

2. This Court has personal jurisdiction over Defendants because they maintain routine and systemic business contacts within this judicial district. More specifically, these Defendants' routine and systemic contacts within this judicial district related directly to, and in fact included, recruitment contacts with DONALD TOLFREE and business pursuits related to the projects, contracts, and services provided in Iraq that are inextricably intertwined with the service of DONALD TOLFREE and others like him.

3. This is a proper venue, pursuant to 28 U.S.C. § 1391, because it is the District in which one or more of the Defendants reside, 28 U.S.C. § 1391(b)(1); in which a substantial part of the events or omissions giving rise to the claim occurred, 28 U.S.C. § 1391(b)(2); and in which one or more of the Defendants may be found, 28 U.S.C. § 1391(b)(2).

II. PARTIES

Plaintiff:

4. Plaintiff KRISTEN MARTIN is the adult daughter of decedent, DONALD TOLFREE, and the duly appointed personal representative of the Estate of DONALD TOLFREE, deceased, pending in the Probate Court for the County of Shiawassee, State of Michigan. Plaintiff is a resident of Owosso, Michigan and resides at 912 Kenwood Drive, Owosso Michigan 48867. Plaintiff was living at 300 W. Ridge St., Apt 2, Owosso, MI 48867, at the time the causes of action alleged in this complaint accrued. Plaintiff asserts her individual claims, her claim for the wrongful death of DONALD TOLFREE on behalf of all wrongful death beneficiaries, and the survival claims of the Estate of DONALD TOLFREE.

Defendants:

5. Defendant HALLIBURTON COMPANY ("HALLIBURTON") is a corporation incorporated in the State of Delaware with its principal place of business located in Dubai, UAE. HALLIBURTON does business in Texas, and derives substantial profits from its activities in the State of Texas. This lawsuit arises out of Defendant's business and recruiting in this state. Plaintiff alleges that HALLIBURTON was not the employer of DONALD TOLFREE and therefore is not entitled to any rights, protections, claims, or immunities as an employer regarding HALLIBURTON's liability for the alleged intentional, willful, wanton, and malicious acts and conduct of Defendants and/or its agents, all of which resulted in the injury and death of DONALD TOLFREE.

6. Defendant KBR, INC. ("KBR") is a corporation incorporated in the State of Delaware with its principal place of business located in Houston, Texas. KBR does business in Texas, and derives substantial profits from its activities in the State of Texas. Plaintiff alleges that KBR was not the employer of DONALD TOLFREE and therefore is not entitled to any rights, protections, claims, or immunities as an employer regarding KBR's liability for the alleged negligent, intentional, willful, wanton, and malicious acts and conduct of Defendants and/or its agents, all of which resulted in the injury and death of DONALD TOLFREE.

7. Defendant, KELLOGG BROWN & ROOT, INC. ("KELLOGG"), is a corporation incorporated in the State of Delaware with its principal place of business located in Houston, Texas. KELLOGG does business in Texas, and derives substantial profits from its activities in the State of Texas. Plaintiff alleges that KELLOGG was not the employer of DONALD TOLFREE and therefore is not entitled to any rights, protections, claims, or immunities as an employer regarding KELLOGG's liability for the

alleged negligent, intentional, willful, wanton, and malicious acts and conduct of Defendants and/or its agents, all of which resulted in the injury and death of DONALD TOLFREE.

8. Defendant KELLOGG BROWN & ROOT SERVICES, INC., ("KBRSI") is a corporation incorporated in the State of Delaware with its principal place of business located in Houston, Texas. KBRSI does business in Texas, and derives substantial profits from its activities in the State of Texas. Plaintiff alleges that KBRSI was not the employer of DONALD TOLFREE and therefore is not entitled to any rights, protections, claims, or immunities as an employer regarding KBRSI's liability for the alleged negligent, intentional, willful, wanton, and malicious acts and conduct of Defendants, all of which were intended by Defendants to result, and resulted in the injury and death of DONALD TOLFREE.

9. Defendant SERVICE EMPLOYEES INTERNATIONAL, INC. ("SEII") was specifically identified by Defendant as the "employer" of DONALD TOLFREE before and at the time the DONALD TOLFREE accepted work in Iraq, is a foreign corporation, and is believed by Plaintiff to be incorporated in the Cayman Islands with its principal place of business in Dubai, UAE. Plaintiff alleges that DONALD TOLFREE's employment with SEII was induced by the Defendants' fraud, intentional misrepresentations, fraudulent concealment of material facts, and deceit; therefore, any rights, claims, protections, or immunities to which Defendant SEII may otherwise be entitled to as an employer are void and unenforceable.

10. Defendant, JOHN DOE 1, ("JD1") was at all times pertinent hereto was the convoy commander and believed to be an employee of Defendants acting in a supervisory/command capacity directing the actions of DONALD TOLFREE at the

direction of Defendants. DONALD TOLFREE's convoy on February 5, 2007, in which DONALD TOLFREE was killed on February 5, 2007, was under the direct operation and control of Defendants and directly commanded by JD1 and KBR Defendants.

11. The true names, capacities, and/or relationships, whether individual, corporate, joint venture, partnership, agency, or otherwise, of other Defendants designated as DOE are not alleged and are unknown to Plaintiff at the time of filing this Complaint. Upon discovering the identities of any such Defendants or upon ascertaining facts demonstrating a Defendant's liability, Plaintiff will seek leave of court to amend this Complaint. Plaintiff currently alleges that all of said currently unknown Defendants are either joint tortfeasors and/or jointly and severally liable and legally responsible in some manner for the events, injuries, and death alleged in this Complaint, and proximately caused the death of DONALD TOLFREE as well as the suffering and damages of the Plaintiff and other surviving family of DONALD TOLFREE.

III. FACTUAL ALLEGATIONS

A. Logistics Civil Augmentation Program (LOGCAP) III Contract

12. Plaintiff is informed and believes that in December, 2001, the United States government awarded an 80 billion dollar "Logistics Civil Augmentation Program ("LOGCAP") III" government contract to Defendant KELLOGG. Plaintiff is informed and believes that KELLOGG subsequently became KBR (collectively "KBR Defendants"). Plaintiff is informed and believes that in 2003, KBR Defendants transferred their duties under the contract to the subsidiary KBRSI pursuant to what Defendants have identified as a "Novation Agreement." Pursuant to the LOGCAP contract, KBR Defendants were to provide non-combat logistical services and support to and for the United States Army

Material Command in the country of Iraq. The LOGCAP is a U.S. Department of Defense initiative for *peacetime* planning and use of civilian contractors for the purpose of implementing peaceful planning and rebuilding of the infrastructure of Iraq. The LOGCAP contract, known as a "costplus" contract, provides for payment by the United States government to KBR Defendants for all billed costs as well as an agreed-upon profit margin for its civilian work in Iraq.

13. On December 12, 2006, DONALD TOLFREE answered an employment advertisement posted by Halliburton and KBR Defendants on an internet employment web site. On December 17, 2006, DONALD TOLFREE flew to Houston, Texas and met with officials from Defendant Halliburton, KBR Defendants, and Defendant SEII. DONALD TOLFREE relied on certain assurances made by these Defendants regarding his 100% safety and the fact that he would be protected by the United States military at all times during his employment in Iraq. Based on those assurances, DONALD TOLFREE executed an employment contract with SEII.

14. On January 11, 2007, DONALD TOLFREE and another worker (here in after referred to as "Starry") arrived in Iraq to drive delivery trucks in convoys and were assigned to work out of Camp Anaconda in Iraq. Upon information and belief, on February 4, 2007, DONALD TOLFREE and Starry were asked if they would volunteer to drive chase trucks for a Convoy rolling out on February 5, 2007.

15. Upon information and belief, chase trucks, are referred to as "Bobtails", semi-trucks without trailers assigned to convoys to act as backup trucks and pull trailers in the event a truck in the convoy becomes disabled.

16. Upon information and belief, both DONALD TOLFREE and Starry volunteered and were assigned as chase truck drivers.

17. Upon information and belief, at 1640 hours on February 5, 2007, a convoy briefing and rehearsal was conducted for all drivers involved in the convoy.

18. Upon information and belief, the convoy briefing and rehearsal were attended by Starry and DONALD TOLFREE.

19. Upon information and belief, because Starry and DONALD TOLFREE were on site for less than a month and were relatively inexperienced, neither fully understood his duties, duties which were new to both and which were to be performed on unfamiliar territory.

20. Upon information and belief, both Starry and DONALD TOLFREE believed that as chase truck drivers, they were to follow the convoy from the staging area to the north gate and would be instructed by the convoy commander to exit the convoy.

21. Upon information and belief, at the time of the incident, no relevant written policy existed regarding chase trucks or their support role for outbound convoys.

22. Upon information and belief, the route from the staging area to the North Gate is approximately 10 miles.

23. Upon information and belief, all KBR Defendant trucks are provided with KBR Defendant radios to communicate with each other and the convoy commander only.

24. Upon information and belief, drivers including Starry and DONALD TOLFREE did not have Military radios to communicate the soldiers or Check Points.

25. Upon information and belief, there is a radio dead zone around the camp perimeter that prevents all non-military communications.

26. Upon information and belief, in all convoys other than those rolling out to the north gate, the convoy commander is in a bobtail at the rear of the convoy to allow observation and command of the convoy vehicles.

27. Upon information and belief, Starry and DONALD TOLFREE were informed that the convoy commander (JOHN DOE) would order them to leave the convoy via radio at the at the appropriate time.

28. Upon information and belief, the convoy commander (JOHN DOE) was in the front of the convoy as it rolled out of the North Gate to be the first to cross a pontoon bridge and observe all vehicles in the convoy cross and then to take up position at the rear.

29. Upon information and belief, between January 11, 2007 and February 5, 2007, neither Starry nor DONALD TOLFREE had driven a truck through a security check point and out of Camp Anaconda.

30. Upon information and belief, convoy commanders were required have a United States soldier count the vehicles in their convoy as they leave the camp and have the count radioed to the convoy commander's vehicle pursuant to:

AFRC-CCA-TC-650

6. Procedures a.(1)(e)

...Convoy Commander to send two Soldiers to the MCT CP (Checkpoint). One of the Soldiers will relay messages to the Convoy Commander whether their com Logistic Patrol (CLP) is approved to roll out and when the MCT CP is all clear. Recommended that the Soldier detailed for this task is from the Convoy Commander's vehicle. The second Soldier will validate (count) all vehicles that roll out of the MCT CP.

31. Upon information and belief, JOHN DOE acting in his capacity as convoy commander for Defendants failed to have a soldier count the vehicles in his convoy rolling out of the check point. Rather, JOHN DOE simply counted the number of headlights in his convoy.

32. Upon information and belief, accountability of personnel and equipment is an implied task in all missions.

33. Upon information and belief, at 1847 hours on February 5, 2007, DONALD TOLFREE, followed by Starry, exited the North Gate of Camp Anaconda in Iraq as part of a convoy headed toward FOB Warhorse.

34. Upon information and belief, Starry and DONALD TOLFREE were not aware they had exited the Camp until the convoy had traveled down Road Heather, turned on to Road Dover and traveled a ½ mile.

35. Upon information and belief, Starry attempted to contact the convoy commander to ask about leaving the convoy.

36. Upon information and belief, a communication came across the KBR Defendants radio, after clearing the radio dead zone, believed to be from the convoy commander, inquiring as to the status of the extras and if they were still with the convoy.

37. Upon information and belief, Starry radioed back informing the convoy commander that they “we’re still here.”

38. Upon information and belief, a communication came across the KBR Defendants radio instructing “the extras” to turn around.

39. Upon information and belief, DONALD TOLFREE made a u-turn followed by Starry and began heading back toward Camp Anaconda.

40. Upon information and belief, the last KBR Defendant vehicle in the convoy was a tow truck.

41. Upon information and belief, the tow truck driver, at the rear of the convoy, radioed the convoy commander to inform him that two KBR Defendant trucks had just turned around and exited the convoy heading back toward camp.

42. Upon information and belief, US Military Gun Truck 6 was the last vehicle in the convoy behind the Tow Truck.

43. Upon information and belief, the crew of Gun Truck 6 radioed the convoy commander and reported that he observed two KBR Defendant trucks heading back to the gate.

44. Upon information and belief, there was a response from the convoy commander that the two chase trucks that were not to be part of the convoy.

45. Upon information and belief, the military procedure for the return of trucks to camp is three gun trucks to one truck. The Tolfree and Starry trucks were unaccompanied by gun trucks as they traveled back to Camp Anaconda.

46. Upon information and belief, the convoy commander did not notify the US Military about DONALD TOLFREE and Starry returning to Camp Anaconda.

47. Upon information and belief, the convoy commander did not inform the sentries posted at the north gate that there were two KBR Defendant trucks returning.

48. Upon information and belief, Defendants were aware of the U.S. Military's procedure for the return of trucks to camp, the U.S. Military's protocol for dealing with unanticipated/unescorted vehicles approaching the camp, and the substantial certainty that drivers of unescorted, unanticipated, and/or unreported vehicles approaching the camp would suffer significant injury and/or death.

49. Upon information and belief, the sentry posed at the north gate observed the two trucks approaching the gate and noted that there were not two KBR Defendant trucks scheduled to enter the camp.

50. Upon information and belief, the guards at the north gate of Camp Anaconda applied the protocol for dealing with unanticipated/unescorted vehicles approaching the camp.

51. Upon information and belief, a gunner, manning a 50 caliber machine gun on the top of a military vehicle at the north gate of camp Anaconda, shot 100 rounds into the cab of the truck being driven by DONALD TOLFREE killing him instantly. Plaintiff alleges that the United States Military acted appropriately and foreseeably in all matters relating to the circumstances surrounding the injury and death of DONALD TOLFREE. Plaintiff does not contend nor allege that the United States Military engaged in any wrongful or culpable conduct, including without limitation negligent, grossly negligent, reckless, or intentional conduct, and does not contend that any such conduct caused or contributed to the injury or death of DONALD TOLFREE or the damages of Plaintiff. Plaintiff's claims challenge actions taken and omissions made solely by Defendants.

52. A KBR Defendant representative traveled to Owosso, Michigan and falsely informed KRISTEN MARTIN that her father, DONALD TOLFREE, was killed by an insurgent's road side bomb. On January 10, 2008, almost a year after the death of DONALD TOLFREE, KBR Defendants continued to misrepresent and misleadingly omit the true circumstances of DONALD TOLFREE's death to Plaintiff and to Senator Carl Levin, who had inquired about the incident on behalf of Plaintiff KRISTEN MARTIN.

IV.
CAUSES OF ACTION
FIRST CAUSE OF ACTION

NEGLIGENCE

**(Against KBR Defendants, KBRSI, SEII Through
Their Commander(s) and Agent(s) and JOHN DOES 1 through 10)**

53. Defendants through their management and commanders owed workers in general and DONALD TOLFEE specifically the following duties among others:

- i) The duty to adequately train and supervise workers on the details of jobs they are asked to perform, more specifically:
 - A) The expectations of chase truck drivers;
 - B) The identification of the perimeter of the military camps;
 - C) The proper protocol for approaching a military camp in a truck;
 - D) The importance of not approaching a military camp without having an armed US Military escort;
 - E) The expectations of chase truck drivers when participating in convoys;
- ii) The duty order a soldier to count and report the number of trucks leaving the gate in a convoy and report to a second soldier within the convoy commander's vehicle to insure only the correct number of vehicles exit the camp;
- iii) The duty to know the location of all trucks and individual truck drivers in the convoy;
- iv) The duty to insure any trucks returning to camp are appropriately announced, escorted, and safe;
- v) The duty to inform the sentry at the gate when KBR Defendant trucks that are not listed on manifests scheduled to return to camp are going to be approaching the gate;

- vi) The duty to use the KBR Defendant radios to check on the status of KBR Defendant bobtails that are reported to be heading toward camp unescorted by military personnel;
- vii) The duty to refrain from sending Bobtail trucks unescorted and unannounced to a US Military Camp when aware of recent warnings about stolen KBR Defendant trucks anticipated to be used as weapons against US Military Camps;
- vii) The duty to entrust operations under their supervision to qualified, competent personnel and/or organizations capable of performing the tasks required;
- viii) The duty to hire qualified, competent personnel and/or organizations capable of performing the tasks required; and
- ix) The duty to adequately train personnel and/or organizations responsible for supervising and managing workers and performing the tasks required;

54. Defendants, through supervisors and agents, committed acts of omission and commission, which collectively and severally constituted negligence, which were a proximate cause of the injuries to and death of DONALD TOLFREE and the damages of Plaintiff. In particular, Defendants breached the aforementioned duties by, among other things:

- i) failing to adequately train workers on the details of jobs they are asked to perform, more specifically:

- A) The expectations of chase truck drivers, which would have prevented DONALD TOLFEE and Starry from questioning their roles and procedures to be followed;
 - B) The identification of the perimeter of the military camps so that DONALD TOLFEE and Starry would have been aware that they actually exited Camp Anaconda;
 - C) The proper protocol for approaching a US Military Camp in a truck;
 - D) The importance of not approaching a military camp without having an armed US Military escort causing DONALD TOLFEE and Starry to be mistaken for insurgents attempting to enter the camp;
- ii) Failing to develop and publish written expectations of chase truck drivers when participating in convoys;
 - iii) Failing to order a soldier to count and report the number of trucks leaving the gate in a convoy and report to a second soldier with the convoy commanders vehicle to insure only the correct number of vehicles exit the camp to prevent unintended departures of personnel and trucks;
 - iv) Failing to know the location of all trucks and individual truck drivers in the convoy;
 - v) Failing to insure that the two chase trucks returning to camp were escorted and safe;

- vi) Failing to inform the sentry at the gate that the trucks driven by DONALD TOLFEE and Starry were not listed on manifests scheduled to return to camp and were going to be approaching the gate;
- vii) Failing to use the KBR radios to check on the status of bobtails that are reported to be heading toward camp unescorted by military personnel;
- viii) Failing to refrain from sending Bobtail trucks unescorted and unannounced to a US Military Camp when aware of recent warnings about stolen trucks anticipated to be used as weapons against US Military Camps;
- ix) Entrusting the management and supervision of dangerous convoy operations to unqualified, incompetent, and/or reckless personnel or organizations;
- x) Hiring and/or retaining unqualified, incompetent, and/or reckless personnel or organizations; and
- xi) Failing to adequately train retained personnel or organizations for the tasks and duties anticipated in convoy operations.

55. The aforementioned breaches caused DONALD TOLFEE to approach the north gate of Camp Anaconda without military escort at a time of known heightened alert and increased sensitivity to approaching unidentified and unescorted trucks.

56. Defendants intentionally engaged in their conduct and activities knowing that the particular results of the weapons attack by friendly forces upon the unarmed and unprotected civilian truck drivers, and drivers' subsequent serious physical injuries and

deaths, was substantially certain to follow the order that DONALD TOLFREE return to Camp Anaconda unannounced, without military escort, and without the ability to communicate with the friendly forces that perceived DONALD TOLFREE to be a threat.

57. The unanticipated and unannounced approach of DONALD TOLFREE's truck toward the north gate of the US Military Camp Anaconda caused the foreseeable and anticipated response of the sentry shooting and killing him.

SECOND CAUSE OF ACTION

WRONGFUL DEATH

(Against All Defendants)

58. As against the Defendants, and each of them, Plaintiff incorporates by reference all paragraphs of this Complaint, with the same force and effect as though set forth at length in their entirety in this cause of action, and further allege, as follows:

59. As the proximate result of the negligent, willful, wanton, intentional, reckless, and grossly negligent acts, omissions, and conduct of Defendants, and each of them as described in this Complaint, DONALD TOLFREE suffered fatal gunshot wounds and ultimately lost his life.

60. As a proximate result of Defendants' acts and omissions resulting in the wrongful death of DONALD TOLFREE, Plaintiff KRISTEN MARTIN has suffered loss of support, society, love companionship, inheritance, and consortium, and have also suffered severe mental anguish.

61. The acts and/or omissions of Defendants HALLIBURTON; KBR Defendants, KBRSI, and SEII were also knowing and willful and constituted malicious, willful, wanton, grossly negligent and/or reckless conduct within the meaning of *Tex. Civ. Prac. Rem. Code* § 41.001, *et seq.* Said acts and/or omissions proximately caused or contributed to DONALD

TOLFEE's untimely death and, as such, give rise to, and warrant, the imposition by a jury of significant punitive and exemplary damages against Defendants.

THIRD CAUSE OF ACTION

FRAUD AND FRAUD IN THE INDUCEMENT

(Against Defendants HALLIBURTON; KBR Defendants; KBRSI; and SEII)

62. Plaintiff incorporates by this reference, all preceding and successive paragraphs of this Complaint, in their entirety, as though fully set forth in this cause of action, and further allege as follows:

63. The statements, representations, and concealment of material facts, made by Defendants' agents, management employees, and representatives, and set forth in all of the recruitment medium and materials generated and produced by HALLIBURTON, KBR Defendants, KBRSI, and SEII, were false at the time Defendants' made such misrepresentations and were known by Defendants to be false at the time the misrepresentations and concealment of facts were made.

64. The misrepresentations and concealment of material facts were made by specific individuals who identified themselves as officers, directors, supervisory and management employees, agents, and/or representatives of each or either of HALLIBURTON, KBR Defendants, KBRSI, and/or SEII. The above-described misrepresentations and concealment of material facts were made by the above identified persons on behalf of Defendants for the purpose of inducing DONALD TOLFEE'S reliance upon the intentional misrepresentations and concealment of material facts in accepting work with Defendants and relocating to Iraq. Contrary to their recruitment advertisements, Defendants knew that the civilian truck drivers, including DONALD TOLFEE, would not

be adequately or sufficiently protected by 24 hour a day United States Military protection or that "with heightened security, you'll be 100% safe."

65. The above described misrepresentations and concealment of true facts were continuously made by Defendants during the process of advertising work in Iraq, before, during, and after the recruitment and orientation meetings held by Defendants in Houston, Texas, and during the civilian truck drivers' actual work in Iraq, all with Defendants' knowledge that Defendants' statements and misrepresentations were false and inaccurate.

66. The agents, employees, and representatives who made the specific misrepresentations and concealment of material facts to DONALD TOLFEE were including, but not limited to, HALLIBURTON's, KBR Defendants', KBRSI's, and/or SEII's Human Resources Director, and HALLIBURTON's, KBR Defendants', KBRSI's, and/or SEII's Director of Employment Recruitment. All of the above named agents, employees, and representatives of Defendants were provided with the specific authority and power to speak on behalf of all Defendants by virtue of being employed by Defendants and by virtue of being given their specific titles and positions of authority by Defendants. Defendants directed the above named individuals to interact with and recruit DONALD TOLFEE and other civilian truck driver worker applicants and workers and with all individuals who came to visit Defendants' facility and orientation meetings in Houston, Texas. Defendants and the above named individuals knew and were aware that DONALD TOLFEE, as a civilian truck driver looking for work to support his family, was specifically vulnerable and trusting of all representations and statements made by Defendants' agents and representatives and that DONALD TOLFEE would believe these statements. With the specific intent of exploiting the special vulnerability of DONALD TOLFEE and obtaining their agreement to accept work in Iraq, Defendants' agents and representatives identified in

this Complaint made the described misrepresentations and intentional concealment of material facts with the intent that DONALD TOLFEE would rely upon Defendants' misrepresentations and concealment of material facts in accepting work in Iraq and in agreeing to terminate his current employment, leave his home and family, and be physically relocated to Iraq.

67. The misrepresentations and concealment of material facts were fraudulent and induced DONALD TOLFEE to accept work in Iraq. In that DONALD TOLFEE was fraudulently induced to agree to accept work in Iraq, any agreement or terms agreed to by DONALD TOLFEE regarding his work in Iraq was fraudulently induced and therefore is void and unenforceable. Defendants' fraudulent misrepresentations and concealment of material facts were made for the specific purpose of HALLIBURTON, KBR Defendants, KBRSI, and SEII collecting large sums of money, amounting to billions of dollars, for every civilian worker working in Iraq.

68. DONALD TOLFEE relied to his detriment upon the deceptive descriptions of the conditions under which the workers would be working in Iraq, as represented on internet recruitment websites advertising work in Iraq. The job descriptions failed to disclose and concealed material facts regarding the true nature and extent of the extreme risk of harm and death involved in working in Iraq, and misrepresented the truth regarding the potential risks and hazards to which DONALD TOLFEE would be subjected, which included friendly and/or enemy attacks and death. DONALD TOLFEE in relying upon Defendants' misrepresentations and concealment of material facts, was induced to terminate his then current employment and accept work in Iraq.

69. DONALD TOLFEE had no knowledge of the falsity of Defendants' misrepresentations and concealment of material facts, and in fact believed Defendants'

statements to be true and accurate. DONALD TOLFREE had no information to give him reason to suspect the falsity of Defendants' misrepresentations and concealment of material facts.

70. DONALD TOLFREE had a right to rely, and was reasonable in his reliance, upon Defendants' misrepresentations and concealment of material facts as described in this Complaint, as Defendants placed themselves in a position of superior knowledge and authority over DONALD TOLFREE, who was unknowledgeable and unaware of the conditions in Iraq under which they would be required to perform their work duties.

71. DONALD TOLFREE suffered fatal wounds as a proximate and legal result of his reliance upon Defendants' misrepresentations and concealment of material facts in accepting work in Iraq. As a result of Defendants' business practices and fraudulent misrepresentations in inducing DONALD TOLFREE to work in Iraq and the resulting death of DONALD TOLFREE, the surviving family of DONALD TOLFREE has been and will continue to be deprived of the love, society, affection, guidance and support of DONALD TOLFREE.

72. The estate of DONALD TOLFREE, and KRISTEN MARTIN, have suffered physical, economic, and emotional injuries as a proximate and legal result of their reliance upon Defendants' misrepresentations and concealment of material facts and in accepting work in Iraq.

FOURTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(Against Defendants HALLIBURTON, KBR Defendants, KBRSI, and SEID)

73. As against the Defendants, and each of them, Plaintiff incorporates by reference all paragraphs of this Complaint, with the same force and effect as though set forth at length in their entirety in this cause of action, and further allege, as follows.

74. Plaintiff KRISTEN MARTIN is the natural daughter of DONALD TOLFREE, deceased.

75. The intentional and/or reckless conduct of Defendants HALLIBURTON; KBR Defendants; KBRSI; and SEIL, including without limitation falsely informing KRISTEN MARTIN that her father, DONALD TOLFREE, was killed by an insurgent's road side bomb, caused KRISTEN MARTIN to suffer severe emotional distress.

76. The conduct of Defendants was extreme and outrageous. Contrary to the information provided by Defendants to Plaintiff KRISTEN MARTIN, the death of DONALD TOLFREE resulted from "friendly fire" by U.S. military caused Defendants' negligent, reckless, and intentional conduct. Further, eleven months after the friendly fire incident which caused DONALD TOLFREE's death, Defendants represented to the United States Government through a letter to the home state senator of KRISTEN MARTIN, knowing the letter would be passed along to KRISTEN MARTIN, that her father died from insurgent activity or other hostility-related activity.

77. Defendants' intentional and/or reckless conduct proximately caused Plaintiff KRISTEN MARTIN to suffer severe emotional distress. No other cause of action would provide a remedy for the severe emotional distress caused by the conduct of Defendants.

FIFTH CAUSE OF ACTION

SURVIVORSHIP CAUSE OF ACTION

(Against All Defendants)

78. Plaintiff KRISTEN MARTIN, representative of the estate of DONALD TOLFREE, asserts a survival cause of action as she represents DONALD TOLFREE's surviving estate, pursuant to TEX. CIV. PRAC. & REM. CODE §§ 71.002 and 71.021.

79. Plaintiff is the lawful representative of the Estate of decedent DONALD TOLFREE.

SIXTH CAUSE OF ACTION

COMMON LAW CIVIL CONSPIRACY TO COMMIT FRAUD

(Against Defendants HALLIBURTON, KBR Defendants, KBRSI, and SEII)

80. Plaintiff incorporates by reference, as if fully set forth at length in their entirety, each and every allegation set forth in the preceding and succeeding paragraphs of this Complaint, and further allege as follows:

81. Plaintiff alleges that Defendants engaged in a conspiracy to commit the wrongful acts and conduct described in this Complaint. HALLIBURTON, KBR Defendants, KBRSI, and SEII's actions in generating and causing the advertisement for work in Iraq, and in inducing the drivers to accept work in Iraq, specifically intended the probable and substantially certain consequences of their intentional conduct, and in fact were substantially certain that the friendly and/or enemy attack upon the truck convoy would occur. Defendants intentionally engaged in their conduct and activities knowing that the particular results of the weapons attack by friendly forces upon the unarmed and unprotected civilian truck drivers, and drivers' subsequent serious physical injuries and deaths, was substantially certain to follow the order that DONALD TOLFREE return to Camp Anaconda unannounced, without military escort, and without the ability to communicate with the friendly forces that perceived DONALD TOLFREE to be a threat.

82. Defendants and each of them combined to accomplish an unlawful purpose or a lawful purpose by unlawful means by agreeing together to defraud DONALD TOLFREE, to fraudulently induce him to accept work in Iraq, and to intentionally inflict emotional distress upon Plaintiff KRISTEN MARTIN by misrepresenting the nature and cause of the death of DONALD TOLFREE.

83. Defendants and each of them had a meeting of the minds on the object or course of action for defrauding DONALD TOLFREE, fraudulently inducing DONALD TOLFREE to accept work in Iraq and to intentionally inflicting emotional distress upon Plaintiff KRISTEN MARTIN.

84. One or more of the Defendants committed an unlawful, overt act to further the object of the conspiracy, namely, to defraud DONALD TOLFREE, to fraudulently induce him to accept work in Iraq, and to intentionally inflict emotional distress upon Plaintiff KRISTEN MARTIN by misrepresenting the nature and cause of the death of DONALD TOLFREE.

85. The wrongful acts of Defendants in furtherance of the conspiracy alleged herein proximately caused the injuries and death of decedent DONALD TOLFREE and the injuries to and damages of Plaintiff.

86. As a result of Defendants' fraud and intentional concealment of their fraud, and Defendants' receipt of monies under the government contract, Plaintiff did not discover and was not informed of Defendants' fraudulent business practices and Defendants' conspiracy to defraud DONALD TOLFREE until such time as a date within all applicable statutes of limitation applicable to Plaintiffs' causes of action set forth in this Complaint.

SEVENTH CAUSE OF ACTION

FRAUD, MALICE, AND GROSS NEGLIGENCE
(Against All Defendants)

87. Plaintiff incorporates by reference, as if fully set forth at length in their entirety, each and every allegation set forth in the preceding and succeeding paragraphs of this Complaint, and further allege as follows:

88. Defendants committed fraud, willful acts or omissions, gross neglect, and/or malice, which proximately caused the injuries and damages of Plaintiff, including the death of DONALD TOLFREE, and for which Plaintiff is entitled to recover punitive damages, pursuant to Chapter 41 of the Texas Civil Practice and Remedies Code ("Chapter 41") and Article XVI, § 26 of the Texas Constitution. Such damages are not subject to limitation under section 41.008(c)(11) of the Texas Civil Practice & Remedies Code because Defendants secured the execution of a document by deception in violation of section 32.46 of the Texas Penal Code.

89. Plaintiff seeks exemplary damages in such an amount as may be found to be proper under the facts and circumstances.

V.
DAMAGES

ACTUAL DAMAGES

90. As a result of the conduct of Defendants, the Estate of DONALD TOLFREE seeks monetary damages from Defendants to compensate for pain and suffering, mental anguish, medical expenses, and funeral and burial expenses of DONALD TOLFREE.

91. As a result of the injuries to and death of DONALD TOLFREE, Plaintiff KRISTEN MARTIN seeks compensatory wrongful death damages from Defendants arising from the injuries she suffered to the nature and degree of care, maintenance, services, advice, counsel, love, comfort, companionship, which she otherwise would have received from DONALD TOLFREE, deceased, and mental anguish, and other resulting

damages sustained in the past and that in reasonable probability will be sustained in the future, in an amount in excess of \$75,000.

92. As a result of the conduct of Defendants, Plaintiff KRISTEN MARTIN seeks compensatory damages arising from the injuries she suffered including mental anguish, loss of society, medical expenses, and lost earning capacity.

PUNITIVE DAMAGES

93. Because Defendants are guilty of gross negligence, they should have punitive damages assessed against them, as a deterrent to such future bad conduct and as a punishment for their bad acts, in an amount to be determined by the jury.

PRE-JUDGMENT AND POST JUDGMENT INTEREST

94. Plaintiff seeks prejudgment and post-judgment interest as provided by law.

VI. **JURY DEMAND**

95. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, that this cause be set down for trial before a jury, and that Plaintiff recover judgment of and from Defendants for her actual and exemplary damages, in such amount as the evidence shows and the jury determines to be proper, together with pre-judgment interest and post-judgment interest, costs of suit, and such other and further relief to which Plaintiff may show herself to be entitled, whether at law or in equity.

Respectfully submitted,

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