June of 1998, and has been a shareholder of KBR continuously since December of 2006.

### DEFENDANTS

#### **A. Halliburton Defendants**

7. Halliburton Company is a corporation duly formed and existing under the laws of the State of Delaware, with its principal place of business located at 5 Houston Center, 1401 McKinney, Suite 2400, Houston, Texas, 77010. Halliburton is duly authorized to transact and conduct business in the State of Texas and may be served with process by serving its registered agent for service, C.T. Corporation System, 350 N. St. Paul Street, Dallas, Texas, 75201. *No service is necessary at this time.*

8. Defendant Albert O. Cornelison, Jr. ("Cornelison") has been Executive Vice President and General Counsel of Halliburton since 2002. Cornelison served on KBR's board of directors from June 2006 through April 2007. Defendant Cornelison is an individual residing in Houston, Texas. He may be served with process by serving him at his residence, 1715 Hazard Street, Houston, Texas, 77019. *No service is necessary at this time.*

9. Defendant Robert L. Crandall ("Crandall") served on Halliburton's board of directors from 1986 until his retirement on May 21, 2008. Defendant Crandall is an individual residing in Vancouver, Washington. Service of process may be had pursuant to TEX.CIV.PRAC.&REM. CODE §17.045 (the Texas "long-arm statute"), via the Office of the Secretary of State of Texas, 1019 Brazos Street, Austin, Texas 78701. He may be served with process by serving him at his residence by certified mail, return receipt requested, 6008 NE 40, Vancouver, Washington, 98660. *No service is necessary at this time.*

10. Defendant Kenneth T. Derr ("Derr") has served on Halliburton's board of directors since 2001. Derr currently sits on the Board. Defendant Derr is an individual residing in San Francisco, California. Service of process may be had pursuant to TEX.CIV.PRAC.&REM. CODE §17.045 (the Texas "long-arm statute"), via the Office of the Secretary of State of Texas, 1019 Brazos Street, Austin, Texas 78701. He may be served with process by serving him at his residence by certified mail, return receipt requested, 1750 Taylor Street, Apt. 2201, San Francisco, California, 94133. *No service is necessary at this time.*

11. Defendant Charles J. DiBona ("DiBona") served on Halliburton's board of directors from 1997 until his retirement on May 18, 2005. *No service is necessary at this time.*

12. Defendant C. Christopher Gaut ("Gaut") has been the President, Drilling and Evaluation Division of Halliburton since January 2008. Prior to that, he served as Executive Vice President and Chief Financial Officer of Halliburton Company, from March 2003 to December 2007. Gaut was a director of KBR from March 2006 to April 2007. Defendant Gaut is an individual residing in Houston, Texas. He may be served with process by serving him at his residence, 805 Kuhlman Road, Houston, Texas, 77024. *No service is necessary at this time.*

13. Defendant S. Malcolm Gillis (“Gillis”) has served on Halliburton’s board of directors since 2005. Gillis currently sits on the Board. Defendant Gillis is an individual residing in Bahama, North Carolina. Service of process may be had pursuant to TEX.CIV.PRAC.&REM. CODE §17.045 (the Texas “long-arm statute”), via the Office of the Secretary of State of Texas, 1019 Brazos Street, Austin, Texas 78701. He may be served with process by serving him at his residence by certified mail, return receipt requested, 1126 Johns Jones Road, Bahama, North Carolina, 27503. *No service is necessary at this time.*

14. Defendant W. R. Howell (“Howell”) served on Halliburton’s board of directors from 1991 until his retirement on May 21, 2008. Defendant Howell is an individual residing in Jackson, Wyoming. Service of process may be had pursuant to TEX.CIV.PRAC.&REM. CODE §17.045 (the Texas “long-arm statute”), via the Office of the Secretary of State of Texas, 1019 Brazos Street, Austin, Texas 78701. He may be served with process by serving him at his residence by certified mail, return receipt requested, 2940 N. White Pine Lane, Jackson, Wyoming, 83001. *No service is necessary at this time.*

15. Defendant Ray L. Hunt (“Hunt”) served on Halliburton’s board of directors from 1998 until his retirement immediately prior to the May 16, 2007 Annual Meeting of Stockholders. Defendant Hunt is an individual residing in Texas. *No service is necessary at this time.*

16. Defendant Andrew R. Lane (“Lane”) was the Executive Vice President and Chief Operating Officer of Halliburton from December 2004 through at least February 1, 2007. Lane has been a director of KBR since June 2006. *No service is necessary at this time.*

17. Defendant David J. Lesar has been a member of Halliburton’s board of directors since August 2000, and has been the Chairman of Halliburton’s board of directors since that

time. Lesar currently serves as Chief Executive Officer and President of the Company. Defendant Lesar is an individual residing in Houston, Texas. He may be served with process by serving him at his residence, 5100 San Felipe Street, Unit 343F, Houston, Texas, 77056. *No service is necessary at this time.*

18. Defendant Aylwin B. Lewis (“A. Lewis”) served on Halliburton’s board of directors from 2001 until his May 18, 2005 resignation. *No service is necessary at this time.*

19. Defendant J. Landis Martin (“Martin”) has served on Halliburton’s board of directors from 1998. Martin currently sits on the Board. Defendant Martin is an individual residing in Denver, Colorado. Service of process may be had pursuant to TEX.CIV.PRAC.&REM. CODE §17.045 (the Texas “long-arm statute”), via the Office of the Secretary of State of Texas, 1019 Brazos Street, Austin, Texas 78701. He may be served with process by serving him at his residence by certified mail, return receipt requested, 150 Vine Street, Denver, Colorado, 80206. *No service is necessary at this time.*

20. Defendant Jay A. Precourt (“Precourt”) has served on Halliburton’s board of directors since 1998. Precourt currently sits on the Board. Defendant Precourt is an individual residing in Parshall, Colorado. Service of process may be had pursuant to TEX.CIV.PRAC.&REM. CODE §17.045 (the Texas “long-arm statute”), via the Office of the Secretary of State of Texas, 1019 Brazos Street, Austin, Texas 78701. He may be served with process by serving him at his residence by certified mail, return receipt requested, 2525 County Road 340, Parshall, Colorado, 80468. *No service is necessary at this time.*

21. Defendant Debra L. Reed (“Reed”) has served on Halliburton’s board of directors since 2001. Reed currently sits on the Board. Defendant Reed is an individual residing in El Dorado Hills, California. Service of process may be had pursuant to TEX.CIV.PRAC.&REM.

CODE §17.045 (the Texas “long-arm statute”), via the Office of the Secretary of State of Texas, 1019 Brazos Street, Austin, Texas 78701. She may be served with process by serving him at her residence by certified mail, return receipt requested, 1022 Gamay Drive, El Dorado Hills, California, 95762. *No service is necessary at this time.*

22. Defendant C. J. Silas (“Silas”) served on Halliburton’s board of directors from 1993 until his retirement on May 18, 2005. *No service is necessary at this time.*

**B. KBR Defendants**

23. KBR, Inc. is a corporation duly formed and existing under the laws of the State of Delaware, with its principal place of business located at 601 Jefferson Street, Suite 3400, Houston, Texas, 77002. KBR is duly authorized to transact and conduct business in the State of Texas and may be served with process by serving its registered agent for service, Capitol Corporate Services, Inc., 800 Brazos, Suite 400, Austin, Texas, 78701. *No service is necessary at this time.*

24. Defendant William P. “Bill” Utt (“Utt”) is the President and Chief Executive Officer of KBR, and was named Chairman of KBR’s Board of Directors in April 2007. Defendant Utt is an individual residing in Houston, Texas. He may be served with process by serving him at his residence, 5432 Tupper Lake Drive, Houston, Texas, 77056. *No service is necessary at this time.*

25. Defendant W. Frank Blount (“Blount”) has served on KBR’s Board of Directors since April 2007. Defendant Blout is an individual residing in Atlanta, Georgia. Service of process may be had pursuant to TEX.CIV.PRAC.&REM. CODE §17.045 (the Texas “long-arm statute”), via the Office of the Secretary of State of Texas, 1019 Brazos Street, Austin, Texas 78701. He may be served with process by serving him at his residence by certified mail, return



receipt requested, 1040 Stovall Blvd. NE, Atlanta, Georgia, 30319. *No service is necessary at this time.*

26. Defendant Loren K. Carroll ("Carroll") has served on KBR's Board of Directors since April 2007. Defendant Carroll is an individual residing in Kingwood, Texas. He may be served with process by serving him at his residence, 5631 Palisade Falls Trail, Kingwood, Texas, 77345. *No service is necessary at this time.*

27. Defendant Jeffrey E. Curtiss ("Curtiss") has served on KBR's Board of Directors since 2006. Defendant Curtiss is an individual residing in Houston, Texas. He may be served with process by serving him at his residence, 647 Hedwig Street, Houston, Texas, 77024. *No service is necessary at this time.*

28. Defendant John Huff ("Huff") has served on KBR's Board of Directors since April 2007. Defendant Huff is an individual residing in Houston, Texas. He may be served with process by serving him at his residence, 102 Broad Oaks Circle, Houston, Texas, 77056. *No service is necessary at this time.*

29. Defendant Lester Lyles ("Lyles") has served on KBR's Board of Directors since November 2007. Defendant Lyles is an individual residing in Columbus, Ohio. Service of process may be had pursuant to TEX.CIV.PRAC.&REM. CODE §17.045 (the Texas "long-arm statute"), via the Office of the Secretary of State of Texas, 1019 Brazos Street, Austin, Texas 78701. He may be served with process by serving him at his residence by certified mail, return receipt requested, 5530 Olentangy River Road, Columbus, Ohio, 43235. *No service is necessary at this time.*

30. Defendant Richard J. Slater ("Slater") has served on KBR's Board of Directors since 2006. Defendant Slater is an individual residing in Pasadena, California. Service of

process may be had pursuant to TEX.CIV.PRAC.&REM. CODE §17.045 (the Texas “long-arm statute”), via the Office of the Secretary of State of Texas, 1019 Brazos Street, Austin, Texas 78701. He may be served with process by serving him at his residence by certified mail, return receipt requested, 550 Orange Grove Circle, Pasadena, California, 91105. *No service is necessary at this time.*

#### IV.

#### VENUE AND JURISDICTION

31. Venue is proper in Harris County, Texas because all or a substantial part of the events giving rise to the claims in this lawsuit occurred in Harris County, Texas.

#### V.

#### FACTS

#### BACKGROUND ON HALLIBURTON AND KBR

32. 1998, Halliburton acquired KBR. At the time, unbeknownst to the public, KBR was involved in an illegal bribery scheme to obtain government contracts from Nigeria. Subsequent to the take over, the Halliburton Defendants failed to institute adequate internal controls to detect and prevent fraud and illegal conduct at KBR. As a result, KBR’s wrongdoing continued unabated long past the merger with Halliburton. As set forth below, KBR has continued to engage in bribery and other illegal activities that were allowed to continue by Halliburton.

33. In 2006, Halliburton spun off KBR, planning to take the company public. Pursuant to the terms of the Master Separation Agreement Between Halliburton and KBR, Halliburton agreed to indemnify KBR for monetary damages relating to claims made or assessed by governmental agencies relating to the Nigerian bribery scheme. A January 26, 2009 Halliburton press release stated:

To enhance KBR's financial stability and solvency, making possible the separation of KBR, Halliburton indemnified KBR from fines or other monetary penalties or direct monetary damages, including disgorgement, as a result of a claim made or assessed by a governmental authority in the United States and certain other countries related to alleged or actual violations occurring prior to November 20, 2006 of the FCPA or particular, analogous applicable foreign statutes, laws, rules, and regulations in connection with investigations pending as of that date.

Halliburton admitted that the terms of this indemnity covered the fines KBR has had to pay as a result of the Nigerian bribe allegations, stating:

As a result of the indemnity and the terms of the prospective settlement with the DOJ, Halliburton would agree to pay \$382 million on behalf of KBR in eight installments over the next two years. Pursuant to the terms of the prospective settlement with the SEC, Halliburton would agree to be jointly and severally liable with KBR for and, as a result of the indemnity, to pay to the SEC \$177 million in disgorgement. KBR would separately agree that Halliburton's indemnification obligations with respect to the DOJ and SEC investigations would be fully satisfied.

Halliburton, accordingly, has been harmed by KBR's wrongdoing in connection with the Nigerian bribery scheme.

34. On April 5, 2007, Halliburton completed an offer to exchange its 135,627,000 shares of KBR common stock for outstanding shares of Halliburton common stock, subject to the terms and conditions set forth in a joint registration statement on Form S-4 the Companies filed with the Securities and Exchange Commission (the "SEC") on March 23, 2007. Upon the closing of this exchange offer, all Halliburton-affiliated directors then serving on KBR's board (namely, Defendants Cornelison, Gaut, and Lane, along with Halliburton Senior Vice President and Chief Accounting Officer Mark A. McCollum) resigned, and KBR elected a "classified" board consisting of three classes of directors each to serve three year terms. Defendants Utt and Curtiss were elected as Class I directors, Defendants Slater and Huff were elected as Class II directors, and Defendant Carroll was elected as a Class III director. Defendant Blount was elected as a Class III director on April 17, 2007.

## DEFENDANTS' WRONGDOING

35. Defendants' lack of oversight at Halliburton and KBR enabled employees of the Companies to engage in a pattern of illegal conduct, resulting in substantial losses to the Companies. As set forth below, the extent of illegal conduct perpetrated by Halliburton and KBR establishes that these Companies were, for all intents and purposes, criminal enterprises.

### **I. The Nigerian Bribery Scheme**

36. In February 2009, KBR pleaded guilty to bribing Nigerian officials, and KBR and Halliburton have settled civil suits with the SEC relating to this misconduct. The size of the multimillion dollar bribes and the magnitude of the cover up evidence a total lack of internal controls at Halliburton and KBR to detect fraud and wrongdoing.

37. On February 11, 2009, KBR pleaded guilty to violating the Foreign Corrupt Practices Act ("FCPA") and conspiring to violate the FCPA by conducting a decade-long scheme to bribe Nigerian government officials. Between 1995 and 2004, KBR bribed Nigerian officials in order to obtain contracts worth \$6 billion to build and design liquefied natural gas facilities as part of the Bonnie Island Project. In total, KBR, through a joint venture with four other contractors, paid over \$182 million to its agents for the purpose of bribing Nigerian officials.

38. As part of the guilty plea, KBR agreed to pay \$402 million in fines. Additionally, KBR agreed to retain an independent compliance monitor for a three-year period to assess the implementation and design of a compliance program. The independent monitor has a duty to make reports on KBR's progress to the Department of Justice. Also, KBR agreed to cooperate with the Department of Justice's ongoing investigation.

39. KBR's bribery scheme was orchestrated at KBR's highest levels. Former KBR CEO and Chairman Albert Jackson Stanley ("Stanley") pled guilty to conspiracy to violate the

FCPA and conspiracy to commit mail and wire fraud. He personally hired consultants to bribe Nigerian officials on behalf of KBR and urged top Nigerian officials to appoint representatives to negotiate the bribes. Additionally, Stanley admitted to receiving approximately \$10.8 million in kickbacks from one consultant he hired to bribe Nigerian officials. As part of the guilty plea, Stanley agreed to pay more than \$10 million in restitution and serve 7 years in prison.

40. Additionally, the SEC brought a civil complaint against Halliburton in connection with the bribery scheme for (1) violations Section 13(b)(2)(A) of the Securities Exchange Act of 1934 (the "Exchange Act") for failing to keep accurate books, records and accounts that accurately reflected that its subsidiary was engaging in bribery and (2) violations of Section 13(b)(2)(B) of the Exchange Act for failing to adopt "internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles."

41. The SEC investigation revealed that KBR used consultants to funnel bribes to Nigerian officials. KBR's and Halliburton's books and records, however, gave the illusion that these consultants were hired to conduct legitimate business when in reality the consultants' sole purpose was to illegally funnel money to Nigerian officials.

42. KBR and Halliburton have agreed to pay \$177 million to settle the SEC's charges.

## **II. The Companies Overcharged The Government**

43. Halliburton is one of the largest recipients of government contracts, having won contracts worth tens of billions of dollars from the federal government for itself and its subsidiary KBR. Halliburton and KBR routinely abused this largesse, repeatedly overcharging the government for its services.

44. Halliburton's largest government contract is with the United States Army Corps of Engineers. Under the contract, known as "LOGCAP" (or Logistics Civilian Augmentation Program), the Companies are responsible for providing supplies and services to the military on a global basis. Some of the typical civil logistics carried out under the contract are the construction of military housing for the troops, transporting food and supplies to military bases and serving food at military cafeterias. By August 2007, KBR had received about **\$25 billion** from the Department of Defense ("DoD") pursuant to LOGCAP, with funds continuing to come in at a rate of more than \$400 million per month.

45. The military has always used private contractors to carry out civil logistics, but not to a great extent. In 1985, the military created LOGCAP with the purpose of privatizing more of the duties involved in civil logistics. While the military first used LOGCAP in 1988 to construct and maintain two petroleum pipeline systems in Southwest Asia in support of contingency operations, most of the military's civil logistics activities remained privatized.

46. Beginning in 1992, future Halliburton CEO Dick Cheney – then serving as the Secretary of Defense – spearheaded the movement to privatize most of the military's civil logistics activities. Under the direction of Secretary Cheney, the Pentagon paid \$9 million to KBR to conduct a study to determine whether private companies like itself should handle all of the military's civil logistics. KBR's classified study concluded that greater privatization of logistics was in the government's best interest. Shortly thereafter, on August 3, 1992, Secretary Cheney awarded the first comprehensive LOGCAP contract to KBR. Commenting on this cozy relationship, the *Washington Post* noted, "The Pentagon chose [KBR] to carry out the study and subsequently selected the company to implement its own plan." Three years later, in 1995, Halliburton hired Cheney as its CEO.

47. In 1997, two years after Cheney became CEO of Halliburton, the government declined to renew KBR's LOGCAP contract in the wake of allegations that the Company engaged in fraudulent billing practices. After KBR was effectively fired by the Army in 1997, the LOGCAP contract was awarded to Halliburton competitor DynCorp. After Cheney became vice president in 2001, DynCorp was fired and KBR was re-awarded the contract.

48. Since procuring this lucrative contract, KBR has engaged in various misdeeds in connection with the LOGCAP contract, abusing the public's trust and using the war in Iraq to line its own pockets.

49. On November 29, 2006, the Justice Department announced that KBR agreed to pay \$8 million to settle allegations of overcharging and other procurement irregularities relating to the LOGCAP contract in the Balkans during 1999 and 2000. In the False Claims Act action pending against it relating to this misconduct, KBR was accused of double-billing or delivery of non-conforming products by aggregate suppliers for use in the construction of Camp Bondsteel in Kosovo and inflating the prices for various goods.

50. In June 2007, the Office of the Special Inspector General for Iraq Reconstruction released the results of its audit of the Army's LOGCAP Task Order 130. The special inspector general found significant flaws in KBR's fuel receiving and distributing processes, waste in KBR's provision of food and billeting services, and flaws in the government's oversight of the LOGCAP contract. The audit report noted the following:

**Fuel Service.** We found weaknesses in KBR's fuel receiving, distributing, and accountability processes of such magnitude that we were unable to determine an accurate measurement of the fuel services provided. The weaknesses were material and identified a high risk of a potential improper use of fuel . . .

**Food Service.** We found that during fiscal year 2006, the food service subsistence account was overspent by \$4.5 million when compared to the Department of the Army's Basic Daily Food Allowance (BDFA) and the recorded level of service provided, and that responsibilities for oversight of the account had

not been clearly understood or established by government oversight participants  
...

**Billeting.** We found numerous errors in KBR's automated billeting tracking tool, which were caused primarily by poor in-and-out processing procedures for housing allocations that resulted in less than optimal use of available trailers . . . Adherence to the current COM and JASG-C billeting policy could have the potential of a 45% reduction in housing requirements of the LOGCAP contractor for Task Order 130.

51. A November 2007 *Vanity Fair* article further detailed KBR's abuse of the cost-plus LOGCAP contract. Under the LOGCAP contract, KBR is reimbursed for all its expenses, plus an additional fee of up to 3%. The more the company spends, the more it makes, providing an incentive to overspend. According to the article, numerous former KBR employees have alleged that KBR over-ordered equipment such as computers, generators, and vehicles on a massive scale. According to these former employees, millions of dollars worth of equipment was left to rot in yards in the desert.

52. Additionally, in 2006, a False Claims Act lawsuit relating to abuses of the LOGCAP contract was filed on behalf of four former KBR employees. The complaint details how KBR managers at the base near Fallujah, Iraq were telling their staff to grossly exaggerate the numbers of soldiers using the Morale, Welfare, and Recreation ("M.W.R.") facility, a two-building complex with gym, a cinema, a game room, and an internet café. The complaint explained that reporting inflated figures "increases the M.W.R. budget in Iraq, allowing for more KBR facilities, administrators, staff and equipment, and boosting KBR's fee."

53. Rendering these abuses all the more egregious, KBR hardly does any of the actual work in Iraq. According to government auditors, 80% of the work under contract is being done by subcontractors. KBR does not have to auction the job off to the lowest bidder. In fact, KBR is more inclined to select the most expensive offer under the cost-plus contract so that it earns a higher "award fee" profit.



54. The multiple layers of subcontracting that exist in Iraq make it very difficult to ascertain the true cost of the services being provided. This intricate network of subcontractors was exposed by an investigation by the House of Representatives Committee on Oversight and Government Reform into the 2004 deaths of four security contractors employed by Blackwater. That investigation attempted to discover who hired the Blackwater employees that were killed.

55. KBR is prohibited from billing the government for private security; it is supposed to rely on U.S. troops for protection. However, the Blackwater investigation showed that the guards were engaged by a Kuwaiti company, Regency Hotel & Hospital Company, which in turn had been subcontracted to ESS Support Services. ESS had a subcontract with KBR to build and operate dining facilities for troops. Blackwater paid the guards \$500 per day, but billed their services to Regency at a rate of between \$815 to \$1075 per day. Regency added a markup of \$285 to \$425 per guard per day when it billed ESS. This amounts to an annual rate for one of these guards between \$401,500 to \$547,000, which was ultimately billed to the government by KBR plus their fee.

56. In February 2007, the House Committee on Oversight and Government Reform got news from Pentagon auditors that contractors in Iraq had claimed at least \$10 billion — three times more than previous official estimates — in expenditures that were either unreasonably high or unsupported by proper documentation. Of this amount, \$2.7 billion had been billed to the government by KBR.

57. In addition to shenanigans relating to the LOGCAP contract, a May 23, 2008 audit report by the Department of Defense Inspector General found that KBR overcharged the U.S. Navy on contracts to provide support services in the aftermath of Hurricanes Ivan and Katrina. On July 4, 2004, KBR was awarded a Navy Construction Capabilities (“CONCAP”)

cost-plus-award-fee, indefinite-delivery, indefinite-quantity contract with a \$500 million ceiling over a 5 year period. According to the audit, the Navy paid approximately \$4.1 million for meals and services that should have cost \$1.7 million and inappropriately paid a markup on material and equipment totaling \$7.2 million. In addition, the audit revealed that some of the subcontractors KBR used to supply labor to support the Hurricane Ivan recovery effort were significantly higher than the prevailing Bureau of Labor Statistics rates for the areas impacted by the storm. The report recommended the Navy seek a refund from KBR for the inappropriate payments.

58. Given KBR's repeated abuses of its government contracts, the government has begun to take a closer look at any contracts awarded to KBR. On October 31, 2007, the Government Accountability Office ("GAO") found that the Army improperly awarded one of its largest contracts — a 10-year, \$150 billion deal to support U.S. troops around the world — to KBR and should reconsider its decision. The GAO found that the Army failed to give sufficient weight to Pentagon auditors' concerns about the past performance of KBR, which has been the only company providing troop support for six years under the current contract.

59. According to an October 31, 2007 *USA Today* article discussing the GAO decision, the Defense Contract Audit Agency ("DCAA") to that date had "challenged more than \$1.9 billion in KBR's billings in Iraq." Senator Frank Lautenberg (D-NJ) has called for the termination of all government contracts with Halliburton, pointedly noting that "*Halliburton's record of overcharging, bribery, and accounting fraud recites like a textbook example of corporate irresponsibility.*"

60. In 2008, Congress established the Wartime Contracting Commission, a two-year contracting commission established to investigate potential contracting abuses in Iraq and

Afghanistan. The Commission referred 32 cases of suspected overcharging for further investigation. On May 4, 2009, April Stephenson, head of the Pentagon's contract audit agency, told the Commission that billings from KBR under the LOGCAP contract comprised the "vast majority" of these 32 cases, noting, "I don't think we are aware of a program, a contract or a contractor that's had this number" of referrals.

61. The problems with KBR's cost accounting and its management of subcontractors were also "unprecedented," Stephenson said. "It's the cost issues, it's the systems issues, it's the systemic issues," she said. "It seems as though it takes a significant period of time to get these deficiencies corrected and that's worrisome," she said. Most troubling, Stephenson noted that "[s]ome of the same problems" disclosed in audits several years ago "still existed."

62. KBR's pattern and practice of overcharging the government – both when it was under Halliburton's control and after the spinoff – amounts to a continuing wrong.

### **III. KBR Accepted Illegal Kickbacks And Engaged In Fraud**

63. During a June 9, 2004 hearing before the House Committee on Government Reform, KBR disclosed a possible violation of the Anti-Kickback Act, 18 U.S.C. § 874 *et. seq.*, by two of its employees. KBR paid \$6.3 million to cover the "estimated impact," but "failed to provide data necessary for [the Defense Contract Audit Agency] to verify the accuracy of that amount."

64. On August 19, 2005, former KBR employee Glenn Allen Powell plead guilty to defrauding the United States and accepting kickbacks of more than \$100,000 from an Iraqi subcontractor. Powell was sentenced to 15 months in prison.

65. On December 1, 2006, former KBR employee Stephen Lowell Seamans was sentenced to 12 months in prison for his role in a kickback scheme with Saudi Arabia's Tamimi

Global Company. Seamans was ordered to pay \$380,130 in restitution. The scheme resulted in Mohammad Shabbir Khan, a Tamimi executive, paying \$133,000 in kickbacks to Seamans, who was responsible for negotiation, execution and administration of subcontracts on KBR's behalf under the U.S. Army's LOGCAP III prime contract. Khan paid Seamans the kickbacks to secure two subcontracts for Tamimi Global Company for military dining facilities: a \$14.4 million dollar subcontract at Camp Arifjan, Kuwait, and a subcontract of \$7.4 million dollars at a palace in Baghdad, Iraq.

66. On July 13, 2007, the Department of Justice announced that Anthony J. Martin, an American who worked for KBR, pleaded guilty to violating the Anti-Kickback Act in awarding nearly \$13 million in contracts to a Kuwaiti company in 2003 to supply the American military with semi-tractors and trailers in Iraq and Kuwait. Martin, whose duties included soliciting and awarding subcontracts on KBR's behalf under its LOGCAP III contract, pleaded guilty in federal court in Illinois to awarding two contracts in exchange for what would have totaled over \$200,000 in kickbacks.

67. KBR's pattern and practice of accepting illegal kickbacks – both when it was under Halliburton's control and after the spinoff – amounts to a continuing wrong.

#### **IV. Halliburton And KBR Exposed Troops To Substantial Bodily Harm**

68. In April 2006, the Senate Democratic Policy Committee held a hearing on allegations that Halliburton and KBR knowingly exposed thousands of U.S. troops in Iraq to hazardous levels of unhealthy non-drinking water from the Euphrates River. This water was mainly used by the troops to shower, wash their hands and faces, brush their teeth, wash their clothes, and sometimes to make coffee. The allegations were made by current and former

Halliburton/KBR water quality maintenance employees who claimed they alerted the company, but it took no action.

69. According to a posting on HalliburtonWatch.org relating to these allegations, former KBR employees and water quality specialists Ben Carter and Ken May told HalliburtonWatch that KBR knowingly exposed troops and civilians to contaminated water from Iraq's Euphrates River. One internal KBR email provided to HalliburtonWatch says that, for "possibly a year," the level of contamination at one camp was two times the normal level for untreated water.

70. Carter – who worked at Camp Ar Ramadi, located 70 miles west of Baghdad in the notoriously violent Sunni Triangle – informed HalliburtonWatch that he "discovered the water being delivered from the Euphrates for the military was not being treated properly and thousands were being exposed daily to numerous pathogenic organisms." Carter helped manage KBR's Reverse Osmosis Water Purification Unit ("ROWPU"), which is a water treatment system designed to produce drinkable water from a variety of raw water sources such as lakes, lagoons and rivers.

71. William Granger of KBR Water Quality for Iraq reached this conclusion in an email after investigating Carter's complaint: "Fact: We exposed a base camp population (military and civilian) to a water source that was not treated. The level of contamination was roughly 2x the normal contamination of untreated water from the Euphrates River." Granger admitted that the contamination was "most likely ongoing through the entire life" of the camp, but that he was "not sure if any attempt to notify the exposed population was ever made."

72. In a March 2005 company email to his superior, Harold "Mo" Orr, coordinator for Halliburton's health and safety department said, "We have determined that the military

(Command Surgeon) has not given any kind of signoff on the military ROWPU (As required by the military SOP) nor has KBR ever inquired about this before. This was only discovered thru the investigation of possible contamination by Ben Carter who is right now in charge of the ROWPU.” Orr’s request for further investigation into the matter was overruled by KBR’s health, safety and environmental manager, Jay Delahoussaye, who said in an email that the initial health hazard turned out to be “erroneous,” that “corrective measures” were taken, and that “[n]o KBR personnel were exposed to contaminated water.”

73. According to Carter, Granger had written a scathing, 21-page report to KBR management about water quality at Ar Ramadi. KBR ignored these notifications. “I tried to correct the problem, only to be blackballed by management and I eventually left this employment,” Carter told HalliburtonWatch.

74. The matter was referred to the Department of Defense Office of Inspector General, which, in March 2008, released a report that found U.S. soldiers at Camp Q-West, located about 180 miles north of Baghdad, were provided with treated but untested wastewater for nearly two years by KBR and may have suffered health problems as a result. The report also found that at several other bases, both KBR and the military failed to perform required water-quality checks, thereby exposing troops to potentially unsafe water for washing, bathing, shaving and cleaning.

75. In addition to the conclusive finding that KBR exposed troops to unsafe water, KBR has been accused of exposing American troops in Iraq to potential contamination. According to a *Vanity Fair* article, a former KBR employee cites a specific instance in June of 2003 in which KBR used a trailer for corpses and then only 11 weeks later used it to carry ice that was going into drinks served to the troops. The trailer had not even been hosed down.

According to the U.S. Army's Center for Health Promotion and Preventative Medicine, "Contact with whole or part human remains carries potential risks associated with pathogenic microbiological organisms that may be present in human blood and tissue." The diseases that may be communicated include AIDS, hepatitis, tuberculosis, septicemia, meningitis, and Creutzfeldt-Jakob disease, the human variant of mad cow.

76. Additionally, ABC News reported in March 2008 that soldiers were dying from electrocution in Iraq at an alarming rate. At the time of the news report, twelve soldiers had died in Iraq due to accidental electrocution, according to Army and Marine e-mails obtained by Rep. Henry Waxman, D-Calif. By comparison, there were 250 occupational fatalities due to electrocution among all workers in the United States in 2005, according to the Bureau of Labor Statistics. Parents of one soldier who was electrocuted to death, filed a wrongful death suit against KBR as the contractor hired to maintain and repair the electrical infrastructure at the complex where the soldier lived in Iraq.

77. The lawsuit claims that KBR had been aware of the problems with the electrical system at the complex since February 2007, citing reports from the contractor and the Army's Criminal Investigation Division shown to the parents during meetings with Army personnel. The parents maintain that the problem was still not fixed and that two more soldiers received non-fatal electrical shocks in the two months since their son's death.

78. New details continue to emerge concerning Halliburton's and KBR's reckless endangerment of the lives of U.S. troops. On April 28-29, 2009, Halliburton and KBR were accused, in nine lawsuits filed in state courts in Alabama, California, Georgia, Illinois, Minnesota, Missouri, New York, North Carolina, and Wyoming, of jeopardizing the health and safety of American soldiers and contractors in Iraq and Afghanistan by burning vast quantities of

unsorted waste in enormous open-air burn pits with no safety controls. These lawsuits seek damages “in an amount sufficient to strip defendants of all of the revenue and profits” Halliburton and KBR earned from the millions of dollars they were paid to oversee waste management for the military.

79. These lawsuits accuse KBR of allowing thick, noxious smoke - coming off of flames sometimes colored blue or green by burning chemicals - to hang over U.S. bases and camps across Iraq and Afghanistan since 2004. Round-the-clock hazardous emissions from the burn pits allegedly caused serious respiratory illnesses, tumors and cancers in the plaintiffs.

80. According to the complaints, “U.S. soldiers and other residents of the military bases and camps have become seriously ill, been diagnosed with serious and potentially fatal diseases and in some cases have died from the physical injuries and diseases caused by the exposure to hazardous smoke and fumes.”

81. The burn pits are so large that tractors are used to push waste onto them and the flames shoot hundreds of feet into the sky, according to the lawsuits. KBR allegedly burned waste such as biohazard materials including human corpses, medical supplies, paints, solvents, asbestos, items containing pesticides, animal carcasses, tires, lithium batteries, styrofoam, wood, rubber, medical waste, large amounts of plastics, and even entire trucks.

82. The Companies’ most notorious conduct relating to garbage burning appears to have taken place at the Balad Air Force Base burn pit. While the military conducted a review of this pit, it acknowledged that it could not account for all of the items burned there. At one point, the Companies used this pit to burn everything from plastics to food to medical waste, often using jet fuel to speed things along.



83. Plaintiffs in the lawsuits filed relating to this improper burning have complained of a wide range of health problems, including severe chest pain, diarrhea, asthma, sleep apnea, and debilitating migraine headaches.

84. KBR's pattern and practice of exposing troops to substantial bodily harm – both when it was under Halliburton's control and after the spinoff – amounts to a continuing wrong.

#### **V. KBR Employees Conspired To Defraud The Government**

85. On March 17, 2005, former KBR employee Jeff Alex Mazon was indicted on charges of devising a scheme to defraud the United States of more than \$3.5 million related to the awarding of a subcontract to Kuwaiti company LaNouvelle General Trading and Contracting Company to supply fuel tankers for military operations in Kuwait. The indictment alleges that on or about February 2, 2003, Mazon, a negotiator for subcontractors, solicited bids by e-mail from potential subcontractors. The cost of the subcontract was estimated by KBR at \$685,080. The indictment alleges Mazon inflated the bid he received from Hijazi to ensure that LaNouvelle would be overpaid.

86. On December 12, 2007, a federal grand jury in Virginia indicted James N. Sellman and Wallace A. Ward, former KBR Fuel Section employees, charging them with conspiracy, making a false writing, bribery, and making a false claim to the Department of Defense. Sellman and Ward were assigned to oversee fuel deliveries to Bagram Airfield in Afghanistan under the LOGCAP support contract.

87. According to the indictment, between May and September 2006, Sellman and Ward conspired to accept bribes from truck drivers employed by British company Red Star Enterprises Limited in return for falsifying government documents indicating receipt of the fuel and then diverting fuel for sale outside the airfield. The indictment alleges that the conspiracy involved over 784,000 gallons of fuel worth more than \$2.1 million.

88. On January 25, 2008, Ward pleaded guilty to conspiracy to receive bribes, making false statements and filing false claims. He admitted to joining the conspiracy in August 2006 and receiving bribes from several drivers. In April 2008, Ward was sentenced to 26 months in prison and three years of supervised release. Ward was also ordered to pay \$216,000 in restitution to the Defense Energy Support Center headquartered at Fort Belvoir.

89. In May 2008, Sellman was sentenced to 26 months in prison, three years of supervised release, and was ordered to pay \$675,000 in restitution to the Defense Energy Support Center.

90. KBR's pattern and practice of allowing its employees to conspire to defraud the government – both when it was under Halliburton's control and after the spinoff – amounts to a continuing wrong.

#### **VI. Halliburton Dumped Hazardous Waste**

91. On November 1, 2007, a federal jury in Alabama ordered Bredero Price Company, Bredero Shaw LLC, ShawCor Ltd. and Halliburton subsidiary Halliburton Energy Services Inc., to pay \$108 million in damages to a Mobile-based landfill operator for dumping hazardous waste in its landfill. Halliburton and ShawCor, through the joint venture Bredero Price (later acquired by Bredero Shaw), owned a facility that chemically treated oil and natural gas pipes. The landfill operator, Dirt Inc., alleged that the defendants were responsible for depositing solid waste containing mercury in the landfill, which Dirt Inc. was ordered to clean up. Halliburton, according to a ShawCor statement, is responsible for half of the total award.

#### **VII. Halliburton Is Being Investigated For Illegally Conducting Business With Iran**

92. Halliburton is currently under investigation for doing business with Iran. Regulations issued by the Office of Foreign Assets Control ("OFAC") of the United States Treasury Department prohibit U.S. citizens, including U.S. corporations and other U.S. business

organizations, from engaging in commercial, financial or trade transactions with Iran, unless authorized by OFAC or exempted by statute.

93. Despite these regulations, and perhaps in an effort to evade them, Halliburton has maintained operations in Iran through a subsidiary organized in the Cayman Islands. In 2001, the OFAC made a formal inquiry to Halliburton regarding its Iranian operations, and made follow-up requests in 2004. In 2004, the OFAC referred the matter to the U.S. Department of Justice, and the DOJ served Halliburton with a grand jury subpoena in July of 2004. The matter currently remains under investigation.

94. Halliburton only announced that it would stop soliciting new contracts in Iran in January 2005, after the government announced its investigation. However, Halliburton continued to do business in Iran until April 2007.

### **VIII. KBR Stands Accused Of Human Trafficking**

95. KBR has been charged with engaging in illegal human trafficking. Most of the physical labor in Iraq is done by "third-country nationals" ("TCNs") from such places as India, Nepal, Sri Lanka, and the Philippines. A 2006 investigation by the Pentagon found that TCNs are subject to substandard living conditions and illegal confiscation of their passports. In addition, many are victims of deceptive hiring practices, where they are not told that their jobs are in Iraq until they have been shipped there. TCNs have also been forced to pay large "recruitment fees," which are deducted from their future earnings. The effect is to reduce them to a state of "involuntary servitude."

96. In August 2008, a lawsuit was filed against KBR alleging that the company and its Jordanian subcontractor engaged in human trafficking of Nepali workers. According to the complaint, thirteen Nepali men were recruited in Nepal to work as kitchen staff in Jordan. Once

they arrived in Jordan in the summer of 2004, however, they had their passports seized and were sent to a military facility in Iraq. On the drive to Iraq, the cars were attacked by insurgents and twelve of the Nepali men were kidnapped and executed. The thirteenth man worked in a warehouse in Iraq for 15 months before returning to Nepal.

#### **IX. Halliburton And KBR Stand Accused Of Allowing Its Employees To Be Gang Raped**

97. In 2007, Jamie Leigh Jones (“Jones”), a 22 year old woman, filed suit against KBR and Halliburton in state court in Texas alleging that she was gang raped by KBR and/or Halliburton coworkers in Baghdad in July 2005. The culture of corruption at Halliburton and KBR ran so deep that rather than assisting Jones after she reported her attack, employees of KBR and Halliburton put her under guard in a shipping container. These employees warned that if she left for medical treatment, she would be out of a job. The woman was held in the container for 24 hours with no food or water.

98. Jones was freed after she convinced a guard to give her a cell phone so she could call her father in Texas. Her father called their congressman who in turn contacted the State Department. Agents from the U.S. Embassy in Baghdad came and rescued her from the container.

99. However, Halliburton’s and KBR’s cover-up did not stop with imprisoning the woman. After Jones was examined by a doctor, the doctor gave her rape kit to a Halliburton and/or KBR security guard. The rape kit subsequently disappeared.

100. Halliburton faces similar suits in North Carolina, Florida and Oklahoma by female ex-employees who claim they were subjected to a sexually hostile work environment where women were routinely demeaned and solicited for sex while supervisors ignored their complaints.

**DEFENDANTS' COMPLICITY WITH OR COMPLETE LACK OF OVERSIGHT  
PERMITTED THE COMPANIES TO ENGAGE IN SUBSTANTIAL WRONGDOING**

101. The myriad crimes and wrongdoings discussed above simply could not have happened if Defendants were doing their jobs. As officers and directors of the Companies, the Defendants were required to ensure that the Companies' internal controls were in place, functioning properly, and sufficiently strong to prevent it from committing wrongful or illegal acts. Under Defendants' unwatchful eyes, Halliburton and KBR were permitted to engage in a panoply of improper and, in many instances, illegal, activities, including (1) bribing Nigerian officials, (2) overcharging the government on contracts, (3) accepting illegal kickbacks, (4) exposing American soldiers to substantial bodily harm, and (5) conspiring to defraud the government. In addition, Halliburton and KBR stand accused of additional instances of grave misconduct, including (1) illegally conducting business with Iran, (2) engaging in human trafficking, and (3) allowing employees to be gang raped on its premises. Defendants' failures have caused the Companies to suffer hundreds of millions of dollars in damages, and to be exposed to substantial additional judgments in the future. The culture of complete lawlessness at Halliburton and KBR demonstrates that Defendants consciously failed to monitor or oversee the Companies' internal controls, thus disabling themselves from being informed of risks or problems requiring their attention. The wide range of improprieties perpetrated on their watch leads to the inescapable conclusion that Defendants were conscious of the fact that they were not doing their jobs.

**I. The SEC Has Challenged The Sufficiency Of The Companies' Internal Controls**

102. In connection with its action relating to the Nigerian bribery scheme, the SEC brought claims against KBR for (1) violating the FCPA; (2) aiding and abetting Halliburton's violations of Section 13(b)(2)(A)-(B) of the Exchange Act; Section 30(b)(5) of the Exchange Act

and Rule 13b2-1 promulgated thereunder, by causing Halliburton to falsify its books, records, and accounts and knowingly circumventing the internal controls of Halliburton.

103. The SEC investigation further revealed that “Halliburton, KBR’s parent corporation, failed to devise adequate internal controls relating to foreign sales agents and the FCPA, and failed to maintain and enforce those internal controls it had.” Specifically, the SEC investigation revealed that Halliburton had only a vague policy stating that investigations of its contracts with agents -- such as the consultants it used to funnel money to Nigerian officials -- must be “reasonable under the circumstances.” Further, according to Halliburton’s policy, such investigation must take into account the reasonableness of fees paid to such agents and the business and cultural environment in which such agents operate. However, the SEC noted: “The policies did not require . . . any specific description of the agent’s duties, or that the agent agree to any accounting or audit of fees received, nor did the policies specify what steps needed to be taken in conducting the investigation.”

104. As a result of this lax policy, Halliburton attorneys investigating the contracts with the contractors that KBR used to bribe Nigerian officials failed to discover the illegal purpose of the contracts. Specifically, the Halliburton investigators failed to inquire about who beneficially owned the contracting companies; failed to check the references provided by such contractors; and even failed to inquire what the contractors did with the millions provided by KBR.

## **II. Halliburton’s History Of Illegal Practices Evidences Its Defective Internal Controls**

105. For years, Defendants have known that Halliburton and KBR engaged in a wide range of improper – and, in many instances, illegal – business practices. These wrongful practices – described at length below – subjected the Companies to extensive investigations, lawsuits, and fines, of which Defendants were well-aware. Defendants’ knowledge of these

improper and/or illegal acts mandated that they take steps to ensure that the Companies' internal controls were functioning appropriately. Plainly, Defendants failed to discharge this duty, allowing the Companies to continue to engage in improper and illegal business activities. Defendants' reckless decision to allow the Companies to continue to conduct "business as usual" and their reckless decision to fail to implement the requisite controls allowed the wrongdoing complained of above to take place. Defendants, accordingly, are liable for the damages Halliburton and KBR have sustained as a result of these activities.

**A. Halliburton Disseminated Materially Misleading Financial Statements**

106. On August 3, 2004, Halliburton paid \$7.5 million to settle an enforcement action brought against it by the SEC challenging Halliburton's failure to disclose a 1998 change to its accounting practices for reporting cost overruns. Halliburton provides a wide range of industrial construction services. In providing those services, Halliburton at times incurs cost overruns. These overruns may be recovered from Halliburton's customers, depending on the terms of the contracts and the nature of the overruns. Historically, Halliburton recognized income arising from cost overrun claims only in the financial quarter in which the claim was finally resolved with the customer. From 1993 through 1997, Halliburton had set forth this practice in its periodic filings with the SEC. In the second quarter of 1998, however, Halliburton changed this historical practice and began recognizing revenue based on the estimated probable recoveries on claims that had not been resolved with customers. Under this new practice, Halliburton recognized revenues on certain claims that the Company believed were probable of collection, rather than only on claims that had been finally resolved. This new practice, while acceptable under Generally Accepted Accounting Principles ("GAAP"), permitted Halliburton to report much higher revenue than it would have reported under its previous practice.

107. Over six reporting periods, spanning approximately 18 months covering 1998 and 1999, Halliburton failed to disclose its changed accounting practice. In the absence of any disclosure, the investing public was deprived of the opportunity to assess meaningfully Halliburton's reported income (*i.e.*, the precise nature of that income and how it compared to its income in prior periods).

108. This undisclosed accounting change had a significant impact on Halliburton's reported financial results. Specifically, Halliburton reported much higher pre-tax income during these reporting periods than it would have under the previous method, as follows:

**IMPACT ON HALLIBURTON'S PRE-TAX INCOME (in millions)**

<u>Year</u>	<u>Filing</u>	<u>Reported Pre-Tax Income</u>	<u>Reported Pre-Tax Income Without Component of Unapproved Claim Revenue</u>	<u>\$ Difference</u>	<u>% Difference</u>
1998	Form 10-Q [Q2]	\$228.70	\$183.30	\$45.40	24.8%
	Form 10-Q [Q3]	(\$609.50)	(\$646.20)	\$36.70	5.7%
	Form 10-K	\$278.80	\$190.90	\$87.90	46.1%
1999	Form 10-Q [Q1]	\$149.00	\$129.80	\$19.20	14.8%
	Form 10-Q [Q2]	\$146.00	\$135.80	\$10.20	7.5%
	Form 10-Q [Q3]	\$103.00	\$92.30	\$10.70	11.6%

These income figures appeared in Halliburton's filings with the SEC, and were also presented in the Company's quarterly earnings releases and analyst teleconferences.

109. The SEC found that Halliburton's financial statements for the above periods were materially misleading due to the Company's failure to disclose the changed accounting practice. Halliburton consented to the entry of an order requiring it to cease and desist from committing or causing future violations of the securities laws, and agreed to pay a \$7.5 million penalty.

110. In the wake of this consent order, Halliburton's accounting improprieties may not have ceased. On December 18, 2006, Anthony Menendez, formerly Halliburton's director of



technical accounting research and training, filed a complaint with a Department of Labor administrative law judge in Louisiana accusing the company of using improper accounting practices to distort its financial statements and mislead investors. Menendez also claims Halliburton retaliated against him in violation of the whistleblower provisions of the Sarbanes-Oxley Act after he reported his concerns to the SEC and Halliburton's audit committee.

### **B. The Companies Overcharged The Government**

111. The Companies' penchant for deliberately overcharging the government is well-known to Defendants. Beginning as early as 2002, Defendants were on notice of the Companies' repeated abuses of their government contracts. Some of the more notorious examples of the Companies' abuses are set forth below.

112. On February 2, 2002, Halliburton agreed to pay \$2 million to settle a lawsuit alleging that KBR had violated provisions of the False Claims Act while performing work for the United States Army at Fort Ord in California.

113. On June 9, 2004, the Director of the Defense Contract Audit Agency ("DCAA") – which, under the authority, direction, and control of the United States Under Secretary of Defense, is responsible for performing all contract audits for the United States Department of Defense ("DoD") and providing accounting and financial advisory services regarding contracts and subcontracts to all DoD Components responsible for procurement and contract administration – testified before the House Committee on Government Reform concerning possible overcharges by KBR in connection with multibillion dollar Iraq Reconstruction contracts. Specifically, KBR was awarded Iraq Reconstruction contracts with ceilings totaling more than \$18 billion under two major programs: (1) the \$10 billion LOGCAP III contract; and (2) the \$8.2 billion Restore Iraqi Oil ("RIO") contract, an extremely lucrative no bid contract.

DCAA identified a number of issues with KBR's performance under these contracts, as follows:

- Estimating Practices. DCAA identified significant deficiencies in KBR's estimating practices related to the award of subcontract costs. In early 2004, DCAA returned two major task order proposals (worth more than \$3 billion) to KBR because they were inadequate for the purpose of negotiating a fair and reasonable price. On January 13, 2004, DCAA notified the appropriate Government contracting officials that KBR's subcontracting estimating process and procedures were considered inadequate. The DCAA found that KBR's deficiencies in estimating subcontracts were contributory factors in potential dining facility overpricing and delays in definitization of task order prices under the LOGCAP contract, and were also contributory factors in potential gasoline overpricing under the Restore Iraqi Oil contract.
- Dining Facility ("DFAC") Subcontract Costs. DCAA identified issues related to the reasonableness of negotiated subcontract costs for DFACs. KBR was unable to support the reasonableness of subcontract prices or the appropriate billing methodology intended in its subcontracts, which were in excess of \$800 million. Specifically, DCAA found that KBR billed for meals at a headcount in excess of at least 19% of the number of meals actually served (according to KBR's own studies) and possibly in excess of 36% of the number of meals actually served (according to DCAA's analysis). While DCAA and KBR initially agreed on a withholding of \$176.5 million until additional supporting data could be provided by KBR, DCAA currently increased its suspended DFAC costs to \$186 million. The government ultimately agreed to withhold \$55 million as a result of the DAC overbilling.
- Application of Federal Acquisition Regulations (FAR) on Contract Definitization. Due to urgent requirements, most of the LOGCAP contract task orders were issued as undefinitized contract actions. The FAR limits contract reimbursement to a maximum of 85 percent until a contract price is definitized to adequately protect the Government's interest in effective cost management. DCAA found that KBR had never applied reimbursement limitations to undefinitized LOGCAP task orders.
- Billing System Review. DCAA conducted a comprehensive billing system review at KBR and found, in an audit report issued May 13, 2004, that KBR's billing system was inadequate in part. As a result, KBR was no longer authorized for direct billing and was required to continue to provide all billing to DCAA for provisional approval prior to submission for payment. Key issues disclosed during this audit included (1) not effectively monitoring subcontract billings (e.g., DFAC costs); (2) inadequate written policies and procedures for the billing system; and (3) failure to adjust billings for changes in indirect rates.

As a result of this investigation, the Government withheld \$55 million from KBR relating to the DFAC overbillings.

114. In December 2003, the DCAA announced that KBR may have overpriced fuel imported to Iraq from Kuwait by as much as \$61 million. Documents from the Army Corp of Engineers show Halliburton overcharged the government for importing gasoline into Iraq from Kuwait. The company was charging \$2.64 per gallon to transport gasoline into Iraq while its competitors were transporting gasoline for less than half that price. For example, the Iraqi state oil company and the Pentagon's Defense Energy Support Center had been transporting gasoline from Kuwait to Iraq for less than half of Halliburton's price. The Army documents were released to Congressional investigators.

115. While Halliburton has the exclusive U.S. contract to import fuel into Iraq, it subcontracts the work to the Kuwaiti firm Altanmia Commercial Marketing Company, a company with no prior experience in oil transport, but which is believed to have hidden consultants or partners with ties to prominent Kuwaiti government officials.

116. In December 2003, the DCAA confirmed in a preliminary audit that Halliburton and Altanmia had overcharged the U.S. government by at least \$61 million through September 2003. The DCCA formerly asked the Pentagon's inspector general to investigate the overcharges and said the fuel importation contract was given to Altanmia "under unusual circumstances." The DCAA was suspicious because the contract was awarded to Altanmia a few days before the bid solicitation process was officially closed. In fact, the bidding process existed for only one day, making it impossible for more than three companies to bid. In addition, Congressman Henry Waxman (R-CA) says there is evidence that Altanmia officials are close friends of high officials in the Kuwaiti government, which indicates the contract could have been awarded to Altanmia only because of cronyism, not merit. Congressman Henry Waxman makes the following assertions about Altanmia:

(1) Altanmia received the multimillion dollar contract to import fuel into Iraq even though it had no prior experience in transporting fuel,

(2) The Bush administration exerted political pressure on Halliburton and the Army Corp of Engineers to use Altanmia as a subcontractor for importing large quantities of fuel from Kuwait even though importing fuel from Halliburton's subcontractors in Turkey could be done at less than half the cost, and

(3) After the DCCA formerly requested the Pentagon's inspector general to investigate the gasoline overcharges, the Army intervened and released Halliburton from its obligation to provide "cost and pricing" data that could justify Altanmia's gasoline prices, thereby making a meaningful audit of Altanmia's charges impossible. A few weeks later, on December 19, 2003, the Army quickly ended the DCAA's audit of the gasoline overcharges. The Army called the overcharges "fair and reasonable." The Army subsequently forced the U.S. government to pay the higher gasoline price even though the Bush administration admitted that "other trucking and oil distributors have made proposals to [Halliburton] on more favorable terms" than Altanmia.

117. Congressman Waxman called the Army's action a "whitewash". Specifically, Congressman Waxman believes the Bush administration gave "special treatment" to Halliburton and Altanmia "that has foreclosed an effective investigation by DCAA and prevented Congress and the public from learning the true facts about Halliburton's gasoline imports."

118. Following this political maneuvering, the Army chose to reimburse Halliburton for all but \$10.1 million of those contested costs.

### **C. Halliburton Illegally Exported And Reexported Neutron Generators To Unstable Countries In The Middle East**

119. On July 25, 1995, Assistant Secretary for Export Enforcement John Despres signed an order assessing a civil penalty of \$2.6 million against Halliburton – the largest fine ever imposed by the Department of Commerce – for export violations in connection with its export of neutron generators to the Middle East. Halliburton subsidiary Halliburton Logging Services ("HLS") exported six neutron pulse generators to Libya between December 1987 and August 1989, and made three unauthorized exports of pulse neutron generators to Kuwait or Yemen between August 1988 and January 1989. Halliburton subsidiary Halliburton Geophysical

Services ("HGS") made 68 unauthorized reexports of spare parts to Libya between April 1989 and April 1991, and one illegal export of U.S.-origin technical data to Libyan nationals in Tunisia in May 1990.

120. In addition to the payment of the civil penalty, Halliburton plead guilty in the United States District Court for the District of Texas to criminal charges relating to these illegal export and reexport activities, and accepted a criminal penalty of \$1.2 million for three violations of the International Emergency Economic Powers Act in connection with the export of pulse neutron generators to Libya.

## VI.

### **DEMAND UPON THE BOARD OF HALLIBURTON IS EXCUSED AS FUTILE**

121. Plaintiff has not made a demand upon the current board of Halliburton because such demand is futile. The Halliburton Defendants currently make up a majority of Halliburton's board and participated in, approved, and/or permitted the wrongs alleged herein, concealed or disguised those wrongs, or recklessly and/or negligently disregarded them. Therefore, the Halliburton board is not disinterested and lacks sufficient independence to exercise business judgment as alleged herein.

## VII.

### **DEMAND UPON THE BOARD OF KBR IS EXCUSED AS FUTILE**

122. Plaintiff has not made a demand upon the current board of KBR because such demand is futile. The KBR Defendants currently make up a majority of KBR's board and participated in, approved, and/or permitted the wrongs alleged herein, concealed or disguised those wrongs, or recklessly and/or negligently disregarded them. Therefore, the KBR board is not a disinterested party and lacks sufficient independence to exercise business judgment as alleged herein.

## VIII.

### TOLLING OF THE STATUTE OF LIMITATIONS

123. Plaintiff did not know, and could not reasonably have discovered, the wrongdoing complained of herein until the dates on which such wrongdoing was first disclosed, as set forth above. Prior to these disclosures, the Halliburton and KBR Defendants actively concealed the wrongdoing complained of herein, and the statutes of limitations on Plaintiff's claims were tolled by Defendants' active and continuing concealment of this wrongdoing.

124. The Companies' pattern and practice of (1) overcharging the government on contracts, (2) accepting illegal kickbacks, (3) exposing troops to substantial bodily harm, and (4) permitting its employees to conspire to defraud the government amount to continuing wrongs. Accordingly, the statute of limitations on Plaintiff's claims (to the extent such claims relate to these acts) remained tolled until the wrongful conduct ceased.

125. Prior to February 11, 2009, Plaintiff did not know, nor could it have known, that the pattern of wrongdoing at KBR and Halliburton was a result of Defendants' failure to exercise prudent supervision over the management, policies, practices, controls, and financial and corporate affairs of Halliburton and KBR.

126. Plaintiff's claims for indemnification only began to accrue when it paid money to resolve claims caused by the wrongful conduct of the Defendants.

## IX.

### CAUSES OF ACTION

#### COUNT I

#### **Derivative Caremark Claim Against The Halliburton Defendants For Wrongful Conduct Prior To The Spinoff Of KBR**

127. Plaintiff incorporates by reference the preceding paragraphs as if set forth herein.

128. The Halliburton Defendants owed fiduciary duties to Halliburton and its stockholders to exercise loyalty, good faith, due care and diligence in the management and administration of the affairs of the Company.

129. As fiduciaries, to discharge these duties, the Halliburton Defendants were required to exercise prudent supervision over the management, policies, practices, controls, and financial and corporate affairs of Halliburton and KBR, which Halliburton controlled.

130. In performing the aforementioned services, the Halliburton Defendants breached their fiduciary duties, causing damages to Halliburton and KBR, by, *inter alia*, (i) directly participating in or, alternatively, failing to discover and prevent, Halliburton's and KBR's violations of law; (ii) failing to properly implement, oversee and maintain appropriate and adequate internal controls, practices and procedures for Halliburton and KBR; (iii) failing to ensure that Halliburton and KBR operated in compliance with all applicable federal and state laws, rules, and regulations requiring the dissemination of accurate financial statements and restricting the misuse of material non-public information; (iv) failing to ensure that Halliburton and KBR not engage in any unsafe, unsound, or illegal business practices; (v) causing Halliburton and KBR to be sued for, and exposed to liability for, violations of the FCPA, the OFAC, and the Exchange Act; (vi) causing Halliburton and KBR to be forced to pay hundreds of millions of dollars in fines relating to their illegal activities; (vii) causing Halliburton and KBR to be subject to civil suits charging the Companies with, *inter alia*, permitting an employee to be gang raped on its premises, human trafficking, exposing U.S. soldiers to substantial bodily harm and death, and violating the False Claims Act; (viii) causing Halliburton and KBR to be subjected to an investigation by the Department of Justice; (ix) abusing their control of the Company; and (x) and grossly mismanaging the Company.

131. The improprieties described herein would not have occurred but for the Halliburton Defendants' intentional wrongdoing and/or conscious or reckless disregard for their oversight responsibilities.

132. The Halliburton Defendants' breaches of their fiduciary duties have proximately caused, and will continue to cause, Halliburton and KBR to suffer substantial monetary damages as a result of the wrongdoing herein, as well as further and even greater damage in the future, including, among other things,

- (i) exposure to forfeitures, fines and penalties;
- (ii) damage to Halliburton's and KBR's reputation and good will (including perhaps irreparable damage to the Companies' reputation and credibility with regulators, and to Halliburton's and KBR's reputation and credibility in the business and financial community);
- (iii) resultant loss of business and business opportunities;
- (iv) legal fees and related expenses incurred and to be incurred by Halliburton and KBR in connection with the Department of Justice investigation, the civil lawsuits, and possible future lawsuits and investigations;
- (v) the costs of internal investigations; and
- (vi) legal fees, costs and potentially huge amounts payable in settlement or satisfaction of various lawsuits alleging violations of federal and state laws.

133. Halliburton and KBR have been directly and substantially injured by reason of the Halliburton Defendants' intentional breach and/or reckless disregard of their fiduciary duties to the Companies. Plaintiff seeks damages and other relief for the Companies, in an amount to be proven at trial.

134. Plaintiff has no adequate remedy at law.



## COUNT II

### **Derivative Caremark Claim Against The KBR Defendants For Wrongful Conduct Occurring After KBR's Spinoff From Halliburton**

135. Plaintiff incorporates by reference the preceding paragraphs as if set forth herein.

136. The Halliburton Defendants owed fiduciary duties to Halliburton and its stockholders to exercise loyalty, good faith, due care and diligence in the management and administration of the affairs of the Company.

137. The KBR Defendants owed fiduciary duties to KBR and its stockholders to exercise loyalty, good faith, due care and diligence in the management and administration of the affairs of the Company.

138. As fiduciaries, to discharge these duties, the Halliburton and KBR Defendants were required to exercise prudent supervision over the management, policies, practices, controls, and financial and corporate affairs of Halliburton and KBR, respectively.

139. In performing the aforementioned services, the Halliburton and KBR Defendants breached their fiduciary duties, causing damages to KBR, by, *inter alia*, (i) directly participating in or, alternatively, failing to discover and prevent, Halliburton's and KBR's violations of law; (ii) failing to properly implement, oversee and maintain appropriate and adequate internal controls, practices and procedures for Halliburton and KBR; (iii) failing to ensure that Halliburton and KBR operated in compliance with all applicable federal and state laws, rules, and regulations requiring the dissemination of accurate financial statements and restricting the misuse of material non-public information; (iv) failing to ensure that Halliburton and KBR not engage in any unsafe, unsound, or illegal business practices; (v) failing to provide oversight to prevent defrauding the U.S. government (vi) abusing their control of the Companies; and (vi) and grossly mismanaging the Companies.

140. As a direct consequence of Defendants' breaches of duty, Halliburton and KBR have been required to pay penalties and fines. The improprieties described herein would not have occurred but for the KBR Defendants' intentional wrongdoing and/or conscious or reckless disregard for their oversight responsibilities.

141. The KBR Defendants' breaches of their fiduciary duties have proximately caused, and will continue to cause, KBR to suffer substantial monetary damages as a result of the wrongdoing herein, as well as further and even greater damage in the future, including, among other things,

(i) creating a substantial likelihood of criminal and civil penalties for defrauding the U.S. Government.

(ii) damage to KBR's reputation and good will;;

(iii) resultant loss of business and business opportunities;

142. KBR has been directly and substantially injured by reason of the KBR Defendants' intentional breach and/or reckless disregard of their fiduciary duties to the Companies. Plaintiff seeks damages and other relief for the Companies, in an amount to be proven at trial.

143. Plaintiff has no adequate remedy at law.

### **COUNT III**

#### **Derivative Claim For Indemnification**

144. Plaintiff incorporates by reference the preceding paragraphs as if set forth herein.

145. The Halliburton and KBR Defendants owed fiduciary duties to Halliburton and KBR and their stockholders to exercise loyalty, good faith, due care and diligence in the management and administration of the affairs of the Companies.

146. As fiduciaries, to discharge these duties, the Halliburton and KBR Defendants were required to exercise prudent supervision over the management, policies, practices, controls, and financial and corporate affairs of Halliburton and KBR.

147. In performing the aforementioned services, the Halliburton and KBR Defendants breached their fiduciary duties, causing damages to the Companies, by, *inter alia*, (i) directly participating in or, alternatively, failing to discover and prevent, the Companies' violations of law; (ii) failing to properly implement, oversee and maintain appropriate and adequate internal controls, practices and procedures for the Companies; (iii) failing to ensure that the Companies operated in compliance with all applicable federal and state laws, rules, and regulations requiring the dissemination of accurate financial statements and restricting the misuse of material non-public information; (iv) failing to ensure that the Companies not engage in any unsafe, unsound, or illegal business practices; (v) failing to provide oversight to prevent defrauding the U.S. government (vi) abusing their control of the Companies; and (vi) and grossly mismanaging the Companies.

148. The improprieties described herein would not have occurred but for the Halliburton and KBR Defendants' intentional wrongdoing and/or conscious or reckless disregard for their oversight responsibilities.

149. As a result of the Halliburton and KBR Defendants' breaches of fiduciary duties, the Companies have had to pay out hundreds of millions of dollars in fines, penalties, and settlements, as follows: (a) \$402 million fine for the Nigerian bribery scheme; (b) \$177 million in disgorgement to the SEC for the Nigerian bribery scheme; (c) \$54 million (one half of a \$108 million judgment) for dumping hazardous waste; (d) \$8 million to settle allegations of overcharging and other procurement irregularities relating to the LOGCAP contract in the

Balkans during 1999 and 2000 overcharging; and (e) \$6.3 million to cover the “estimated impact” of a possible violation of the Anti-Kickback Act, 18 U.S.C. § 874 *et. seq.* by two employees.

150. The Halliburton and KBR Defendants are required to indemnify the Companies for the damages sustained by the Companies caused by their breaches of fiduciary duty.

151. Plaintiff has no adequate remedy at law.

## X.

### DAMAGES

Plaintiff seeks all damages allowed by the State of Texas as a result of the wrongdoing alleged herein.

## XI.

### REQUEST FOR A JURY TRIAL

Plaintiff requests a jury trial on this matter.

WHEREFORE, Plaintiff, on behalf of KBR and Halliburton, demands judgment as follows:

A. Awarding KBR and Halliburton damages against all Defendants in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law;

B. Awarding Plaintiff the costs of this suit, including reasonable attorneys’ fees and other disbursements;

C. Indemnification from Defendants in connection with all claims that have been, are or may in the future be, asserted against KBR and Halliburton by virtue of those Defendants’ misconduct and wrongdoing alleged herein; and

D. Awarding Plaintiff such other and further relief as this Court may deem just and proper.

DATE: MAY 14, 2009

Respectfully submitted,

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