

**ORAL ARGUMENT NOT YET SCHEDULED
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

IN RE KELLOGG BROWN & ROOT, INC.,
KELLOGG BROWN & ROOT SERVICES, INC.,
KBR TECHNICAL SERVICES, INC., KELLOGG
BROWN & ROOT ENGINEERING
CORPORATION, KELLOGG BROWN & ROOT
INTERNATIONAL, INC. (A DELAWARE
CORPORATION), KELLOGG BROWN & ROOT
INTERNATIONAL, INC. (A PANAMANIAN
CORPORATION), and HALLIBURTON COMPANY,

Petitioners.

Case No. 14-5319

**REPLY IN SUPPORT OF ALTERNATIVE REQUEST FOR RELIEF IF
RELATOR'S FEBRUARY 11, 2015 CROSS-MOTION IS GRANTED**

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Pursuant to Federal Rule of Appellate Procedure 27(a)(3)(B) and (a)(4) and D.C. Circuit Rule 27(c) and (d), Petitioners (“KBR”) submit this reply in support of KBR’s request for leave to respond to any additional briefing this Court may permit by Relator or an *amicus curiae* supporting the District Judge.* Relator does not oppose KBR’s request for leave to respond to an *amicus* brief supporting the District Judge. *See* Rel.’s 2/25/15 Reply & Resp. 4 n.1. He offers three arguments in opposition to KBR’s request for leave to reply to any brief this Court may allow him to file in response to the *amicus* brief supporting KBR. Those arguments are meritless.

First, Relator argues that “KBR has already addressed the issues raised by the proposed amici brief in its petition for writ of mandamus and reply.” *Id.* at 4. KBR, however, has not had an opportunity to respond to any arguments *Relator* might make regarding the *amicus* brief. Relator chose not to respond to *amicus*’s arguments in his opposition to KBR’s mandamus petition, which he filed one week after the *amicus* brief was lodged, and his request to file a separate brief responding to the *amicus* brief is still pending. Because Relator has not responded to the *amicus* brief despite ample opportunity to do so, KBR has had no opportunity to address Relator’s yet-to-be-

* As noted in KBR’s February 18, 2015 opposition to Relator’s February 11 cross-motion, KBR’s request is an alternative request for relief only if the Court grants Relator’s cross-motion for additional briefing, which KBR opposes. *See* KBR’s 2/18/15 Opp’n. Unlike Relator, *see* Rel.’s 2/25/15 Reply & Resp. 3-5 & n.2 (improperly providing further argument in opposition to *amicus*’s motion for leave to file their brief supporting KBR), KBR in this reply focuses only on “matters that . . . relate to [Relator’s] response” to KBR’s alternative request for relief, as the rules dictate. Fed. R. App. P. 27(a)(4).

made responses. Therefore, KBR should be permitted to respond to any additional briefing that Relator may be allowed to file, ensuring KBR the right to be heard last in support of its request for affirmative mandamus relief, as the Federal Rules of Appellate Procedure contemplate. *See* KBR's 2/18/15 Opp'n 3.

Second, Relator contends that KBR's request for leave to respond to additional briefing should be denied because KBR's counsel have previously represented *one* of the six *amici* in other, unrelated matters. *See* Rel.'s 2/25/15 Reply & Resp. 4-5. This contention is a complete non sequitur. The *amicus curiae* discussed in Relator's opposition—the Chamber of Commerce of the United States of America (“the Chamber”)—“regularly files amicus curiae briefs in cases raising issues of concern to the Nation's business community.” *Amici* Br. A-1. It is thus hardly surprising, or in any way inappropriate, that KBR's counsel have represented the Chamber in other matters. *See id.* at 1 n.1 (*amici* “certify that no party's counsel authored [their] brief, in whole or in part; that no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and that no person—other than the amici, their members, or their counsel—contributed money that was intended to fund preparing or submitting the brief”). Moreover, such unrelated representation would not give KBR's counsel any insight into what *Relator* might say in his as-yet-unfiled response to the *amicus* brief supporting KBR. The representation is thus wholly irrelevant to KBR's request for leave to respond to any brief that Relator might be allowed to file regarding the *amicus* brief.

Finally, Relator argues that because Federal Rule of Appellate Procedure 29(e) only refers to an “opposing party[’s]” response to an *amicus* brief, KBR’s request for leave to respond to additional briefing by Relator has “no support in the rules.” Rel.’s 2/25/15 Reply & Resp. 5-6. This argument is baseless. This Court’s authority to provide for supplemental briefing is well established. *See, e.g., Wilkett v. Interstate Commerce Comm’n*, 844 F.2d 867, 874 (D.C. Cir. 1988) (“A court has authority to require supplemental briefing by the parties as it deems helpful.”). Rule 28(c) specifically recognizes that “the court [may] permit[] . . . further briefs” after an appellant’s reply brief is filed. Fed. R. App. P. 28(c). Relator’s refusal to respond to the *amicus* brief in his principal filing, even though that is the conventional practice and Relator had seven days in which to prepare a response, provides ample cause for granting KBR a supplemental brief so that its right to be heard last is protected. This Court granted the precise relief KBR is now requesting in the prior mandamus proceeding in this matter, allowing KBR to reply to Relator’s supplemental brief responding to the *amicus* brief supporting KBR. *See Order, In re Kellogg Brown & Root, Inc.*, No. 14-5055 (D.C. Cir. Apr. 14, 2014). If the Court permits further briefing from Relator, it should follow the approach it took in the prior proceeding and allow KBR to reply to that response.

* * *

If the Court permits further briefing in support of the district court’s decisions, it should grant KBR leave to file a supplemental reply brief, no more than half the

length of, and to be filed within half the time allocated for the preparation of, any such further briefing.

Dated: February 26, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 26th day of February, 2015, a copy of the foregoing opposition and alternative request for relief was served by Federal Express on:

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On this day, a copy of the foregoing was served by Federal Express on:

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Cleveland, Ohio 44113-1838

On this day, a copy of the foregoing was served electronically via the Court's CM/ECF system on:

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