

# KBR Wins in the U.S. Court of Appeals for the Fifth Circuit And Defeats Plaintiffs' Iraq War Toxic Tort Lawsuit

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On March 27, 2017, KBR, Inc. won an appeal in the U.S. Court of Appeals for the Fifth Circuit as the appellate court affirmed in its entirety the district court's summary judgment dismissal of all claims brought by 166 toxic tort plaintiffs against KBR.

Plaintiffs are former American and British soldiers who provided security at an Iraqi water injection facility in 2003 during the Iraq War. Plaintiffs alleged they were exposed to a chemical called sodium dichromate that they alleged caused skin irritation, nosebleeds, headaches, coughing, genetic transformation, risk of cancer, and other supposed ailments. Plaintiffs sought over \$1 billion dollars in what they called damages.

In 2015, KBR won a complete summary judgment in the U.S. District Court for the Southern District of Texas based in part on medical and scientific evidence that KBR argued overwhelmingly disproved the plaintiffs' lawyers' allegations of supposed injury.

*After KBR won summary judgment in the district court, plaintiffs appealed to the U.S. Court of Appeals for the Fifth Circuit. The Fifth Circuit in a 3-0 decision affirmed summary judgment in favor of KBR. The Fifth Circuit noted that plaintiffs' own medical expert admitted "he did not know the dose of sodium dichromate any particular individual plaintiff was exposed to" and admitted there were "no credible" measurements of any plaintiffs' exposure. The Fifth Circuit held that plaintiffs' epidemiological evidence did not meet the "reliability threshold" under Texas law and "cannot be considered competent summary judgment evidence establishing general causation."*

*Geoffrey L. Harrison, a partner in Susman Godfrey LLP's Houston office, has been KBR's lead trial lawyer since 2010. Harrison said, "KBR's win in the district court and its 3-0 win in the Fifth Circuit is total and complete vindication for KBR." Harrison said he was "most pleased indeed with KBR's most recent win in the Fifth Circuit."*

*Harrison noted that, since 2003, KBR has supported the U.S. military in Iraq and Afghanistan and has provided life support services like meals, laundry and mail service to our troops. Harrison said that "KBR communicated openly and honestly with the U.S. Army and went above and beyond the call of duty in addressing the sodium dichromate issue."*

KBR for years has argued that the sodium dichromate litigation was driven by a small group of plaintiff lawyers making unsubstantiated claims without due regard for the facts and the medical and scientific evidence. A substantial volume of medical and scientific evidence came from independent sources and discredited plaintiffs' lawyers' claims. For example:

- The U.S. Army's 2003 medical and environmental investigation found only "minimal short-term exposure" to sodium dichromate; over 70% of the soldiers self-reported they did not have symptoms at the Iraqi facility; the few reported symptoms may have been caused by "the general desert environmental conditions, i.e., heat, sand, dust and wind;" and none of the soldiers had symptoms or medical problems that likely were caused by sodium dichromate exposure.
- The U.K. military's 2003 "sampling showed that levels of Sodium Dichromate were significantly below UK government and US Army guidance levels and that any potential hazards should not have any effect on the patrolling guard force" and concluded that the "Risks of long-term adverse health effects in personnel who have been potentially exposed to hexavalent chromium, at the Qarmat Ali Water Treatment Plant in SE Iraq, are extremely low."
- The U.S. Defense Health Board in 2008 explained that "No findings indicative of acute hexavalent chromium exposure were identified" and "the prevalence of irritation is reported to be consistent with the experience of other soldiers in the desert environment."
- The U.S. Secretary of the Army in 2009 confirmed the Army's continuing view that the Army's medical evaluations of the soldiers "indicate little or no expectation of future health concern."

The U.S. government's Iraq War-related contract with KBR requires the government to indemnify KBR for claims like plaintiffs' claims in this toxic tort lawsuit. Harrison noted that plaintiffs lawsuit has caused the U.S. government to pay nearly \$1.1 million in litigation costs, and KBR fully intends to pursue plaintiffs and their lawyers to recover that money for the government's economic benefit.

The KBR defendants are represented by Geoffrey L. Harrison, Vineet Bhatia, J. Hoke Peacock III, Johnny W. Carter, and Chanler A. Langham of Susman Godfrey LLP in Houston, Texas; Jordan W. Connors of Susman Godfrey LLP in Seattle, Washington; Warren W. Harris and Yvonne Ho of Bracewell LLP in Houston, Texas.

Plaintiffs are represented by Michael P. Doyle of Doyle, LLP in Houston, Texas; David M. Gunn and Chad Flores of Beck Redden LLP in Houston, Texas; Gabriel A. Hawkins of Cohen & Malad LLP in Indianapolis, Indiana; and David F. Sugerman of Portland, Oregon.

The case is *Mark McManaway, et al. v. KBR, Inc., et al.*, No. 15-20641, In the U.S. Court of Appeals for the Fifth Circuit.