

NINTH CIRCUIT OVERTURNS \$80 MILLION VERDICT, FINDING THAT LOWER COURT LACKED PERSONAL JURISDICTION OVER OUT-OF-STATE DEFENDANT'S FOREIGN CONDUCT

by
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On May 14, 2015, the U.S. Court of Appeals for the Ninth Circuit vacated an award of over \$80 million against a defense contractor that was accused of injuring members of the Oregon National Guard while they were serving in Iraq. The Ninth Circuit ruled in *Bixby v. KBR, Inc.* that Oregon lacked personal jurisdiction over the contractor; the contractor's knowledge that plaintiffs resided in Oregon was not sufficient to confer jurisdiction to decide their claims.¹

Background. A group of Oregon National Guardsmen sued a defense contractor that worked in Iraq to help the U.S. Army restore Iraq's oil infrastructure. The guardsmen, who were responsible for protecting the contractor during its work, alleged that the contractor negligently failed to protect them from hazardous chemicals at one of the Iraqi facilities.

A federal jury in Oregon, applying Oregon law, awarded over \$80 million against the contractor. The contractor appealed to the Ninth Circuit, arguing that Oregon lacked jurisdiction because the contractor was not based in Oregon and did not cause any injuries in Oregon.

Personal Jurisdiction Requirements. While the appeal was pending, the U.S. Supreme Court decided *Walden v. Fiore*, which held that due process did not permit Nevada to exercise personal jurisdiction over a police officer working in a Georgia airport who allegedly seized a large amount of cash from plaintiffs who were returning to their Nevada residence.² The Court clarified that "the plaintiff cannot be the only link between the defendant and the forum." In other words, a defendant's actions cannot give rise to personal jurisdiction simply because the defendant directs its conduct at plaintiffs whom he knew had connections to the forum state.

Analysis. The Ninth Circuit's decision in *Bixby v. KBR, Inc.* is a relatively straightforward application of *Walden v. Fiore*. Perhaps for this reason, the Ninth Circuit chose to explain its reversal of such a substantial judgment (that garnered briefs from several *amici curiae*) via a four-page

¹ *Bixby v. KBR, Inc.*, 2015 WL 2242170 (9th Cir. May 14, 2015).

² *Walden v. Fiore*, 134 S. Ct. 1115 (2014).

memorandum disposition rather than a published opinion. The contractor's alleged conduct occurred in Iraq, and was directed at the plaintiff guardsmen while they were in Iraq. Like the police officer in *Walden v. Fiore*, the defense contractor's only contact with plaintiffs' chosen forum was that plaintiffs resided there. *Bixby v. KBR, Inc.* confirms that due process limits a State's ability to regulate conduct occurring beyond its borders, even where the effects of that conduct may ultimately be experienced within the State.

Eric Boorstin is an Associate with the law firm Horvitz & Levy LLP in Los Angeles, California. Mr. Boorstin and the firm filed an *amicus curiae* brief to support defendants' appeal in *Bixby v. KBR, Inc.*

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