

**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

**OPPOSITION TO RELATOR'S FEBRUARY 11, 2015 CROSS-MOTION  
FOR AFFIRMATIVE RELIEF, AND ALTERNATIVE REQUEST FOR  
RELIEF IF RELATOR'S CROSS-MOTION IS GRANTED**

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International, Inc. (a Delaware Corporation), Kellogg Brown & Root International, Inc. (a  
Panamanian Corporation), and Halliburton Company*

Pursuant to Federal Rule of Appellate Procedure 27(a)(3), Petitioners (“KBR”) submit this response to Relator’s February 11, 2015 cross-motion requesting that the Court (1) invite an *amicus curiae* to represent the District Judge in opposition to KBR’s mandamus petition, and (2) permit Relator to file a response to the *amicus* brief supporting KBR.

The requested relief is unnecessary and inappropriate. Although inviting an *amicus curiae* to defend a district court’s decision may be warranted where “the respondent does not oppose issuance of [mandamus relief] or does not have sufficient perspective on the issue to provide an adequate response,” Advisory Committee’s Notes on 1996 Amendments to Fed. R. App. P. 21(b), neither of those conditions applies here. In this case, Relator has vigorously opposed KBR’s mandamus petition, obtaining leave to file an over-length, 40-page brief. *See* Combined Answer of Harry Barko to Motion for Stay & Petition for Writ of Mandamus, *In re Kellogg Brown & Root, Inc.*, No. 14-5319 (D.C. Cir. Feb. 6, 2015); *see also* Order, *In re Kellogg Brown & Root, Inc.*, No. 14-5319 (D.C. Cir. Jan. 5, 2015). Furthermore, the district court has explained the rationale underlying its challenged orders in written decisions. That is everything ordinarily available to defend a district court’s judgment; therefore, there is no need for the Court to invite an *amicus curiae* to defend the decision below. *See* Advisory Committee’s Notes on 1996 Amendments to Fed. R. App. P. 21(b) (“The court of appeals ordinarily will be adequately informed not only by the opinions or statements made by the trial court judge contemporaneously with the entry of the challenged

order but also by the arguments made on behalf of the party opposing the relief.”). It is one thing to permit entities that wish to do so to file an *amicus* brief in a case that raises issues of importance to them; it is something far different for the Court to appoint a stranger to the litigation to argue a certain point of view, particularly when that view is adequately represented by an existing party to the litigation who is represented by experienced counsel.

Similarly, there is no need for the Court to grant Relator leave to respond to the *amicus* brief supporting KBR. *Amici* notified Relator’s counsel of the forthcoming brief eight days before they moved for leave to file it, which permitted counsel to schedule time for responding. *See* Reply in Support of Motion for Leave to File a Brief *Amici Curiae* 2, *In re Kellogg Brown & Root, Inc.*, No. 14-5319 (D.C. Cir. Feb. 18, 2015). Furthermore, Relator had seven days after the *amicus* brief was lodged to incorporate responses into his February 6 response to KBR’s mandamus petition and stay motion. That is ample time for responding to an *amicus* brief. Indeed, seven days is the approximate amount of time appellants generally have to respond to *amicus* briefs supporting appellees under the Federal Rules of Appellate Procedure. *See* Fed. R. App. P. 31(a)(1) (requiring that reply brief be filed within 14 days of service of appellee’s brief); *see also* Fed. R. App. P. 29(e) (*amicus* briefs are generally filed seven days after principal brief of party being supported).

If, however, the Court permits additional briefing, either by an *amicus curiae* supporting the District Judge or by Relator in response to the *amicus* brief supporting

KBR, KBR requests that the Court allow it to respond to the additional briefing. The Federal Rules of Appellate Procedure generally contemplate that the party seeking affirmative relief (here, KBR) will have the right to be heard last. *See, e.g.*, Fed. R. App. P. 28(c) (providing that “[u]nless the court permits, no further briefs may be filed” after appellant’s reply brief). During the prior mandamus proceeding—where only two, not seven, days separated the lodging of the *amicus* brief supporting KBR and the filing of Relator’s mandamus opposition—the Court permitted Relator to respond to the *amicus* brief, but also permitted KBR to reply to Relator’s response. *See* Order, *In re Kellogg Brown & Root, Inc.*, No. 14-5055 (D.C. Cir. Apr. 14, 2014). If the Court permits further briefing in support of the district court’s decisions, it should provide KBR a similar opportunity here to respond to that briefing. In particular, the Court 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 in support of the district court’s decisions. *Cf.* Fed. R. App. P. 31(a)(1), 32(a)(7)(B)(ii).

\* \* \*

For the foregoing reasons, Relator’s February 11, 2015 cross-motion should be denied. In the alternative, KBR should be granted leave to respond to any further briefing permitted by the Court in response to Relator’s cross-motion.

Dated: February 18, 2015

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on this 18th day of February, 2014, 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:

The Honorable James Gwin  
Carl B. Stokes United States Court House  
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On this day, a copy of the foregoing was served electronically via the Court's CM/ECF system on:

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