

CAUSE NO. _____

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| KEVIN CLOYD, NICKALANDRA | § | IN THE DISTRICT COURT |
| WITHERSPOON, and LUCILA ANDRADE | § | |
| V. | § | HARRIS COUNTY, TEXAS |
| | § | |
| KBR, INC. | § | _____ JUDICIAL DISTRICT |

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs Kevin Cloyd, Nickalandra Witherspoon, and Lucila Andrade (“Plaintiffs”), complaining of Defendant KBR, Inc. (“KBR” or “Defendant”), and, for cause of action, would respectfully show this Honorable Court as follows:

I. DISCOVERY CONTROL PLAN

1.1 Plaintiffs intend to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4.

1.2 This suit does not fall under the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiffs seek damages in excess of \$100,000.

II. CLAIM FOR RELIEF

2.1 While Plaintiffs leave the determination of the amount to the jury for the unspeakable pain and suffering they have endured, Plaintiffs must also comply with Texas Rule of Civil Procedure 47. In fulfilling this duty, and under Rule 47, Plaintiffs plead that the damages sustained exceed \$10,000,000.00.

III. PARTIES

3.1 Plaintiff, Kevin Cloyd, is a citizen of Wisconsin.

3.2 Plaintiff, Nickalandra Witherspoon, is a citizen of Texas.

3.3 Plaintiff, Lucila Andrade, is a citizen of Texas.

3.4 Defendant KBR, Inc. is a Delaware corporation with its principal place of business in Houston, Texas, doing business in the State of Texas for the purpose of accumulating monetary profit. KBR failed to properly supervise and evacuate the contractors though it had the power and duty to do so. It has become necessary to bring this suit, because KBR's acts and omissions resulted in Plaintiffs being left in a dangerous, hostile land where ultimately they sustained life altering injuries during a missile attack. KBR may be served with process through its registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136, as such it is a citizen of Texas.

3.5 Plaintiffs specifically invoke the right to institute this suit against whatever entities were conducting business using an assumed or common name, if any, with regard to the events described in this Petition. Plaintiffs specifically invoke the right under Rule 28, Texas Rules of Civil Procedure, to have the true name of such parties substituted at a later time, if necessary.

IV. JURISDICTION & VENUE

4.1 This Court has jurisdiction over this case because Defendant is a citizen of and maintains its principle place of business in Texas. The damages sought herein are in excess of the minimal jurisdictional limits of this Court.

4.2 This case is not removable as there is no diversity of citizenship as the Defendant has its principal place of business and home office in Texas and is therefore a citizen of the State of Texas, precluding removal. Additionally, there is not complete diversity of citizenship among the parties.

4.3 Furthermore, Defendant KBR has judicially admitted that it was not a party to any contract with the government of the United States, and therefore, there is no federal question jurisdiction presented in this matter.¹

4.4 Plaintiffs do not bring any cause of action under the Defense Base Act (“DBA”), nor are their claims governed by this Act, because the sole Defendant in this lawsuit was neither its legal nor fictional employer nor was it in contract with the government of the United States. The DBA’s plain text provides that “[t]he liability of an employer, contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) under this chapter shall be exclusive and in place of all other liability of such employer, contractor, subcontractor, or subordinate contractor to his employees”. Any removal of this lawsuit by KBR to federal court on the basis that Plaintiffs’ claims are governed by the DBA would be fraudulent on its face, done solely in an attempt to improperly forum shop.

4.5 Any allegations that Plaintiffs’ claims are barred by the Federal Tort Claims Act are similarly false because KBR has judicially admitted that it did not contract with the federal government to perform the work that was done by the Plaintiffs. Because it did not contract with the government, KBR is not considered a government contractor for purposes of this suit.

4.6 This case is brought for negligence under the laws of the State of Texas, and does not invoke any federal law.

4.7 Venue is proper in Harris County, Texas under Tex. Civ. Prac. & Rem. Code § 15.002(a)(3), as Defendant’s principal office in this state is located in Harris County, Texas.

¹ See KBR Motion to Dismiss in Case No. 4:20-cv-00985: *Kevin Cloyd, et al. v. KBR, Inc.*, in the United States District Court for the Southern District of Texas (Doc. 3): “ **KBR, Inc....was not party to the government contract at issue here.**” (emphasis added)

V. FACTUAL BACKGROUND

5.1 It has become necessary to bring this lawsuit as a result of the failure of KBR to evacuate workers from Iraq prior to the Iranian missile attack on an Iraqi base on January 8, 2020.

5.2 On the date of the attack, Plaintiffs were all employed by Service Employees International, Inc. working at the military base. KBR had the authority to supervise and evacuate the Service Employees International, Inc. employees. Unfortunately, KBR decided to ignore the unambiguous threats of retaliation levied by Iran following the death of General Qassem Soleimani. Placing profits over the safety of these individuals and contractors, KBR failed to evacuate them. At the same time KBR was focusing on profits, numerous other companies heeded the warnings issued by the United States Government and evacuated workers prior to their sustaining harm.

Timeline of Events

June 20, 2019:

5.3 Iran's Islamic Revolutionary Guard Corps shot down a United States RQ-4A Global Hawk BAMS-D surveillance drone with a surface-to-air missile over the Strait of Hormuz.

June 22, 2019:

5.4 Amid escalating confrontation between Iran and the United States, Iran's armed forces general staff spokesman Brigadier General Abolfazl Shekarchi warned the United States: "Firing one bullet towards Iran will set fire to the interests of America and its allies."

5.5 U.S. Department of Homeland Security issues a warning to U.S. industries that Iran was stepping up cyber attacks of critical industries — particularly oil, gas and other energy sectors — and government agencies, and have the potential to disrupt or destroy systems

July 19, 2019:

5.6 In retaliation for Britain’s seizure of an Iranian tanker at the request of the United States, Iran seized a British Oil Tanker in the Strait of Hormuz.

December 27, 2019:

5.7 A rocket attack believed to be linked to a Shiite militia group, backed by Iran's Islamic Revolutionary Guard Corps, killed a US civilian contractor and wounded several US and Iraq military personnel on a base near Kirkuk, Iraq.

December 29, 2019:

5.8 According to the Pentagon, US forces conducted airstrikes at five facilities in Iraq and Syria controlled by a Shiite military group known as Kataib Hezbollah -- the group that American officials blamed for the attack on the base near Kirkuk.

January 3, 2020:

5.9 On January 3, 2020, a drone strike by the U.S. Government killed Iranian General Qassem Soleimani near the Baghdad Airport. Following the attack, Iran vowed retaliation against the United States.

5.10 Iran's Foreign Minister Javad Zarif immediately condemned the attack on Twitter saying that the US “bears responsibility for all consequences of its rogue adventurism.”

5.11 Iranian Supreme Leader Ayatollah Ali Khamenei threatened “severe retaliation.” Khamenei said the U.S. action will “double the motivation” of the Iranian people's resistance against the United States.

5.12 Iran's President, Hassan Rouhani, issued a statement: "Suleimani's martyrdom will make Iran more decisive to resist America's expansionism and to defend our Islamic values. With no doubt, Iran and other freedom-seeking countries in the region will take his revenge."

5.13 Iranian news agency IRNA quoted Iran's Defense Minister Amir Hatami as saying Tehran would extract "crushing revenge" for Soleimani's killing.

5.14 Pro-Iranian protesters, demonstrating against the American airstrikes, attacked the US Embassy in Baghdad, scaling walls and forcing the gates open.

5.15 The U.S. State Department issued a travel warning for Americans, urging them to leave Iraq immediately. The United States announced that it would send 3,000 additional troops to the Middle East amid rising tensions in the region.

5.16 American workers from a number of foreign companies that were in Iraq began to leave the country.

5.17 ExxonMobil begins to evacuate employees located at its West Qurna field in Iraq.

5.18 KBR ignores the risks and the threats of retaliation to Americans in the region and fails to evacuate the contractors employed by Service Employees International.

January 4, 2020:

5.19 Thousands gather for the funeral procession of Soleimani in Baghdad, Iraq.

5.20 Revolutionary Guards General Gholamali Abuhameed said Iran will punish Americans wherever they are within reach of the Islamic Republic. "Vital American targets in the region have been identified by Iran since long time ago ... some 35 US targets in the region as well as Tel Aviv are within our reach."

5.21 NATO suspended training missions in Iraq, citing security concerns. The NATO Secretary General noted: “In everything that we do, the safety of our personnel is paramount. As such, we have temporarily suspended our training on the ground.”

5.22 KBR ignores the risks and the threats of retaliation to Americans in the region and fails to evacuate the contractors employed by Service Employees International.

January 5, 2020:

5.23 Soleimani's body is returned to Iran and sent to the city of Ahvaz, according to the state-run IRIB news agency. Thousands began gathering in the city to mourn the general.

5.24 The military advisor to Iran’s Supreme Leader states: “*The response for sure will be military and against military sites.*” (Emphasis added).

5.25 Hezbollah chief Hassan Nasrallah vowed to mete out “just retribution” for the killing of Soleimani.

5.26 KBR ignores the risks and the threats of retaliation to Americans in the region and fails to evacuate the contractors employed by Service Employees International.

January 6, 2020:

5.27 UN Secretary-General Antonio Guterres warns that tensions are at their "highest level this century," in an address. "The New Year has begun with our world in turmoil," he wrote on Twitter.

5.28 Hundreds of thousands flood Tehran's streets to mourn Soleimani while Khamenei led prayers at the funeral. Many of those on the streets of the Iranian capital were visibly upset and angry; others shouted “down with the USA” and “death to the USA.”

5.29 Abu Ali al-Askari, the security leader of Iranian-backed Iraqi Shiite militia Kataib Hezbollah stated on Twitter: “Regarding the air base it will be brought to the ground if they (US troops) insist to stay in Iraq.”

5.30 Chevron evacuated all American oil workers from the northern part of Iraq. “The safety of our people and facilities is Chevron’s top priority globally,” a Chevron spokesperson told CNN.

5.31 KBR ignores the risks and the threats of retaliation to Americans in the region and fails to evacuate the contractors employed by Service Employees International.

January 7, 2020:

5.32 More than 50 people are reported dead, and over 200 injured after a stampede at Soleimani's funeral in his home city of Kerman. Over a million people were estimated to be in attendance, in what would be Iran's largest funeral procession since the 1989 funeral of Ayatollah Ruhollah Khomeini, the leader of the 1979 Islamic Revolution.

5.33 Iranian lawmakers unanimously voted for a motion declaring all US forces as “terrorists” in response to the killing of Iranian General Qassem Soleimani. After the plan was approved, delegates chanted, “Death to America.”

5.34 In an interview with CNN, Iranian Foreign Minister Javad Zarif stated: “We will defend our own territory, we will defend our people.” He continued and noted that the killing “has enraged the people of our region,” and that “this is an act of aggression against Iran, and amounts to an armed attack against Iran and we will respond.”

5.35 KBR ignores the risks and the threats of retaliation to Americans in the region and fails to evacuate the contractors employed by Service Employees International.

January 8, 2020:

5.36 Iran launches 22 ballistic missiles at two military bases hosting US and allied troops in Iraq, in what Ayatollah Ali Khamenei described as a “slap in the face” for the killing of Soleimani.

5.37 Cloyd was roughly 200 feet away when one of the ballistic missiles hit the Al Asad Airbase. The explosion was so severe that it launched Cloyd through a nearby closed door. The explosion, and resultant impact, caused substantial physical and mental injuries to Cloyd. His medical treatment is only just beginning, and will likely require treatment for the remainder of his life, due to the head and brain damage he has sustained.

5.38 Witherspoon also sustained significant injuries in the attack. Her medical treatment is only just beginning, and will likely require treatment for the remainder of her life, due to the head and brain damage she has sustained

5.39 KBR supervised Service Employees International, Inc. who sent Plaintiffs to work on the military base with representations about its security and commitment to safety. However, even after KBR had been made aware of the heightened risk of a strike in the face of evidence of the escalating regional violence, it left Plaintiffs and the other employees of Service Employees International and Overseas Administrative Service at the base, in direct risk of substantial harm.

5.40 Plaintiffs file this lawsuit to recover for the injuries and damages sustained, and to prevent similar tragedies from being visited upon other families.

VI. NEGLIGENCE

6.1 Defendant owed Plaintiffs a duty to exercise ordinary care to ensure that Plaintiffs were not injured by its acts and/or omissions and was well aware of the foregoing facts in paragraphs 5.3 through 5.40, incorporated herein, but failed to act when it had the power to do so.

6.2 Defendant engaged in negligent acts and/or omissions resulting in the injuries and resultant damages to Plaintiffs. Defendant failed to protect contractors, including Plaintiffs, from the conditions it knew, or should have known, about and failed to evacuate contractors when a reasonably prudent person and company would have done so when it had the power to.

6.3 The damages sustained by Plaintiffs were proximately caused by the negligence of Defendant, its officers, agents, or employees, in one or more of the following ways:

- (a) failing to properly select, hire, train and manage Defendant's employees, who had supervisory authority over the facility where Plaintiffs were deployed;
- (b) failing to properly select, hire, train and manage independent contractors who it supervised;
- (c) failing to implement proper and adequate safety methods and/or procedures which it supervised;
- (d) failing to take reasonable precautions for Plaintiffs' safety;
- (e) failing to provide Plaintiffs with a reasonably safe place to work including failing to evacuate and/or supervise Plaintiffs;
- (f) failing to provide security measures, including, but not limited to, adequate and sufficient communication of safety information and status updates, a means of evacuating Iraq when conditions became unreasonably dangerous, and protection from violent attacks;
- (g) failing to properly and adequately provide safety training, planning, and information to Plaintiffs in the event they came under violent attack; and
- (h) other acts of negligence and/or omissions to be shown at trial herein.

VII. GROSS NEGLIGENCE

7.1 The Defendant's acts and/or omissions rose to the level of gross negligence and warrant the imposition of exemplary damages.

7.2 The acts and omissions of Defendant involved an extreme degree of risk, considering the probability and magnitude of harm to others, and Defendant had actual, subjective awareness of the risks but proceeded with conscious indifference to the rights, safety, and welfare of others.

VIII. DAMAGES

8.1 As a direct and proximate result of all Defendant's negligence and/or gross negligence, Plaintiffs suffered the following injuries and resultant damages, including, but not limited to: (a) mental anguish in the past and future; (b) lost earnings; (c) loss of earning capacity; (d) disfigurement in the past and future; (e) physical impairment in the past and future; (f) medical expenses in the past and future; (g) physical pain and suffering in the past and future; (h) punitive damages.

8.2 Plaintiffs are seeking monetary relief over \$10,000,000.

IX. REQUEST FOR DISCLOSURE

9.1 Plaintiffs request that Defendant disclose the information or material described in Rule 194.2, Tex.R.Civ.P.

WHEREFORE, Plaintiffs pray the Court issue citation for Defendant to appear and answer, and that Plaintiffs be awarded a judgment against Defendant for the following:

- a. Actual damages;
- b. Exemplary damages;
- c. Prejudgment and post-judgment interest;
- d. Court costs;

- e. Punitive damages and attorney's fees; and
- f. All other relief to which Plaintiffs are entitled.

Respectfully submitted,

By: /s/ Marcus R. Spagnoletti

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