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PSC Urges Federal Appeals Court to Affirm Dismissal of "*Burn Pit*" Litigation

Arlington, V.A. (Nov. 22, 2017) – In an amicus curiae ("friend of the court") brief filed on Nov. 21 with the U.S. Court of Appeals for the Fourth Circuit, the Professional Services Council (PSC) and the National Defense Industrial Association (NDIA) jointly urged the court to affirm a Maryland federal district court's dismissal of the multi-district, class-action "*Burn Pit*" litigation.

More than 60 individual and class-action suits had been filed around the country by numerous soldiers and civilians alleging injuries and illnesses resulting from the U.S. military's decision to use "burn pits" for solid waste disposal on military installations in the Iraq and Afghanistan war zones between 2003 and 2010. Since federal law prevents the plaintiffs from suing the U.S. Government directly, they filed state-law tort suits against Kellogg Brown & Root Services, Inc., a war-zone support contractor, which constructed and operated many of those waste disposal facilities at the direction and under the control of the U.S. Army.

"It is regrettable that anyone – soldiers, federal civilian employees, or contractors – may have been injured or become ill, but the military's operational decision to use burn pits at forward operating bases was made with full knowledge of the potential health risks to those nearby," said Alan Chvotkin, PSC's Executive Vice President and Counsel and a co-author of the brief. "Our goal in filing this amicus brief is to provide the Court with an industry-wide perspective on the practical reasons why litigation like this should not be allowed to proceed."

"Subjecting the U.S. military's support contractors to the substantial burdens, expenses and risks of litigating (or settling) state tort suits for combat-zone injuries allegedly attributable to their contractual performance would discourage or deter [contractors] from bidding on high-risk work and/or interfere with their implementation of military directives," the amicus brief explained. Chvotkin said: "That, in turn, would be detrimental to national defense interests," including the military's reliance on services contractors for combat-zone logistical support.

The amicus brief urges the Court to apply its "battlefield contractor" case law precedents by affirming dismissal on the grounds that the litigation is barred by both the "political question" doctrine and "combatant activities" preemption.

Lawrence S. Ebner of Capital Appellate Advocacy, PLLC was the principal author of the brief. He was assisted by Lisa Norrett Himes of Rogers Joseph O'Donnell, PC.

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