

ORAL ARGUMENT NOT YET SCHEDULED

No. 14-5055

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

IN RE KELLOGG BROWN & ROOT, INC., ET AL.,

Petitioner.

On Petition for a Writ of Mandamus to the United States District Court
for the District of Columbia, No. 1:05-CV-1276

**MOTION FOR THE CHAMBER OF COMMERCE OF THE UNITED
STATES OF AMERICA, NATIONAL ASSOCIATION OF
MANUFACTURERS, COALITION FOR GOVERNMENT
PROCUREMENT, AMERICAN FOREST & PAPER ASSOCIATION, AND
ASSOCIATION OF CORPORATE COUNSEL FOR LEAVE
TO FILE A BRIEF AMICI CURIAE**

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March 19, 2014

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CERTIFICATE AS TO PARTIES, RULING, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), amici curiae the Chamber of Commerce of the United States of America, National Association of Manufacturers, Coalition for Government Procurement, American Forest & Paper Association, and Association of Corporate Counsel certify that:

(A) Parties and Amici

Except for amici curiae, all parties, intervenors, and amici appearing before the district court and in this court are listed in the Brief for Petitioner. Amici curiae are not aware of other amici intending to file.

(B) Ruling under Review

Reference to the ruling at issue appears in the Brief for Petitioner.

(C) Related Cases

As stated in the Brief for Petitioner, this case was not previously before this court and amici curiae are aware of no related cases currently pending in this court or in any other court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, amici curiae certify that no amicus curiae has outstanding shares or debt securities in the hands of the public, and none has a parent company. No publicly held company has a 10% or greater ownership interest in any amicus curiae.

STATEMENT REGARDING RULE 29(C)(5)

Pursuant to Rule 29(c)(5) of the Federal Rules of Appellate Procedure, amici curiae certify that:

(A) No party's counsel authored the brief in whole or in part;

(B) No party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(C) No person—other than amici curiae, its members, and its counsel—contributed money that was intended to fund preparing or submitting the brief.

Pursuant to Federal Rule of Appellate Procedure 29(b), amici curiae the Chamber of Commerce of the United States of America, the National Association of Manufacturers, the Coalition for Government Procurement, the American Forest & Paper Association, and the Association of Corporate Counsel respectfully move the Court for leave to file a brief amici curiae in support of the petitioner in *In re Kellogg Brown & Root, Inc.*, No. 14-5055. The proposed brief accompanies this motion.

The Chamber of Commerce of the United States of America (“the Chamber”) is the world’s largest business federation. The Chamber represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry, from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. The Chamber thus regularly files amicus curiae briefs in cases raising issues of concern to the Nation’s business community.

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. The NAM is the powerful voice of the manufacturing community and the leading advocate for a

policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The Coalition for Government Procurement is a national trade association of Federal Government contractors. Coalition members include small, medium, and large business concerns, and collectively account for approximately 70% of the sales generated through the GSA Multiple Award Schedules program and about half of the commercial item solutions purchased annually by the U.S. Government. Contracts held by Coalition members are subject to many of the compliance requirements at issue in this case.

The American Forest & Paper Association (AF&PA) serves to advance a sustainable U.S. pulp, paper, packaging, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. The forest products industry accounts for approximately 4.5 percent of the total U.S. manufacturing GDP and employs nearly 900,000 men and women. The Association regularly files amicus curiae briefs in cases that raise issues of concern to the forest products industry.

The Association of Corporate Counsel (ACC) is the leading global bar association that promotes the common professional and business interests of in-house counsel. ACC has over 33,000 members who are in-house lawyers employed by over 10,000 organizations in more than 75 countries. ACC has long

sought to aid courts, legislatures, regulators, and other law or policy-making bodies in understanding the role and concerns of in-house counsel. To ensure that clients are able to turn to their in-house counsel for confidential legal advice, ACC has championed the attorney-client privilege, working to ensure that a robust privilege applies to a client's confidential communications with in-house lawyers.

The petition for writ of mandamus presents significant questions concerning the ability of amici's member companies to seek and obtain candid legal advice and of amici's members to offer candid legal advice. By holding that internal communications are protected by the attorney-client privilege only if the sole purpose of those communications is to seek legal advice, the District Court's decision threatens to erode the attorney-client privilege and negatively affect how member companies conduct corporate internal compliance programs, especially those required or strongly encouraged by federal regulatory regimes. In light of the increasing number of statutes that impose standards of business conduct and internal compliance procedures on amici's members and the potential negative effects of the District Court's decision, amici and their members have a substantial interest in the petition.

The proposed brief amici curiae discusses other statutory or regulatory regimes that require companies to create internal compliance programs, and further explains how such internal compliance programs will be adversely affected by the

District Court's privilege decision, which will discourage in-house counsel from taking an active role in internal investigations. The brief also discusses how the loss of attorney-client privilege will undermine the role that in-house counsel serves in the member companies and other entities, and how this will be detrimental to member companies and the public interest more broadly.

Counsel for the amici consulted with counsel for petitioner and respondent prior to filing this motion, asking for consent to file a brief amici curiae. Counsel for Petitioners consented to the filing of a brief amici curiae, but counsel for Respondents refused to consent.

Respectfully submitted.

/s/ Elisebeth Cook

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March 19, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 2014, a true and correct copy of the foregoing Motion for the Chamber of Commerce of the United States of America, National Association of Manufacturers, Coalition for Government Procurement, American Forest & Paper Association, and Association of Corporate Counsel for Leave To File a Brief Amici Curiae was filed with the Clerk of the United States Court of Appeals for the D.C. Circuit via the Court's CM/ECF system. Counsel for all parties are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Elisebeth Cook

ELISEBETH COOK