

Halliburton and KBR Agree to \$579 Million FCPA Settlement

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In February 2009, Halliburton and its former subsidiary Kellogg, Brown & Root (KBR) settled long-running parallel investigations by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) under the Foreign Corrupt Practices Act (FCPA). The settlement is the second largest FCPA penalty and disgorgement to date, and is a significant multiple of prior settlements, including those involving the oil and gas industry. The settlement papers illustrate several recent trends in the investigation and prosecution of anti-corruption cases, including the focus on high-risk geographies and industries, the pursuit of both individuals and corporate entities, the continued use of post-settlement monitors and compliance consultants, and international cooperation among law enforcement authorities.

Settlement Summary. KBR pleaded guilty in the Southern District of Texas to a five-count information, alleging conspiracy and substantive FCPA anti-bribery violations. The plea agreement and Statement of Facts describe improper payments by KBR to Nigerian government officials over a 10-year period to obtain construction contracts valued at more than \$6 billion. The documents state that KBR was part of a four-company joint venture that obtained several contracts to build liquefied natural gas plants in Nigeria, and that KBR and its joint venture partners authorized and paid bribes described as consulting fees to third parties, including through wire transfers and cash transfers. The court papers explain that KBR held an interest in the joint ventures through special purpose corporations based in Portugal as part of an “intentional effort to insulate itself from FCPA liability.” Payments to the agents allegedly exceeded \$180 million.

Pursuant to the plea agreement, KBR agreed to pay a criminal fine of \$402 million. The KBR plea agreement details that the stipulated criminal fine is approximately 25 percent above the low end of the applicable U.S. Sentencing Guidelines range, reflecting “the egregiousness and long duration of the criminal conduct, KBR’s leadership role in the conduct, and the fact that KBR’s use of international sales agents to make corrupt payments to foreign government officials does not appear to have been limited to a single project.” In connection with the settlements, KBR agreed to retain a corporate compliance monitor for a period of three years, and Halliburton agreed to retain an independent consultant to review its FCPA compliance program.

In a parallel proceeding, the SEC filed civil charges related to the same activity. Without admitting or denying the SEC’s allegations, KBR and Halliburton consented to the entry of a court order enjoining: (1) KBR from violating the anti-bribery and books and records provisions of the FCPA; and (2) Halliburton from violating the FCPA’s record-keeping and internal controls provisions. In addition to the facts described above, the SEC alleged that Halliburton’s internal controls, especially its due diligence processes, failed to detect or prevent the bribery, and that Halliburton’s records were falsified as a result of the bribery

scheme. Halliburton and KBR agreed to civil disgorgement of \$177 million in profits, on top of the \$402 million criminal fine.

Jack Stanley Plea Agreement. In September 2008, former KBR Chairman and CEO Albert J. “Jack” Stanley pled guilty to a two-count criminal information charging him with conspiracy to violate the FCPA and conspiracy to commit mail and wire fraud based on his involvement in making improper payments to senior Nigerian officials. Stanley agreed to fully cooperate with the DOJ in its ongoing investigations. Under the plea agreement, Stanley faces up to seven years in prison and \$10.8 million in restitution.

Enforcement Trends. The Halliburton/KBR settlement highlights several trends in DOJ and SEC investigation and enforcement of anti-corruption cases:

- *Focus on high-risk countries and industries; here, business in Nigeria and the oil and gas sector.* In the past two years, settlements involving alleged FCPA violations in Nigeria include those with Willbros Group, Inc.; York International Corp.; Bristow Group Inc.; Paradigm BV; Baker Hughes Inc.; and Vetco International Inc. Public disclosures by several international corporations indicate that numerous pending investigations also involve Nigerian activity.
- *Increased fines and penalties.* The combined penalty is the second largest U.S. FCPA settlement to date, and is orders of magnitude higher than the \$44 million Baker Hughes settlement, which was comprised of a civil fine of \$10 million, civil disgorgement and prejudgment interest of \$23 million and a criminal fine of \$10 million.
- *Investigation and prosecution of individuals and corporate entities.* To date, the SEC and DOJ have resolved matters with Halliburton, KBR and former KBR CEO Jack Stanley. The DOJ and SEC investigations remain ongoing.
- *Appointment of post-settlement monitors.* As has been the case with the majority of recent anti-corruption settlements, Halliburton and KBR agreed to post-settlement compliance improvements and monitoring. Among other reasons, regulators identify the international nature of anti-corruption compliance as justification for ongoing, independent monitoring.
- *International cooperation among law enforcement agencies.* The DOJ gathered evidence abroad and received assistance from French, Italian, Swiss and British law enforcement authorities; the SEC acknowledged the assistance of authorities in Europe, Asia, Africa and the Americas. Press reports indicate that French prosecutors also are conducting a separate investigation regarding these payments.