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**I.  
SUMMARY**

The KBR Defendants are the prevailing parties on Plaintiff Jamie Leigh Jones' ("Jones") Title VII sexual harassment, hostile work environment, and retaliation claims. Jones' Title VII claims were frivolous, unreasonable, and groundless and Jones continued to litigate her claims after it clearly became so. Therefore, the Court should exercise its discretion and grant the KBR Defendants an award of the reasonable and necessary attorneys' fees they incurred defending themselves against these claims. The KBR Defendants request that the Court first find that Jones is liable for the KBR Defendants' attorneys' fees. The KBR Defendants further request that the Court then set a briefing schedule to allow the parties to brief their arguments regarding the amount of reasonable and necessary attorneys' fees that should be awarded to the KBR Defendants.

**II.  
STATEMENT OF FACTS**

Jones asserted the following causes of action against the KBR Defendants in this lawsuit: negligence, negligent undertaking, sexual harassment and hostile work environment under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), retaliation under Title VII, breach of contract, fraud in the inducement to enter the employment contract, fraud in the inducement to agree to arbitration, intentional infliction of emotional distress, and false imprisonment. Docket No. 53, Plaintiff's Fourth Amended Complaint.

On May 24, 2011, the Court granted summary judgment to the KBR Defendants on Jones' negligence, negligent undertaking, retaliation, breach of contract, intentional infliction of emotional distress, and false imprisonment claims. Docket No. 212, May 24, 2011 Memorandum and Order.

On July 6, 2011, the Court granted a directed verdict to the KBR Defendants on Jones' fraud in the inducement to agree to arbitrate, fraudulent inducement by non-disclosure to enter into the employment contract, and vicarious liability/respondeat superior claims.

On August 3, 2011, following the jury's July 8, 2011 verdict, the Court signed the judgment for Bortz and the KBR Defendants on Jones' remaining claims of assault and battery, sexual harassment under Title VII, and fraudulent inducement by misrepresentation to enter into the employment contract. The Court specifically ordered that "Jones take nothing and recover nothing in her lawsuit against the KBR Defendants or Defendant Charles Bortz." Docket No. 352. The judgment was entered by the Court on August 5, 2011.

### **III. STATEMENT OF ISSUES**

Whether Jones is liable for the KBR Defendants' attorneys' fees incurred in defending themselves against Jones' Title VII retaliation and sexual harassment claims.

### **IV. ARGUMENT & AUTHORITY**

Title VII authorizes courts, in their discretion, to award prevailing parties "a reasonable attorney's fee (including expert fees) as part of the costs." 42 U.S.C. § 2000e-5(k). A plaintiff may be liable for defendants' attorneys' fees under Title VII if the court finds that her claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so. *Christiansburg Garmet Co. v. EEOC*, 434 U.S. 412, 422 (1978). If the plaintiff is found to have brought or continued her claim in bad faith, there will be an even stronger basis for charging her with the attorneys' fees incurred by the defendants. *Id.*

The Fifth Circuit has been guided by the following factors in determining whether it is appropriate to award fees to the prevailing defendant: "(1) whether the plaintiff established a

prima facie case; (2) whether the defendant offered to settle; and (3) whether there was a full-blown trial on the merits.” *Skinner v. San Felipe Del Rio Consol. Indep. Sch. Dist.*, 95 Fed. Appx. 717, 718 (5th Cir. 2004) (not selected for publication) (a copy of the case is attached as Exhibit A). However, these factors are “guideposts, not hard and fast rules” and determinations regarding frivolity must be made on a case-by-case basis. *Id.* (citing *EEOC v. L.B. Foster Co.*, 123 F.3d 746, 751 (3d Cir. 1997)).

Jones did not establish a prima facie case with respect to her Title VII claims. However, even if she had, “[w]hile satisfying a prima facie case usually precludes the award of attorneys’ fees, there are instances in which the prima facie case may be shown but the case is ultimately frivolous.” *Id.* The KBR Defendants made a good faith settlement offer to Jones in January 2007, before she filed her lawsuit. Jones made a settlement demand of \$50,000,000 on September 17, 2010. Exhibit B. Obviously, that was not a settlement offer that the KBR Defendants were willing to entertain, especially after Jones had attacked them in the media and before Congress. The KBR Defendants had no choice but to take this case to trial to defend its reputation. At trial, the issues submitted to the jury were very narrow, as discussed in more detail below.

Jones’ retaliation claims are that (1) she was “ridiculed, threatened and harassed because of her requests to Eric Iler that he stop forcing her to have the sexual relationship with him,” (2) that Eric Iler “provided a false report of her performance to her new supervisor,” and (3) that after she reported the alleged rape at Camp Hope in Iraq, she was imprisoned in a trailer and was not allowed to call her family. Docket No. 53, Plaintiff’s Fourth Amended Complaint at ¶¶ 47-49. This Court granted the KBR Defendants’ summary judgment on Jones’ retaliation claims in its Order dated May 24, 2011. Docket No. 212, Memorandum and Order at p. 45. Specifically,

the Court held that Jones failed to exhaust her administrative remedies because she did not complain of Eric Iler or reference any retaliatory conduct in her EEOC Charge. *Id.* at pp. 37-40. Therefore, the KBR Defendants are the prevailing parties with respect to Jones' retaliation claims.

In *O'Brien v. Lucas Associates Personnel, Inc.*, the Fifth Circuit affirmed summary judgment for the defendant on the plaintiff's gender discrimination and hostile work environment claims. 127 Fed. Appx. 702, 708 (5th Cir. 2005) (not selected for publication) (a copy of the case is attached at Exhibit C). The Court specifically affirmed summary judgment on plaintiff's hostile work environment claim because the plaintiff failed to exhaust her administrative remedies. *Id.* at 708 (finding that the plaintiff's hostile work environment claim was beyond the scope of her EEOC claim). The Fifth Circuit held that "given the degree to which [plaintiff's] claim lacks merit in general, and the vacuousness of some of her claims in specific," the district court abused its discretion in failing to award the defendant's attorneys' fees and costs. *Id.*

There is absolutely no evidence supporting Jones' retaliation claims except for her self-serving testimony at trial. Jones has especially focused on her claim that she was locked in a trailer under armed guards (without food or a phone) to disparage the KBR Defendants in the media. For example, in an interview with Dan Abrams on December 17, 2007, Jones said that KBR "imprisoned" her in a container with two armed guards. Exhibit D at p. 7. She said that the armed guards would not let her leave and she was only able to call her father after one of the security guards let her use his phone. *Id.*

Jamie Armstrong (Human Resources with KBR) testified from Kabul during trial that Jones was free to come and go from the trailer. Exhibit E, Transcript from Trial, June 30, 2011, p. 7, lines 17-19. Armstrong further testified that she took care of Jones' needs when she was in

the trailer, brought her food, and that Jones talked with her mother that day in the trailer. *Id.* at p. 7, lines 10-13; p. 7, line 22 – p. 8, line 7; and p. 17, lines 7-10. Gabriel Andino (the Project Manager), William Goodgine (the Security Operations Manager), and Jamie Armstrong all testified that there were not armed guards preventing Jones from leaving the trailer. Exhibit F, Transcript from Trial, June 28, 2011, p. 97, lines 11-21; Exhibit G, KBR's Cross Examination of William Goodgine (shown by video at trial), p. 21, lines 15-23; Exhibit H, KBR's Cross Examination of Jamie Armstrong (shown by video at trial), p. 18, line 15 – p. 19, line 5. William Goodgine and Kimberly Nichols further testified that no KBR guards were armed at Camp Hope. Exhibit G, KBR's Cross Examination of William Goodgine (shown by video at trial), p. 21, lines 15-23; Exhibit I, Transcript from Trial, June 22, 2011, p. 203, lines 8-9.

Jones' mother testified that Jones and her father both told her that Jones was held in a shipping container by KBR for several days. Exhibit J, Transcript from Trial, June 29, 2011, p. 206, line 20 – p. 207, line 15. However, Jones herself admitted at trial that she was in the trailer for only six hours. Exhibit K, Transcript from Trial, June 20, 2011, p. 23, line 23 – p. 24, line 2.

Jones' testimony at trial regarding her alleged imprisonment by KBR demonstrated the frivolousness of her retaliation claims against the KBR Defendants. During her direct examination, Jones claimed that Armstrong demanded a statement from her in the trailer and said "You better be careful because another girl was raped and she was buried here." Exhibit K, Transcript from Trial, June 20, 2011, p. 20, line 21 – p. 21, line 8. Jones admitted on cross-examination that Armstrong's alleged threat that "another girl was raped and buried" was not in her pleadings, was not mentioned during Jones' deposition, and that she did not tell Congress, 20/20, or any other media about Armstrong's alleged threat. Exhibit L, Transcript from Trial, June 21, 2011, p. 243, line 5 – p. 244, line 15. Jones claimed that she made the allegation for the

first time at trial after having a sudden recall memory the week before. *Id.* at p. 58, line 17 – p. 65, line 16. She further testified that her mother and father now both remember Armstrong's alleged threat. *Id.* at p. 65, line 5 – p. 66, line 1. However, at trial, Jones' mother did not testify about Jones' new allegation that Armstrong had threatened her life and Jones' father did not testify live as expected. Jones' parents were not asked about Armstrong's alleged threat during their depositions because Jones raised that allegation for the first time at trial.

Armstrong testified very clearly during the trial that she did not tell Jones that she better be careful because another girl was raped and she was buried over here. Exhibit E, Transcript from Trial, June 30, 2011, p. 6, lines 1-9. Armstrong further testified that she did not say anything to Jones about anyone murdering or burying a rape victim and did not threaten Jones' life in any way. *Id.* at p. 6, lines 13-18.

Jones' new allegation at trial that Armstrong threatened her by saying that another rape victim had been buried at Camp Hope is just one of many examples of how Jones' story has changed numerous times over the past six years. It is also one of many examples of how Jones' allegations are not supported by any evidence and in fact, are contradicted by others' testimony in this case. The logical conclusion is that Jones' has fabricated her story. Furthermore, Jones' testimony at trial demonstrates that she continued to litigate her retaliation claim long after the Court held granted summary judgment on her retaliation claim to the KBR Defendants. The KBR Defendants obtained summary judgment on Jones' retaliation claims and are entitled to attorneys' fees for defending against those claims. *Butler v. MBNA Technology, Inc.*, 140 Fed. Appx. 542 (5th Cir. 2005) (affirming award of attorneys' fees to defendant for claims it was awarded summary judgment on) (not selected for publication) (a copy of the case is attached at Exhibit M).

Jones' sexual harassment and hostile work environment claim is based on her allegation that "during her employment in Iraq, she was subject to and the target of sexual harassment." Docket No. 53, Plaintiff's Fourth Amended Complaint at ¶ 42. More specifically, Jones alleges in her live pleading that she was drugged and brutally raped several KBR firefighters. *Id.* at ¶ 19. The Court stated during the trial that Jones had not presented evidence sufficient to meet the Fifth Circuit's standard on harassment other than the alleged rape. Exhibit N, Transcript from Trial, July 6, 2011, p. 195, lines 6-16. The jury charge questions for sexual harassment and hostile work environment were predicated on a finding of "Yes" to the question asking if Jones had been raped by Bortz. The jury found that Jones had not been raped by Bortz. Therefore, they did not answer the sexual harassment and hostile work environment questions. The Court signed the judgment on August 3, 2011, specifically stating that "Jones take nothing and recover nothing in her lawsuit against the KBR Defendants." Docket No. 352. The KBR Defendants are clearly the prevailing parties on Jones' sexual harassment and hostile work environment claims.

Jones' allegation of rape was never substantiated by any witnesses or documents in this case. She herself claims that she does not remember what happened the night of July 27, 2005 or the early morning of July 28, 2005. Jones alleged that she was gang raped by numerous KBR firefighters and she told that story many times to the media, Congress, and her doctors. However, she has no evidence that she was gang raped and even tried to amend her complaint twice to remove those allegations. She also tried to amend her complaint to remove her allegation that her breast implants were ruptured during the alleged incident after her own doctor testified that her breast implants were not ruptured. *See* Docket No. 53, Plaintiff's Fourth Amended Complaint at ¶ 19. Jones made very serious allegations against Bortz and the KBR Defendants without any evidence and continuously asserted those allegations to the media.

The Court appointed Dr. Victor Scarano to conduct an independent medical examination of Jones. In Dr. Scarano's report, he set forth his opinions regarding Jones:

It is my opinion to a reasonable degree of medical certainty that:

1. Ms. Jones engaged in adult, voluntary, consensual sexual behaviors including sexual intercourse with Charles Bortz on or about the late night hours of 07/27/05 and/or the early morning hours of 07/28/05,
2. Ms. Jones was not gang raped by 4 to 5 KBR firefighters on or about the late night hours of 07/27/05 and/or the early morning hours of 07/28/05,
3. Ms. Jones was not drugged with Rohypnol causing unconsciousness and loss of anterograde memory from about 10:00 PM on 07/27/05 through 6:30 AM on 07/28/05,
4. Ms. Jones has malingered a loss of memory from about 10:00 PM on 07/27/05 to about 2:00 AM on 07/28/05, when she and Mr. Bortz fell asleep,
5. Ms. Jones fabricated an event, for reasons known to her, that she was given a date-rape drug and then brutally gang raped by 4 to 5 KBR firefighters, and
6. Ms. Jones has malingered having post-traumatic stress disorder to support her claim that she had been severely and brutally traumatized.

Exhibit O, pp. 223-224.

Dr. Scarano defines malingering as "the intentional production of false or grossly exaggerated physical or psychological symptoms motivated, in Ms. Jones' case, for financial compensation and maintaining the national role she created for herself." *Id.* at p. 223. Dr. Scarano further opined that "Ms. Jones, having fabricated a story of being drugged and gang raped vaginally and anally by 4-5 KBR firefighters, having used this fabrication to form a foundation to allegedly help women who have been raped, having testified before congress as the victim of brutal rape with the perpetrators supported by a large corporation, and having made appearances on national news broadcasts, is now boxed in and feels compelled to continue to argue that her fabricated story is true." *Id.* at p. 223.

Jones' fabricated story of being drugged and raped demonstrates that her Title VII claims are not only frivolous, unreasonable, and groundless, but also that she brought these claims in bad faith. Additional evidence of Jones' fabrication is that her story about the alleged rape has changed numerous times over the last six years. During trial the Court acknowledged that "she's told multiple stories" and noted the "oddity of her memory working for certain periods in great detail and other periods not at all." Exhibit I, Transcript from Trial, June 22, 2011, p. 151, lines 2-16. As Dr. Scarano opined, Jones appears to have fabricated this story for financial gain. That is certainly supported by her numerous media appearances, the book she wrote, her contacts with agents, and her movie deal.

The KBR Defendants respectfully request that the Court award them reasonable and necessary attorneys' fees spent defending themselves against Jones' Title VII frivolous retaliation and sexual harassment claims. The KBR Defendants also request that, pursuant to Title VII, the attorneys' fees and non-taxable litigation expenses be taxed as costs. *See* 42 U.S.C. § 2000e-5(k) (noting that attorneys' fee awards should be "part of the costs").

Federal Rule of Civil Procedure 54(d)(2)(B) sets forth the procedural requirements for a motion for attorneys' fees. FED. R. CIV. P. 54(d)(2)(B)(i)-(iii) (requiring a motion for attorneys' fees to "(i) be filed no later than 14 days after the entry of judgment; (ii) specify the judgment and the statute . . . entitling the movant to the award; [and] (iii) state the amount sought or provide a fair estimate of it. . ."). This motion meets the requirements of Rule 54(d)(2)(B).

First, the KBR Defendants filed this Motion on August 17, 2011, which is not later than 14 days after the Court's August 5, 2011 entry of Judgment. Second, as noted above, Title VII is the federal statute entitling the KBR Defendants to an award for attorneys' fees for its ultimate success against Jones' Title VII retaliation and sexual harassment claims. 42 U.S.C. § 2000e-

5(k). Finally, after a diligent review of the KBR Defendants' billing statements from inception of this case through present, the KBR Defendants' fair estimate of its reasonable and necessary attorneys' fees incurred in defending itself solely against Jones' Title VII retaliation and sexual harassment claims exceeds \$2,000,000. The KBR Defendants also request \$20,500 for expert fees paid to Dr. Irwin and Dr. Rose, who both testified at trial.

The KBR Defendants further request that the Court first determine that the KBR Defendants are entitled to attorneys' fees incurred in defending themselves against Jones' Title VII claims. FED. R. CIV. P. 54(d)(2)(C) (the "court may decide issues of liability for fees before receiving submissions on the value of services"). Once the Court has held that the KBR Defendants are entitled to attorneys' fees, the KBR Defendants request that the Court set a briefing schedule to allow them to substantiate their fair estimate of fees through affidavits and billing records, as well as provide briefing to the Court on the law governing the proper calculation of attorneys' fees awards. The KBR Defendants also request that, in setting the briefing schedule, the Court grant them at least 30 days from the date the Court signs the Order before the KBR Defendants' opening brief is due.

#### **PRAYER**

The KBR Defendants respectfully request that, pursuant to Title VII, the Court award the KBR Defendants their reasonable and necessary attorneys' fees and non-taxable litigation expenses incurred in defending themselves against Jones' Title VII retaliation and sexual harassment claims. The KBR Defendants also request that the Court first determine Jones' liability for the KBR Defendants' attorneys' fees and then set a briefing schedule regarding the amount of attorneys' fees to be awarded.

Respectfully submitted,

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**CERTIFICATE OF CONFERENCE**

I hereby certify that I discussed the KBR Defendants' Application and Motion for Attorneys' Fees Pursuant to Title VII with Plaintiff's counsel, Heidi Vicknair, who indicated that Plaintiff is opposed to the Application and Motion.

Susan E. Cates  
Susan E. Cates

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 17<sup>th</sup> day of August, 2011, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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