

**In JAMS**

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**Brandon Albers, Michael R. Browning,  
Michael Lawrence Douglas, Timothy  
Dralle, John Garber, John-Luke Hoyt,  
Robert Jones, Scott Joyner, Shane Lohf,  
Samuel J. Matychak III, James  
McDonald, Justin Miller, Jacob Norris,  
Joshua Norris, Rodney Pierce, Timothy  
Spencer, Michael Verbruggen, Andreas  
Vivolo, David Williams, Shane  
Zimmerman, individually and on behalf  
of those similarly situated,**  
Claimants,  
vs.  
**Wackenhut Services International, LLC  
et al,**  
Respondents.

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JAMS Reference No. 141000604  
Arbitrator Curtis E. von Kann

**Amended Class Action Demand for Arbitration**

Claimants, individually and on behalf of all persons similarly situated, submit this amended demand pursuant to Order No. 22 and allege:

1. Claimants bring this amended class action arbitration against Wackenhut Services Int., Wackenhut Services, Inc., Wackenhut Services International, LLC (hereinafter referred to as “WSI” or “Respondents”) on behalf of themselves and all other firefighter employees of WSI who are similarly situated (hereinafter the above-named claimants and those similarly situated are referred to as “Claimants”) to require Respondents to comply with their legal pay obligations to Claimants, who worked for Respondents from February 1, 2009 forward as firefighters and officer firefighters in Iraq.

**I. CLAIMANTS**

2. Claimants are citizens of the United States who worked for Respondents on United States military installations in Iraq under U.S. Government subcontracts,

who have been denied payment for work as firefighters for Respondents. (Hereinafter the above-named claimants and those similarly situated are referred to as “Claimants”).

3. The following Claimants worked for WSI in Iraq as firefighters and acting officers as follows:

- 3.1. Brandon M. Albers, September 2007 to September 2008, and June 2009 to December 2009 and performed acting officer duties;
- 3.2. Michael R. Browning, times to be proved at trial;
- 3.3. Michael Lawrence Douglas, April 2009 until 2010;
- 3.4. Timothy N. Dralle, Sept 11, 2006 to May 18, 2009;
- 3.5. John Garber, 2004 to October 2009;
- 3.6. John-Luke Hoyt, March 2005 to September 2009;
- 3.7. Robert Jones, March 23, 2007 to July 31, 2010;
- 3.8. Scott Joyner, March 29, 2009 to October 13, 2010;
- 3.9. Shane Lohf, dates to be proved at trial;
- 3.10. Samuel J. Matychak III, Feb. 5, 2005 to August 10, 2010;
- 3.11. James McDonald, November 2005 to August 2009;
- 3.12. Justin Miller, July, 2009 to July 2010;
- 3.13. Jacob Norris, February 2008 to August 2010;
- 3.14. Joshua Norris, May 2009 to October 2010;
- 3.15. Rodney Pierce, March 2005 to November 2009;
- 3.16. Timothy Spencer, March 29, 2009 to October 13, 2010;
- 3.17. Michael Verbruggen, March 29, 2009 to October 13, 2010;
- 3.18. Andreas Vivolo, March 2006 to July 2010;
- 3.19. James David Williams, March 29, 2009 to October 12, 2010;
- 3.20. Shane Zimmermann, February 2008 to April 2010.

## **II. FACTUAL & LEGAL ALLEGATIONS COMMON TO ALL CLAIMANTS**

4. Claimants are among over 400 persons who worked in Iraq for WSI as Firefighters, Lieutenant Firefighters, Captain Firefighters, Assistant Chiefs, and Chiefs, and other supervisor or lead Firefighters under WSI subcontracts with Kellogg, Brown & Root (“KBR”), who in turn had a contract with the U.S. Army, known as the LOGCAP contract.

5. The annual contracts between WSI and Claimants provided for hourly pay with up-lifts (consisting of foreign service bonus, work area differential and hazard pay, paid as a percentage of base wage) and in many cases a completion or partial completion bonus.

6. WSI knew at the time it entered into agreements with KBR that KBR paid its firefighters for the full 24 hours of a shift even though 8 hours of that was sleep time.

7. Respondents through their upper management engaged in a study of FLSA regulations and industry standards after WSI firefighters began complaining about being forced to work 24 hours, but paid for less or no hours.

8. The study concluded that Claimants had to work shifts, but were on call for 24 hours since following their shifts they were on call until they went on shift again and the off-shift, on-call work was accompanied by restrictions on movement, radio monitoring duties, response obligations, sleep interruptions. Therefore, it concluded some of their time should be compensated.

9. WSI had been paying for only 12-hours per day and decided to compensate them for only an additional 4 hours, and decided not to pay for the additional 8 hours on shift days and decided not to pay for non-shift days where Claimants were nevertheless on call for 24 hours.

10. Thus, WSI declined to pay Claimants for on-call duty performed at times for 12-hour periods, 8-hour periods, or 24-hour periods.

11. WSI also required some Claimants to perform assignments above their paygrades as lieutenants or captains and other firefighter-officer positions, or to perform as “acting” in these grades or positions, but were not paid commensurate with these grades or positions as promised by WSI.

12. Claimants were placed on call in a manner that was essentially on duty at the fire stations by requiring Claimants to have walkie-talkies to their ear during sleep and to hear all of the traffic on base, thus making it difficult to sleep, by frequently calling them out on a fire or other emergency or possible emergency, by requiring them to remain near the fire house and not leave except with other members of a crew.

13. Respondents used a ruse to deny them pay by determining that they were not working when on call even though they had these restrictions placed upon them.

14. Claimants complained to WSI of the failure to pay all they pay they were entitled to pursuant to the contracts. In response, agents and managers of WSI threatened Claimants.

15. Agents and employees of KBR often took charge of WSI firefighter-employees and required them to perform duties outside their contracts, to perform duties outside the hours they were required to work, and to be on call for numerous hours, and to perform acting officer duties, but without pay.

#### **THE CLAIMANT CLASS**

16. The Class Representatives seek to maintain claims on their own behalf and on behalf of a class of former WSI firefighters who were employed by WSI in Iraq from February 1, 2009 to the present. Each of the Class Representatives is a member of the class. Upon information and belief, there are in excess of four hundred such individual members of the proposed class.

17. Claimants bring this action on behalf of themselves and the following Classes:
- a. All persons who worked as firefighters in Iraq and were denied pay and up-lifts for on-call hours worked and who worked for WSI under LOGCAP subcontracts from February 1, 2009 to the present.
  - b. All persons who worked as firefighters in Iraq and were denied pay and up-lifts commensurate with the grade or position they fulfilled when they performed duties of lieutenants or other officer-firefighter grades or positions and who worked for WSI under LOGCAP subcontracts from February 1, 2009 to the present.

18. Substantially the same class was already certified in the prior arbitration so that Respondents are collaterally estopped from asserting that class treatment would not be appropriate or available, pursuant to the arbitrator's prior ruling on this issue that was upheld by the Georgia Federal District Court.

19. Claimants bring this action pursuant to Rules 23(a) and 23 (b)(3) of the Federal Rules of Civil Procedure and JAMS Class Action Procedures (effective May 1, 2009) on behalf of themselves and all other similarly situated who worked for Respondents WSI from February 1, 2009 to the present.

20. The above-described class is so numerous that joinder of all members is impracticable since the Claimants are informed and believe that WSI claimants from February 1, 2009 to the present are in excess of 400. Joinder of the members of the class is additionally impeded by geographic concerns because class members work and/or reside in several states as well as in Iraq, Afghanistan or other countries.

21. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether the Class was improperly denied pay and up-lifts for all hours worked on call as firefighters working for Respondents;

(b) Whether Respondents breached their obligations to pay for higher paying duties of lieutenant or higher with the accompanying up-lifts;

(c) Whether Respondents breached their obligations willfully under Florida minimum wage law given that no payment of any minimum amount was provided for those hours worked for which pay is sought in this class arbitration.

(d) Whether Claimants are third-party beneficiaries of the KBR-WSI contract.

22. Named Claimants claims are typical of the claims of the members of the Class. Named Claimants and all members of the Class are persons who should have been paid for all of their work or on-call time, as well as for any time worked under duties of higher graded positions such as lieutenant, captain, assistant chief or chief.

23. Claimants will fairly and adequately protect the interests of the Class and have retained counsel who are competent and experienced in this case, class litigation, complex contract disputes involving performance overseas during war time. Claimants have interests that are not antagonistic to, or in conflict with, those interests Claimants seek to represent as the Class representatives.

24. Respondents refuse to act on grounds usually applicable to the Class, thereby making it appropriate for relief to be granted with respect to the Class as a whole. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable as it would require individual hearings for each firefighter that would take years, and many live in disparate part of the United States and abroad.

25. Because the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation make it impracticable for the members of the class to pursue individual litigation in order to vindicate their rights. In the absence of a class action, Respondents will retain the benefits of their wrong doing despite serious violations of the law. Claimants envision no difficulties likely to be encountered in the management of this litigation as a class action.

26. Each of Claimants is a proper representative of the class of those similarly situated as they enjoyed various levels of seniority with Respondents, are experienced firefighters and were all damaged in the same ways for which class relief is being sought.

27. The class satisfies the requirements of JAMS Class Action Procedures rule 3, and Federal Rules of Civil Procedure 23, because the class is sufficiently (1) numerous, in that there are in excess of 400 such former and current firefighters who worked for Respondents, (2) common in fact and law, in that the interests of claimants is identical to that of the rest of the class in that all suffered the same damage calculable by easy mathematical calculation of hours and wages, contractual formulae for up pay and officer pay, (3) typical of all claims in that each of the Claimants has the same type of claim as other claimants concerning loss of wages, and (4) there is adequacy of representation in that they will adequately represent the interests of the class and they have secured counsel with experience in class litigation and the firefighter litigation in particular, employment class action, and complex employment litigation as well as complex overseas contractors disputes on contracts, wage and disability cases.

## **COUNT I**

(Breach of Contract, or in the alternative, Third Party Beneficiary or Quasi Contract)

28. Claimants repeat and incorporate by reference each allegation set forth in the above paragraphs.

29. Respondents entered into express agreements to employ Claimants and those similarly situated in Iraq in exchange for pay for all hours worked at particular rates depending on rank.

30. In the alternative, Claimants claim that agreements were made with Respondents that are implied in law, and implied in fact.

31. Respondents breached the agreements with claimants and those similarly situated by not paying for on-call hours, and for acting officer pay with appropriate uplifts.

32. In an earlier Order in this arbitration it has been determined that Claimants on-call time was compensable time under the employment agreements so that Respondents are estopped by the law of the case and other doctrines from asserting otherwise.

33. WSI breached its duty of good faith and fair dealing by denying Claimants the benefit of the bargain where WSI refused to pay Claimants for on-call hours worked where the employment agreements state that it will pay for hours worked, but then did not pay for on-call hours worked.

34. WSI further breached its duty of good faith and fair dealing where WSI refused to pay Claimants for on-call hours worked where the employment agreements state that it will pay for hours worked and the revised Data Compensation Sheet only describes anticipated shifts and does not describe hours worked.

35. The agreement provided for pay for work performed at higher ranks, but WSI breached its duty to pay for these higher-paying duties.

36. In the alternative, in the event the Arbitrator finds no express contractual obligation to pay for the damages claimed herein, Claimants plead that they



were third party beneficiaries under the WSI-KBR subcontracts, which subcontracts stated the specific amounts of compensation and uplifts that would be paid to the Claimants, which subcontracts stated that WSI would pay Claimants the same as KBR paid its own employee-firefighters in Iraq so that, therefore, Claimants were primarily and directly intended to be benefited by these provisions of the WSI-KBR subcontracts.

37. And KBR paid its firefighters for 24 hours each day to include pay for on call periods, including 8 hours of sleep time.

38. And KBR considered as hours worked all of the on call or wait time afore-described, but WSI never so paid its firefighters.

39. WSI is in breach of its subcontract with KBR by not so paying Claimants.

40. Also, in the event that the Arbitrator finds no contractual obligation to pay for the foregoing, and finds no third party beneficiary contractual liability, in the alternative, Claimants would ask for equitable relief for work performed for which WSI retained a benefit and was paid by KBR, and it would be unjust not to pay Claimants for that work.

41. As a direct and foreseeable result of Respondents' breach, Claimants and those similarly situated have been damaged in loss of pay subject to proof at hearing, interest, and attorneys fees under 31 FL. Stat. section 448.08.

### **RELIEF REQUESTED**

WHEREFORE, Claimants pray for judgment Against Respondents and for the following relief:

- (a) Judgment against Respondents for the Amount of hours, on-call hours, or other contractual pay and up-lifts as proved at hearing or subsequent prove-up proceedings;

- (b) Judgment against Respondents for the Amount of hours, on-call hours, for acting officer duties performed, together with accompanying up-lifts as proved at hearing or subsequent prove-up proceedings;
- (c) In the alternative should the claimants not prevail on the contract and wage claims, judgment against Respondents for breaching the third party beneficiary contract between Respondents and KBR;
- (d) In the alternative should the claimants not prevail on the contract, wage and third party beneficiary claims, judgment against Respondents for retaining a benefit conferred upon them that it would be unjust not to compensate Claimants and those similarly situated for;
- (e) In the alternative should the claimants not prevail on the above claims, judgment against Respondents for reasonable value of services for which they were unjustly enriched;
- (f) Reasonable attorneys' fees under 31 FL. Stat. section 448.08, expenses and costs of the action;
- (g) For prejudgment interest on all amounts of damages.

Dated: February 20, 2015

Respectfully Submitted,

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**CERTIFICATE OF FILING**

I hereby certify that on this 20th day of February 2015 a copy of the foregoing was delivered electronically and via U.S. Mail to:

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