

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

In re KBR, Inc.

In re KBR, Inc., 893 F.3d 241 · Decided June 20, 2018

SUMMARY

The Fourth Circuit held that the political question doctrine barred tort claims by servicemembers against military contractor KBR for injuries from burn pit smoke and contaminated water in Iraq and Afghanistan. Applying the "direct control" test from **Taylor v. Kellogg, Brown & Root**, the court found the military exercised plenary and actual control over KBR's waste management and water services, making the contractor's actions unreviewable military decisions. The court affirmed dismissal for lack of subject-matter jurisdiction and vacated the district court's alternative holding on FTCA combatant-activities preemption as moot.

CASE DETAILS

COURT	United States Court of Appeals for the Fourth Circuit
WRITING FOR THE COURT	Floyd; Diaz; King
JURISDICTION	Federal
DECIDED	June 20, 2018
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of Maryland, after jurisdictional discovery, dismissal for lack of subject matter jurisdiction based on political question doctrine, and summary judgment based on FTCA preemption.
STANDARD OF REVIEW	Clear error for factual findings, de novo for legal conclusions. "We review the district court's factual findings with respect to jurisdiction for clear error and the legal conclusion that flows therefrom de novo." (quoting <i>Scott v. Cricket Commc'n</i> , 865 F.3d 189, 194 (4th Cir. 2017))
PRECEDENTIAL VALUE	Published
PARTIES	Servicemembers (military personnel, civilian contractors, and surviving family members) v. KBR (Kellogg, Brown & Root, LLC and Halliburton Company)

TOPICS

constitutional law

separation of powers

subject matter jurisdiction

torts

negligence

PRACTICE AREAS

Military Law

Torts

Civil Procedure

QUESTIONS PRESENTED

1. Whether the suit brought by Servicemembers against KBR for injuries from burn pit smoke and water contamination is barred by the political question doctrine because the military exercised plenary and actual control over KBR's waste management and water services.

HOLDINGS

1. Yes, the suit presents a nonjusticiable political question because the military exercised plenary and actual control over KBR's waste management and water services, making KBR's decisions de facto military decisions.

KEY QUOTATIONS

"a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it." (at 259)

"a suit against a military contractor raises a nonjusticiable political question if either (1) the military exercised direct control over the contractor, or (2) 'national defense interests were closely intertwined with the military's decisions regarding [the contractor's] conduct.'" (at 260)

"We conclude that the military's control over KBR's waste management and water services was plenary and actual." (at 262)

FACTUAL BACKGROUND

The U.S. military relied heavily on contractors to support operations in Iraq and Afghanistan. KBR was awarded a contract (LOGCAP III) to provide waste management and water services at forward operating bases. The military mandated the use of burn pits for waste disposal, and KBR could not unilaterally decide to use alternatives. The military controlled the location, operation, and hours of burn pits, as well as what could be burned. For water services, the military directed the frequency, quantity, and methods of water production, and retained ultimate control over water quality testing. KBR was integrated into the military chain of command, participating in briefings and subject to military directives.

PROCEDURAL HISTORY

The Judicial Panel on Multidistrict Litigation consolidated and transferred these cases to the District of Maryland. The district court initially dismissed the suit, but the Fourth Circuit vacated and remanded for jurisdictional discovery. After discovery, the district court again dismissed based on the political question doctrine and granted summary judgment on FTCA preemption. The Servicemembers appealed.

DISPOSITION

other

REMAND INSTRUCTIONS

The district court's judgment dismissing the case for lack of subject matter jurisdiction is affirmed. The district court's ruling on FTCA preemption is vacated as moot.

CASES CITED

- Japan Whaling Ass'n v. Am. Cetacean Soc'y, 478 U.S. 221, 230 (1986)
- Taylor v. Kellogg, Brown & Root Servs., Inc., 658 F.3d 402 (4th Cir. 2011)
- Al Shimari v. CACI Premier Tech., Inc., 840 F.3d 147 (4th Cir. 2016)
- Carmichael v. Kellogg, Brown & Root Servs., Inc., 572 F.3d 1271 (11th Cir. 2009)
- Baker v. Carr, 369 U.S. 186, 217 (1962)
- Nixon v. United States, 506 U.S. 224, 228 (1993)
- Marbury v. Madison, 5 U.S. (1 Cranch) 137, 170, 177 (1803)
- Zivotofsky ex rel. Zivotofsky v. Clinton, 566 U.S. 189, 194-95 (2012)
- Al Shimari v. CACI Premier Tech., Inc., 758 F.3d 516 (4th Cir. 2014)
- Lebron v. Rumsfeld, 670 F.3d 540, 548 (4th Cir. 2012)
- Harris v. Kellogg, Brown & Root Servs., Inc., 724 F.3d 458 (3d Cir. 2013)
- In re KBR, Inc., Burn Pit Litig., 744 F.3d 326 (4th Cir. 2014)
- Scott v. Cricket Commc'n, 865 F.3d 189, 194 (4th Cir. 2017)
- In re Bate Land & Timber LLC, 877 F.3d 188, 198 (4th Cir. 2017)
- Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 573 (1985)
- United States v. Wooden, 887 F.3d 591, 602 (4th Cir. 2018)
- Variety Stores, Inc. v. Wal-Mart Stores, Inc., Variety Stores, Inc. v. Wal-Mart Stores, Inc., 888 F.3d 651, 659 (4th Cir. 2018)
- Saleh v. Titan Corp., 580 F.3d 1, 9 (D.C. Cir. 2009)
- Karsten v. Kaiser Found. Health Plan of Mid-Atl. States, Inc., 36 F.3d 8, 11 (4th Cir. 1994)
- Norfolk S. Ry. Co. v. City of Alexandria, 608 F.3d 150, 161 (4th Cir. 2010)

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