

Congress of the United States
Washington, DC 20510

December 7, 2012

Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, DC 20310-0108

Dear Assistant Secretary Darcy:

We are committed to ensuring that the brave veterans from the Oregon Army National Guard who KBR negligently exposed to the cancer-causing chemical hexavalent chromium in 2003 while they guarded the Qarmat Ali water-treatment plant in Iraq receive the justice they deserve in a timely manner. We also expect that the Army Corps of Engineers will aggressively fight the case filed by Kellogg, Brown and Root on November 16 in the U.S. Court of Federal Claims to evade responsibility for the damages a jury assigned to it.

Nearly a decade after the soldiers' exposure, a jury in federal court in Oregon found KBR negligent in its conduct, noting that KBR acted with "reckless and outrageous indifference to a highly unreasonable risk of harm," and held a "conscious indifference to the health, safety and welfare" of these brave men and women in uniform. The case, awarding \$85 million to the plaintiffs, is a milestone not just for these veterans and their families, but for the many that currently face similar injuries. It is our hope that this verdict makes clear that contractors have a responsibility to alert servicemembers to possible dangers, and helps avert similar injuries in the future.

KBR is now trying to make taxpayers foot the bill – up to \$100 million – for its legal costs and its negligence. On November 16, KBR filed suit in the U.S. Court of Federal Claims against the Army Corps of Engineers in an effort to force the U.S. government to pay the soldiers' damages and legal fees stemming from the verdict. KBR's claim that the contract it entered into with the Army Corps in 2003 indemnifies it from its actions in Iraq merits the full attention by your organization and we urge you to aggressively challenge KBR's position.

We would also like to remind you that DoD's contract with KBR allows the Pentagon to oversee and even take control of the litigation process between KBR and the soldiers. The contract specifically requires KBR to "comply with the government's directions," and gives the government the ability to "direct" and "control" KBR's defense and settle the case. DoD should take control of the case to avoid dragging it out for many more years, potentially at great expense to U.S. taxpayers.

We remain deeply concerned that the Department of Defense can enter into contracts that leave U.S. service members doubly exposed: first to the unsafe environment created by contractors, and second as taxpayers potentially paying for the legal defense—and any damages—of the very

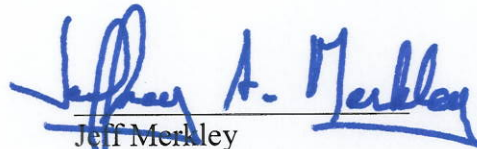
contractors causing them harm. As the result of an amendment included in S. 3254, the National Defense Authorization Act for FY13, which we'll push to have included in the final bill sent to the President, the Secretary of Defense will have to notify the Congressional defense committees when the Pentagon enters into indemnification agreements with contractors connected to U.S. military efforts and explain why such a provision is necessary. This will increase oversight and we hope force a reform of how DoD writes contracts to prevent future problems.

Contractors that put our servicemen and women, as well as innocent civilians, at risk should be held accountable. At the very least, U.S. taxpayers must not be required to pay for their mistakes. We are eager to see this case resolved and to hold accountable those that negligently expose our troops to toxic chemicals.

Sincerely,



Ron Wyden
United States Senator



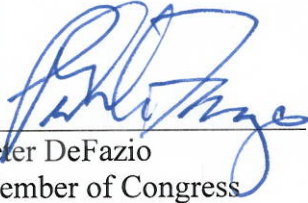
Jeff Merkley
United States Senator



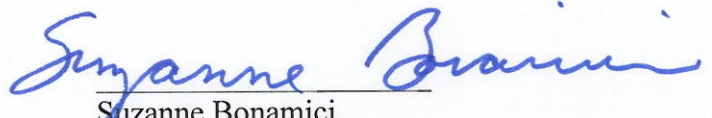
Earl Blumenauer
Member of Congress



Kurt Schrader
Member of Congress



Peter DeFazio
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