

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

DALE GALLAHER; ROBERT  
WILSON; RUSSELL POWELL;  
ANDRU KELLER; ERIC HEID; JOHN  
HEADLEY; and BRADLEY EBERT,

Plaintiffs

vs.

KBR, INC.; KELLOGG, BROWN &  
ROOT SERVICES, INC.; KBR  
TECHNICAL SERVICES, INC.;  
OVERSEAS ADMINISTRATION  
SERVICES, LTD.; and SERVICE  
EMPLOYEES INTERNATIONAL, INC.

Defendant.

CIVIL ACTION NO.: 5:09-cv-69

**COMPLAINT**

NOW COMES the Plaintiffs, by and through the undersigned counsel, and for their Complaint against the Defendants, state and aver as follows:

Plaintiffs, Dale Gallaher, Robert Wilson, Russell Powell, Andru Keller, Eric Heid, John Headley, and Bradley Ebert (together, “West Virginia Guardsmen”) file this Complaint against Defendants, KBR, INC., KBR TECHNICAL SERVICES, INC., KELLOGG BROWN & ROOT SERVICES, INC., OVERSEAS ADMINISTRATION SERVICES, LTD., AND SERVICE EMPLOYEES INTERNATIONAL, INC. (“together, “KBR”), and would respectfully show the following:

**FACTUAL BACKGROUND**

1. KBR, a private company, and its operating subsidiaries (including Cayman Island subsidiaries set up by KBR for various purposes described further below) received billions of

dollars of no-bid contracts for work in Iraq in 2003. This suit arises from one of the projects KBR was charged with safely completing, a project involving the restoration of the Qarmat Ali water plant in southern Iraq so the facility could resume pumping water down into the Iraqi oil wells for more consistent oil flow. After major combat operations ceased in southern Iraq, KBR, a self-proclaimed expert in overseas infrastructure projects, was responsible at Qarmat Ali for proper site survey before and as work progressed. For allegedly timely completing the Qarmat Ali project, KBR received not only base contract payments but also retrospective “award” payments after Qarmat Ali was back on line.

2. Instead of doing what KBR promised and was paid to do for the Qarmat Ali project, KBR managers based in Kuwait City; Houston, Texas; Alexandria, Virginia; and elsewhere disregarded and downplayed the extreme danger of wholesale site contamination by sodium dichromate, a toxic chemical used at the site as an anti-corrosive and containing nearly pure hexavalent chromium. KBR managers knew about both the site contamination and the extreme danger of hexavalent chromium<sup>1</sup>. What these knowing acts and omissions meant to the West Virginia Guardsmen providing security for the actual work at Qarmat Ali, along with the British troops and the American civilians actually carrying on the work at Qarmat Ali, was months and months of unprotected, unknowing, direct exposure to one of the most potent carcinogens and mutagenic substances known to man, hexavalent chromium. When the West Virginia Guardsmen and American civilians actually working at Qarmat Ali began experiencing the most characteristic symptom of acute hexavalent chromium poisoning, nasal excoriation (bleeding from the nose) known to toxicologists as “chrome nose”, KBR managers told men

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<sup>1</sup> According to Dr. Max Costa, a recognized expert on the human effects of hexavalent chromium and Chairman of the NYU Medical School Department of Environmental Medicine, exposure to 30-40 micrograms of hexavalent chromium per cubic meter, has been demonstrated to show more than 50 (fifty) percent increase in cancers in exposed humans.

onsite it was simply an effect of the “dry desert air” and they must be “allergic to sand”. The West Virginia Guardsmen were repeatedly told that there was no danger on site, even after KBR managers knew that blood testing of American civilians exposed onsite confirmed elevated chromium levels. What was not revealed until Congressional Hearings in June 2008 was the extent of knowledge of KBR managers about the danger on-site and the ongoing concealment of the exposures to the West Virginia Guardsmen and others. *See*, Senate Democratic Policy Committee Hearing, “The Exposure at Qarmat Ali: Contractor Misconduct and the Safety of U.S. Troops in Iraq”, June 20, 2008, at <http://dpc.senate.gov/hearings/hearing44/> (“The United States Senate Hearing”). As outlined further below, KBR is apparently still withholding from the United States Army the full extent of KBR managers’ knowledge of the dangers to the soldiers and others onsite, dangers directly impacting the current and future health evaluations of the soldiers exposed at Qarmat Ali.

3. Several of the West Virginia National Guardsmen have already manifested respiratory system tumors characteristically associated with hexavalent chromium exposure, and many of the West Virginia Guardsmen continue to experience chemical sensitivities and rashes consistent with the impacts of hexavalent chromium poisoning. As has become clear only recently, the West Virginia Guardsmen and other exposed persons now require ongoing, expensive follow-up health care for the health impacts of these exposures, as well as compensation for the reasonably anticipated manifestations over time, including the cancers, potential impact on their offspring, and heightened reaction to chromium salts in the environment.

4. The West Virginia Guardsmen never shirked their responsibilities to their families, the State of West Virginia, or this Nation. The West Virginia Guardsmen have

consistently gone above and beyond the call of duty for their fellow citizens, year after year, many for decades, responding to natural disasters; serving after 9-11 to protect the home front; and proudly putting themselves on the line in Iraq. The West Virginia Guardsmen and their fellow soldiers accepted the hazards from enemy action while doing their part to assist the United States in restoring freedom to Iraq, but could not even imagine that KBR's managers would act in a manner that directly and continuously exposed them to serious health impacts for the rest of their lives. They have filed this legal action because they believe that KBR, having profited handsomely, should be held accountable for these costs it has imposed on the West Virginia Guardsmen, and the burdens should not just be dumped by KBR on the West Virginia Guardsmen, their families, or the United States taxpayer.

**PARTIES**

5. Plaintiff, Dale Gallaher, is a citizen and resident of Kansas City, Kansas.
6. Plaintiff, Robert Wilson, is a citizen and resident of Dunbar, West Virginia.
7. Plaintiff, Russell Powell, is a citizen and resident of Moundsville, West Virginia.
8. Plaintiff, Andru Keller, is a citizen and resident of Middlebourne, West Virginia.
9. Plaintiff, Eric Heid, is a citizen and resident of Rocky Mount, North Carolina.
10. Plaintiff, John Headley, is a citizen and resident of Paden City, West Virginia.
11. Plaintiff, Bradley Ebert, is a citizen and resident of Wheeling, West Virginia.
12. Upon information and belief, Defendant, KBR, INC. is a Delaware corporation with its principal place of business in the State of Texas and was created and functions solely for the accumulation of monetary profit.

13. Upon information and belief, Defendant KELLOGG, BROWN & ROOT SERVICES INC., is a Delaware corporation with its principal place of business in the State of Texas that was created and functions solely for the accumulation of monetary profit.

14. Upon information and belief, Defendant, KBR TECHNICAL SERVICES, INC., is a Delaware corporation with its principal place of business in the State of Texas that was created and functions solely for the accumulation of monetary profit.

15. The following two entities were incorporated by KBR managers in the Cayman Islands for purposes exposed in Senate Hearing in 2008, as outlined by Senator Byron L. Dorgan:

It was created for one purpose only. That purpose was to hire American workers, but pay them through a post office box in the Cayman Islands so that the company could claim to the United States government that these workers were not really American workers subject to U.S. taxes. So they didn't have to pay any payroll taxes on their American workers that they hired and sent to Iraq if they ran their payroll through Post Office Box 847 in the Cayman Islands.

The United States Senate Hearing, June 20, 2008.

16. Upon information and belief, Defendant OVERSEAS ADMINISTRATION SERVICES, LTD. was incorporated by KBR's managers in the Cayman Islands, but manages its operations from KBR's offices at 4100 Clinton Avenue, Houston, Texas 77020.

17. Upon information and belief, Defendant SERVICE EMPLOYEES INTERNATIONAL INC. was incorporated by KBR's managers in the Cayman Islands, but manages its operations from KBR's offices at 4100 Clinton Avenue, Houston, Texas 77020.

### **VENUE & JURISDICTION**

18. The West Virginia Guardsmen are citizens of the States of West Virginia, North Carolina, and Kansas, and the KBR Defendants each maintain a principal place of business in the

State of Texas. Claims are each made for damages well in excess of \$75,000. Jurisdiction is therefore proper before this Court pursuant to 28 U.S.C. § 1332 (diversity jurisdiction). Venue is proper in this Court pursuant to 28 U.S.C. § 1391, as KBR Defendants reside in the Northern District of West Virginia for venue purposes, including, but not limited to, regular recruitment in West Virginia and their employment of citizens of West Virginia by KBR, and by the fact that they directed activity into West Virginia by way of their knowledge that their herein-described actions would have an effect and an impact in West Virginia.

### **Factual Background**

19. This suit is necessary to collect a legal debt and damages due and owing the West Virginia Guardsmen because of KBR's acts and omissions that proximately led to the West Virginia Guardsmen's unprotected exposure to injurious levels of hexavalent chromium at the Qarmat Ali site. The West Virginia Guardsmen agreed to undertake and appreciated the hazards from foreign enemies while doing their part to assist the United States in restoring freedom to Iraq, but could not even imagine that KBR's managers would act in a manner that directly and continuously exposed them to serious health impacts for the rest of their lives.

20. There is no doubt that KBR's managers knew before the West Virginia Guardsmen ever arrived at Qarmat Ali about the dangerous contamination at the site, at least according to the sworn statement of KBR's southern Iraq Health Safety Environment (HSE) manager Johnny Morney:

Q. How did you learn Sodium –

A. Jake Duhan was making a round as a safety professional. He made a round and he observed this.

Q. Mr. Duhan- A Right.

Q. - this observation that was conveyed to you –

A. Right.

Q. - in May 2003 -

A. Right.

Q. - how was it conveyed to you in May 2003? In what manner? Did you get a memo, did you get a email?

A. In a conversation. He came in and it was in his daily report and we had a discussion, which was a requirement of all our HSE coordinators....

As documented by KBR managers, sixty (60) percent of the workers onsite reported symptoms of acute poisoning by the beginning of August 2003, and yet the work (and exposure) was not even stopped fully until September 2003. Exhibit "A-C", photos of sodium dichromate, Qarmat Ali. See, Exhibit "D", KBR internal memorandum, August 8, 2003. The repeated warnings, both in writing and in meetings, about the sodium dichromate onsite continued to be disregarded by KBR's managers from their offices while the West Virginia Guardsmen continued to do their duty at Qarmat Ali *See, e.g.* Exhibit "E", June 22, 2003 KBR HSE log. Unfortunately, this confirmed hazard was not timely shared with the United States Army by Mr. Morney, or any other KBR managers, even though KBR was fully aware that the soldiers providing security stayed within arms' reach of KBR workers on site:

Q. This information you shared about Sodium Dichromate the need for personal protective equipment in May 2003, did you make any effort as a manager to ensure it got to the U.S. Army soldiers being sent out there?

A. There was no need. *They were not working in the area / emphasis added /*.

21. A month before KBR managers finally shut down the contaminated site in September 2003, KBR managers did leave their offices to conduct an inspection of the Qarmat site in full "Level C" environmental protection (including suits protecting against even skin exposure). Despite the protection KBR manages afforded themselves, they left the soldiers and civilian workers onsite unprotected and exposed. *See*, Exhibit "F", photo of KBR personnel, Qarmat Au, Iraq, August 2003.

22. More disturbing, however, is that KBR, as part of the work for which KBR billed and was paid by the United States government, conducted a full-site analysis identifying the

hazards at Qarmat Ali even earlier, in April 2003, according to senior KBR HSE manager, Chuck Adams:

Q. Site analysis has a very specific meaning to a health safety environment professional doesn't it?

A. Yes, it does. Normally when you do a site analysis, you go out and you look at — get a good overview of the site and then you also take soil samples, core samples in areas that you may feel that there may be a possible contamination of the soil, other than just on the surface. You'll do air sampling if you feel that there's — if — if you see a risk from air sampling and noise sampling. There is all kinds of things you do for a risk assessment?

Q. This site analysis also called a risk assessment?

A. Yes.

Q. Mr. Cater /KBR site manager/ told you who had performed a risk assessment before you ever got there April 29, 2003?

A. Mr. Cater told me that the environmental group for OAS /KBR's Overseas Administrative Services/ had been out there to — and looked over the site. He did not specifically say that they had done a risk assessment per Se, but he said they had been given the go ahead by the environmental group and the military to go ahead and do the work.

Q. You also identify what efforts, if any, were made to actually identify properly hazards?

A. Yes, you identify the -- the air samples, the soil samples, what -- what processes you went through to get that — that, you know, that checklist completed and where the samples were taken.

23. KBR's HSE manager for Iraq, Chuck Adams, has testified under oath that he was never provided the April 2003 "no notes" site assessment that was conducted by other KBR professionals months before the West Virginia Guardsmen arrived at Qarmat Ali:

Q. Now, you said you -- you got Mr. Cater telling you somebody had been out there. Did you see any record of that site analysis?

A. No. Sorry, no.

Q. Now, when you say consultant specialists to come in and do soil and air samples, you're talking about folks from Houston, aren't you?

A. Folks from Houston. We use them as a consultant, if — if we needed them. They were not working for us. They came in just on a consultant basis just to help us.

Q. Absolutely positive, you never saw, never even asked for, any documentation about any kind of site analysis done by Mr. Kimbro /KBR employee! or anyone April of 2003?

A. No.

Q. Did it concern you at all that there is standard protocols for doing site analysis,

soil samples, air sampling, a basic KBR checklist you've used around the world for years and nobody could show you one for this site?

A. Sure it concerned me, but based on the information I had been given, and you have to understand, again, I'm in charge -- I'm trying to cover a whole country.

24. What happened to Ed Blacke, the American civilian medic at Qarmat Ali, when he tried to take action to protect the workers and soldiers in late July 2003, points to the KBR handling of the site contamination:

As an EMT concerned that there was a health problem, I began to query all English-speaking personnel working at the facility, which included KBR, Halliburton, Iraqi Oil Company, U. S. Army National Guard and British soldiers, and all were suffering identical symptoms. The symptoms for all at the facility developed into continuous bloody noses, spitting up of blood, coughing, irritation of the nose, eyes, throat and lungs, and shortness of breath. In order to determine what might be the cause of these medical problems, I undertook a more in depth assessment of the facility with my Iraqi interpreter taking down the chemical names on the burst bags I initially noted as well as from the tanks in the Injection building. The chemical was Sodium Dichromate, which contains hexavalent chromium. I asked my Iraqi interpreter if he was aware of what the material in the bags was used for and was advised that it was injected into the water supply system for the oil fields as an anti-corrosive. He was reluctant to say more and when pressed he said he knew it was poisonous and that he was aware of many workers from the plant who were made ill by it. He said that it being a poisonous chemical was probably the reason members of the Baath party had opened the storage bags and spread their contents all over the plant as part of their sabotage efforts in the facility. That evening, on my return to my quarters, I researched sodium dichromate on the internet, finding and downloading a Material Safety Data Sheet (MSDS) for the chemical (attached). The MSDS states that sodium dichromate is a hazardous material and a carcinogen, exposure to which is to be avoided. At this time, a colleague I knew from Chad provided me with an internal memo written by a KBR Industrial Hygienist that substantiated my personal findings. I was totally taken aback to find that KBR knew as early as May, from a UN report and from their Industrial Hygienist, that they were putting not only KBR workers but our security details from the U. S. and British in harms way, without the required training or personal protective equipment.

I reported my findings about the imminent danger sodium dichromate was posing to the workers at Qarmat Ali to the HSE and Project Manager in Kuwait and insisted that they take immediate action. A few days later, two representatives of the health, safety and environmental section of KBR came to Qarmat Ali to assess the situation and talk to the workers. Those individuals were Safety Manager Tommy Mornay and Medical Supervisor Ray Garcia. They held a meeting with the workers in which they told the workers that the sodium dichromate was a mild irritant at worst, that the plant had been thoroughly checked out and was safe, and that they were to get back to work. I was at the meeting and was shocked that fellow safety and medical professionals were telling such outrageous and blatant lies to the workers. I pointed out in the meeting that the NIOSH/CDC documents that I had on sodium dichromate directly contradicted

their statements to the workers: At this point, Mr. Garcia, who was one of my superiors, directed me to be quiet and to leave. He then escorted me out of the meeting. Outside of the meeting, he advised me that I was being insubordinate, disruptive, and that my input was not appreciated. I was determined to pursue the complaint with higher-ups in KBR's HSE department in Kuwait, and upon attempting to do so, it was made clear to me that my presence in Iraq and Kuwait was no longer appreciated and that I would be better off going home. As a response to my complaints, the Medical Supervisor, Ray Garcia, under direction of the KBR Project Manager, directed me to accompany him to a clinic for blood workup. I was taken to a substandard medical clinic where I refused to submit to the tests due to the unsanitary conditions and unprofessional nature of the staff.

.....

In my mind, it was criminally negligent of the KBR HSE and Project management to make a decision to continue to expose personnel to sodium dichromate poisoning at the Qarmat Ali water treatment plant when they knew of the exposure and knew of the absence of any personal protective gear whatsoever. I understand that KBR and Halliburton take the position that the air was tested at the plant and showed low levels of chromium, however, those tests were apparently done when the air was still, not during one of the frequent dust storms in which all of the materials on the ground became airborne. Furthermore, the levels of chromium from the ground samples show that the plant was a highly dangerous and unsafe and contaminated facility, and these facts were objective facts known by KBR management, in the face of which they made the conscious decision to continue to expose the American workers, the Iraqi workers, the American military personnel, and the British military personnel at the plant to these horrifically unsafe conditions. It is outrageous that American tax dollars are the source of the funding of the Iraqi operation of Halliburton and KBR when those companies have demonstrated such total and complete disregard for the health and safety of the workers for whom they are responsible.

Statement of Ed Blacke, The United States Senate Hearing, June 20, 2008, at <http://dpc.senate.gov/hearings/hearing44/>.

25. Hexavalent Chromium is one of the most potent carcinogens known to man. Humans exposed to hexavalent chromium often exhibit the nasal bleeding associated with "chrome nose", confirming the specific injurious impact on the exposed individual. It can produce any type of cancer depending upon genetic susceptibility, quantity and route of exposure. It is important that humans not be exposed to this carcinogen since it can enter the human body by inhalation, ingestion, and also through the skin. Hexavalent Chromium can cause severe damage to the liver and kidneys, depress the immune system, and can enter every cell of the body and potentially produce widespread injury to every major organ in the body. This is

because it looks the same as the nutrients sulphate and phosphate and is actively sucked up into cells by carriers that would normally transport these essential nutrients. It is very dangerous for humans to become exposed to even small amounts of hexavalent chromium. The most common cancer that develops following inhalation exposure to hexavalent chromium is lung cancer. Studies have also shown elevations of stomach, brain, GI, prostate, leukemia, lymphoma, urinary track, renal, bladder and bone cancers in worker exposed to hexavalent chromium by inhalation. Generally these cancers develop with a latency period of about 5 years for the blood cancers up to 15-20 years for the other types of cancers. Hexavalent chromium is also known to cause birth defects during pregnancy and has also been reported to have effects on sperm in experimental animals. Hexavalent chromium is the substance made known by the Erin Brockovich story and movie.

26. In practical terms, this means that, based upon the best scientific evidence, persons exposed to injurious levels of hexavalent chromium have an expected 1 in 5 cancer rate. Once hexavalent chromium has damaged the body, and in particular at the cellular level, there is no “fix”. Instead, vigilant health care and early treatment, if possible, is the only protection that medical science can afford exposed individuals from the anticipated future consequences.

**FIRST CAUSE OF ACTION—NEGLIGENCE**

27. The West Virginia Guardsmen re-allege and incorporate each allegation contained in Paragraphs 1-26 of this Complaint as if fully set forth herein.

28. KBR’s managers undertook to inspect and direct the site and work where the West Virginia Guardsmen worked and were exposed to hazardous dust(s) for conformance with safety practices and procedures and/or otherwise undertook supervision of the same. As a result of these actions, KBR is liable to the West Virginia Guardsmen under RESTATEMENT

(SECOND) OF TORTS § 324A. In the alternative, or jointly, KBR knew, or should have known, of the dangers of the dusts to which the West Virginia Guardsmen were exposed, yet consciously withheld the information from the West Virginia Guardsmen.

29. The acts and omissions of KBR constitute negligence, in that KBR failed to exercise ordinary care in their assumption of the safety and health responsibilities, as well as direct oversight of the work activities, of the West Virginia Guardsmen, and these breaches proximately caused legal injuries to the West Virginia Guardsmen. The West Virginia Guardsmen suffered a direct impact, as evidenced by the nose bleeds and skin lesions they suffered while guarding this plant, such that Defendants negligently inflicted emotional distress upon the Plaintiffs for which Plaintiffs should be compensated.

**SECOND CAUSE OF ACTION—GROSS NEGLIGENCE**

30. The West Virginia Guardsmen re-allege and incorporate each allegation contained in Paragraphs 1-29 of this Complaint as if fully set for herein.

31. The acts and omissions of KBR constitute gross neglect, as that term is defined by law. Viewed objectively from the standpoint of KBR at the time of the occurrences, the acts and omission of KBR involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and KBR had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety and welfare of others. As a result of the gross neglect and legal malice of KBR, the West Virginia Guardsmen each received harmful exposure to a known carcinogen with serious short-term and long-term effects. Accordingly, the West Virginia Guardsmen seek an award of exemplary damages.

**THIRD CAUSE OF ACTION – TORT OF OUTRAGE**

32. The West Virginia Guardsmen re-allege and incorporate each allegation contained in Paragraphs 1-32 of this Complaint as if fully set forth herein.

33. The above-described conduct of the Defendants was extreme and outrageous and constitutes the tort of outrage against the West Virginia Guardsmen.

**FOURTH CAUSE OF ACTION – NEGLIGENT INFLICTION  
OF EMOTIONAL DISTRESS**

34. The West Virginia Guardsmen re-allege and incorporate each allegation contained in Paragraphs 1-31 of this Complaint as if fully set forth herein.

35. The West Virginia Guardsmen, in addition to the claims asserted herein, aver, that these Defendants by their acts and omissions, negligently inflicted emotional distress upon them and as a proximate result of this conduct, the West Virginia Guardsmen have suffered serious emotional distress, all to their damage including compensatory and punitive damages.

**RESULTING LEGAL DAMAGES**

36. The acts and omissions of KBR's corporate managers caused each of the West Virginia Guardsmen to sustain actual damages. The West Virginia Guardsmen are entitled to be compensated for the personal injuries and damages the West Virginia Guardsmen sustained to the varying degrees each has experienced and will likely experience in the future. The West Virginia Guardsmen each sustained physical pain and mental anguish and, in reasonable probability, will continue to suffer physical pain and mental anguish in the future. To varying degrees, the West Virginia Guardsmen have suffered and will continue to suffer physical impairment and disfigurement. The West Virginia Guardsmen are reasonably expected to sustain a loss of earning capacity before the time of trial and a loss of future wage earning capacity. Because of the nature and severity of the injuries, the West Virginia Guardsmen required

medical treatment in the past and will, in reasonable probability, require additional medical treatment in the future. Charges for such medical treatment that have been made in the past and those which will in reasonable probability be made in the future have been and will be reasonable charges made necessary by the occurrence in question. As a result of Defendant's conduct, the West Virginia Guardsmen have sustained damages in excess of the minimum jurisdictional limits of this Court.

37. Through the unlawful conduct set forth in the preceding paragraphs, West Virginia Guardsmen have been physically impacted by the injurious effect of hexavalent chromium contained within the sodium dichromate to which they were exposed. Unfortunately, the acute effects, and even the ongoing allergenic effects (rashes, inflammatory reactions, and unnatural sensitivity to chromium present in their day to day exposures) are not the only reasonably anticipated results of the exposures. Given the nature of the unprotected exposures to this toxic chemical occasioned by KBR's misconduct, the West Virginia Guardsmen face a twenty to thirty times risk of cancers and other harmful health effects, especially with regard to respiratory system (including the nasal airway) cancers. The only medically accepted method of treating this greatly enhanced risk is medical surveillance for the West Virginia Guardsmen on an ongoing basis.

38. As a direct and proximate result of the conduct of KBR outlined above, West Virginia Guardsmen have suffered physical injuries including but not necessarily limited to acute effects (immune system hypersensitivity, decreased respiratory functioning), and various physical manifestations of emotional distress associated with the injurious exposure.

39. As a direct and proximate result of the conduct of KBR outlined above, West Virginia Guardsmen have been exposed to greater risks of severe injury and death. West Virginia

Guardsmen's increased risk of additional and serious injury is a direct and proximate result of KBR's liability as set forth above. In the absence of the injurious exposure, the West Virginia Guardsmen would not be at the increased risk of additional and serious injury. The West Virginia Guardsmen would also not be forced to expend additional monies and incur additional economic damages for appropriate medical monitoring, including at least a biannual CT (computerized axial tomography) scan and sputum pathology screening.

40. As a direct and proximate result of KBR's liability, a medically indicated monitoring regime is reasonably necessary and supported by contemporary scientific principles. As a direct and proximate result of KBR's wrongful conduct, West Virginia Guardsmen have sustained and will continue to sustain direct physical impacts from the injurious exposures, including damaged immune systems and emotional distress and physical manifestations thereof, mental anguish, economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief in amounts to be proven at trial, to monitor the health of the West Virginia Guardsmen, and to pay or reimburse West Virginia Guardsmen for all evaluative, monitoring, diagnostic, preventative, and corrective medical, surgical, and incidental expenses caused by KBR's wrongdoing.

41. The acts of Defendants herein were done intentionally, willfully, wantonly, maliciously or recklessly with indifference to the rights of others thereby entitling the West Virginia Guardsmen to punitive damages.

42. As a result of Defendants' acts and/or omissions, the West Virginia Guardsmen have sustained damages in excess of the minimum jurisdictional limits of this Court.

43. The West Virginia Guardsmen are entitled under law to the recovery of prejudgment interest at the maximum legal rate.

**INAPPLICABILITY OF CERTAIN ALLEGED LEGAL EXCUSES/DEFENSES**  
**ANTICIPATED TO BE ASSERTED BY KBR**

**Fraudulent concealment/tolling of statute of limitations/discovery rule**

44. KBR may be anticipated to claim that some or all of the West Virginia Guardsmen's claims are barred by the applicable statute of limitations. This excuse is barred by KBR's active concealment of its misconduct and the injurious effects of the exposure on the West Virginia Guardsmen. Even as recently as the fall of 2008, KBR apparently was still providing to the United States Army, for further dissemination to our soldiers, information denying any knowledge by KBR of the site contamination until the end of July 2003 (even though KBR managers were admittedly aware by at least May 2003, *see, Para. 4.2*). *See* Exhibit "G", Chronology, KBR both morally and legally may not benefit from fraudulent concealment of its wrongdoing.

45. KBR's concealment was not limited to the false and misleading statements it disseminated; KBR conducted evidentiary "spoliation" to further attempt to make it more difficult to hold it accountable for its actions. Even though soil testing showed almost 1.6 percent of the soil was sodium dichromate at differing tested locations, and most of the civilian workers incompletely tested (as outlined in the following paragraph) showed elevated chromium levels, KBR reported instead that its air testing showed only "safe" levels of chromium exposure. *But See*, Exhibits "A"- "D". However, according to KBR's own industrial hygienist, Dr. Sudhir Desai, KBR waited until after the most injurious exposure from the contaminated site, during the "shamal", or Iraqi windy season in June and July, to actually conduct any air sampling:

Q. As an industrial hygienist, OSHA professional, how reasonable is it, or unreasonable, not to take samples during a dust storm when workers are frequently working in dust storms?

A. He should have collected. Personal opinion.

Q. Because?

A. It's an ambient condition that can change.

Q. And if you have a work site with identified sodium dichromate around in bags, mixing room, buried in the sludge, how critical is it, if you really want to know what the risks are, to take samples during dust storms?

A. It's obvious he should have col-collected.

Q. Ever get any explanation from any HSE manager, including Dennis Bagnoche /KBR corporate HSE manager!, why Mr. Keyston, when sent out there, didn't take samples during dust storms?

A. I do not know.

Q. Really excusable, from a safety standpoint, not to take samples during a dust storm?

A. No.

46. By its nature, hexavalent chromium is quickly introduced and "uptaken" at the cellular level, and it quickly damages the cell at a most basic level, then is quickly disposed of by the human body. The most visible sign of acute poisoning - bleeding from the nose - is apparent at the time of the exposure, and may or may not continue on an intermittent level thereafter. What that means is that there is no test, unless taken in a brief window of time within weeks of the exposure, that can specifically confirm hexavalent chromium presence and levels, and the affected individual is simply left with a ticking health time bomb. KBR conducted incomplete blood testing on civilian workers exposed at Qarmat Ali and the blood testing revealed elevated levels of total chromium (which includes but is not limited to just hexavalent chromium). KBR's medical director, Dr. Robert Conte, confirmed that when confronted with these blood test results, KBR's managers made the decision not to have the exact test done that would be necessary to confirm the presence and extent of hexavalent chromium toxicity in the workers showing symptoms:

Q. You knew the initial human medical monitoring tests did not include tests that would identify levels of hexavalent chromium in blood?

A. We knew it would involve just total chromium; that's correct.

Q. What--

A. Total chromium.

Q. What I just said was correct?

A. Correct.

Q. You knew the tests that were done would not identify the level of hexavalent chromium in the blood?

A. That's correct.

Q. You knew the tests that were done would not identify the level of hexavalent chromium in the blood?

A. That's correct.

Q. These discussions that you were involved in –

A. Yeah.

Q. -- with managers including by e-mail –

A. Uh-huh.

Q. -- you were always sitting in corporate offices in Houston when you were involved in it?

A. That's correct.

Q. These discussions that you've told us about where –

A. Uh-huh.

Q. -- hexavalent chromium blood tests hasn't yet been done, all conducted here in Houston, Texas?

A. My -- my -- yeah. Any discussions I would have had would have been by e-mail and discussed out of my office in Houston. That's correct.

47. The West Virginia Guardsmen repeatedly received information in 2003 that their exposure to the chemicals at Qarmat Ali was minimal and that there was no significant health risk. It was not until after June 2008, during the Senate Hearings described above, that the extent of the exposure (and KBR's concealment of same) was revealed to the public. In June or July of 2008, the Commander of the West Virginia National Guard was notified; and he set about the task of attempting to notify the soldiers exposed, including the West Virginia Guardsmen. Therefore, the West Virginia Guardsmen did not know, and in the exercise of reasonable care, could not have known of the basis for this claim.

**Government Officer/state secrets/government contractor**

48. As a private company, KBR charges taxpayers enormous amounts of money, profits handsomely, and did so for its Qarmat Ali project. KBR often claims it is immune from being held accountable for its misconduct overseas. As at least one United States Court of



Michael P. Doyle, Esq. (will seek admission *pro hac vice*)  
Jeffrey L. Raizner, Esq. (will seek admission *pro hac vice*)  
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