IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUPERMEDIA, INC., ET AL.,	)	
	)	
Plaintiffs,	)	CIVIL ACTION NO.
	)	
VS.	)	3:12-CV-2034-G
	)	
LINTON BELL, ET AL.,	)	

RESPONSE BY DEFENDANTS
MENTZER, NOE, OHNSTAD, PALMER and ZENUS
TO PLAINTIFFS' MOTION TO DISMISS COUNTERCLAIMS

Defendants and Counter-claimants Robert Mentzer, Sandra Noe, Carl Ohnstad, Claire Palmer, and Bernard Zenus (collectively "Counter-claimants") file their response to Docket No. 86, the Plaintiffs' motion to dismiss the counterclaims.

I. BACKGROUND

The Plaintiffs are six entities that have collectively referred to themselves as "SuperMedia." (Docket entry 23, intro. para.) (hereinafter referred to as "SuperMedia"). SuperMedia provides health and welfare benefits to its eligible retired employees (and eligible retired employees of its predecessors). (*Id.*, ¶ 42). Such retiree welfare benefits are provided pursuant to various health and welfare benefit plans and various collective bargaining agreements. (*Id.*, ¶¶ 41, 44).

On June 25, 2012, the Employee Benefits Committee of the SuperMedia Inc. Board of Directors voted to amend three of its retiree welfare benefits plans to the substantial detriment of the retirees, including Counter-claimants. (*Id.*, ¶ 52). For example, SuperMedia has declared it will reduce or eliminate contributions to retirees' health insurance premiums and that it will increase co-pays and deductibles. (*Id.*, ¶ 62). On June 26, 2012, SuperMedia sent notice of the

plan amendments to those retirees who are potentially affected, including each of the Counter-claimants. (*Id.*, ¶ 64). With its notice, SuperMedia included a "Claim Form" that allowed plan beneficiaries to "make a claim for benefits, raise questions, voice concerns, or make objections regarding the plan amendments and SuperMedia's legal right to amend, modify, revoke, or terminate the Plans at any time." (*Id.).* Super Media received replies from more than 900 retirees, including those submitted by the Counter-claimants. (*Id.*, ¶ 65; see also Docket entry 23-46, Exs. Y-AM, sample collection of claim forms submitted by retirees, including Counter-claimants). SuperMedia's Claim Form states that the "purpose ... is to provide you with a procedure to object to SuperMedia's right to amend" the plans. (*Id.*).[1]

By these "Claim Forms", SuperMedia ambushed the unsuspecting retirees. Within hours of receiving the Claim Forms that Defendant Carol Foy and Defendant Stanley Russo faxed back to SuperMedia, rather than review and respond to the objections made, the SuperMedia Plaintiffs commenced this lawsuit. (Docket entry 1, ¶ 42).[2] In the original Complaint, SuperMedia named as defendant parties Foy, Russo, and Locals 1301 and 1302 of the Communication Workers of

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[1] On June 26, 2012, the SuperMedia Plaintiffs sent each retiree a packet with a claim form and specifically told them, "[i]f you wish to contest SuperMedia's right to change or terminate retiree benefits, please do so in writing on the enclosed SuperMedia Retiree Benefits Claim Form. Upon completion, please return your SuperMedia Retiree Benefits Claim Form, as well as any additional documentation, to SuperMedia by overnight mail, fax, or e-mail, as indicated in the claim form." (Docket entry 5-50, p. 4 of 52 "Objections").

[2] There was no forewarning that, if any retiree expressed his or her disagreement with SuperMedia's announced plan to detrimentally change retiree welfare benefits, he or she would be sued in a federal court far from home. It is readily apparent from the timing of SuperMedia's actions taken on June 26, 2012 that SuperMedia and its counsel sent out the Claim Form and chose to lie in wait and immediately prey on the first bunch of unsuspecting retirees who sent back to SuperMedia a completed Claim Form objecting to SuperMedia's announced plan to negatively change retiree welfare benefits. There is absolutely no excuse for such lawyerly misconduct bullying retirees who loyally worked an entire career with SuperMedia's predecessors. When ruling upon the SuperMedia Plaintiffs' motion to dismiss, the Court should send a very strong message to SuperMedia and each of its involved counsel sanctioning all of them for having terrorized retirees who had no idea that, if they did exactly as requested by SuperMedia and simply expressed their concerns and disagreement with SuperMedia, they could be sued in a federal court, the Dallas federal court.

America, AFL-CIO. On August 2, 2012, a First Amended Complaint was filed, adding twenty-one (21) additional retirees and Local 2213 of the International Brotherhood of Electrical Workers ("IBEW union"). (Docket entry 23).

Since then, the Court has dismissed 9 of the 23 retirees who were named as defendants. (Docket entries 50, 51, 52, 67 and 91). The SuperMedia Plaintiffs filed notices of dismissal of the CWA and the IBEW unions. (Docket entries 87 and 94). Notably, since well over 90 days have passed since the original class action complaint was filed on June 26, 2012 (Docket entry 1), the SuperMedia Plaintiffs have abandoned their class allegations because they have failed to timely file a motion for class certification as required by the Court's Local Rule 23.2. The SuperMedia Plaintiffs' delay should not be excused. *Harper v. American Airlines, Inc*., Not Reported in F.Supp.2d, 2009 WL 4858050 at *3-4 (N.D. Tex. December 16, 2009) (Means, J), *appeal dismissed*, 371 Fed. Appx. 511 (5th Cir. 2010). Rather than simply ending this litigation for all, the SuperMedia Plaintiffs continue to bully their way against remaining defendants.

While certain retirees, including Counter-claimants, are the only remaining defendants, it is an undisputed fact that the retirees had no expectation of ever being hauled into federal court simply because they had objected to SuperMedia's announced plans to detrimentally change retiree welfare benefits. (See e.g., Docket entry 66-2 at page 2 of 3, "I filled out THEIR form as requested [by SuperMedia] and got swept up in something I have no interest in,"; Docket entry 39 "I do not understand why the plaintiff is filing suit against me for trying to keep [my retirement benefits]."; See also Docket entry 32, "I have no further resources or strength to pursue this matter any longer. Hopefully, the remainder of my retirement may be peaceful.").

Because SuperMedia discriminated and retaliated against Counter-claimants by randomly selecting them, out of a group of over 900 persons who were exercising their ERISA rights, and

causing Counter-claimants to suffer this litigation, they have counterclaimed under ERISA Section 404(a)(1)(A), for breach of fiduciary duty, and ERISA Section 510, for retaliation and discrimination. The SuperMedia Employee Benefits Committee ("SuperMedia EBC") is the lone defendant on the breach of fiduciary duty counter-claim. (Docket 73, pp. 7-8). All of the SuperMedia Plaintiffs are defendants on the ERISA Section 510 counter-claim.

On November 16, 2012, in response to the counter-claims, the SuperMedia Plaintiffs filed a Rule 12(b)(6) motion to dismiss arguing that each counter-claim fails to state any claim for relief. (Docket 86, the SuperMedia Plaintiffs' motion to dismiss). For the following reasons, the motion to dismiss should fully be denied.

II. ARGUMENT

A. Rule 12(b)(6) Motion to Dismiss Standard

The SuperMedia Plaintiffs move to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6). "To survive a Rule 12(b)(6) motion, the plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.'" *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1974 (2007)), *cert. denied*, 552 U.S. 1182, 128 S.Ct. 1230 (2008). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Katrina Canal*, 495 F.3d at 205 (quoting *Twombly*, 127 S.Ct. at 1965). "The court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *Id*. (internal quotation marks omitted) (quoting *Martin K. Eby Construction Company v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004)). The ultimate question in a Rule 12(b)(6) motion is whether the complaint states

a valid claim when it is viewed in the light most favorable to the plaintiff. *Great Plains Trust Co. v. Morgan Stanley Dean Witter*, 313 F.3d 305, 312 (5th Cir. 2002).

The United States Supreme Court has prescribed a "two-pronged approach" to determine whether a complaint fails to state a claim under Rule 12(b)(6). See *Ashcroft v. Iqbal*, 556 U.S. 652, 678, 129 S.Ct. 1937, 1949-50 (2009). The trial court must "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Id*. at 1950. The trial court should then assume the veracity of any well-pleaded allegations and "determine whether they plausibly give rise to an entitlement of relief." *Id*. The plausibility principle does not convert Fed.R.Civ.Proc. Rule 8(a)(2) notice pleading to a "probability requirement," but "a sheer possibility that a defendant has acted unlawfully" will not defeat a motion to dismiss. *Id*. at 1949. A plaintiff need only "plead[ ] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. The trial court, drawing on its judicial experience and common sense, must undertake the "context-specific task" of determining whether the plaintiff's allegations "nudge" its claims against the defendant "across the line from conceivable to plausible." See *id*. at 1950, 1952. The trial court does not evaluate the plaintiff's likelihood of success; instead, it only determines whether the plaintiff has pleaded a legally cognizable claim. *United States ex rel. Riley v. St. Luke's Episcopal Hosp*., 355 F.3d 370, 376 (5th Cir. 2004).

B. The First Counter-claim for Relief Should Not be Dismissed Because Counter-claimants Assert a Plausible Claim That The SuperMedia EBC's Decision to Sue Counter-claimants is a Breach of Fiduciary Duty.

SuperMedia EBC is the named fiduciary of all of the employee benefit plans. (Docket entry 1, ¶ 7; Docket entry 5, p. 12 of 30, ¶ 4.2; Docket entry 5-1, p. 12 of 31, ¶ 4.2; Docket entry 5-2, p. 12 of 31, ¶ 4.2). ERISA Section 402(a)(2) defines a "named fiduciary" as "a

fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly." 29 U.S.C. § 1102(a)(2). While ERISA allows a corporate employer to play multiple roles, such as both the plan sponsor and the plan fiduciary, ERISA does require the entity with two hats wear only one at a time, and wear the fiduciary hat when making fiduciary decisions. *Pegram v. Herdrich*, 530 U.S. 211, 225, 120 S.Ct. 2143, 2152 (2000) (citing *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 443-444, 119 S.Ct. 755, 142 L.Ed.2d 881 (1999); *Varity Corp. v. Howe*, 516 U.S. 489, 497, 116 S.Ct. 1065, 134 L.Ed.2d 130 (1996).

The SuperMedia EBC, unlike the corporate employer, can only act in one capacity, as fiduciary to the retirees and other plan participants and beneficiaries. The SuperMedia EBC cannot act in any other role. It cannot act in an employer capacity. The SuperMedia EBC employs no one. And the SuperMedia EBC is not a plan sponsor. Count One is asserted only against the SuperMedia EBC. The plan sponsor and corporate employer is not a party to Count One. Indeed, in Count One, Counter-claimants are not challenging any actions of the employer, such as the decision to amend the plans and reduce retiree benefits and coverages. Therefore, all of the SuperMedia Plaintiffs' arguments appearing on pp. 8-10 of their motion to dismiss are totally inapplicable and the case law cited is entirely inapposite.

In *Haliburton Co. Benefits Comm. v. Graves*, 463 F.3d 360 (5th Cir. 2006), there never was any contention made that the plan fiduciary had selectively sued unsuspecting retirees. In fact, the retirees had specifically warned Haliburton that the company must rescind the disputed plan amendments and, therefore, comply with the merger agreement in order to "preclude any legal or public relations actions that some retirees have discussed." (See Exhibit A filed

herewith, page 10 of 14 of Docket entry 1-2 filed in *Haliburton*, Civil Action No. 4:04-cv-00280, Southern District of Texas).[3] The *Haliburton* retirees had fair warning that they might be made parties to litigation and, before the suit was filed, Haliburton carefully considered the retirees' demand and denied it. (Exhibit A, Docket entry 1, page 2 of 40, ¶¶ 3-4). In this case, Counter-claimants rightfully contend that the fiduciary randomly selected retirees and forced them to answer and defend an unnecessary lawsuit in a federal court, and the fiduciary did not first deny the retirees' claims and give the retirees any advance warning or notice of possible litigation. Here, there has been absolutely no fair play on the part of the SuperMedia EBC.

The SuperMedia EBC, in view of its special relationship with the retirees, should not have participated in the unfair ambushing of retirees and putting them through such misery. Under ERISA, the SuperMedia EBC has a duty of loyalty to Counter-claimants, a duty long recognized by the federal courts.

> Although officers of a corporation who are trustees of its pension plan do not violate their duties as trustees by taking action which, after careful and impartial investigation, they reasonably conclude best to promote the interests of participants and beneficiaries simply because it incidentally benefits the corporation or, indeed, themselves, their decisions must be made with an eye single to the interests of the participants and beneficiaries. Restatement of Trusts 2d s 170 (1959); II Scott on Trusts s 170, at 1297-99 (1967) (citing cases and authorities); Bogert, The Law of Trusts and Trustees s 543 (2d ed. 1978). This, in turn, imposes a duty on the trustees to avoid placing themselves in a position where their acts as officers or directors of the corporation will prevent their functioning with the complete loyalty to participants demanded of them as trustees of a pension plan.

Donovan v. Bierwirth, 680 F.2d 263, 271 (2nd Cir. 1982), *cert. denied*, 459 U.S. 1069, 103 S.Ct. 488 (1982); *Bussian v. RJR Nabisco, Inc*., 223 F.3d 286, 294 (5th Cir. 2000). A fiduciary must discharge plan responsibilities as a prudent man, *solely* in the interest of the participants and

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[3] The Court may take judicial notice of the complaint and exhibit filed in the *Haliburton v. Graves* case, a copy of which is attached hereto as Exhibit A.

beneficiaries (not the sponsoring employer) and for the exclusive purpose of providing benefits to participants and their beneficiaries and of defraying the reasonable expenses of the plan, in accordance with the lawful terms of the plan's controlling documents. ERISA Section 404(a), 29 U.S.C. § 1104(a). "ERISA's duty of loyalty is 'the highest known to the law.'" *Id.* (citing *Donovan v. Bierwirth*, 680 F.2d 263, 272 n. 8 (2d Cir.), *cert. denied*, 459 U.S. 1069, 103 S.Ct. 488 , 74 L.Ed.2d 631 (1982). It requires fiduciaries to make "their decisions ... with an eye single to the interests of the participants and beneficiaries." *Id*. at 298 (citations omitted). This standard "focuses ... on the fiduciary's conduct." *Id.* Essentially, a fiduciary must deal fairly and honestly with plan participants and beneficiaries. *Simpson v. ConAgra Foods Retirement Income Sav. Plan*, Slip Copy, 2012 WL 1252566 at *3 (N.D. Tex. April 13, 2012) (Fitzwater, CJ) (citing *Varity Corp. v. Howe*, 516 U.S. 489, 506, 116 S.Ct. 1065, 134 L.Ed.2d 130 (1996); *Shea v. Esensten*, 107 F.3d 625, 628 (8th Cir.1997) (describing duty of loyalty as an "obligation to deal fairly and honestly with all plan members")).

The SuperMedia EBC did not deal fairly and honestly with Counter-claimants and other retirees by soliciting them to freely express any disagreement with the corporate employer's announcement to change retiree welfare benefits, and then, once the retirees did as they were requested to do and returned a claim form to SuperMedia, promptly suing them for having exercised their rights about the matter. The SuperMedia EBC's decision to grab the bully pulpit and sue the retirees without even giving them the courtesy of either a rebuttal to their expressed opinions or response to their claims was not acting in the best interests of the plan participants.

Before its surprise attack in the form of a federal lawsuit, the SuperMedia EBC chose not to make any decision on any aspect of the retirees' administrative claims which the SuperMedia Plaintiffs solicited. Prior to filing this lawsuit, the SuperMedia EBC did not explain to Counter-

claimants or any other retirees whether there was any opposition to their solicited claims and, if so, the basis for such opposition. While specifically encouraging all retirees to make an administrative claim, the SuperMedia EBC completely thwarted the administrative process and did not give anyone a full and fair review of their written claims. Indeed, SuperMedia EBC's conduct serves to deter participants from ever submitting a written claim. That is not how an ERISA regulated plan fiduciary is supposed to operate.

Accordingly, the allegations in Counter-claimants' Count One plausibly give rise to an entitlement of relief for breach of fiduciary duty in violation of ERISA Section 404(a)(1), and the SuperMedia Plaintiffs' Rule 12(b)(6) motion to dismiss must be denied.

C. The Second Counter-claim for Relief Should Not be Dismissed Because Counter-claimants Assert a Plausible Claim That The SuperMedia EBC's Decision to Sue Counter-claimants is a Violation of ERISA Section 510.

In Count Two of their Counter-claims, Counter-claimants claim they were randomly discriminated against for having exercised their rights with respect to SuperMedia benefit plans as the SuperMedia Plaintiffs themselves specifically solicited the retirees to do. While over 900 retirees did exactly as requested by the SuperMedia Plaintiffs, but less than two dozen retirees were needlessly sued.

ERISA Section 510, "Interference with Protected Rights," makes illegal discrimination and retaliation on account of plan participants exercising rights related to an employee benefit plan. It reads in pertinent part: "It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or *discriminate against a participant* or beneficiary. . . for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, *for exercising any right to which he is entitled to under the provisions of an employee benefit plan*, this title or Welfare and Pension Plans Disclosure Act." (Emphasis added). 29

U.S.C. § 1140. The Fifth Circuit's own review of ERISA's legislative history "found nothing to suggest that Congress intended to protect the pension and welfare benefits of active employees any more strenuously than that of retirees." *Heimann v. National Elevator Industry Pension Fund*, 187 F.3d 493, 508 (5th Cir. 1999). Instead, Congress's aim was to safeguard equally the rights of all participants. The Fifth Circuit has declared:

> ERISA's basic purpose is "to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare plans." s. Rep, No. 93-127. See also, h.R. Rep. No. 95-533, stating that the "primary purpose of the bill is the protection of individual pension rights[.]" ERISA's basic purposes, plain words and legislative history, require a reading of §§ 510 and 502(a)(3) that provides all participants and beneficiaries, including former employees, former union members, and retirees with a remedy for economic retaliation because of participants' and beneficiaries' exercise of pension plan rights. (citation omitted).

Id., at 508. Accordingly, retirees and Counter-claimants are not excluded from ERISA Section 510's prohibition against discrimination and retaliation.

By randomly choosing less than two dozen retirees out of a group of over 900 persons who engaged in the very conduct requested of them, the SuperMedia Plaintiffs had and continue to have the specific intent to violate ERISA, to discriminate against and retaliate against the Counter-claimants for having exercised their rights to submit a written claim in connection with employee benefit plans. The SuperMedia Plaintiffs have, thereby, interfered with Counter-claimants' rights and protections accorded by the terms of SuperMedia's welfare benefit plans and ERISA. In bad faith, prior to filing this lawsuit and harassing unsuspecting retirees from the far corners of this nation, there was no effort by any of the SuperMedia Plaintiffs to comply with the plans' internal claims process and give either the Counter-claimants or any other retiree a full and fair review of their written claims. The SuperMedia Plaintiffs actions have caused Counter-claimants to incur significant legal fees and expenses with this unnecessary lawsuit.

Given that the SuperMedia Plaintiffs' violation of ERISA Section 510 is so clear,

Counter-claimants Count Two plausibly gives rise to an entitlement of relief without the necessity of further pleadings or proceedings. At the very least, the SuperMedia Plaintiffs' Rule 12(b)(6) motion to dismiss must be denied.

III. CONCLUSION

WHEREFORE, for all the above stated reasons, Counter-claimants Robert Mentzer, Sandra Noe, Carl B. Ohnstad, Claire Palmer and Bernard Zenus request this Court to deny the SuperMedia Plaintiffs' Rule 12(b)(6) motion to dismiss the counter-claims.

DATED this 13th day of December, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 13TH day of December, 2012, a true and correct copy of the above and foregoing document, together with Exhibit A, was electronically filed with the Clerk of the Court using the CM/ECF system causing a copy to be emailed to all counsel of record.

Also, copy of the same was delivered via Internet email to Defendants Bell, Foy, Ketzer, Kraft, Lane, Leynes, Mentzer, Noe, Ohnstad, Palmer, Russo, Shapses, Sullivan and Zenus.

s/ Curtis L. Kennedy
Curtis L. Kennedy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUPERMEDIA, INC., ET AL.,	)	
	)	
Plaintiffs,	)	CIVIL ACTION NO.
	)	
VS.	)	3:12-CV-2034-G
	)	
LINTON BELL, ET AL.,	)	

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HALLIBURTON COMPANY BENEFITS COMMITTEE (in its capacity as plan administrator of the Halliburton Energy Services, Inc. Welfare Benefits Plan, including its constituent benefit program, the Dresser Retiree Life and Medical Program)	§	
Plaintiff,	§	H-04-0280
VS.	§	CIVIL ACTION NO. _____
JAMES B. GRAVES, PHIL GRIFFIN, AND PAUL M. BRYANT (individually, and as representatives of a requested class of all similarly situated persons)	§	
Defendants.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

MAY IT PLEASE THE COURT:

Plaintiff, the Halliburton Company Benefits Committee (the "Committee"), complains of Defendants James B. Graves, Phil Griffin, and Paul M. Bryant individually, and as representatives of a requested class of all similarly situated persons, in the following particulars.

SUMMARY OF COMPLAINT

1. Halliburton Company ("Halliburton" or the "Company") acquired Dresser Industries, Inc. ("Dresser") in 1998. Dresser previously had established a welfare benefits program that provided medical and other benefits for its employees and retirees. This is a suit to confirm the validity of certain amendments to the medical benefits program that Dresser had established for Dresser's non-union retirees, known as the Dresser Retiree Life and Medical Program (the "Dresser Retiree Program" or the "Program").

2. In November 2003, amendments were made to the Dresser Retiree Program. These amendments brought the Dresser Retiree Program more closely in line with the medical benefits program offered to other Halliburton retirees and thereby served to achieve parity for all Company retirees.

3. Defendant Paul M. Bryant has challenged the amendments and demanded that the amendments be withdrawn in a letter (the "Participants' demand") written on behalf of all participants in the Program, many of whom, including named defendants James B. Graves and Phil Griffin, reside in this district. The letter contends that the amendments violate certain provisions of the February 25, 1998 Agreement and Plan of Merger between Halliburton and Dresser (the "Merger Agreement"), which provisions are alleged to guarantee Dresser retirees lifetime medical benefits on a par with the medical benefits provided to current employees of Halliburton during the term of their employment.

4. The Committee has carefully considered the Participants' demand and denied it. The interpretation of the Merger Agreement proposed by the demand would render certain provisions of the Merger Agreement meaningless and would require acceptance of the implausible proposition that Dresser bargained during the merger negotiations for the guarantee of indefinite benefits for Dresser retirees at a level consistent with the medical benefits provided to Halliburton employees during the term of their employment, regardless of whether such benefits were consistent with the level of benefits provided to similarly situated Halliburton retirees, regardless of the impact such a guarantee might have on the benefits the Company might in the future be able to provide to active employees or the financial well-being of the Company as a whole, and despite the fact that Dresser itself had reserved the absolute right to amend or terminate the Dresser Retiree Program in its entirety prior to the merger. More importantly, the

United States District Court
Southern District of Texas

Case Number: 4-04-CV-280

ATTACHMENT

Description: Complaint

☐ State Court Record ☐ State Court Record Continued

☐ Administrative Record

☐ Document continued - Part _____ of _____

☒ Exhibit to: _____
number(s) / letter(s) _____

Other: _____

_____

_____

Paul Bryant
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December 8, 2003

Mr. David J. Lesar, CEO and Chairman
Halliburton Company
5 Houston Center
Houston, Texas 77010

Dear Dave:

As Chief Executive of Halliburton, I am writing you concerning the actions Halliburton has taken with the Dresser Retiree Medical Program. My hope is that after your review of these actions, these changes will be reversed and thus help to preclude any legal or public relations actions that some retirees have discussed.

The Merger Agreement with Dresser (Section 7.09 (g) (i)) clearly spells out Halliburton's commitment to maintain the Dresser Retiree Medical Program and also details the methodology to be used for any future changes. Attachment "A" cites the language in the Merger Agreement and provides an explanation for implementation and was used as part of a communication to certain affected employees.

Halliburton has violated the Merger Agreement in several areas:

1. **Beginning in 2005, the post-age 65 plan will be terminated.** There is no provision in the Merger Agreement to allow this. The Merger Agreement clearly calls for the Plan to be maintained.

   Under the Dresser Retiree Medical Plan, upon entering Medicare at age 65, the Plan becomes a "Medicare Supplement" with respect to the retiree. A younger spouse of the retiree would still remain in the pre-age 65 Plan until he/she became 65, when both the retiree and the spouse would be in the post-age 65 or "Medicare Supplement" Plan.
2. **Halliburton contributions to the pre-age 65 plan have been frozen at 2003 levels.** The Merger Agreement would only allow this if a similar action were taken with Active employees, which has not happened.
3. **I *believe* that Halliburton has increased the Dresser Retiree contributions at a faster rate than to Active employees.** This is also in violation with the Merger Agreement.

   While I do not have access to all current Halliburton rates, the comments I have received from many Retirees indicate that their contributions have