

Susman Godfrey Partner Geoffrey Harrison Convinces Federal Judge to Reverse Previous Ruling in High-Profile Iraq War Case

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HOUSTON (Jan. 28, 2014) — KBR Inc., formerly Kellogg Brown & Root Inc., and some of its subsidiaries recently won a victory in a high-profile case related to the Iraq war, convincing a federal judge to reverse himself and grant their motion for summary judgment.

U.S. District Judge Keith Ellison found that he could not apply a law retroactively and therefore had no jurisdiction to hear a lawsuit brought by Nepalese families, who had alleged that the KBR defendants engaged with third parties that trafficked their loved ones to work in a war zone, but en route they were kidnapped and killed.

Relying on the U.S. Supreme Court's decision in *Kiobel v. Royal Dutch Petroleum Co.* (2013), Ellison concluded that the plaintiffs couldn't sue the KBR defendants in U.S. courts.

Geoffrey Harrison, a Houston partner in Susman Godfrey, replaced previous counsel and began representing the KBR defendants in September 2013. He welcomed Ellison's reversal and stressed that, despite the profoundly disturbing narrative of the allegations, his clients lack liability.

Harrison said Ellison "is an intellectually honest and careful judge who wants to get it right and do the right thing, and he did get this right."

The plaintiffs counsel—Agnieszka Fryszman, a partner in New York's Cohen Milstein Sellers & Toll, and Paul L. Hoffman, a partner in Los Angeles' Schonbrun, Desimone, Seplow, Harris & Hoffman—declined to answer questions but issued a statement after Ellison's ruling, saying, in part, that they were disappointed and would appeal.

In a memorandum and order issued in *Ramchandra Adhikari v. Daoud & Partners* on Jan. 15, Ellison granted in its entirety the KBR defendants' motion for summary judgment. Geoffrey Bracken, a partner in the Houston office of Gardere who represents Daoud & Partners, did not return a call for comment.

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With his ruling, Ellison dismissed all claims filed against the KBR defendants by the plaintiffs, who include the Nepalese laborers' families and one worker who alleged he escaped from the kidnapping that took place in 2004 and continued on to work for the KBR defendants in Iraq.

According to Ellison's memorandum and order, the plaintiffs had alleged in a complaint that the KBR defendants "engaged in a scheme to traffic" 13 laborers from Nepal to Iraq and "established, engaged and/or contracted with a network of suppliers, agents, and/or partners in order to procure laborers from third world countries." Plaintiffs also alleged that most of the Nepalese laborers, when recruited, "were told that they would be employed by a luxury hotel in Amman, Jordan" rather than in a war zone or any "dangerous location."

In mid-August 2004, while en route on the Amman-to-Baghdad highway, "which was known at the time to be a highly dangerous route" the plaintiffs alleged a group of men, who later revealed themselves to be members of the Ansar al-Sunna Army, stopped them. By Aug. 31, 2004, international media outlets broadcasted video of the Ansar al-Sunna Army executing the 12 men, beheading one and shooting the others in the backs of their heads. The families saw the video and it caused them "great emotional distress," Ellison writes.

The plaintiffs initially filed a complaint against the KBR defendants, citing claims under Racketeer Influenced Corrupt Organizations Act, (RICO), the Alien Tort Statute (ATS) and the Trafficking Victims Protection Reauthorization Act, TVPRA. In 2008, Congress passed TVPRA §1596, which allows for a "conferral of extraterritorial jurisdiction."

In response to the plaintiffs' complaint, the KBR defendants filed a summary judgment motion, seeking a dismissal of all the claims.

In 2013, Ellison partially granted that KBR motion. He dismissed the RICO and ATS claims. But he determined that TVPRA §1596, "could be applied retroactively to KBR's actions," Ellison writes in his Jan. 15 ruling. But, he adds, "Upon further reflection, the Court now determines that this holding was in error."

In his memorandum and order, Ellison explains that he remains "concerned that the TVPRA's purpose will be undermined if United States defendants escape liability so long as their acts of human trafficking took place outside of the United States borders prior to 2008." But he writes that he "cannot distinguish the TVPRA's protection of victims of human trafficking from the ATS's protection of aliens for the violations of the laws of nations," and, in its 2013 decision in Kiobel, "[t]he Supreme Court found that 'nothing in the [ATS] rebuts' the presumption against extraterritoriality." Therefore, "This Court must apply the same logic to claims brought by Plaintiffs under the TVPRA."

Harrison said, "The plaintiffs' allegations raise a tragedy that occurred in Iraq, but the tragedy occurred before any of the Nepali decedents reached the U.S. military and before any of them had had any contact at all with KBR."

He continued, "The plaintiffs' lawyers admitted in open court that they are not alleging that KBR was culpable for the Nepali's men's murders. ... KBR has a zero tolerance policy related to any behavior with respect to trafficking in persons and forced labor. And KBR is committed to treating all people with dignity and respect."

Harrison said, "While our hearts go out the families of those who were killed while serving in Iraq, we note that the plaintiffs lawyers did not prove and were not able to prove the exaggerated allegations they made to try and attract attention to this case."

Harrison also noted that KBR was "four times removed" from the company that recruited the Nepali workers

In their statement, plaintiffs counsel Fryszman and Hoffman wrote, "Earlier this year the court held that sufficient evidence existed to show plaintiffs' family members were victims of human trafficking. The court also found sufficient evidence existed to show KBR was aware of and responsible for this illicit trafficking activity."

Further, they wrote, “[T]he court’s most recent decision allows KBR to escape liability on the grounds that plaintiffs’ claims involve trafficking that occurred outside of the territorial United States. We believe the court misapplied Supreme Court precedent when it reconsidered and reversed its earlier decision on jurisdiction, as the trafficking statute includes an explicit statement of extraterritorial jurisdiction that applies to conduct by a U.S. military contractor at a U.S. military base.”

Harrison said he was not surprised by plaintiffs’ plans to appeal but noted that they would need Ellison’s approval to do so on an interlocutory basis.

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