IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMIE LEIGH JONES	§	
	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION NO. 4:07-CV-02719
	§	
HALLIBURTON COMPANY d/b/a KBR KELLOGG BROWN & ROOT (KBR); KELLOGG BROWN & ROOT, SERVICES, INC.; KELLOGG BROWN & ROOT INTERNATIONAL, INC.; KELLOGG BROWN & ROOT, LLC; KELLOGG BROWN & ROOT, INC.; KELLOGG BROWN & ROOT, S. de R.L.; KELLOGG BROWN & ROOT (KBR), INC.; KBR TECHNICAL SERVICES, INC.; OVERSEAS ADMINISTRATIVE SERVICES, LTD.; ERIC ILER, CHARLES BOARTZ; and SEVERAL JOHN DOE RAPISTS	§	
	§	**JURY TRIAL DEMANDED**
Defendants.	§	

KBR DEFENDANTS' MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS

Defendants Halliburton Company, Kellogg Brown & Root Services, Inc., Kellogg Brown & Root International, Inc., Kellogg Brown & Root LLC, Kellogg, Brown & Root, Inc., Kellogg Brown & Root, S. de R.L., KBR Technical Services, Inc. (hereafter, collectively, "KBR"), and Overseas Administrative Services ("OAS") move the Court to compel Plaintiff Jamie Leigh Jones to submit her claims against KBR and OAS to arbitration and to stay or dismiss those claims, as follows:

STATEMENT OF THE ISSUE

Currently pending before the American Arbitration Association is an arbitration proceeding, initiated by Jones on February 15, 2006, against Halliburton Company d/b/a KBR Kellogg, Brown & Root, Kellogg, Brown & Root Services, Inc., KBR Technical Services, Inc., Overseas Administration Services, Ltd. and Charles Boartz ("Boartz") – in effect, the same KBR and OAS parties made defendants in this action -- in which Jones alleges virtually the same claims alleged here. *See* Exh. A (Request for Arbitration); Exh. B (Second Amended Demand for Arbitration). In that proceeding, an arbitrator has been appointed, discovery is underway and cross motions for summary judgment on a subgroup of claims have been filed.

Despite the ongoing arbitration, on May 17, 2007, Jones, along with her husband, Daigle, filed a complaint in the Eastern District of Texas against practically the same KBR and OAS defendants, along with the United States of America and some individual defendants, in which they alleged the same claims as are pending in arbitration (along with some new claims arising from the same set of operative facts). Doc. 1. Jones's most recent complaint was filed (without seeking this Court's leave) on October 7, 2007. Doc. 41.

This motion arises from Plaintiff's attempt to avoid her written agreement to submit all employment-related disputes with her former employers, OAS and Kellogg Brown & Root Technical Services, and all affiliated companies, to final and binding arbitration pursuant to Halliburton Company's Dispute Resolution Program (the "DRP" or the "Program") and instead to litigate those claims in this Court. Even though Jones has invoked and benefited from the terms of the DRP in her ongoing arbitration, she now seeks to avoid that obligation to arbitrate her claims. The undisputable evidence establishes that a valid arbitration agreement exists, which is governed by and enforceable under the FAA, and that Jones's claims against KBR, and

OAS fall within the scope of that agreement. This Court must compel Jones to arbitrate her claims against KBR, and OAS.

FACTS

A. Jones's Employment and Her Agreements to Arbitrate.

Jones initially was hired by KBR Technical Services ("KBRTS") on April 15, 2004, as a temporary administrative employee, and was hired as a regular employee on July 25, 2004. Exh. C (Employee History Report), verified at Exh. J (Affidavit of Janet Brooks). She completed an Employment Application on April 15, 2004, in which she agreed to be bound by the Halliburton DRP. Specifically, in signing the Application, she agreed as follows:

> I also agree that I will be bound by and accept as a condition of employment the terms of the Halliburton Dispute Program which are herein incorporated by reference. I understand that the Dispute Resolution Program requires, as it's last step, that any and all claims that I might have against the company related to my employment, including my termination, and any and all personal injury claims, arising in the workplace, I have against any other parent or affiliate of the company, but [sic] submitted to binding arbitration instead of the court system.

Exh. D (Employment Application), verified at Exh. J.

When first hired, she also signed a Personnel Action Notice agreeing to be bound by the Halliburton DRP. The agreement contained virtually identical language to the Application's, some of which was capitalized:

> I also agree that I will be bound by and accept as a condition of employment the terms of the Halliburton Dispute Resolution Program which are herein incorporated by reference. I UNDERSTAND THAT THE DISPUTE RESOLUTION PROGRAM REQUIRES, AS ITS LAST STEP, THAT ANY AND ALL CLAIMS THAT I MIGHT HAVE AGAINST THE COMPANY OR THE COMPANY MAY HAVE AGAINST ME RELATED TO MY EMPLOYMENT, INCLUDING MY TERMINATION, AND ANY AND ALL PERSONAL INJURY CLAIMS, ARISING IN THE WORKPLACE, I HAVE AGAINST ANY OTHER PARENT OR AFFILIATE OF THE COMPANY, BE SUBMITTED TO BINDING ARBITRATION INSTEAD OF THE COURT SYSTEMS. . . .

Exh. E (Personnel Action Notice), verified at Exh. J.

In July 2005, Jones applied for an overseas position in Iraq with OAS. OAS is a wholly-owned foreign subsidiary of KBR.[1] Exh. B. Jones was offered a position as an IT Customer Support Analyst in Iraq. She accepted that offer and on July 15, 2005, executed an Employment Agreement. Exh. G (Employment Agreement), verified at Exh. J. Paragraph 26 of her Employment Agreement provides (in bold print):

> **You also agree that you will be bound by and accept as a condition of your employment the terms of the Halliburton Dispute Resolution Program which are herein incorporated by reference. You understand that the Dispute Resolution Program requires, as its last step, that any and all claims that you might have against Employer related to your employment, including your termination, and any and all personal injury claim arising in the workplace, you have against other parent or affiliate of Employer, must be submitted to binding arbitration instead of to the court system.**
>
> **It is expressly understood that, in the case of any controversy described above, all parent, subsidiary and affiliate or associated corporations of Employer, and of their officers, directors, employees, insurers and agents are third party beneficiaries to this provision and are entitled to invoke, enforce and participate in arbitration pursuant to this provision.**

Exh. G at ¶ 26. Jones initialed at the end of that paragraph specifically. Thus, Jones acknowledged both her obligation to arbitrate any claims related to her employment with OAS and that her obligation to arbitrate extended to any claims she may have against companies affiliated or associated with her employer, including claims against KBR. *Id.*

B. The Halliburton Dispute Resolution Program

The Halliburton Dispute Resolution Program, which is incorporated by reference in Jones's Employment Agreement, provides an effective and fair means of finally resolving any disputes between an affiliated company and its employees that arise from or relate to the employment relationship. The dispute resolution process established by the Program culminates in binding arbitration before an independent and neutral arbitrator. Ex. H (Dispute Resolution

[1] KBR was fully separated from Halliburton Company in April 2007. Exh. F. (Affidavit of Celia Balli).

Brochure) at 5, verified at Exh. J. The Program facilitates resolution of disputes without the expense and delay of litigation, permits representation of the employee by legal counsel, provides for discovery in accordance with the Federal Rules of Civil Procedure, and authorizes an award of attorneys' fees to employees who prevail in the arbitration. Ex. I (Dispute Resolution Rules) at 6, 11, verified at Exh. J. The company pays all administrative expenses of the arbitration process except for a $50 filing fee. *Id.* at 16-17. Under its Legal Consultation Plan, the Program also will pay up to $2,500 per year to help employees cover the cost of consulting with an attorney of their choice about their legal rights. Exh. H at 15.

The Program does not restrict or modify an employee's substantive rights under any law or statute, and places no limitation on available remedies. Exh. I at 5-6. Rule 30 of the 2001 Dispute Resolution Rules makes this clear:

> The arbitrator's authority shall be limited to the resolution of legal Disputes between the Parties. As such, the arbitrator shall be bound by and shall apply applicable law including that related to the allocation of the burden of proof as well as substantive law. The arbitrator shall not have the authority either to abridge or enlarge the substantive rights available under applicable law.

Id. at 15-16. The Program brochure similarly explains that, "in arbitration, it's possible for you to seek or receive any award you might seek through the court system." Ex. H at 18. Thus, all employees of Halliburton-related companies can obtain the same relief in arbitration that they can in court.

C. Jones's Initiation of Arbitration and Subsequent Attempt to Avoid Her Agreement to Arbitrate By Filing This Action.

On or about February 15, 2006, Jones filed a demand for arbitration with the American Arbitration Association (in which she admitted being a party to an arbitration agreement). Exh. A. Jones has now filed this lawsuit against KBR and OAS asserting claims arising out of her employment with OAS and KBR, which are generally the same claims she asserted in her

arbitration demand. In her Third Amended Complaint, Jones admits "that an arbitration agreement purporting to bind some issues exists in this case," but argues that the Court should disregard the agreement so she can bring all of her claims in one forum. Doc. 41, ¶12. Even though Jones has availed herself of the DRP and is participating in an ongoing arbitration proceeding involving the same claims, she now refuses to dismiss this action against KBR and OAS in compliance with the arbitration agreement.

ARGUMENT AND AUTHORITIES

A. Jones's Agreement to Arbitrate Is Enforceable Under the Federal Arbitration Act.

Section 2 of the Federal Arbitration Act provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of a contract, transaction, or refusal, shall be valid, irrevocable and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2. Thus, the FAA mandates the enforcement of arbitration agreements where such agreements (1) are part of a contract or transaction involving commerce and (2) are valid under general principles of contract law. *Id.; Doctor's Assocs., Inc. v. Casarotto*, 116 S. Ct. 1652, 1657 (1996). The arbitration agreement between Jones and OAS satisfies both requirements and is, therefore, enforceable under the FAA.

1. Jones's Employment Relationship With KBRTS and OAS Involved Commerce.

The United States Supreme Court has held that the FAA's reference to commerce reflects Congress' intent to extend the FAA's coverage to the limits of federal power under the Commerce Clause. *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 268 (1995). In so holding, the Court recognized that the determination of whether a transaction or contract

"involves" commerce requires an expansive construction of the term in order to effectuate Congress' goal of encouraging alternative dispute resolution mechanisms. *Id.* Accordingly, the Court held that a matter "involves" commerce under the FAA if it merely "affects" commerce, a standard commonly applied by the Court to situations in which it is clear that Congress intended to exercise its Commerce Clause powers to the fullest extent. *Id.* Furthermore, the FAA's coverage extends to employment contracts that involve such commerce. *See, e.g.*, *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001).

Section 1 of the FAA expressly defines "commerce" as "commerce among the several States or with foreign nations …." 9 U.S.C. § 1. KBRTS acts as an agent for recruiting, travel, and visa processing for OAS which provides support services for the United States military in Iraq and Afghanistan, among other locations. As an administrative employee at KBRTS, Jones supported the company's overseas operations.

Further, OAS's contractual relationship with Jones was expressly connected with an underlying contract with the United States Army, under which OAS – through employees such as Jones – was to provide various support services to the Army's Area of Operation under U.S. Contract DAAA09-02-D0007. Exh. G at Preamble. More specifically, Jones was hired to work at U.S. Army's Central Command Area of Operations in Iraq. *Id.* at Data Sheet. Consequently, her contractual relationship with KBRTS and OAS involved foreign commerce, and the arbitration agreements connected to that relationship are governed by and enforceable under the Federal Arbitration Act.

2. The Arbitration Agreements Between Jones and OAS and KBRTS Are Valid And Enforceable.

a. The Agreements Are Valid Under General Principles of Contract Law.

The validity of an arbitration agreement is determined by reference to general principles of contract law. *Doctor's Assocs. Inc.*, 517 U.S. at 686-87 (1996); *see also Perry v. Thomas*, 482 U.S. 483, 492 n.9 (1987) (noting that "state law, whether of legislative or judicial origin, is applicable *if* that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally"). However, to the extent that state law carves out special rules for arbitration agreements that do not apply generally to all contracts, it is "inconsonant with, and is therefore preempted by, the federal [act]." *Doctor's Assocs.*, 517 U.S. at 688.

Jones signed an Employment Application, Personnel Action Notice, and Employment Agreement, accepting each time the obligation to submit all employment-related disputes to binding arbitration, rather than pursue them in court. Exh. D, E, and G at ¶ 26. The arbitration provisions in those documents are direct and unambiguous and, although there is no requirement under the FAA that an arbitration clause be noted conspicuously within a contract, in this particular case, there can be no argument that the provisions were hidden or otherwise obscured.

Moreover, having invoked the terms of the DRP in the past, Jones cannot now claim that she was unaware of her agreement to arbitrate. Indeed, in Texas, a party who signs a document is conclusively presumed to have read and understood its contents. *E.g.*, *EZ Pawn Corp. v. Mancias*, 934 S.W.2d 87, 90 (Tex. 1996) (noting additionally that there is nothing per se unconscionable about arbitration agreements and that Texas courts favor dispute resolution through arbitration); *G-W-L, Inc. v. Robichaux*, 643 S.W.2d 392, 393 (Tex. 1982).

Further, the agreements between Jones and OAS and KBRTS are amply supported by consideration. The provisions obligate both Jones and OAS and KBRTS to arbitrate

employment disputes. Exh. E, Exh. I at 3. This mutuality of obligation is, by definition, sufficient consideration for a contract. *Roark v. Stallworth Oil and Gas, Inc.*, 813 S.W.2d 492, 496 (Tex. 1991). *See also In Re Halliburton Co.,* 80 S.W.3d 566, 569 (Tex. 2002) (enforcing the Halliburton Program and holding that the parties' mutual promises to arbitrate are sufficient consideration for their agreement). OAS and KBRTS provided additional consideration via the Program's commitment to pay all costs associated with arbitration except for the payment of a $50 processing fee. Exh. I at 14-15. Additional consideration also exists in the form of the Legal Consultation Plan. Exh. H at 15.

In a case Jones's attorneys have designated as a "companion" to this one, *Barker, et al v. Halliburton Company, et al*, C.A. No. H-07-2677 ("*Barker*"), currently pending before Judge Gray Miller, Barker claimed that the arbitration provision she executed was not valid and enforceable 1) because there was no "meeting of the minds" as to the scope of the arbitration provision, or 2) because "the arbitration provision was never executed with the intent to be mutually binding." *Barker*, Doc. 53 at 15. As OAS and KBR anticipate that Jones's attorneys will reuse these arguments to oppose the instant motion to compel, these arguments are briefly addressed.

Finding a "meeting of the minds"—and thus, offer and acceptance—is based on an objective assessment of what the parties did, rather than their subjective state of mind. *See, e.g., Cox v. Southern Garrett L.L.C.*, No. 01-05-01091-CV *4 (Tex.App.—Houston [1st Dist.] October 11, 2007, no pet.), *citing Copeland v. Alsobrook*, 3 S.W.3d 598, 604 (Tex.App.—San Antonio 1999, pet. denied). The requisite meeting of the minds as to the scope of the arbitration agreement—here, Jones's promise to arbitrate "any and all claims that [she] might have against Employer related to [her] employment . . . and any and all personal injury claim arising in the

workplace"—is objectively manifested by the agreements she acknowledges signing and the arbitration provision she specifically initialed.

Furthermore, Jones cannot argue that the arbitration provision fails because OAS and KBR had no "intent to be mutually bound." Where an agreement is unambiguous, the intent of the parties is conclusively determined from the agreement itself. *Bruner v. Exxon Co., U.S.A.*, 752 S.W.2d 679, 683 (Tex.App.—Dallas 1988, writ denied); *Republic Nat'l Bank of Dallas v. National Bakers Life Ins. Co.*, 427 S.W.2d 76, 79 (Tex.Civ.App.—Dallas 1968, writ ref'd n.r.e.). The DRP, which is incorporated by reference into both the Employment Agreement and the Personnel Action Notice, states that it "applies to and binds the Company, each Employee and Applicant…" Exh. I p. 3. OAS and KBR have complied fully with these terms by participating in arbitration with Jones and assuming responsibility for the costs of that arbitration.

Therefore, under Texas law applicable to all contracts, this arbitration agreement is valid and enforceable.

b. Jones's Fraudulent Inducement Claims Do Not Invalidate Her Agreements to Arbitrate.

Although Jones asserts a cause of action for fraud in the inducement, claiming that KBR and OAS fraudulently induced her to enter into the employment contract by misleading her about the safety and conditions at the worksites in Iraq, *see* Doc. 41 at ¶62-64, that claim does not defeat the enforceability of her arbitration agreement. The Supreme Court holds that claims of fraud in the inducement of the contract generally, rather than the arbitration clause specifically, must be submitted to the arbitrator. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403-04 (1967); *Banc One Acceptance Corp. v. Hill*, 367 F.3d 426, 430 (5th Cir. 2004) ("Only if the allegations concern solely the arbitration term and are not generally applicable to the agreement as a whole may the district court properly adjudicate the enforceability of the

arbitration clause"); *Snap-On Tools Corp. v. Mason*, 18 F.3d 1261, 1267-68 (5th Cir. 1994) (submitting fraudulent inducement defense to arbitration).

Jones's latest ploy to avoid her arbitration agreement is amending her complaint to add a "claim" for "Fraud in the Inducement to Agree to Arbitration."[2] Doc. 41 at ¶¶ 65-67. To determine whether she can be compelled to arbitrate when she has alleged fraud, the principal issue is "whether…[her] claim of fraud relates to the making of the arbitration agreement itself or the contract as a whole." *R.M. Perez & Assoc., Inc. v. Welch*, 960 F.2d 534, 538 (5th Cir. 1992). Here, Jones's claim that she was fraudulently induced to agree to arbitrate is based upon allegations identical to those made in her claim that she was fraudulently induced to enter into the Employment Agreement. *Compare* Doc. 41 at ¶¶ 62-64 with ¶¶ 65-67. She makes no allegations of fraud specifically related to her agreement to arbitrate; rather, she claims that she "relied upon misrepresentations of fact regarding the safety measures for women in Iraq" and if "the true nature of the risk had been made known [to her], she would not have executed the 'mandatory arbitration provision.'" Doc. 41 at ¶ 66. "[U]nless a defense relates specifically to the arbitration agreement, it must be submitted to the arbitrator as part of the underlying dispute." *Primerica Life Ins. Co. v. Brown*, 304 F.3d 469, 472 (5th Cir. 2002); *Bloxom v. Landmark Publishing Corp.*, 184 F.Supp.2d 578, 583 (E.D. Tex. 2002) (finding fraud claim related to contract as a whole, despite the plaintiffs' claim that they were fraudulently induced to enter into the arbitration provision specifically). As Jones's allegations of fraud go to the employment contract in its entirety, they are subject to arbitration.

[2] Notably, she added this "claim" only after her attorneys were apprised of the *Prima Paint* doctrine in KBR's Motion to Compel Arbitration filed in *Barker*.

3. Halliburton's Dispute Resolution Program Has Been Enforced by Both the Fifth Circuit and the Texas Supreme Court.

The Supreme Court has unequivocally stated that arbitration agreements do not deprive employees of substantive rights, but simply change the forum in which those rights may be vindicated. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985) ("By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum."). It also reaffirmed that "there are real benefits to the enforcement of arbitration provisions" which do not "somehow disappear when transferred to the employment context." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 123 (2001). Furthermore, the Texas Supreme Court and the Fifth Circuit have both upheld the enforceability of the Halliburton Dispute Resolution Program. The Texas Supreme Court concluded that Halliburton and a Halliburton employee had formed a valid, enforceable agreement to arbitrate under Texas law after that employee received unequivocal notice from Halliburton that acceptance of the Dispute Resolution Program was a term of his employment and he continued to work thereafter. *Halliburton*, 80 S.W.3d at 569. The court rejected numerous challenges to the agreement raised by the employee, specifically holding that the Program was not unconscionable. *Id.* at 572. The Fifth Circuit also rejected a challenge to the enforceability of the Halliburton Program in *Dodds v. Halliburton Energy Servs.*, No. 01-40057 (5th Cir. 2001).

B. Jones's Claims Against KBR and OAS Are Within the Scope of the Agreement.

The DRP covers all disputes, which it defines to mean:

> all legal and equitable claims, demands, and controversies, of whatever nature or kind, whether in contract, tort, under statute or regulation, or at law, between persons and entities bound by the Plan or by an agreement to resolve Disputes under the Plan, or between a person bound by the Plan and a person or entity

> otherwise entitled to its benefits, including, but not limited to, any matters with respect to:
>
> * * *
>
> 2. the employment or reemployment of an Employee, including the terms, conditions or termination of such employment with the Company;
>
> * * *
>
> 4. any other matter related to the relationship between the Employee and the Company including, by way of example and without limitation, allegations of: discrimination based on . . . sex . . .; sexual harassment; . . . intentional infliction of emotional distress; . . . or
>
> 5. any personal injury allegedly incurred in or about a Company workplace.

Exh. I at ¶ 2.F.

This is a broad provision capable of "expansive reach." *See, e.g., Pennzoil Exploration and Production Co. v. Ramco Energy Limited*, 139 F3d 1061, 1067 (5th Cir. 1998). Thus, it covers not only wage or discrimination claims, but all disputes (against bound parties) related to her employment. To the extent it is uncertain whether the claims are related to Jones's employment, they must be arbitrated, as the United States Supreme Court has held that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Memorial Hosp. v. Mercury Constr. Co.*, 460 U.S. 1, 24-25 (1983). Thus, Jones's arbitration agreement applies "unless it can be said with positive assurance that the arbitration clause is not susceptible of an interpretation which would cover the dispute at issue." *Personal Security & Safety Sys. Inc. v. Motorola Inc.*, 297 F.3d 388 (5th Cir. 2002) (quotations omitted).

Jones's claims against KBR and OAS all are within the scope of the agreement. She alleges the following causes of action against them, each of which are based on alleged events or omissions taking place during her employment with KBRTS or OAS:

- Negligence based upon, *inter alia*, "failing to provide a safe working environment" and "failing to devise a proper policy for the placement of females in their living or working environment" (Doc. 41 at ¶¶24-31);
- Negligent undertaking for, *inter alia*, allowing Jones "to enter into, work in, be housed in, an unsafe and hostile area" (¶¶32-36);
- Sexual harassment and hostile work environment in violation of the Civil Rights Act of 1964 (¶¶41-45);
- Retaliation (¶¶46-50);
- Breach of the employment contract (¶¶58-61);
- Fraud in the inducement to enter the employment contract (¶¶62-64);
- Fraud in the inducement to agree to arbitration (¶¶ 65-67) and
- Intentional infliction of emotional distress (¶¶73-75).

Significantly, the majority of Jones's claims against KBR and OAS are specifically enumerated in the DRP as examples of claims falling within the scope of its coverage. See Exh. I p. 2 (listing among covered disputes claims of sexual harassment, retaliation, intentional infliction of emotional distress, and personal injury claims). All of the claims against KBR and OAS include allegations about her "working conditions" and fault KBR and OAS for failing to act reasonably in fulfilling their obligations as her employer. Furthermore, the "living environment" of which Jones complains in her negligence claims was housing provided to her in accordance with the terms of her Employment Agreement with OAS. See Exh. G at 4.

OAS was not Jones's "landlord;" rather, it was her employer, and provided her living quarters so she could perform her employment in Iraq. Jones did not travel to Iraq to find housing, but to accept employment. She did not contract with OAS to provide her housing independently of her Employment Agreement, did not sign a lease, and did not pay rent. Thus, any duty OAS owed Jones with respect to her living conditions—as well as her working conditions--was based on its status of her employer. To the extent that there is any doubt as to

whether Jones's claims fall within the reach of the arbitration agreement, they must be submitted to arbitration.[3]

Additionally, Jones cannot escape her obligation to arbitrate by naming additional related defendants in addition to her employers, OAS and KBRTS. Jones's claims against Halliburton and the various KBR entities are also within the scope of the arbitration agreement, under the terms of her agreements with OAS and KBRTS, the DRP and Texas common law. Under well established Texas law, one who is not a party to an agreement may nonetheless enforce that agreement where the parties to the agreement intended to provide benefits to that third party. *Benefit Trust Life Ins. Co. v. Littles*, 869 S.W.2d 453, 463 (Tex.App.—San Antonio 1993, no writ). Where the contract is unambiguous, the intent of the parties is conclusively determined from the language used in the document itself. *Bruner v. Exxon Co., U.S.A.*, 752 S.W.2d 679, 683 (Tex.App.—Dallas 1988, writ denied); *Republic Nat'l Bank of Dallas v. National Bakers Life Ins. Co.*, 427 S.W.2d 76, 79 (Tex.Civ.App.—Dallas 1968, writ ref'd n.r.e.).

Arbitration agreements are no different from other contracts in this respect. Where an agreement to arbitrate clearly identifies a third party who is intended to benefit from the contract, that third party may enforce the arbitration provision. *E.g., In re Palm Harbor Homes, Inc.*, 2006 WL 1562546, *1, 3-4 (Tex. 2006) (holding purchasers of a manufactured home must arbitrate their claims against the manufacturer pursuant to a written arbitration agreement between the purchasers and the retailer where the arbitration agreement specified that it inured to

[3] Plaintiffs in *Barker* cited *McCauley v. Halliburton Energy Services, Inc.*, 161 Fed. Appx. 760 (10th Cir. 2005), albeit without discussion, in support of their argument that Barker's claims are beyond the scope of her arbitration agreement, and likely will do so here. *McCauley* addressed whether an individual could be required to arbitrate claims arising out of an incident that occurred while he was working as an independent contractor for Halliburton. The court concluded that a provision requiring the arbitration of employment-related claims was "not so broad as to sweep within the Plan's structure a sole proprietor." *Id. at* *5. Jones does not claim that she was acting as an independent contractor in Iraq, nor can she claim that her living there was not "related to" her employment; thus, *McCauley* is not germane.

the benefit of the manufacturer); *Palm Harbor Homes v. McCoy*, 944 S.W.2d 716, 719 & n.5 (Tex.App.—Fort Worth 1997, no writ) (holding that a non-signatory to a sales contract that contained an arbitration provision was a third party beneficiary of the contract and was entitled to compel arbitration of all claims arising under the contract). *See also*, *Southwest Health Plan, Inc. v. Sparkman*, 921 S.W.2d 355, 358 (Tex. App.—Fort Worth 1996, no writ) (holding that "the strong presumption favoring arbitration is not weakened where a third party beneficiary, rather than a party, seeks to enforce an agreement to arbitrate").

The Employment Agreement between Jones and OAS expressly provides that "all parent, subsidiary and affiliate or associated corporations of" OAS are "third party beneficiaries to this provision and are entitled to invoke, enforce and participate in arbitration pursuant to this provision." Ex. G at ¶ 26. Additionally, the DRP, incorporated into the Employment Application, Personnel Action Notice and Employment Agreement by reference, defines "Company" to include "Sponsor [Halliburton Company] and every subsidiary of Sponsor." Ex. E at ¶ 2.E, M. It further provides that "this Plan applies to and binds the Company." *Id.* at ¶ 3.B. Additionally, it states: ". . . this Plan applies to any Dispute," and "Dispute" is defined to include all claims "between persons bound by the Plan . . . or between a person bound by the Plan and a person or entity otherwise entitled to its benefits." *Id.* at ¶¶ 3.C, 2.F. KBR, Inc., is the ultimate parent company of Kellogg Brown & Root Services, Inc.; Kellogg Brown & Root International, Inc.; Kellogg Brown & Root LLC; Kellogg Brown & Root; S. de R.L.; KBR Technical Services, Inc., and OAS.[4] Exh. F. Halliburton Company was at the time of the events in question KBR's parent; in 2007, it was fully separated from KBR. *Id.* All KBR defendants qualify as a parent, affiliate or associated company with OAS or KBRTS, and were subsidiaries

[4] Kellogg Brown & Root, Inc., is no longer an active company, but was a subsidiary of KBR during the relevant time period. Exh. F.

of Halliburton Company at the time of the execution of the arbitration agreement and the events in question. Thus, Jones's claims against Halliburton and the KBR entities are also governed by the DRP.

C. This Court Does Not Have Discretion to Permit Jones to Avoid Her Agreement So That Her Claims Against All Defendants Can Be Brought In A Single Forum.

Section 3 of the FAA provides:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, ….

9 U.S.C. § 3.

This provision requires the trial court to stay judicial proceedings where the issues presented in the lawsuit are encompassed within a valid agreement to arbitrate. The FAA leaves the trial court no discretion on this point; rather, the FAA mandates that courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement exists. 9 U.S.C. §§ 3, 4. Jones's claims against OAS and KBR, which consist of various allegations of unlawful conduct, are within the scope of the arbitration agreement between her and OAS or KBRTS in that they relate to her employment with OAS or KBRTS. Thus, under the FAA, Jones should be ordered to abide by the terms of her agreement.

Plaintiffs claim that "[b]ecause this case involves various plaintiffs and various defendants, federal question of law, and issues that should be resolved at one forum, it is properly before this court, despite the fact that an arbitration agreement purporting to bind some

issues exists in this case."[5] Doc. 41, ¶12. They then urge the Court "to exercise its discretion to bring all known causes of action to one forum – this court, in the interest of judicial economy, justice and fairness to the parties." *Id.* Plaintiffs are incorrect that Jones's claims against KBR and OAS are properly before the Court, despite a binding agreement to arbitrate such claims, simply because Jones has asserted claims against other defendants. Likewise, Plaintiffs are wrong that the Court even has discretion to permit Jones to ignore her agreement to arbitrate and pursue her claims against KBR and OAS in court. The United States Supreme Court has unequivocally ruled that the Court has no such discretion, but that arbitrable claims must be compelled to arbitration irrespective of whether they have been joined with other claims. *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 217 (1985). "If the issues in a case are within the reach of that arbitration agreement, the district court has no discretion under section 3 to deny the stay." *Texaco Exploration and Production Co. v. AmClyde Engineered Products Co., Inc.*, 243 F.3d 906, 909 (5th Cir. 2001) (quotation omitted).

Because all of the claims raised by Jones against KBR and OAS are subject to arbitration, dismissal of Jones's claims against KBR and OAS is the appropriate remedy. As the Fifth Circuit noted in *Alford v. Dean Witter Reynolds*, 975 F.2d 1161, 1164 (5th Cir. 1992),

> Given our ruling that all issues raised in this action are arbitrable and must be submitted to arbitration, retaining jurisdiction and staying the action will serve no purpose. Any post-arbitration remedies sought by the parties will not entail

[5] While Jones refers to "various defendants," currently only the OAS and KBR defendants have been served and have answered in this action. It is unclear whether Iler has been served properly, and Boartz has never been served; neither has answered. Fed. R. Civ. P. 4(m) provides a 120-day time limit for serving a summons and complaint; far more time has elapsed since this suit was filed.

Furthermore, if Iler or Boartz ever appear in this case, they, as DRP participants, might compel the claims against them to arbitration as well. As set forth previously, the DRP defines "Dispute" to include "all legal and equitable claims, demands, and controversies, of whatever nature or kind, whether in contract, tort, under statute or regulation, or at law, between persons and entities bound by the Plan…" Exh. I at ¶ 2.F. Thus, under the express terms of the arbitration agreement and longstanding principles of arbitration law, they are entitled to the benefit of the agreement. *See, e.g., Roby v. Corporation of Lloyd's*, 996 F.2d 1353, 1360 (2d Cir. 1993) (noting that a rule to the contrary would make it "too easy to circumvent [arbitration] agreements by naming individual defendants instead of the entity itself").

> renewed consideration and adjudication of the merits of the controversy but would be circumscribed to a judicial review of the arbitrator's award in a limited manner prescribed by law.

Id. (quoting *Sea-Land Service, Inc. v. Sea-Land of P.R., Inc.*, 636 F. Supp 750, 757 (D.P.R. 1986)). In the alternative, all claims against KBR and OAS must be stayed pending the arbitration of Jones's claims against KBR and OAS.

D. Jones's Attorneys Should Be Liable for Reasonable Attorneys' Fees Incurred As A Result of Their Refusal to Arbitrate.

KBR and OAS are entitled to an award of its reasonable attorneys' fees under both 28 U.S.C. § 1927 and Texas Civil Practice and Remedies Code § 38.001. Jones's attorneys' refusal to abide by her agreement to arbitrate rises to the level of sanctionable conduct under 28 U.S.C. § 1927. Section 1927 provides:

> An attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

All that is required to support § 1927 sanctions is a determination that an attorney multiplied proceedings in a case in an unreasonable manner. *Lyn-Lea Travel Corp. v. American Airlines, Inc.*, 283 F.3d 282, 291 (5th Cir. 2002).

Jones has admitted that she is a party to an arbitration agreement and has invoked and benefited from the terms of the DRP by participating in a pending arbitration proceeding involving the same claims. She made a demand for arbitration more than a year before filing this lawsuit, participated in the selection of an arbitrator, exchanged discovery and even moved for summary judgment. Notwithstanding her prior acknowledgment of her obligation to arbitrate, her actions taken in furtherance of that agreement, and requests by counsel for KBR that she abide by her agreement (*see, e.g.,* Exh. K, Affidavit of Shadow Sloan), her attorneys brought this

action on her behalf in federal court. By bringing this lawsuit and requiring KBR to file this motion, Jones has unreasonably multiplied the proceedings. Moreover, Jones's attorneys' multiplication of the proceedings is especially unreasonable and egregious in that she has already initiated and is pursuing arbitration asserting generally the same claims made the basis of this lawsuit.

In addition to being sanctionable under § 1927, Jones's refusal to arbitrate also amounts to a breach of contract for which attorneys' fees are recoverable under Texas Civil Practice and Remedies Code § 38.001. Specifically, § 38.001 provides for the recovery of reasonable attorneys' fees from an individual if the claim is for breach of contract. TEX. CIV. PRAC. REM. CODE § 38.001(8). As explained above, Jones's agreement to arbitrate is valid and enforceable under general principles of contract law. Jones failed to perform under that agreement by filing this lawsuit and refusing to pursue her claims in arbitration, rather than in court. Accordingly, KBR is entitled to its reasonable attorneys' fees incurred in preparing this motion to compel arbitration for Jones's breach of the arbitration agreement.

CONCLUSION

For the foregoing reasons, KBR and OAS respectfully request that the Court compel Jones to arbitrate her claims against them and sever and dismiss her claims against KBR and OAS. In the alternative, OAS and KBR requests that the Court compel Jones to arbitrate her claims against them and stay those claims pending such arbitration. KBR further requests that the Court order Jones or her attorneys to pay KBR for its reasonable attorneys' fees incurred in preparing this motion, in an amount to be determined by the Court.

Respectfully submitted,

/s/ Shadow Sloan
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CERTIFICATE OF CONFERENCE

I emailed Plaintiffs' counsel on November 1, 2007, who indicated his opposition to this motion.

/s/ Shadow Sloan
Shadow Sloan

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2007 a true and correct copy of the foregoing document was filed electronically by using the CM/ECF and/or by first-class mail, return receipt requested, on Plaintiff's counsel, addressed as follows:

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