

FILED

01

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

2004 OCT 26 P 4:05

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

----- X

THE KUWAIT COMPANY FOR  
PROCESS PLANT CONSTRUCTION &  
CONTRACTING k.s.c./MORRIS  
CORPORATION (AUST) PTY, LTD,  
A JOINT VENTURE,

Plaintiff,

v.

Civil Action No. 1:04 CV 1289 (LMB) (LO)

BROWN & ROOT SERVICES,  
A DIVISION OF KELLOGG, BROWN &  
ROOT, INC.

SERVE:

CT Corporation System  
Registered Agent  
4701 Cox Road, Suite 301  
Glen Allen, VA 23060

Defendant.

----- X

**COMPLAINT FOR BREACH OF SETTLEMENT AGREEMENT**

Plaintiff The Kuwait Company for Process Plant Construction & Contracting k.s.c./Morris Corporation (AUST) PTY. Ltd. a Joint Venture (hereafter "KCPC/Morris" or "Joint Venture"), complaining of defendant Brown & Root Services, a division of Kellogg, Brown & Root, Inc. (hereafter "KBR") alleges as follows:

**PRELIMINARY STATEMENT**

1. This action arises from KBR's breach of a settlement agreement with the Joint Venture. KBR and the Joint Venture entered into a subcontract on June 17, 2003 pursuant to which the Joint Venture agreed to establish and provide food service operations for U.S. troops

①

near the Iraqi city of Tikrit. KBR terminated the subcontract on July 31, 2003. After months of discussions, KBR and the Joint Venture met in May 2004 in KBR's offices in Arlington, Virginia in an effort to resolve the dispute. On May 19, 2004, the parties entered into a settlement agreement under which KBR agreed to pay the Joint Venture \$20,440,000.00 within 60 days. The Joint Venture agreed to the 60-day payment period after receiving assurances from KBR that it would likely make payment within 14 days and that the 60-day period was necessary to allow for unforeseen delays. KBR has since failed to make the payment.

### **THE PARTIES**

2. KCPC/Morris is a joint venture between The Kuwait Company for Process Plant Construction & Contracting k.s.c., a Kuwaiti company, and Morris Corporation (AUST) PTY. Ltd., an Australian company. The Joint Venture is organized and existing under the laws of Kuwait. The Joint Venture's principal place of business is in Kuwait.

3. KBR is a corporation organized and existing under the laws of the State of Delaware. KBR does business in the Commonwealth of Virginia and has an office at 1550 Wilson Blvd., Arlington, Virginia.

### **JURISDICTION AND VENUE**

4. The Court has subject matter jurisdiction pursuant to 28 U.S.C. 1332(a)(2), in that the Joint Venture is a citizen of a foreign state and KBR is a citizen of the State of Delaware and the matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000.00.

5. The Court has personal jurisdiction over KBR pursuant to the Virginia long-arm statute, Va. Code Ann. § 8.01-328.1, in that the Joint Venture's cause of action arises from KBR's transaction of business in Virginia.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2), in that a substantial part of the events giving rise to the Joint Venture's claim occurred in this judicial district.

### FACTS

#### KBR Enters Into a Settlement Agreement to Resolve the Joint Venture's Claims

7. In June 2003, KCPC/Morris entered into Master Agreement NO. LOGCAP-KU-MA00006 with KBR (the "Subcontract") pursuant to which KCPC/Morris agreed to establish and provide dining facilities and food services for U.S. troops in locations to be determined throughout Kuwait and Iraq. On June 29, 2003, KBR issued Work Release #1, which required the Joint Venture to establish and operate two dining facilities for U.S. Army Camp Site C-1 to be located in or in the vicinity of the northern section of Tikrit, Iraq. The pricing for the work was based on an agreed man-day rate, which was to be recovered through the charges made for food services set forth in the Subcontract. In determining the rate it would charge, the Joint Venture included the costs it would incur to purchase and establish the dining facilities for use in Tikrit, which would include transporting structures to use as dining and support facilities to that location from outside Iraq and constructing those facilities under wartime conditions. The prices also included the cost of bringing in workers to that location that could perform the work and be approved by the U.S. military, food and consumables, and the cost of financing the work. Work Release #1 had a "Not to Exceed" Amount of \$35,132,482. On that same day, KBR issued Work Release #2 for the same services in the southern part of Tikrit, Iraq, designated as Site C-2. The same method of calculating the price of the work that went into pricing for Work Release #1 applied to Work Release # 2, although each contract had different man-day rates. Work Release #2 had a "Not to Exceed" amount of \$26,206,932.78.

8. As expected under wartime conditions, the Joint Venture was delayed in its performance due to events that were beyond its control, including extensive delays caused by the U.S. military. Despite these difficult conditions, the Joint Venture began serving food to U.S. troops at the two locations within the C-1 site in July 2003.

9. Notwithstanding the extraordinary efforts undertaken by KCPC/Morris to construct facilities and establish food service in Tikrit and the excusable delays encountered by the Joint Venture, KBR claimed to be dissatisfied with the performance and terminated Work Release #1 (Site C1) and Work Release #2 (Site C2) for default on July 31, 2003.

10. In August 2003, KBR changed the termination of Work Release #2 for default to a termination for convenience. KBR requested that the Joint Venture continue to provide services at both sites until a new contractor could commence performance. Services were provided for an additional 44 days, as requested.

11. KBR then awarded a subcontract for the food service to a company with which certain KBR employees had previous dealings. KBR would not allow the Joint Venture to remove its equipment and supplies brought to the sites and KBR provided the new subcontractor with the facilities constructed and supplies brought to the sites by the Joint Venture, which included more than 135 forty-foot trailers containing supplies and equipment.

12. On September 13, 2003, the Joint Venture submitted a proposal for settlement of its claims arising out of the termination of Work Release ##1 and 2. On October 26, 2003, KBR responded with its own proposal for settlement, which fell short of a realistic settlement proposal and was promptly rejected by the Joint Venture by letter dated October 27, 2003. KBR then requested additional documentation supporting the Joint Venture's claims, which KCPC/Morris provided on November 5, 2003. On December 12, 2003, KBR responded that it would resolve

the Joint Venture's claims within 60 days. KCPC/Morris sought a meeting with KBR to further discuss settlement of the issue. Although the parties met in December in Kuwait, without reaching an agreement, KBR committed to the Joint Venture that it would continue to assess the claim. However, the Joint Venture saw no evidence that KBR was making any progress in its evaluation. In response to the Joint Venture's complaints about lack of progress regarding settlement, KBR stated that it was reviewing the documentation provided by KCPC/Morris and calculating an amount which KBR could agree to pay the Joint Venture.

13. In January 2004, KBR informed the Joint Venture that the documentation from the Joint Venture had been transferred to KBR's office in Arlington, Virginia for analysis and action. On January 13, 2004, Mr. William Jonas, Vice-President Procurement for KBR in Arlington, confirmed that he was reviewing the files and in February would schedule a time for the Joint Venture to meet in Arlington with him to settle the matter.

14. On February 24, 2004, the parties met in Arlington. KBR promised at that meeting to reach agreement with the Joint Venture within two weeks. However, that time passed and KBR claimed not to be ready to reach an agreement. After further delay, the parties agreed to once again meet at KBR's office in Arlington, Virginia in order to try to reach a settlement.

15. From May 17 through May 19, 2004, the Joint Venture met with Mr. Jonas, Mr. Steve Grumbach, Mr. Ken Hudson and Ms. Kathleen Manolakas from KBR and discussed the terms of a settlement of the KCPC/Morris claims. The employees of KBR represented that they had the authority to enter into a settlement agreement with the Joint Venture. The meetings took place at KBR's Arlington, Virginia office.

16. On May 19, 2004 the parties agreed to a final settlement that required the payment by KBR to the Joint Venture of \$20,440,000 within 60 days, or by July 18, 2004. The

Joint Venture agreed to the 60-day period only after KBR stated that it would likely make payment within 14 days and wanted a 60-day payment period in case of an unforeseen delay. At the Joint Venture's insistence, KBR agreed to pay interest at a rate of 10 percent per annum on any part of the \$20,440,000 that was not paid within 60 days. KBR also agreed to pay each of the Joint Venture partners separately in amounts provided by the Joint Venture to KBR. Finally, KBR agreed to change the termination for default of Work Release #1 to a termination for convenience.

17. On May 30, 2004, the Joint Venture confirmed the terms of the settlement in an email to Mr. Jonas. On June 8, 2004, Mr. Jones confirmed by telephone that the parties had reached an agreement. This was further memorialized in a June 12 email from the Joint Venture to Mr. Jonas.

18. By email dated June 22, 2004, Ms. Manolakas informed the Joint Venture that she was working on a written document that would "formalize" the provisions of the Settlement Agreement and that she was working on "accomplishing payment." Although the parties had agreed at the May 19 meeting that KBR would reduce the terms of the Settlement Agreement to a writing, this was not a condition of the settlement. On several occasions during the months of June and July 2004, KBR provided assurances to the Joint Venture that it would pay the Joint Venture in accordance with the Settlement Agreement.

#### **KBR Fails to Honor the Settlement Agreement**

19. KBR did not make the required payment by July 18, 2004. Instead, on July 23, 2004, KBR requested that the Joint Venture provide additional documentation in support of its claim. The provision of additional information by the Joint Venture was not a condition to the Settlement Agreement and was not discussed in the May settlement talks. Although the Joint

Venture provided the documentation requested by KBR, it insisted on immediate payment of the now overdue settlement amount. KBR's request for additional supporting documentation caused the Joint Venture to be concerned that KBR was renegeing on the Settlement Agreement.

20. The Joint Venture gave KBR many opportunities to honor the Settlement Agreement and avoid this litigation. However, KBR failed to make payment and has not identified a date on which it intends to make payment to the Joint Venture and convert the termination for default to one for convenience.

21. The last correspondence from KBR, on September 23, 2004, stated that it had sent "the Agreement" to the Defense Contract Audit Agency (the "DCAA") for review and that KBR would let the Joint Venture know when it received a response. KBR provided the Joint Venture with no further information regarding what had been sent to DCAA and ignored the Joint Venture's request for a copy of the documentation allegedly forwarded to DCAA. The September 23 email from KBR to the Joint Venture did not confirm that it intended to pay the Settlement Amount to the Joint Venture. In fact, the submission of the Settlement Agreement to the DCAA was not agreed upon by the Joint Venture as a condition to payment and signaled again that KBR did not intend to honor the Settlement Agreement.

22. Approximately 150 days have passed since the parties entered into the Settlement Agreement and KBR has not made payment of the Settlement Amount with interest and has not changed the termination for default to a termination for convenience. KBR's failure to honor the Settlement Agreement has caused injury to the Joint Venture.

WHEREFORE, the Joint Venture requests that the Court:

- (a) enter judgment in favor of the Joint Venture and against KBR for breach of the Settlement Agreement;
- (b) Award KCPC/Morris damages in the amount of \$20,440,000.00, plus accrued interest at the rate of 10 percent per annum;
- (c) Order KBR to make payment of portions of the Settlement Amount to the Joint Venture partners separately in the amounts agreed upon by the Joint Venture Partners;
- (d) Order KBR to convert the termination for default of Work Release #1 (Site C1) to a termination for convenience;
- (e) Award KCPC/Morris reasonable attorneys' fees and costs associated with this matter; and
- (f) Award KCPC/Morris such further relief as the Court may deem just and proper.

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

By: 

Scott M. Heimberg  
Jonathan S. Spaeth  
Jonathan H. Hambrick (VA. Bar No. 37590)  
1333 New Hampshire Avenue, N.W.  
Suite 400  
Washington, D.C. 20036  
(202) 887-4000 (Tel)  
(202) 887-4288 (Fax)

Dated: October 26, 2004

ATTORNEYS FOR PLAINTIFF  
KCPC/Morris