

SEC v. Halliburton Co. and KBR, Inc. (S.D. Tex. 2009)

Nature of the Business.

Engineering, procurement, and construction (“EPC”) contracts for natural gas liquefaction facilities at Bonny Island in Nigeria (“Bonny Island Project”). During most of the time of the conduct, which occurred between 1995 and 2004, Kellogg Brown & Root LLC, a U.S. corporation, was a subsidiary of Halliburton Company (“Halliburton”). Kellogg Brown & Root LLC is now a wholly owned subsidiary of KBR, Inc. (“KBR”). Halliburton and KBR are incorporated in Delaware and headquartered in Houston, Texas.

Influence to be Obtained.

Kellogg Brown & Root LLC participated in a joint venture to obtain and perform EPC contracts to build and expand the Bonny Island Project for Nigeria LNG Limited, which is owned in part by the Nigerian National Petroleum Corporation. The joint venture received four EPC contracts for the Bonny Island Project between 1995 and 2004. According to the SEC’s February 11, 2009 complaint, from at least 1995 until 2004, Kellogg Brown and Root LLC and its partners in the joint venture allegedly authorized, promised, and paid bribes to Nigerian government officials to obtain business related to the Bonny Island Project. To conceal the bribes, the joint venture allegedly entered into sham consulting or services agreements with intermediaries. The complaint alleges that one consultant received over \$130 million, and another received over \$50 million, for use in bribing Nigerian government officials.

Enforcement.

On February 11, 2009, the SEC filed a complaint alleging that KBR, acting as an agent of Halliburton, violated the anti bribery provisions of the FCPA; that Halliburton failed to keep accurate books and records and to maintain adequate internal controls; that KBR aided and abetted Halliburton’s failure to do so; and that KBR falsified, or caused to be falsified, Halliburton’s books and records. Without admitting or denying the allegations of the complaint, Halliburton and KBR consented to the entry of final judgments permanently enjoining future violations, ordering disgorgement of \$177 million, requiring Halliburton to retain an independent consultant to evaluate its FCPA related policies and procedures and adopt any recommendations, and requiring KBR to obtain an independent corporate monitor for a term of three years. Pursuant to the master separation agreement between Halliburton and KBR, Halliburton agreed to indemnify KBR for certain FCPA related matters, and Halliburton will pay the \$177 million disgorgement.

Kellogg Brown & Root LLC and KBR also settled a related DOJ action on February 11, 2009, pleading guilty to one count of conspiring to violate the FCPA and four counts of violation of the anti bribery provisions of the FCPA. As part of the plea agreement, Kellogg Brown & Root LLC and KBR agreed to pay a \$402 million fine, of which Halliburton will pay \$382 million. Additionally, Kellogg Brown & Root LLC will retain an independent corporate monitor for a term of three years.

In September 2008, Albert “Jack” Stanley, former CEO and chairman of Kellogg Brown & Root LLC, pleaded guilty to conspiring to violate the FCPA, admitting that he participated in a scheme to bribe Nigerian government officials. Stanley was later sentenced on February 23, 2012 to 30 months in prison followed by three years of supervised release along with a payment of \$10.8 million in restitution.

In February 2009, the DOJ indicted two other individuals, Jeffrey Tesler and Wojciech Chodan, both U.K. citizens, alleging involvement in the scheme. Chodan and Tesler subsequently pleaded guilty to charges of conspiracy and other related charges on December 3, 2011 and March 11, 2012 respectively. Sentencing of both individuals took place in February 2012.

Key Facts

Citation. *SEC v. Halliburton Co., et al.*, No. 4:09 cv 00399 (S.D. Tex. 2009).

Date Filed. February 17, 2009.

Country. Nigeria.

Date of Conduct. 1995 – 2004.

Amount of the value. Approximately \$180 million.

Amount of business related to the payment. Over \$6 billion.

Intermediary. Agents.

Foreign official. Officials in the executive branch of the Nigerian government; employees of Nigerian National Petroleum Corporation; and employees of Nigeria LNG Limited, controlled by the Nigerian government.

FCPA Statutory Provision.

- **Halliburton.** Books-and-Records; Internal Controls.
- **KBR.** Anti-Bribery; Aiding and Abetting (Books-and-Records; Internal Controls); Circumventing Internal Controls/Falsifying Books and Records.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer (Halliburton; KBR).

Defendant’s Citizenship. United States (Halliburton; KBR).

Total Sanction. \$177,000,000.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor Halliburton; KBR).

Related Enforcement Actions. *United States v. Stanley*, No. 08 cr 597 (S.D. Tex. 2008); *United States v. Kellogg Brown & Root LLC*, No. 4:090 cr 00071 (S.D. Tex. 2009); *United States v. Tesler et al.*, No. 4:09 cr-00098 (S.D. Tex. 2009); *SEC v. Stanley*, No. 08 cv 2680 (S.D. Tex. 2008).

Total Combined Sanction. \$579,000,000.

French, Nigerian, Swiss, and British authorities continue to investigate this matter. In an SEC filing on February 17, 2010, Halliburton first reported it was seeking plea negotiations with the United Kingdom's Serious Fraud Office. On February 16, 2011, KBR announced that its wholly owned subsidiary, M.W. Kellogg Limited ("MWKL"), reached a civil settlement with the Serious Fraud Office, according to which MWKL paid approximately \$11,238,886 and agreed to improve its internal audit and compliance systems.

Similarly according to a February 17, 2011 SEC filing, Halliburton and KBR reached a settlement to resolve charges filed against the two corporations in Nigeria in December 2010. As a result, Halliburton agreed to pay \$33 million to the Government of Nigeria and an additional \$2 million for the Government of Nigeria's attorneys' fees.

A March 30, 2009 news article reported that Swiss authorities will provide Britain with bank account details related to the payments. Swiss authorities previously provided these documents to France and the U.S.

