

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION  
NO. 2:06-CV-49 (F)**

BLACKWATER SECURITY )  
CONSULTING, LLC, a Delaware Limited )  
Liability Company; BLACKWATER )  
LODGE AND TRAINING CENTER, INC., )  
a Delaware Corporation, )

Plaintiffs/Petitioners, )

v. )

RICHARD P. NORDAN, as Ancillary )  
Administrator for the separate Estates of )  
STEPHEN S. HELVENSTON, MIKE R. )  
TEAGUE, JERKO GERALD ZOVKO and )  
WESLEY J.K. BATALONA, )

Defendant/Respondent. )

**DEFENDANT'S PROCEDURAL  
RESPONSE TO MOTION FOR  
LEAVE TO FILE A  
SUPPLEMENTAL PETITION**

COMES NOW Defendant Richard P. Nordan, as Ancillary Administrator for the Separate Estates of Stephen S. Helvenston, Mike R. Teague, Jerko Geraldo Zovko and Wesley J.K. Batalona, and hereby specially appears to challenge the jurisdiction of this Court over Blackwater's Motion for Leave to File a Supplemental Petition. This Court is currently without jurisdiction to consider Blackwater's Motion for Leave, in that a Notice of Appeal has been filed which divested the Court of jurisdiction over the case and conferred jurisdiction to the Fourth Circuit where the matter is currently pending.

I. On or about December 21, 2006, Blackwater Security Consulting, LLC and Blackwater Lodge and Training Center, Inc. (collectively "Blackwater") instituted this action by filing a Petition for Order Granting Arbitration Pursuant to the Federal Arbitration Act. In

Orders dated April 20 and May 11, 2007, this Court granted Blackwater's petition.

2. On May 18, 2007, Defendant filed a Notice of Appeal. [Exhibit "A"]

3. The Fourth Circuit has accepted the appeal of this case, despite Blackwater's Motion to Dismiss, and has set a briefing schedule. [Exhibit "B"]

4. Long after this District Court was divested of jurisdiction over this matter, Blackwater filed the instant motion for leave to file a supplemental petition, on or about July 10, 2007. This Court is currently without jurisdiction to consider said motion.

5. The transfer of jurisdiction upon the filing of a notice of appeal is well established. The U.S. Supreme Court stated: "[A] **federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.**" *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *see also Brickwood Contractors, Inc. v. Datnet Engineering, Inc.*, 369 F.3d 385, 393 (4<sup>th</sup> Cir. 2004) (**Observing that the filing of a notice of appeal is jurisdictional in that it "establishes the point of time at which the subject-matter jurisdiction of the District Court ends and that of the Court of Appeals begins"**).

6. In this case, a Notice of Appeal was filed on May 18, 2007. It was at that point in time that the subject matter jurisdiction of the District Court ended and that of the Fourth Circuit Court of Appeals began. Nearly two months later, Blackwater filed the instant motion for leave with this District Court, which no longer has jurisdiction over the case. The instant motion for leave to file a supplemental petition compelling arbitration is within the scope of the subject matter of the instant appeal, in that it deals with the very same parties and the very same

contractual arbitration provision.

7. Pursuant to binding U.S. Supreme Court and Fourth Circuit authority, this District Court is without jurisdiction to consider Blackwater's motion for leave.

It is respectfully requested that the Court deny the motion for lack of subject matter jurisdiction.

This 30<sup>th</sup> day of July 2007.

**CALLAHAN & BLAINE, APLC**

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WESLEY J.K. BATALONA

**KIRBY & HOLT, LLP**

By: /s/ David F. Kirby  
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Attorneys for Plaintiff  
RICHARD P. NORDAN, as the Ancillary Administrator of  
the separate Estates of STEPHEN S. HELVENSTON,  
MIKE R. TEAGUE, JERKO GERALD ZOVKO and  
WESLEY J.K. BATALONA

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **Defendant's Procedural Response to Motion for Leave to File a Supplemental Petition** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Kirk G. Warner  
Mark A. Ash  
*Attorney for Blackwater Security Consulting, LLC and Blackwater Lodge and Training Center, Inc.*  
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP  
P. O. Box 2611  
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Michael P. Socarras, Sr.  
*Attorney for Blackwater Security Consulting, LLC and Blackwater Lodge and Training Center, Inc.*  
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600 Thirteenth Street, NW  
Washington, DC 20005-3096

David S. Coats  
Bailey & Dixon, L.L.P.  
P. O. Box 1351  
Raleigh, NC 27602

This the 31th day of July, 2007.

/s/William B. Bystrynski  
William B. Bystrynski  
Kirby & Holt, L.L.P.

**EXHIBIT “A”**

**EXHIBIT “A”**

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION  
NO. 2:06-CV-49 (F)**

BLACKWATER SECURITY )  
CONSULTING, LLC, a Delaware Limited )  
Liability Company; BLACKWATER )  
LODGE AND TRAINING CENTER, INC., )  
a Delaware Corporation, )

Plaintiffs/Petitioners, )

v. )

RICHARD P. NORDAN, as Ancillary )  
Administrator for the separate Estates of )  
STEPHEN S. HELVENSTON, MIKE R. )  
TEAGUE, JERKO GERALD ZOVKO and )  
WESLEY J.K. BATALONA, )

Defendant/Respondent. )

**NOTICE OF APPEAL**

Notice is hereby given that Defendant Richard P. Nordan, as Ancillary Administrator for the Separate Estates of Stephen S. Helvenston, Mike R. Teague, Jerko Gerald Zovko and Wesley J.K. Batalona, in the above named case, hereby appeals to the United States Court of Appeals for the Fourth Circuit from the April 20, 2007 and May 11, 2007 Orders denying Defendant's motion to dismiss, motion for abstention and motion to stay, and directing the parties to arbitrate claims that are pending in a separate, two year-old state court case.

This 18<sup>th</sup> day of May 2007.

**CALLAHAN & BLAINE, APLC**

By: /s/ Marc P. Miles  
DANIEL J. CALLAHAN (Cal. Bar No. 91490)  
BRIAN J. McCORMACK (Cal. Bar No. 167547)  
MARC P. MILES (Cal. Bar No. 197741)

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MIKE R. TEAGUE, JERKO GERALD ZOVKO and  
WESLEY J.K. BATALONA

**KIRBY & HOLT, LLP**

By: /s/ David F. Kirby

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LR 83.1 Counsel

Attorneys for Plaintiff

RICHARD P. NORDAN, as the Ancillary Administrator of  
the separate Estates of STEPHEN S. HELVENSTON,  
MIKE R. TEAGUE, JERKO GERALD ZOVKO and  
WESLEY J.K. BATALONA

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **Notice of Appeal** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Kirk G. Warner

Mark A. Ash

*Attorney for Blackwater Security Consulting, LLC and Blackwater Lodge and Training Center, Inc.*

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP

P. O. Box 2611

Raleigh, NC 27602

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Washington, DC 20005-3096

David S. Coats

Bailey & Dixon, L.L.P.

P. O. Box 1351

Raleigh, NC 27602

This the 18th day of May, 2007.

/s/David F. Kirby

David F. Kirby

Kirby & Holt, L.L.P.



**EXHIBIT “B”**

**EXHIBIT “B”**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

FILED  
June 1, 2007

07-1508 Blackwater Security v. Nordan

**BRIEFING ORDER**

Briefs and the appendix shall be served and filed within the time provided in the following schedule:

Appellant's brief/Appendix	7/11/07 -----
Appellee's brief	30 days after service of brief of appellant
Reply brief (if any)	14 days after service of brief of appellee

If this case involves more than one appellant or appellee, or is a case consolidated for purposes of the appeal, all parties to a side shall join in a single brief, unless the Court has granted a motion for leave to file separate briefs pursuant to Local Rules 28(a) and 28(d). All parties to a side shall share the time allowed for oral argument. Each side must notify the Court of the attorney who has been designated as lead counsel within 10 days of the date of this order.

After the briefing schedule in this case has been completed, the Court may review this case to determine the need for oral argument before the Clerk prepares the oral argument calendar. Pursuant to Local Rule 34(a), the Court may, on its own initiative and without prior notice, screen an appeal for decision on the parties' briefs without oral argument. If your case is selected for the oral argument calendar, you will receive notice that your case has been tentatively calendared for a specific court session approximately 30 days in advance of the session, and any motion to submit the appeal on briefs, voluntarily dismiss the appeal, continue argument to another date, or seek other relief which may affect oral argument must be filed by a deadline established in the notice.

Counsel are reminded that failure of the appellant to timely file a brief will cause the Court to initiate the process for dismissing a case under Local Rule 45, impose discipline pursuant to Local Rule 46(g), or both. Failure of the appellee to timely file a brief may result in the loss of the right to be heard at oral argument and in the imposition of discipline pursuant to Local Rule 46(g). Any motion for an extension of time to file a brief must be filed well in advance of the date the brief is due and must set forth the additional time requested and the reasons for the request. The Court discourages these motions, and grants extensions only when extraordinary circumstances exist. Local Rule 31(c).

If an appeal has not been scheduled for a mediation conference, but counsel believes such a conference would be beneficial, counsel should contact the Office of the Circuit Mediator directly at (843) 521-4022, and a mediation conference will be scheduled. In such a case, the reason for scheduling the conference will be kept confidential.

cc: Kirk Gibson Warner  
Mark Alan Ash  
David Stebbins Coats  
William Bernard Bystrynski  
David Fulghum Kirby  
Daniel Jerome Callahan  
Brian Joseph McCormack  
Marc Phillip Miles

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

FILED  
June 26, 2007

No. 07-1508  
2:06-cv-00049-F

BLACKWATER SECURITY CONSULTING, LLC; BLACKWATER LODGE AND  
TRAINING CENTER, INCORPORATED

Petitioners - Appellees

v.

RICHARD P. NORDAN, as Ancillary Administrator for the  
Separate Estates of Stephen S. Helveston, Mike R. Teague,  
Jerko Gerald Zovko, and Wesley J. K. Batalona

Respondent - Appellant

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O R D E R  
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The Court extends the time for filing the appellant's  
brief until 8/29/07.

For the Court - By Direction

/s/ Patricia S. Connor

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CLERK