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Halliburton Wants $256M Tax Suit Against KBR Revived

By **Jeremy Heallen**

Law360, Houston (September 24, 2013, 4:38 PM ET) -- Halliburton Co. asked a Texas state court Monday to throw out an arbitration panel's decision to nix its claim for $256 million the oilfield services giant says it overpaid in taxes to KBR Inc. with respect to the companies' 2007 split.

In an application to vacate the ruling, Halliburton said the case should have been determined under the terms of a tax sharing agreement the companies struck, but instead an arbitration panel was assigned to resolve the dispute pursuant to a separate master separation agreement and found in favor of KBR.

"[T]he MSA arbitration panel had no authority to decide this dispute," the application said. "The award issued by the MSA arbitration panel should be vacated because the panel not only exceeded its powers, but lacked any power over the parties as to this dispute."

Halliburton's attack on the decision comes as it is in the midst of a separate appellate challenge to a trial court's ruling last year that the arbitration provision of the MSA controls the conflict.

In connection with KBR's 2007 spinoff from Halliburton, the companies signed a master separation agreement that allocated the companies respective liabilities and a separate tax sharing agreement that was meant to reconcile tax obligations for the years between initially agreeing to and finalizing the split, according to Halliburton.

Halliburton says that for tax years 2001 to 2007, it paid KBR about $426 million for estimated tax liabilities and benefits. Using the agreed-upon calculation method in the TSA, however, Halliburton found that its obligation was only about $206 million.

After Halliburton unsuccessfully demanded a refund from KBR, the companies initiated a resolution process under the TSA that allowed for an accounting referee to determine whether or not overpayments had been made under the agreement.

But the companies reached an impasse over the scope of the referee's authority and the operation of a competing arbitration clause contained in the MSA, prompting Halliburton to **file suit.**

Halliburton alleged that the entire dispute is subject to the TSA's arbitration provision, which is triggered by a disagreement over entitlement to reimbursement or other similar matters.

The express purpose of creating the TSA was to provide for the allocation between the

companies of all tax responsibilities, liabilities and benefits, Halliburton said, arguing that such includes the procedures for calculating the parties' respective obligations and the method for reconciling the amounts owed.

But KBR said in its own demand for arbitration that while an accounting referee could calculate the proper amounts owed under the TSA, a separate arbitration panel had to decide whether KBR is actually liable for those amounts under the MSA.

The trial court agreed with KBR last September and ordered arbitration under the MSA. Halliburton says that although it disagreed with the trial court's decision, it participated in arbitration while appealing the ruling.

In June, a panel of arbitrators ruled that the MSA barred Halliburton from recovering any portion of the $256 million in allegedly overpaid taxes from KBR.

Now, Halliburton wants the arbitration panel's decision tossed, arguing the same jurisdictional grounds it is urging in the ongoing appeal.

Halliburton is represented by Jonathan B. Rubenstein, Stephen G. Tipps, Benjamin A. Geslison and Tina Q. Nguyen of Baker Botts LLP.

KBR is represented by Erica W. Harris, Vineet Bhatia and Zenobia V. Harris of Susman Godfrey LLP.

The cases are Halliburton Co. v. KBR Inc., case numbers 2013-56664 and 2012-39503, in the 165th Judicial District Court of Harris County, Texas.

--Additional reporting by Kaitlin Ugolik. Editing by Philip Shea.