

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**No. 34865**

HEATHER RUCKDESCHEL, and  
THOMAS G. MILLER, SR., as  
Co-Administrators of the Estate of  
THOMAS G. MILLER, Jr., deceased,

Plaintiffs Below,

v.

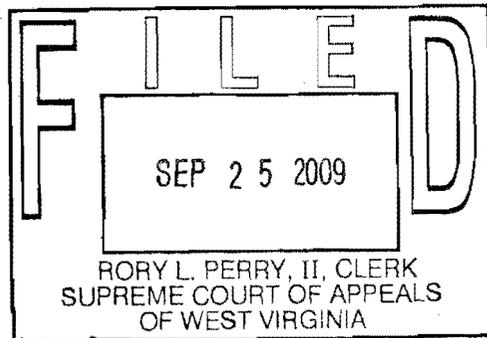
FALCON DRILLING COMPANY,  
LLC, and TEXAS KEYSTONE, INC.,

Appellees/Defendants Below,

and

HALLIBURTON ENERGY SERVICES, INC.

Appellant/Defendant Below



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**BRIEF OF APPELLEE  
FALCON DRILLING COMPANY, LLC**

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**TABLE OF CONTENTS**

TABLE OF CONTENTS .....i

TABLE OF AUTHORITIES.....ii

I. KIND OF PROCEEDING AND NATURE OF RULING BELOW ..... 1

II. STATEMENT OF FACTS.....2

III. STANDARD OF REVIEW.....6

IV. REBUTTAL TO FIFTH ASSIGNMENT OF ERROR.....6

V. LAW AND ARGUMENT.....6

    1. The Right To Recover Contribution Is Available Only To A Party Who Pays Damages In Satisfaction Of A Final Judgment, And Halliburton Is Not Such A Party .....6

    2. The Right To Recover Contribution Is Not Available To A Party Who Voluntarily Settles With The Plaintiff Prior To A Judicial Determination Of Liability.....9

    3. This Court’s Decision In *Zando*, And The Verdict Credit To Which Non-Settling Defendants Are Entitled, Bar A Settling Defendant From Recovering Contribution..... 11

    4. Even If The Court Recognizes The Right Of A Pre-Judgment Settling Defendant To Pursue Contribution, Halliburton’s Claims Fail Because Its Settlement With Plaintiffs Did Not Extinguish The Liability Of Texas And Falcon ..... 14

    5. Texas And Falcon Are Not Liable For Contribution Because They Have Both Entered Into Good Faith Settlements With Plaintiffs..... 16

    6. Halliburton Cannot Recover Implied Indemnity Against Falcon Because It Voluntarily Settled With Plaintiffs And Cannot Otherwise Demonstrate That It Is Without Fault..... 17

VI. CONCLUSION .....19

## TABLE OF AUTHORITIES

### WEST VIRGINIA CASES

<i>Board of Educ. v. Zando Martin &amp; Milstead, Inc.</i> , 182 W. Va. 597, 390 S.E.2d 796 (1990).....	3, 11, 12, 14, 16
<i>Bowyer v. Hi-Lad, Inc.</i> , 216 W. Va. 634, 609 S.E.2d 895 (2004).....	18
<i>Buskirk v. Musick</i> , 100 W. Va. 247, 130 S.E. 435 (1925).....	2
<i>Charleston Area Medical Center, Inc. v. Parke-Davis</i> , 217 W. Va. 15, 614 S.E.2d 15 (2005).....	8, 9, 15
<i>Hager v. Marshall</i> , 202 W. Va. 577, 580 S.E.2d 640 (1998).....	8
<i>Harvest Capital v. West Virginia Dept. of Energy</i> , 211 W. Va. 34, 560 S.E.2d 509 (2002) .....	18
<i>Haynes v. City of Nitro</i> , 161 W. Va. 230, 240 S.E.2d 544 (1977) .....	7
<i>Howell v. Luckey</i> , 205 W. Va. 445, 518 S.E.2d 873 (1990) .....	8
<i>Levine v. Headlee</i> , 148 W. Va. 323, 134 S.E.2d 892 (1964) .....	2
<i>Lombard Canada, Ltd. v. Johnson</i> , 217 W. Va. 437, 618 S.E.2d 446 (2005).....	7, 10
<i>Sanders v. Roselawn Memorial Garden, Inc.</i> , 152 W. Va. 91, 159 S.E.2d 784 (1968).....	13
<i>Sitzes v. Anchor Motor Freight, Inc.</i> 169 W. Va. 698, 289 S.E.2d 679 (1982).....	7, 8
<i>Smith v. Monongahela Power Co.</i> , 189 W. Va. 237, 429 S.E.2d 643 (1993) .....	3
<i>Sydenstricker v. Unipunch Products, Inc.</i> , 169 W. Va. 440, 288 S.E.2d 511 (1982).....	7, 9, 17
<i>Tennant v. Craig</i> , 156 W. Va. 632, 195 S.E.2d 727 (1973) .....	11
<i>Weekly v. Hardesty</i> , 48 W. Va. 39, 35 S.E. 880 (1900) .....	2

### OTHER CASES

<i>Barringer v. Baptist Healthcare of Oklahoma</i> , 22 P.3d 695 (Okla. 2001).....	16
<i>Beech Aircraft Corp. v. Jinkins</i> , 739 S.W.2d 19 (Tex. 1997).....	13
<i>Dixon v. Chicago &amp; North Western Trans. Co.</i> , 601 N.E.2d 704 (Ill. 1992).....	16

<i>Farmers Mutual Ins. Co. v. Appalachian Power Co.</i> , 78 Fed. Appx. 259, 2003 WL 22383710 (C.A.4 (W. Va.)).....	10
<i>G &amp; P Trucking v. Parks Auto Sales</i> , 591 S.E.2d 42 (S.C. App. 2003).....	16
<i>Gaf Corp. v. Tolar Constr. Co.</i> , 246 Ga. 411, 271 S.E.2d 811 (1980).....	9
<i>Gramex Corp. v. Green Supply, Inc.</i> , 89 S.W.3d 432 (Mo. 2002).....	16
<i>Hawkins v. Gadoury</i> , 713 A.2d 799 (R.I. 1998).....	16
<i>Jackson v. Freightliner Corp.</i> 938 F.2d 40 (5 <sup>th</sup> Cir. 1991).....	13
<i>McLaughlin v. Lougee</i> , 137 P.3d 267 (Alaska 2006).....	16
<i>Motorist Mut. Ins. Co. v. Huron Rd. Hosp.</i> , 653 N.E.2d 235 (Ohio 1995).....	16
<i>Nuessmeier Elec., Inc. v. Weiss Mfg. Co.</i> , 632, N.W.2d 248 (Minn. App. 2001).....	16
<i>Ogle v. Craig Taylor Equipment Co.</i> , 761 P.2d 722 (Alaska 1998).....	16
<i>Pierce v. Shannon</i> , 607 N.W.2d 878 (N.D. 2000).....	16
<i>Pike Industries, Inc. v. Hiltz Const. Inc.</i> , 718 A.2d 336 (N.H. 1998).....	16
<i>Powell v. Montange</i> , 765 N.W.2d 496 (Neb. 2009).....	16
<i>The Doctors Co. v. Vincent</i> , 98 P.3d 681 (Nev. 2004).....	16
<i>Walton v. Avco Corp.</i> , 610 A.2d 454 (Pa. 1992).....	16

**STATUTES AND RULES**

Uniform Contribution Among Joint Tortfeasors Act, 12 U.L.A. 202 (2008), § 1(d).....	15
Uniform Comparative Fault Act, 12 U.L.A. 142 (2008), § 4(b).....	15
W. Va. Code § 55-7-13.....	7
W. Va. R. Civ. P. 13(g).....	6, 7
W. Va. R. Civ. P. 14(a).....	6, 7

**TREATISES AND SECONDARY SOURCES**

Restatement (Second) of Torts: *Contribution Among Tortfeasors*, § 886(A)(2) (1979)..... 15

Restatement (Third) of Torts: *Apportionment of Liability*, § 23(a) (2000) ..... 15

18 Am. Jur.2d *Contribution*, § 61 and § 65 ..... 15

Black’s Law Dictionary (8<sup>th</sup> Ed. 2004)..... 15

## **I. KIND OF PROCEEDING AND NATURE OF RULING BELOW**

Appellant, Halliburton Energy Services, Inc. (“Halliburton”) seeks relief from two Orders of the Circuit Court of Tyler County (“circuit court”) entered on October 29, 2008 and February 6, 2009, respectively.<sup>1</sup> These Orders resulted in the dismissal of Halliburton’s cross-claim against appellee, Texas Keystone, Inc. (“Texas”) for contractual indemnity and common law contribution. (Record 198-207, 233-236, hereinafter (“R. \_\_\_”)).

The circuit court dismissed Halliburton’s contractual indemnity claim against Texas on the basis of an arbitration clause in a written work order between Halliburton and Texas. The circuit court dismissed Halliburton’s contribution claim against Texas on the basis of Halliburton’s voluntary settlement with plaintiffs in February, 2008, holding that “Halliburton’s cross-claim for contribution against Texas...is dismissed in accordance with the West Virginia Supreme Court of Appeals holding in Charleston Area Medical Center, Inc. v. Parke-Davis.” (R. 235-236).

Halliburton also asserted a cross-claim in the circuit court against appellee, Falcon Drilling Company, LLC (“Falcon”) for contribution and implied indemnity. (R. 78-82, ¶¶ 12, 17-18). Among the rulings made by the circuit court in its February 6, 2009 Order was a finding that, despite Halliburton’s voluntary settlement with plaintiffs a year earlier, its cross-claims against Falcon for contribution and implied indemnity remained pending. (R. 236).

One of the issues presented by this appeal is whether Halliburton’s voluntary settlement with plaintiffs in February, 2008 extinguished its right to remain in the case to pursue its contribution claims against Texas and Falcon, as well as its implied indemnity claim against Falcon. (*See*, Halliburton’s Petition for Appeal, pp. 36-44 and Halliburton’s Brief, pp. 38-46). It is the position of both Texas and Falcon that Halliburton’s claims against them for contribution

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<sup>1</sup> The October 29, 2008 Order was entered by The Honorable Judge John T. Madden, who retired effective January 1, 2009. Halliburton sought clarification of this Order and a hearing was held on the motion on January 16, 2009, resulting in the entry of the February 6, 2009, Order by The Honorable Judge David W. Hummel.

were, in fact, extinguished by the settlement. It is also Falcon's position that Halliburton's claim for implied indemnity against it must also fail for the same reason. Accordingly, Falcon files this brief in response to Halliburton's Fifth Assignment of Error. This Court's ruling with respect to Halliburton's cross-claim against Texas for contribution will directly affect and be equally applicable to Halliburton's cross-claims against Falcon for contribution and implied indemnity, and will directly impact a pending motion to vacate a default judgment against Falcon discussed *infra*.<sup>2</sup>

## **II. STATEMENT OF FACTS**

Plaintiffs below, Heather Ruckdeschel and Thomas G. Miller, Sr., as Co-Administrators of the Estate of Thomas G. Miller, Jr.,<sup>3</sup> brought a wrongful death action against Halliburton, Texas and Falcon in connection with an explosion and fire which occurred on October 19, 2005 at the Wiley No. 8 well site in Tyler County, resulting in Thomas G. Miller, Jr.'s death. The Amended Complaint contained separate counts against Halliburton, Texas and Falcon which alleged that each of these defendants was responsible for the death of Thomas G. Miller, Jr. as a result of their respective negligence, fault, or other acts or omissions. (R. 1-6).

As part of its responsive pleading to the Amended Complaint, Halliburton asserted cross-claims against Texas and Falcon. The cross-claim against Texas was for contractual indemnity and common law contribution. (R. 80-82, ¶¶ 13-18). The cross-claim against Falcon was for

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<sup>2</sup> "Where one party only appeals, but his rights and the rights of others are not only involved in the same questions, but are equally affected by the decree or judgment, the appeal of the one will call for an adjudication also of the rights of those not appealing". *Levine v. Headlee*, 148 W. Va. 323, 334, 134 S.E.2d 892, 898 (1964) (quoting Syllabus Point 1, *Buskirk v. Musick*, 100 W. Va. 247, 130 S.E. 435 (1925)). Further, "[a]n appeal brings up the entire record, and any error to the prejudice of an appellee not appealing or cross assigning error may be corrected or reversed, though his right do [sic] not depend on the same errors assigned by the appellant, but is even separate from or hostile to it, if justice requires such correction on reversal." Syl. Pt. 2, *Weekly v. Hardesty*, 48 W. Va. 39, 35 S.E. 880 (1900).

<sup>3</sup> The original Complaint named only Heather Ruckdeschel as plaintiff in her capacity as the Administratrix of the Estate of Thomas G. Miller, Jr. The Amended Complaint filed on or about September 13, 2007, named Thomas G Miller, Sr. as a plaintiff and Co-Administrator of the Estate of Thomas G. Miller, Jr. As discussed *infra*, plaintiffs have now settled with Halliburton, Texas and Falcon and are not involved in this appeal.

implied indemnity and common law contribution. (See, Halliburton's Brief, pp. 1, 3). Specifically, Halliburton cross-claimed that Texas and Falcon were liable to it "[i]n the event that the Plaintiff (sic) obtains a judgment against [Halliburton]." Also, Halliburton asserted that "[i]n the event that the Plaintiffs should be awarded damages for which [Halliburton] is found to be any percentage liable, [Texas and/or Falcon are] required to provide indemnification...to [Halliburton]" and that "[i]n the event that Plaintiffs should be awarded damages for which [Halliburton] is found to be any percentage liable, [Halliburton] is alternatively entitled to contribution from [Texas and/or Falcon]." (R. 80-82, ¶¶ 12, 17, 18).

Halliburton subsequently entered into settlement negotiations with plaintiffs. Neither Texas nor Falcon were aware of, or invited to participate in, those negotiations. Halliburton ultimately reached a settlement with plaintiffs for the sum of \$825,000.00. By Order entered February 29, 2008, the circuit court approved the settlement between Halliburton and plaintiffs, and made a specific finding that the settlement was a good faith settlement in accordance with the decisions in *Board of Educ. v. Zando Martin & Milstead, Inc.*, 182 W. Va. 597, 390 S.E.2d 796 (1990) and *Smith v. Monongahela Power Co.*, 189 W. Va. 237, 429 S.E.2d 643 (1993). This Order also released, acquitted and discharged Halliburton of any and all claims or demands for damages arising from, or in any manner connected with the death of Thomas G. Miller, Jr. However, the Order specifically reserved plaintiffs' "right to continue the prosecution of the above-captioned civil action" against Texas and Falcon. The Court also made a specific finding that Halliburton could continue to pursue contractual indemnity from Texas, but struck any reference to Halliburton being able to continue to pursue indemnity from Falcon. (R. 147-151, 182-185).

While plaintiffs proceeded with their case against Texas and Falcon, Halliburton began pursuing its contractual indemnity claim against Texas for the amount it had paid plaintiffs in

settlement. (R. 154-178). The work order through which Halliburton attempted to assert its indemnity claim also contained a provision which required all disputes arising thereunder to be resolved through arbitration. Texas' position was that whether the indemnity provision in the work order was enforceable against it was required to be litigated through arbitration. (R. 187-197). Pursuant to its October 29, 2008 Memorandum Order, the circuit court agreed with Texas' position and dismissed Halliburton's cross-claim "upon the basis that the claim is subject to arbitration...." (R.198-206).

Halliburton then began asserting that its cross-claim against Texas for contribution was still alive, despite the fact that Halliburton's cross-claim had been dismissed in its entirety by the circuit court's October 29, 2008 Order. Halliburton filed a motion seeking clarification of the October 29, 2008 Order, and a ruling that Halliburton's cross-claim for contribution against Texas remained active. (R. 208-211). As memorialized in its Supplemental Order entered February 6, 2009, the circuit court found that its October 29, 2008 Order "was meant to encompass both Halliburton's claim for indemnification and contribution" against Texas, and ordered that Halliburton's cross-claim for contribution was "dismissed in accordance with the West Virginia Supreme Court of Appeals holding in Charleston Area Medical Center, Inc. v. Parke-Davis." (R. 233-236).

At oral argument on the motion for clarification, Halliburton had also sought a ruling on the status of its cross-claim against Falcon for contribution and implied indemnity. The circuit court's February 16, 2009 Order also contained a finding that Halliburton's claims for contribution and implied indemnity against Falcon remained pending, despite its settlement with plaintiffs in February, 2008. (R. 233-236).

On or about February 25, 2009, Halliburton filed its Petition for Appeal with this Court. As its fifth assignment of error, Halliburton contended that the circuit court committed reversible

error when it dismissed Halliburton's contribution claims against Texas and Falcon based upon Halliburton's voluntary settlement with plaintiffs. (*See*, Petition for Appeal, ¶¶ i, 5, 36).

While the Petition for Appeal was still pending, Halliburton filed a motion for default judgment against Falcon in the circuit court, seeking reimbursement for the full amount of its settlement with plaintiffs on the basis that Falcon had never answered Halliburton's cross-claim. Falcon opposed the motion for default judgment and, while the motion was still pending, Texas and Falcon reached a mediated settlement with the plaintiffs on April 8, 2009 in the total amount of \$2.4 million dollars, to be borne equally by Texas and Falcon. (R. 241, p.3, ¶ 8; R. 242, p. 4, ¶ 2). Although the circuit court had been advised of the settlement reached between plaintiffs, Texas and Falcon, it nevertheless granted Halliburton's motion for default judgment against Falcon just two days later. (*See*, 4/8/09 correspondence to Judge Hummel advising of this settlement, attached hereto as **Exhibit A** and 4/10/09 Order granting Halliburton's motion for default judgment, attached hereto as **Exhibit B**).<sup>4</sup>

Falcon has moved to vacate the default judgment and that motion remains pending before the circuit court. (*See*, Halliburton's Brief, p.1, n.2). The motion to vacate is premised on the argument that, because Halliburton's settlement with plaintiffs in February, 2008 extinguished its right to contribution and implied indemnity from Falcon, no responsive pleading to the cross-claim on Falcon's part was required. Therefore, the default judgment entered over a year later, in April of 2009, granted Halliburton a remedy to which it had no right.

The circuit court, by its July 17, 2009 Order, approved the \$2.4 million dollar settlement between plaintiffs, Texas and Falcon, and found it to be a good faith settlement. (R. 239-244). The court further ordered that Texas and Falcon were released, discharged and acquitted of any and all liability to plaintiffs in connection with the death of Thomas G. Miller, Jr., and that

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<sup>4</sup> The undersigned counsel for Falcon was not involved in the case leading up to the circuit court's entry of the default judgment, and only became involved in the case after entry of the default judgment.

plaintiffs claims against Texas and Falcon were dismissed with prejudice. (R. 239-244). The circuit court also recently approved the distribution of these settlement proceeds to plaintiffs (See, 9/14/09 Order Approving Distribution of Wrongful Death Settlement Proceeds, attached hereto as **Exhibit C**). Accordingly, plaintiffs have now settled with and released Halliburton, Texas and Falcon, and plaintiffs' claims against each of these defendants arising out of the death of Thomas G. Miller, Jr. have been dismissed with prejudice.

### **III. STANDARD OF REVIEW**

Falcon finds no error with the standard of review set forth by Halliburton with respect to its Fifth Assignment of Error. Falcon takes no position with respect to the appropriate standard of review applicable to Halliburton's other Assignments of Error.

### **IV. REBUTTAL TO FIFTH ASSIGNMENT OF ERROR**

**THE CIRCUIT COURT CORRECTLY DETERMINED THAT HALLIBURTON'S VOLUNTARY SETTLEMENT WITH PLAINTIFFS EXTINGUISHED ITS RIGHT TO RECOVER CONTRIBUTION.**

### **V. LAW AND ARGUMENT**

#### **1. The Right To Recover Contribution Is Available Only To A Party Who Pays Damages In Satisfaction Of A Final Judgment, And Halliburton Is Not Such A Party.**

Throughout its brief, Halliburton mistakenly equates the procedure which must be followed to *preserve* a claim for contribution with the right to *recover* contribution.<sup>5</sup> Contribution may be *recovered* in West Virginia in one of two ways, both of which require the rendering of a joint judgment against non-settling tortfeasors, of which one tortfeasor has been forced to pay more than his proportionate share in satisfying the judgment.

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<sup>5</sup> As to those defendants whom a plaintiff has sued directly, a claim for contribution is preserved by way of cross-claim pursuant to W. Va. R. Civ. P. 13(g). Where a plaintiff has not sued all potentially liable parties, a named defendant may preserve a claim for contribution from one or more non-named parties by way of third-party impleader pursuant W. Va. R. Civ. P. 14(a).

The first method of recovering contribution is pursuant to W. Va. Code § 55-7-13, following the entry of the joint judgment against non-settling tortfeasors. This statute provides:

Where a judgment is rendered in an action *ex delicto* against several persons jointly, and satisfaction of such judgment is made by any one or more of such persons, the other shall be liable to contribution to the same extent as if the judgment were upon an action *ex contractu*.

W. Va. Code § 55-7-13.

The second method of recovering contribution is pursuant to the “inchoate” right which this Court recognized in *Haynes v. City of Nitro*, 161 W. Va. 230, 240 S.E.2d 544 (1977). This method permits a named tortfeasor in an action by an injured party to join one or more non-named tortfeasors as third-party defendants by way of third-party impleader, to share by way of contribution on the verdict recovered by the plaintiff. *Sydenstricker v. Unipunch Products, Inc.*, 169 W. Va. 440, 441, 288 S.E.2d 511, 513 (1982) (“the procedural mechanism for invoking this non-statutory right of contribution, ...is by means of third-party joinder”); *see also, Sitzes v. Anchor Motor Freight, Inc.* 169 W. Va. 698, 707, 289 S.E.2d 679, 685 (1982), at n. 10 (“Since our decision in *Haynes* ..., if a plaintiff does not elect to sue all of the joint tortfeasors, those that have been sued may bring in the absent joint tortfeasors in a third-party suit for contribution.”); *Lombard Canada, Ltd. v. Johnson*, 217 W. Va. 437, 442, 618 S.E.2d 446, 451 (2005) (the law of West Virginia “permits a joint tortfeasor to recover contribution *only* pursuant to the statutory provisions governing contribution actions *or through means of third-party impleader* in the course of a lawsuit that is initiated by the injured party.”) (emphasis added).<sup>6</sup>

This inchoate method of recovering contribution also requires that a joint *judgment* be rendered establishing a common obligation owed by the joint tortfeasors to the injured party. As

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<sup>6</sup> While Halliburton spends a significant portion of its argument on this issue asserting that it may remain in the case, notwithstanding its settlement with plaintiffs, to pursue this “inchoate” right of contribution against Texas and Falcon, such right is not implicated by the facts of this case because plaintiffs elected to sue Halliburton, Texas and Falcon directly. Thus, it was not necessary for Halliburton to join Texas and Falcon by way of third-party impleader, because they were already defendants in the case. Halliburton’s cross-claims were asserted pursuant to W. Va. R. Civ. P. 13(g), not pursuant to the joinder provisions of W. Va. Civ. P. 14(a).

this Court stated in *Charleston Area Medical Center, Inc. v. Parke-Davis*, 217 W. Va. 15, 24, 614 S.E.2d 15, 24 (2005):

....To permit the inchoate right of contribution to be successfully asserted, the injured party must bring a cause of action against an alleged tortfeasor who then joins additional non-named tortfeasors by means of third-party joinder, *following which a judgment is rendered that establishes a common obligation owed by the joint tortfeasors to the injured party*. Absent compliance with this procedural mechanism for asserting contribution *in advance of the rendering of a joint judgment*, there is no right of contribution outside the statutory rights provided by W. Va. Code § 55-7-13 ...[W]e hold that the inchoate right of contribution recognized by this State can only be asserted by means of third-party impleader in an action brought by an injured party against a tortfeasor. (emphasis added)

*See also, Howell v. Luckey*, 205 W. Va. 445, 449, 518 S.E.2d 873, 877 (1990) (“If contribution is not *limited to joint judgments*, there is no way to avoid infinitely extending the time period for suing the joint tortfeasor.”) (emphasis added); *Sitzes*, 169 W. Va. at 715, 289 S.E.2d at 690, n. 23 (...“*Payment of more than an individual’s assigned percentage of the judgment is payment of more than his pro tanto share and gives rise to his right in contribution to recover the excess.*”) (emphasis added).

In the case *sub judice*, Halliburton could no longer be party to a joint judgment by virtue of its settlement with, and release by plaintiffs in February, 2008. Indeed, as noted previously, in view of plaintiffs’ settlement with, and release of Texas and Falcon, no judgment on the defendants’ joint liability can or will be issued, no damages can or will be calculated, and no relative fault can or will be apportioned among the defendants. Therefore, contribution from Texas and Falcon to Halliburton is not available as a matter of law.<sup>7</sup>

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<sup>7</sup> Halliburton’s own cross-claims recognize the requirement of a joint judgment which Halliburton must satisfy as a condition precedent to its right to recover contribution against Texas and Falcon. Halliburton seeks contribution “*in the event that the Plaintiff obtains a judgment*” against it, and also cross-claims that “*in the event that the Plaintiff should be awarded damages for which [Halliburton] is found to be any percentage liable, [Halliburton] is alternatively entitled to contribution from [Texas and/or Falcon].*” (R. 81-82, ¶¶ 12, 18) (emphasis added).

**2. The Right To Recover Contribution Is Not Available To A Party Who Voluntarily Settles With The Plaintiff Prior To A Judicial Determination Of Liability.**

In *Parke-Davis*, the Court recognized that a common obligation owed to an injured party by multiple tortfeasors was the necessary predicate to any recovery in contribution. The Court noted that it had explained this principle in *Sydenstricker* when it stated: “the doctrine of contribution has its roots in equitable principles. The right to contribution arises when persons having a common obligation, either in contract or tort, are sued on that obligation, and one party is *forced* to pay more than his *pro tanto* share of the obligation.” *Id.*, 217 W. Va. 22-23, 614 S.E.2d 22-23, citing *Sydenstricker*, 169 W. Va. at 441, 288 S.E.2d at 513, Syl. Pt. 4, in part. (emphasis added). As the Court explained in *Sydenstricker*, “[i]t is this common or joint liability to the plaintiff on the part of joint tortfeasors that gives rise to a cause of action for contribution.” *Id.*, 169 W. Va. at 448, 288 S.E.2d at 516.

In *Parke-Davis*, the Court held that the underlying basis for the contribution claim being asserted had not arisen as the result of the party seeking contribution having been legally compelled to pay the injured party in satisfaction of a judgment, but instead “arose out of the voluntary payment by CAMC of an amount reached by means of a settlement agreement.” *Id.*, 217 W. Va. at 23, 614 S.E.2d at 23, citing *Gaf Corp. v. Tolar Constr. Co.*, 246 Ga. 411, 271 S.E.2d 811, 812 (1980) (observing that “the quintessential element of a claim for contribution [is] the *legal compulsion to pay* on the part of one seeking contribution from a joint tortfeasor”). The Court found that the “predicate common obligation owed to the injured party was not established” because CAMC had voluntarily settled its claims with the plaintiff:

Given that CAMC acted of its own salutary accord in deciding to settle the claims raised by the child’s estate, it cannot claim to have been “forced to pay more than [its] *pro tanto* share.”

*Id.*, 217 W. Va. at 23, 614 S.E.2d at 23.

In a futile effort to avoid the effect of its voluntary settlement with the plaintiffs in February 2008, Halliburton attempts to suggest that the above-quoted language, which was relied upon by the circuit court in the present case, was merely *dicta*. However, a clear reading of the Court's language reveals that the voluntary settlement by CAMC was the fundamental basis for its finding that no common liability to the plaintiffs could ever be established, thereby barring CAMC's contribution claim. *Id.* This is evidenced by the Court's subsequent decision in *Lombard Canada, supra*, where it stated:

[W]e concluded in *Parke-Davis* that *where a settlement agreement is reached between the injured party and one tortfeasor, the predicate common obligation owed to the injured party cannot be manufactured...* Critically, the substantive grounds for invoking the inchoate right of contribution were determined not to be present in *Parke-Davis* based upon the voluntary payment by one tortfeasor of a settlement amount as opposed to being compelled legally to make such payment due to the rendering of a judgment. See, *Parke-Davis*, 217 W. Va. at 23, 614 S.E.2d at 23 (recognizing that voluntary nature of settlement precludes conclusion that settling party seeking contribution from other tortfeasor was "forced to pay more than [its] *pro tanto* share.") (emphasis added).

See also, *Farmers Mutual Ins. Co. v. Appalachian Power Co.*, 78 Fed. Appx. 259, 261-63, 2003 WL 22383710, pp. 3-5 (C.A.4 (W. Va.)) (interpreting West Virginia law, and holding that defendant/third-party plaintiff's voluntary dismissal of third-party defendant precluded the possibility of a "common liability" to the plaintiff established by a joint judgment, thereby barring contribution claim against third-part defendant).<sup>8</sup>

Here, Halliburton cannot satisfy the predicate "common liability" necessary to maintain a contribution claim against Texas and Falcon. As noted above, Halliburton's settlement with plaintiffs foreclosed the possibility that Halliburton would share a "common liability" with Texas and Falcon pursuant to a joint judgment against them, which Halliburton was required to satisfy. In this case, all defendants have settled with plaintiffs, albeit at different times in the litigation,

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<sup>8</sup> It is interesting to note that counsel for Halliburton was also counsel for the settling party who was seeking contribution in the *Farmers Mutual* case, and is also counsel for Farmers Mutual—the settling party seeking contribution—in another matter before the Court this term styled *Farmers Mutual Insurance Co. v. Fike*, No. 34743.

which means there will be no judgment, no damages awarded, no determination of liability, and no apportionment of fault. Halliburton cannot be found liable for any portion of plaintiffs' damages, and will not satisfy *any* judgment for damages in favor of plaintiffs, let alone more than its proportionate share. In the absence of such "common liability", and the satisfaction of a judgment, Halliburton has no right to recover contribution from Texas and Falcon as a matter of law.

**3. This Court's Decision In *Zando*, And The Verdict Credit To Which Non-Settling Defendants Are Entitled, Bar A Settling Defendant From Recovering Contribution.**

When Halliburton entered into a good faith settlement with plaintiffs in early 2008, it was, as a matter of law, relieved from any liability for contribution to the non-settling defendants. *Zando*, Syl. Pt. 6. If the case were then tried and a verdict rendered for plaintiffs, any remaining defendant, including Falcon, would have been entitled, as a matter of law, to have the verdict reduced to reflect Halliburton's \$825,000.00 settlement. As stated in Syllabus Points 1 and 2 of *Tennant v. Craig*, 156 W. Va. 632, 195 S.E.2d 727 (1973):

"1. 'Where payment is made, and release obtained, by one joint tortfeasor, the other tortfeasors shall be given credit for the amount of such payment in the satisfaction of the wrong' (citation omitted)

"2. 'Partial satisfaction of the injured person by one joint tortfeasor is a satisfaction, *pro tanto* as to all.' (citation omitted)

Citing the above-referenced syllabus points, the Court in *Zando* stated "these cases implicitly stand for the proposition that one who settles with the plaintiff prior to verdict is discharged from any liability for contribution." *Id.* 182 W. Va. at 604, 390 S.E.2d at 803. Because a non-settling defendant is entitled to a credit against any verdict for the entire amount paid by a settling defendant, the opposite must also be true--a settling defendant cannot remain in the case to seek recovery from a non-settling defendant of any amount it has voluntarily paid to plaintiff in settlement. In other words, where a defendant settles with and is released by plaintiff,

and is thereby also relieved from any further obligation to non-settling defendants for contribution, the *quid pro quo* is that the settling defendant cannot continue to litigate its cross-claim for contribution against any non-settling defendant.

Stated another way, the “settling defendant, is, in effect, paying a share of liability on the verdict...[and] [a]t the same time, the use of the verdict credit ensures against double recovery by the plaintiff.” *Zando*, 182 W. Va. at 605, 390 S.E.2d at 804. Because a settling defendant, in effect, pays its proportionate share of liability on the verdict, and the non-settling defendants receive the benefit of the verdict credit, the settling defendant is relieved of any liability for contribution to the non-settling defendants. *Id.*

Equity requires that this principle be applied with mutuality. The settling defendant has settled its share of the case for a specified amount. Under *Zando*, the settling defendant may not be compelled to pay more than it has settled for by way of contribution claims to the non-settling defendants. Conversely, the settling defendant may not seek to reduce the amount it has paid in settlement by seeking to recover contribution from the non-settling defendants. For the reasons stated above, Halliburton cannot recover contribution from Texas and Falcon.

To adopt Halliburton’s position, and now permit settling defendants to pursue contribution from their non-settling counterparts, who themselves are barred from pursuing contribution under *Zando*, defies logic, and would not only be wholly inconsistent with the prior decisions of this Court and W. Va. Code § 55-7-13, but would also achieve a result completely contrary to principles of equity and fairness. It is certainly not an equitable system which would allow a settling defendant to remain in a case to pursue contribution against non-settling defendants, when under *Zando*, the non-settling defendants could not avail themselves of the same opportunity.

Additionally, as recognized by the Supreme Court of Texas in *Beech Aircraft Corp. v. Jinkins*, 739 S.W.2d 19, 22 (Tex. 1997), promoting a system which, in the absence of a joint judgment, would still allow a settling defendant to “prosecute the other jointly responsible parties” would not facilitate judicial economy or “result in any significant savings of time or resources.” The court in *Jinkins* appropriately recognized that “the settling defendant’s unusual posture as ‘surrogate plaintiff’” would do nothing more than lead to additional litigation, jury confusion and possible prejudice to the remaining non-settling defendants. *See also, Jackson v. Freightliner Corp.* 938 F.2d 40, 41 (5<sup>th</sup> Cir. 1991).

As stated above, the law of this State does not permit a settling tortfeasor to seek contribution for the amount of the settlement from another joint tortfeasor where no judgment has been entered against them jointly. To adopt Halliburton’s position ignores the express intent of our Legislature and the decisions of this Court. Moreover, adoption of such a system would perpetuate, rather than eliminate, litigation in contravention of public policy. *See, Syl. Pt. 1, Sanders v. Roselawn Memorial Garden, Inc.*, 152 W. Va. 91, 159 S.E.2d 784 (1968) (the law in West Virginia “favors and encourages the resolution of controversies by...compromise and settlement rather than by litigation; and it is the policy of the law to uphold such [settlements] if they are fairly made and are not in contravention of some law or public policy.”).

Playing out Halliburton’s argument to its logical conclusion conjures an image much akin to that of a dog chasing its tail. Consider a situation involving facts essentially identical to those presently before the Court: A plaintiff sues three alleged joint tortfeasors. All three defendants negotiate separate settlements with the plaintiff which are found by the court to be in good faith. One settling defendant asserts by way of a cross-claim a right to contribution from the other settling defendants. What would be the logical result? Instead of the lawsuit being dismissed in its entirety, it would continue, as it would be necessary for the defendants to essentially litigate

the merits of the plaintiff's case among themselves to judgment (without the participation of the plaintiff) in order to apportion fault among them. Such a situation would be untenable and calls to mind the language which this Court cited with approval in *Zando*:

Few things would be better calculated to frustrate this policy, and to discourage settlement of disputed tort claims, than knowledge that such a settlement lacked finality and would but lead to further litigation with one's joint tortfeasors, and perhaps further liability.

*Id.* 182 W.Va. at 605, 390 S.E.2d at 804.

The result is the same if Halliburton's argument is that settling defendants should be permitted to remain in a case after settling with the plaintiff in order to pursue contribution from the non-settling defendants, except that now the plaintiff and the settling defendant will be aligned with one another in prosecuting the plaintiff's claims against the non-settling defendants. The verdict credit to which non-settling defendants are entitled under existing law would be rendered meaningless, and it would again be necessary to litigate the case through judgment in order to determine the apportionment of liability among the defendants. What happens if it is determined that that the settling defendant is found to be more at fault than the non-settling defendants, and accordingly paid *less than* its proportionate share of the judgment? Would then the non-settling defendants have a right to recover contribution from the settling defendant? Where would it end? In short, to adopt Halliburton's position is to contravene decades of sound public policy in favor of resolving controversies through settlement and compromise as articulated by this Court in *Sanders, supra*, a result that should not be countenanced.

**4. Even If The Court Recognizes The Right Of A Pre-Judgment Settling Defendant To Pursue Contribution, Halliburton's Claims Fail Because Its Settlement With Plaintiffs Did Not Extinguish The Liability Of Texas And Falcon.**

The law of this State, as announced by this Court, requires satisfaction of a joint judgment by one tortfeasor for more than its proportionate share of liability before contribution

may be recovered from other joint tortfeasors against whom judgment has also been rendered. However, should this Court hereafter allow contribution in the absence of a joint judgment, Halliburton still cannot prevail under the facts of this case, because its settlement with plaintiffs did not extinguish the liability of Texas and Falcon. As specifically noted in *Parke-Davis*:

....[E]ven in those States where the Uniform Contribution Among Joint Tortfeasors Act has been adopted, *contribution is not permitted by one settling tortfeasor barring a release obtained by the settling tortfeasor that expressly extinguishes any liability against all tortfeasors*. ...In this case, as mentioned above, CAMC was the only party released from liability by the child's estate through the executed settlement documents.

*Id.*, 217 W. Va. at 23, 614 S.E.2d at 23, n. 11. (emphasis added).<sup>9</sup>

It is clear from the record in this case that Halliburton sought only a release of its own potential liability by settling with plaintiffs for \$825,000.00. The discharge of liability obtained by Halliburton pursuant to its settlement with plaintiffs applies only to it, and makes no mention of Texas or Falcon, except to the extent that plaintiffs specifically reserve their right to continue the litigation to seek recovery against Texas and Falcon. (R. 179-186). Plaintiffs, did, in fact, continue their action against Texas and Falcon, conducting depositions of appropriate employees and representatives of these defendants. (R. 237, 238) (depositions of Falcon's COO, Larry D. Winckler and Falcon employee, Paul Gelles). Ultimately, plaintiffs entered into separate settlements with Texas and Falcon totalling \$2.4 million dollars, which settlements the circuit court approved, and specifically found to be a good faith settlement, in its order of July 17, 2009. (R. 239-244). Accordingly, even if the Court were to hereafter permit settling defendants to

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<sup>9</sup> The Uniform Contribution Among Joint Tortfeasors Act, 12 U.L.A. 202 (2008) provides at § 1(d) – “a tortfeasor who enters into a settlement agreement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in any respect to any amount paid in a settlement which is in excess of what is reasonable.” Similarly, the Uniform Comparative Fault Act, 12 U.L.A. 142 (2008) provides at § 4(b) – “Contribution is available to a person who enters into a settlement with a claimant only (1) if the liability of the person against whom contribution is sought has been extinguished and (2) to the extent that the amount paid in settlement was reasonable.”; see also, Restatement (Second) of Torts: *Contribution Among Tortfeasors*, § 886(A)(2) (1979) and Comment f; Restatement (Third) of Torts: *Apportionment of Liability (Contribution)*, § 23(a) (2000), Comment b and Reporters' Note to Comment b; 18 Am. Jur.2d *Contribution*, §§ 61 and 65; Black's Law Dictionary, “contribution” (8<sup>th</sup> Ed. 2004).

pursue contribution from non-settling defendants, Halliburton could not recover contribution because its settlement with plaintiffs did not extinguish the liability of Texas and Falcon.<sup>10</sup>

**5. Texas And Falcon Are Not Liable For Contribution Because They Have Entered Into A Good Faith Settlement With Plaintiffs.**

“A party in a civil action who has made a good faith settlement with the plaintiff prior to a judicial determination of liability is relieved from any liability for contribution.” *Zando*, 182 W. Va. at 606, 390 S.E.2d at 805. As noted above, Texas and Falcon entered into a good faith settlement with plaintiffs on April 8, 2009, which the circuit court approved in its July 17, 2009 Order. (R. 239-244). The good faith settlements by Texas and Falcon were entered into and approved prior to any judicial determination of liability for the damages alleged by plaintiffs. The circuit court has dismissed plaintiffs’ claims against Texas and Falcon with prejudice. (R. 239-244). This Court’s holding in *Zando* – that a party who settles with the plaintiff before judgment is no longer liable for contribution – applies to the settlements reached by Texas and Falcon, and bars Halliburton’s effort to recover contribution from them as a matter of law.

It is anticipated that Halliburton will argue that, because it was granted default judgment against Falcon prior to the circuit court’s approval of Falcon’s good faith settlement with plaintiffs, the default judgment controls and should be given legal effect. However, if Halliburton’s right to recover contribution was, as Falcon contends, extinguished when it settled

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<sup>10</sup> In jurisdictions permitting contribution claims by settling tortfeasors, it is well settled that the liability of the person from whom contribution is sought must be extinguished as a fundamental prerequisite to recovering contribution. See e.g., *Powell v. Montange*, 765 N.W.2d 496 (Neb. 2009) (“[A] right of contribution among joint tort-feasors is not established if the tort-feasor seeking contribution extinguishes only his or her liability and does not extinguish the liability of the other joint-feasors from whom contribution is sought.”); *McLaughlin v. Lougee*, 137 P.3d 267, 279 (Alaska 2006); *Nuessmeier Elec., Inc. v. Weiss Mfg. Co.*, 632, N.W.2d 248, 253 (Minn. App. 2001) (“[T]he settling tortfeasor must have removed the threat that the injured party might later proceed directly against the non-settling tortfeasor.”); *G & P Trucking v. Parks Auto Sales*, 591 S.E.2d 42, 45, 46 (S.C. App. 2003) (finding no right to contribution where settling tortfeasor failed to procure release discharging all tortfeasors from liability); *Gramex Corp. v. Green Supply, Inc.*, 89 S.W.3d 432, 443 (Mo. 2002); *Motorist Mut. Ins. Co. v. Huron Rd. Hosp.*, 653 N.E.2d 235, 239 (Ohio 1995); *Pierce v. Shannon*, 607 N.W.2d 878, 881 (N.D. 2000); *Dixon v. Chicago & North Western Trans. Co.*, 601 N.E.2d 704, 707 (Ill. 1992); *Walton v. Avco Corp.*, 610 A.2d 454, 461-62 (Pa. 1992); *The Doctors Co. v. Vincent*, 98 P.3d 681, 683 (Nev. 2004); *Barringer v. Baptist Healthcare of Oklahoma*, 22 P.3d 695, 698 (Okla. 2001); *Hawkins v. Gadoury*, 713 A.2d 799, 805 (R.I. 1998); *Pike Industries, Inc. v. Hiltz Const. Inc.*, 718 A.2d 336, 239 (N.H. 1998); *Ogle v. Craig Taylor Equipment Co.*, 761 P.2d 722, 725 (Alaska 1998).

with plaintiffs in February 2008, there was no need for Falcon to respond to Halliburton's cross-claim, and there was no legal basis upon which default judgment could be granted. Thus, Falcon's good faith settlement with plaintiffs would still bar Halliburton's contribution claim.

**6. Halliburton Cannot Recover Implied Indemnity Against Falcon Because It Voluntarily Settled With Plaintiffs And Cannot Otherwise Demonstrate That It Is Without Fault.**

Although not directly at issue in this appeal, Falcon brings to the Court's attention that the nature of the claims against Halliburton, Texas and Falcon, as well as Halliburton's settlement with plaintiffs, also bars Halliburton's implied indemnity claim against Falcon. Accordingly, Falcon respectfully requests that this Court dismiss Halliburton's implied indemnity claim against Falcon.

At the heart of the doctrine of implied indemnity is the premise that the person seeking indemnity "has been *required to pay damages* caused by a third party". See, *Sydenstricker*, 169 W. Va. at 445, 288 S.E.2d at 515. (emphasis added). As demonstrated above, Halliburton was not compelled or required to pay damages to plaintiffs in satisfaction of a judgment taken against the defendants. Thus, for the same reason Halliburton's contribution claim was extinguished – the absence of a judgment which it satisfied – Halliburton was precluded from seeking implied indemnity from Falcon once it voluntarily settled with plaintiffs in February, 2008. Based upon the foregoing, Halliburton's cross-claim for implied indemnity against Falcon is barred as a matter of law.

Moreover, Halliburton is not entitled to implied indemnity because it cannot demonstrate that it is without fault. "The requisite elements of an implied indemnity claim in West Virginia are a showing that: (1) an injury was sustained by a third party; (2) for which a putative indemnitee has become subject to liability *because of a positive duty created by statute or common law*, but whose independent actions did not contribute to the injury; and (3) for which a

putative indemnitor should bear fault for causing *because of the relationship the indemnitor and indemnitee share.*” Syl. Pt. 4, *Harvest Capital v. West Virginia Dept. of Energy*, 211 W. Va. 34, 560 S.E.2d 509 (2002); Syl. Pt. 14, *Bowyer v. Hi-Lad, Inc.*, 216 W. Va. 634, 609 S.E.2d 895 (2004). (emphasis added). “[T]he key to an indemnity claim--as the Court noted in *Harvest Capital*--is that the defendant seeking indemnification must show that its “independent actions did not contribute to the injury[.]” In other words, the defendant seeking indemnification must be one “who has committed no independent wrong.” *Id.*, 211 W. Va. at 37, 560 S.E.2d at 512.

In order to avoid the dismissal of its implied indemnity claim, Halliburton would have to demonstrate that it is without fault in this matter. This it cannot do. Plaintiffs’ Amended Complaint sets forth a separate cause of action against Halliburton for its own negligence in failing to (a) properly place equipment at a safe distance from flammable vapors, and (b) employ appropriate safety devices on such equipment, and/or adequately supervise the cementing and other operations at the Wiley No. 8 well site. (R. 5, ¶ 23).

In this case, Halliburton has not pled that Falcon is liable for implied indemnity based upon any relationship between them or any positive duty created by statute or common law. Because Halliburton could only have been liable in judgment to the plaintiffs based upon its own actions or inactions, its claim for implied indemnity against Falcon cannot lie, because Halliburton would not be without fault, and its independent actions would be the underlying basis for its liability.

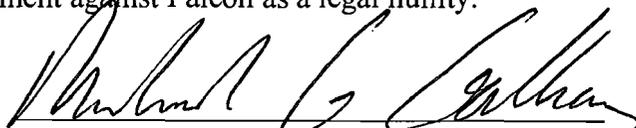
Finally, the implied indemnity claim must fail for the same reasons discussed in sections 1., 2., and 5., *supra*, Pursuant to *Hager v. Marshall*, 202 W. Va. 577, 580 S.E.2d 640 (1998), Syl. Pt. 7, a settling defendant is relieved of liability for implied indemnity from non-settling defendants. Here, all defendants have entered into good faith settlements with the plaintiffs and plaintiffs’ claims against all defendants have been dismissed with prejudice. There can be no

judgment against any of the defendants requiring any of the defendants to pay damages. Thus, there is no longer any basis upon which an implied indemnity claim could be made.

## **VI. CONCLUSION**

The circuit court correctly held that Halliburton's right to recover contribution was extinguished by its voluntary good faith settlement with Plaintiffs in February, 2008, and the dismissal with prejudice of plaintiffs' claims against Halliburton. The law of this State requires a joint judgment, which must be satisfied, before the right to recover contribution arises. In this case there can be no joint judgment which would form the predicate "common liability" for Halliburton to recover contribution, because Halliburton voluntarily settled with plaintiffs, and was not forced to pay damages. Additionally, it would be inequitable and contrary to law to permit a settling defendant to remain in a case to pursue contribution when, under *Zando*, non-settling defendants could not do the same. For these same reasons, and because Halliburton cannot establish that it is without fault, Halliburton's implied indemnity claim against Falcon fails as well.

**WHEREFORE**, for the reasons set forth herein, Falcon respectfully requests that this Court: 1. affirm the circuit court's dismissal of Halliburton's cross-claim for contribution against Texas; 2. hold that Halliburton's cross-claims against Falcon for contribution and implied indemnity must be dismissed; 3. reverse the circuit court's April 10, 2009 Order granting Halliburton's motion for default judgment against Falcon as a legal nullity.

  
Michael G. Gallaway, Esquire (WVSB #5071)  
**SPILMAN THOMAS & BATTLE, PLLC**  
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Wheeling, West Virginia 26003  
Telephone: (304) 230-6950  
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*Counsel for Falcon Drilling Company, LLC*

**EISENBERG & TORISKY**  
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April 8, 2009

**VIA FACSIMILE AND REGULAR MAIL**

The Honorable David Hummel, Jr.  
Judge, 2<sup>nd</sup> Judicial Circuit  
Marshall County Courthouse  
600 Seventh Street  
Moundsville, WV 26041

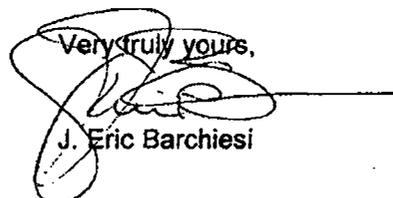
**RE: Heather Ruckdeschel and Thomas G. Miller, Sr., Co-Administrators of the Estate of Thomas G. Miller, Jr., deceased vs Falcon Drilling Company, L.L.C., Texas Keystone, Inc. and Halliburton Energy Services**  
**No.: 07-C-49 Tyler County, West Virginia**  
**Claim No. 709-527238-001**  
**Document Label: LEGAL - OTHER COURT DOCUMENT**  
**DOL: 10/19/05**  
**File No.: PAPI-00984**

Dear Judge Hummel:

This correspondence will serve to advise you that through a mediation process held this morning, all claims brought by the Plaintiffs against Falcon Drilling Company, L.L.C. and Texas Keystone, Inc. have amicably resolved. In light of this settlement, it is our position and belief that the crossclaims advanced in this matter against Falcon Drilling Company, L.L.C. by Texas Keystone, Inc. and Halliburton Energy Services have been rendered moot. I respectfully request that you regard this settlement as an additional fact in your consideration of the Motion for Default filed by Halliburton Energy Services against Falcon Drilling Company, L.L.C.

By copy of this correspondence to all counsel of record, I am advising them of this communication.

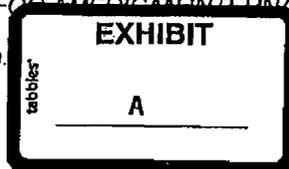
Thank you for your courtesy and attention.

Very truly yours,  
  
J. Eric Barchiesi

JEB  
cc: Counsel of Record

STAFF COUNSEL FOR AMERICAN INTERNATIONAL COMPANIES

L:ERIC\00984-Ruckdeschel\JUDGE.HUMMEL.04.08.09.



IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

HEATHER RUCKDESCHEL, and  
THOMAS G. MILLER, SR.,  
as Co-Administrators of the Estate of THOMAS  
G. MILLER, JR., deceased,

*Filed  
4-10-09  
Dott*

Plaintiffs,

vs.

Civil Action No. 07-C-49M

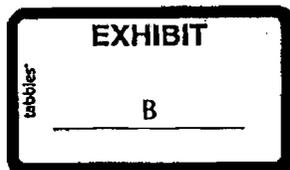
FALCON DRILLING COMPANY,  
L.L.C., TEXAS KEYSTONE, INC., and  
HALLIBURTON ENERGY SERVICES, INC.

Defendants.

**ORDER GRANTING HALLIBURTON ENERGY SERVICES, INC'S  
MOTION FOR DEFAULT JUDGMENT**

**Findings of Fact**

1. The Amended Complaint was filed by Plaintiffs in this civil action, on or about September 13, 2007.
2. Halliburton Energy Services, Inc., ("Halliburton") filed an Answer to Plaintiff's Amended Complaint on or about September 14, 2007, which included a cross-claim against Texas Keystone, Inc., and Falcon Drilling, L.L.C.
3. Halliburton's cross-claim against Falcon Drilling, L.L.C., asserted claims for both common law contribution and indemnification.
4. As of the date of the filing of Halliburton's Motion for Default Judgment, Falcon Drilling, L.L.C., had not filed an Answer, Motion to Dismiss, or other responsive pleading to the cross-claim asserted by Halliburton, despite ample opportunity to do so.



5. Halliburton Energy Services, Inc., has fully litigated its cross-claim against Texas Keystone, which now is the subject of a Petition for Appeal before the West Virginia Supreme Court of Appeals. To allow Falcon to answer at this late date would unduly prejudice Halliburton.

6. It is the opinion of this Court that had Falcon Drilling, L.L.C., desired, it could have filed a responsive pleading. By failing to do so, it did not dispute the claims made against it by Halliburton.

#### Conclusions of Law

7. Pursuant to Rule 12(a)(2) of the West Virginia Rules of Civil Procedure, "a party served with a pleading stating a cross-claim against that party *shall* serve an answer thereto within 20 days after bring [sic] served." A review of the pleadings in this matter, finds that Falcon Drilling, L.L.C., did not file any responsive pleading to the cross-claim asserted by Halliburton, for approximately eighteen months after the filing of this civil action.

8. A review of the record finds that Halliburton's cross-claim against Falcon Drilling, L.L.C., has been pending for almost eighteen (18) months at the time of the filing of Halliburton's Motion for Default Judgment.

9. It is apparent to this Court that Falcon Drilling, L.L.C., could have filed an Answer or other responsive pleading at any point in these proceedings.

10. The Court takes notice that Halliburton extensively litigated its cross-claim against Texas Keystone, Inc., which is now the subject of a Petition for Appeal before the West Virginia Supreme Court of Appeals. It would be unfair to require Halliburton to re-litigate these issues when Falcon could easily have filed an answer to join the issue.

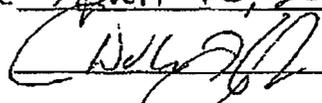
11. This Court finds as a matter of law that Halliburton would be unduly prejudiced if Falcon Drilling, L.L.C. were permitted to file an Answer or other responsive pleading at this late

date, thereby opening up the litigation as to Halliburton's claims against Falcon Drilling, solely due to Falcon Drilling's unexcused delay.

12. By Falcon Drilling, L.L.C.'s failure to file its Answer or responsive pleading at any time since Halliburton's cross-claim was filed upon it, Falcon Drilling has waived its right to assert a defense to Halliburton's cross-claim allegations, as a matter of law. The liability assertions of said cross-claim are hereby deemed admitted and an inquiry of damages hearing will be hereinafter set to establish the damages amount Halliburton is entitled to recover from Falcon.

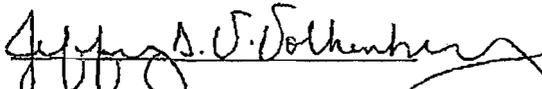
13. This Court hereby ORDERS, that the Motion for Default Judgment, filed by Halliburton Energy Services, Inc., pursuant to its cross-claim against Falcon Drilling, L.L.C., requesting relief as set forth therein is hereby GRANTED. This Court further finds that the specific dollar amount to be awarded to Halliburton by this Court, will be decided at a later date, at an inquiry of damages hearing.

ENTER:

April 10, 2009  


The Honorable David Hummel, Judge Circuit  
Court of Tyler County, West Virginia

PREPARED AND SUBMITTED BY:

  
Jeffrey D. Van Volkenburg (W. Va. Bar ID 10227)  
McNeer, Highland, McMunn and Varner, L.C.  
400 W. Main Street  
P.O. Drawer 2040  
Clarksburg, W. Va. 26302

I hereby certify that the annexed instrument is a true  
and correct copy of the original on file in my office.

Attest: Candy Warner, clerk  
Circuit Court of Tyler County, West Virginia

By: Linda Titgum, Deputy

FILED

IN THE CIRCUIT COURT OF TYLER COUNTY,  
WEST VIRGINIA

2009 SEP 21 PM 12:42

HEATHER RUCKDESCHEL, and  
THOMAS G. MILLER, SR., as Co-  
Administrators of the Estate of  
THOMAS G. MILLER, JR., deceased,

CANDY L. WARNER  
CIRCUIT COURT/FAMILY COURT  
TYLER COUNTY, WV

Plaintiffs,

CIVIL ACTION NO. 07-C-49-M

vs.

FALCON DRILLING COMPANY, L.L.C.,  
TEXAS KEYSTONE, INC. and  
HALLIBURTON ENERGY SERVICES,

*Filed*  
*9-14-09*  
*Dott*

Defendants.

**ORDER APPROVING DISTRIBUTION**  
**OF WRONGFUL DEATH SETTLEMENT PROCEEDS**

On the 14<sup>th</sup> day of September, 2009, came the Plaintiffs, Heather Ruckdeschel and Thomas G. Miller, Sr., as Co-Administrators of the Estate of Thomas G. Miller, Jr., and Falcon Drilling Company, L.L.C. and Texas Keystone, Inc., by their respective counsel, upon the Motion for Court Approval of the Distribution of the Wrongful Death Settlement Proceeds in the above-captioned matter, pursuant to W.Va. Code §55-7-7 (1994):

WHEREUPON, the Court heard the duly sworn testimony of the Plaintiffs upon the matters set forth in said Motion and heard the statements and arguments of counsel.

UPON MATURE CONSIDERATION of the Motion filed by the plaintiffs herein, and the testimony of the Plaintiffs, and arguments of counsel, the Court hereby finds that the prayer set forth in the foregoing Motion of the Plaintiffs should be granted; and

It is therefore ORDERED that Seven Hundred Thousand Dollars (\$700,000.00) of the net settlement proceeds of the settlement between the plaintiffs and defendants shall be used to purchase a structured settlement annuity for the benefit of the minor beneficiary Derek Ruckdeschel; and

It is further ORDERED that the remaining balance of Seven Hundred Seventeen Thousand Six Hundred Forty One Dollars and Seventy-Three Cents (\$717,641.73) of the net settlement proceeds of the settlement between the plaintiffs and defendants shall be forwarded to E. Marc Abraham CPA to be invested in a Customized American Fund Mutual Fund Portfolio for the benefit of the minor-beneficiary Derek Ruckdeschel in a manner consistent with the terms and conditions set forth in Plaintiffs Motion to Approve Final Distribution, and no withdrawal shall be made from this account until the minor-beneficiary Derek Ruckdeschel reaches the age

EXHIBIT

tabler

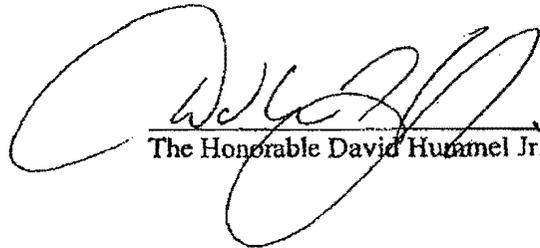
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of eighteen (18) years or upon further Order of this Court, and the said E. Marc Abraham shall be provided with a copy of this Order stating these restrictions; and

It is further ORDERED that bond and/or the need for referral of this case to a fiduciary supervisor is discharged.

It is further ORDERED that nothing in this Order shall affect any pending cross-claim issues existing by and between Halliburton Energy Services, Falcon Drilling Company, L.L.C. and Texas Keystone, Inc., which are on appeal, or still in litigation in the Tyler County Circuit Court, respectively.

The Clerk is ORDERED to forward a certified copy of this ORDER to all counsel of record and to E. Marc Abraham, CPA, Abraham & Company, PLLC, 400 Morton Avenue, Moundsville, West Virginia 26041-1617.

  
The Honorable David Hummel Jr.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.  
Attest: Candy Warner, clerk  
Circuit Court of Tyler County, West Virginia  
By: Linda Fitzmaurice, Deputy

**CERTIFICATE OF SERVICE**

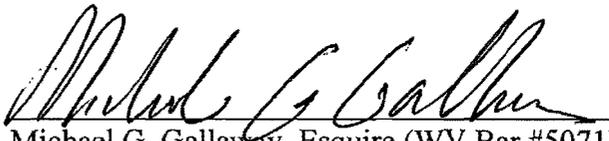
The undersigned counsel hereby certifies that service of the foregoing “**Brief of Appellee, Falcon Drilling Company, LLC**” has been made upon counsel of record by depositing copies thereof in the United States mail, first class, postage-prepaid mail on this 24<sup>th</sup> day of September, 2009, addressed as follows:

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