

# Court overturns \$85 million award for Oregon soldiers

By STEVEN DUBOIS  
Associated Press

PORTLAND — The 9th U.S. Circuit Court of Appeals overturned an \$85 million jury award to a dozen Oregon National Guard soldiers who said they were sickened from guarding a water treatment plant during the Iraq War.

The military contractor Kellogg, Brown and Root successfully argued that Oregon was not the proper jurisdiction for the case. KBR is based in Houston, and similar cases filed by soldiers from Indiana, West Virginia and South Carolina are pending in federal court there.

"We are thrilled with the result; it is the right result and we look forward to a successful conclusion to this and all the legacy tort claims that relate to KBR's work supporting the U.S. military in Iraq," KBR attorney Geoffrey Harrison said by phone Thursday.

The three-judge panel heard oral arguments May 4 in Portland and came back with a surprisingly fast decision. The brief opinion only addressed the question of jurisdiction, and it found an insufficient link between KBR and Oregon.

The opinion mentions two possibilities for what comes next: Either the case is dismissed and then refiled in an appropriate venue, presumably Texas, or it's simply transferred there.

The plaintiffs could also ask the full court to review the case.

Mike Doyle, the lead attorney for the soldiers, said he will take a few days before deciding the next step. He said KBR was fully able to defend itself in Oregon, so it was tough to lose on jurisdictional grounds.



AP Photo/Rick Bowmer, File

**In this 2009 file photo, Iraq veteran Larry Roberta looks down during his testimony before the House Rules Committee at the Oregon Capitol in Salem, about his exposure to a chemical called sodium dichromate, which contains a potentially cancer-causing substance.**

"But that's the law," he said. "We'll follow the law; we'll follow the rules. That's what we do."

A federal jury in Portland found KBR guilty of negligence after a three-week trial in late 2012. Each of the 12 soldiers was awarded \$850,000 in noneconomic damages and \$6.25 million in punitive damages.

U.S. District Court Judge Paul Papak acknowledged before the trial that the losing side was likely to appeal.

KBR reconstructed the water treatment center shortly after the March 2003 invasion while National Guardsmen defended the area.

The soldiers said they had respiratory ailments after their exposure

to sodium dichromate, a corrosive substance used to keep pipes at the water plant free of rust. Moreover, they feared a carcinogen found in sodium dichromate could cause cancer later in life.

KBR witnesses testified that the soldiers' maladies resulted from desert air and pre-existing conditions. And even if the soldiers were exposed to sodium dichromate, they weren't around enough of it, for long enough, to cause serious health problems.

Rocky Bixby, one of the Oregon soldiers, said his health hasn't improved since the 2012 verdict. He said he has coughing fits, lung problems, depression and post-traumatic stress disorder.

"We beat them in federal court on the merits of the case and now we have to retry it again," he said. "It's frustrating that the appellate court basically threw out our whole case."

The case has been going on since 2009. "I don't know how many of us will survive to the end of this, but we'll push through and see what happens," Bixby said.

The military contractor has had more legal success in its home state than in Oregon. The Texas federal court granted KBR's request for summary judgment on several matters in the case involving Guard troops from other states, including whether KBR was negligent.

That has left those soldiers with one pending claim, whether KBR intentionally inflicted emotional distress.

"The Oregon plaintiffs should stand on the same shaky footing that their claims deserve and that the other plaintiffs have, based on their legally and factually meritless allegations," said Harrison, the KBR attorney.

# Roseburg council holsters decision on garage gun store

By TROY BRYNELSON  
Roseburg News-Review

ROSEBURG — Supporters of a garage-based gun store on Southeast Sharon Avenue in Roseburg came out in force Monday night to defend the business against accusations that it drives up traffic on the otherwise quiet street.

The Roseburg City Council spent nearly two hours hearing from supporters of KC's Exchange, a gun store owned and operated out of the home of an elderly couple, who decried anonymous complaints that led the city to issue an abatement in May last year. The city contended that, in addition to four complaints, the gun store also violated city land-use codes about running a business in a residential neighborhood.

The supporters Monday night balked at the idea that traffic was an issue.

"I go down that road six times a day. There's never a traffic problem," said Gary Leif, a downtown business owner who owns three properties near KC's Exchange. Leif said he wasn't aware a business was even being run there, despite having lived in the area for seven years. "A friend said to me, 'Have you been to KC's Exchange?' and I said, 'I don't even know what that is.'"

KC's Exchange, owned by Ken and Carolyn Kellim, has been doing business on Southeast Sharon Avenue since 2013. The couple had been in the gun-selling business since 1995 but shuttered the first store on Southeast Stephens Street in 2003 when Carolyn Kellim decided she wanted to spend more time at home.

The couple reopened the shop after spending \$5,000 to retrofit the garage to turn it into a fully stocked gun store.

Carolyn Kellim, 86, who estimates she sold 600 guns last year, said that the store gives her purpose in her retirement years.

"I'm not ready to die. The people who take off and loll around in the sun don't live very long," she said.

However, the city had received complaints that the business was inundating the quiet neighborhood with traffic, a claim the couple and supporters deny. On May 19, 2014, the city issued an abatement notice asking the store to end its retail business, which the couple appealed 10 days later.

The two sides convened in November 2014 and agreed that if the gun store would limit business to three customers per day — an idea reportedly hatched by KC's Exchange and its legal team — it could operate quietly in the neighborhood. Christopher Peterman, the Kellim's lawyer, said they were under the impression the deal was for three firearm purchases per day, not three customers total.

"What I suggested on behalf of Mrs. Kellim was that we would limit the live persons to three per day. I think what was lost in translation was that we didn't anticipate that meant we would close the door and lock out anyone who showed up," Peterman said. "What we anticipated is that we would try to limit the sales and the foot traffic by kind of motivating individuals to come. We didn't anticipate that if someone showed up later in the afternoon we'd have to lock them out."

City Manager Lance Colley said the business could operate as long as it honored the three-customer limit, as well as advertising the business as "by appointment only."

## Klamath farmers take another hit on irrigation

KLAMATH FALLS (AP) — Farmers on a federal irrigation project straddling the Oregon-California border will get less than half the water they would expect in a plentiful year.

Greg Addington, executive director of the Klamath Water Users Association, says they were notified this week by the U.S. Bureau of Reclamation that the mountain snowpack is rapidly declining and estimates of water availability have dropped.

A month ago, the drought was expected to result in 60 percent of full water deliveries this summer. Now, that will be about 45 percent.

## BRIEFLY

Addington tells the *Klamath Falls Herald and News* that 11 of the project's 15 irrigation districts have already shut down.

In drought years, Endangered Species Act demands for protected sucker fish and salmon mean less water for farms on the project.

## Health care executive charged with public indecency

SALEM (AP) — Police arrested a health care executive accused of masturbating in a car parked outside a Bi-Mart store in Woodburn.

A city spokesman said Rick Cagen, the president and CEO of Silverton



Health, was taken to jail Thursday after he was arrested on one count of public indecency.

The jail website lists Cagen's bail at \$5,000 and says his initial court appearance is Friday.

Officers found Cagen at Woodburn Health Center after a witness provided them with a vehicle description and license plate number.

Cagen turned 64 years old on Wednesday.

## Corrections

The *East Oregonian* works hard to be accurate and sincerely regrets any errors. If you notice a mistake in the paper, please call 541-966-0818.

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### AccuWeather.com Forecast

TODAY	SATURDAY	SUNDAY	MONDAY	TUESDAY
71° 52°	73° 46°	71° 47°	74° 50°	75° 51°

**PENDLETON TEMPERATURE FORECAST**  
71° 52° 73° 46° 71° 47° 74° 50° 75° 51°

**HERMISTON TEMPERATURE FORECAST**  
76° 51° 76° 46° 74° 47° 77° 49° 78° 50°

**ALMANAC**

**PENDLETON**  
through 3 p.m. yesterday

TEMPERATURE	HIGH	LOW
Yesterday	65°	41°
Normals	71°	46°
Records	97° (1934)	31° (1916)

**PRECIPITATION**  
24 hours ending 3 p.m. 0.00"  
Month to date 1.06"  
Normal month to date 0.53"  
Year to date 4.19"  
Last year to date 6.13"  
Normal year to date 5.64"

**HERMISTON**  
through 3 p.m. yesterday

TEMPERATURE	HIGH	LOW
Yesterday	70°	43°
Normals	73°	46°
Records	97° (1939)	30° (1964)

**PRECIPITATION**  
24 hours ending 3 p.m. 0.00"  
Month to date 1.21"  
Normal month to date 0.53"  
Year to date 3.00"  
Last year to date 3.77"  
Normal year to date 4.52"

**SUN AND MOON**

	New	First	Full	Last
	May 17	May 25	June 2	June 9

**REGIONAL FORECAST**

Coastal Oregon: Intervals of clouds and sunshine today. Partly cloudy tonight. Rather cloudy tomorrow.

Eastern and Central Oregon: A couple of showers today, except dry near the Cascades.

Western Washington: Partly sunny today. Partly cloudy tonight. Mainly cloudy tomorrow.

Eastern Washington: Clouds and sun today; a passing shower near the Idaho border and in the mountains.

Cascades: Variable clouds today. A passing shower in the south; pleasant across the north.

Northern California: Sun today. Snow showers in the morning, then showers in the interior mountains; a shower in central parts.

### REGIONAL CITIES

	Today			Sat.		
	Hi	Lo	W	Hi	Lo	W
Astoria	58	50	pc	60	48	c
Baker City	59	43	sh	63	37	sh
Bend	61	35	c	61	35	c
Brookings	59	47	c	59	47	c
Burns	55	39	sh	62	34	sh
Enterprise	53	42	sh	53	42	sh
Eugene	64	46	c	64	41	c
Heppner	65	48	c	65	44	sh
Hermiston	76	51	c	76	46	c
John Day	57	45	sh	60	43	sh
Klamath Falls	57	32	sh	64	35	c
La Grande	62	48	sh	65	44	sh
Meacham	58	39	c	60	36	sh
Medford	66	46	sh	72	47	c
Newport	55	48	pc	55	46	c
North Bend	58	50	pc	59	47	c
Ontario	63	50	sh	70	49	c
Pasco	78	52	pc	78	46	c
Pendleton	71	52	c	73	46	sh
Portland	67	52	pc	65	51	c
Redmond	64	34	c	65	33	c
Salem	66	47	pc	65	47	c
Spokane	73	50	pc	70	49	pc
Ukiah	60	44	c	60	41	sh
Vancouver	66	50	pc	65	48	c
Walla Walla	72	52	c	73	51	c
Yakima	80	49	pc	80	49	pc

### WORLD CITIES

	Today			Sat.		
	Hi	Lo	W	Hi	Lo	W
Beijing	78	51	s	84	61	s
Hong Kong	91	82	pc	90	83	sh
Jerusalem	77	52	s	83	58	s
London	63	53	pc	63	45	pc
Mexico City	73	57	t	76	56	t
Moscow	57	43	r	53	43	r
Paris	62	44	pc	64	46	pc
Rome	77	57	pc	72	58	t
Seoul	73	50	pc	74	48	s
Sydney	65	58	pc	67	57	sh
Tokyo	80	66	c	77	65	r

### WINDS

(in mph)	Today	Saturday
Boardman	WNW 6-12	WSW 10-20
Pendleton	WNW 7-14	WSW 10-20

### UV INDEX TODAY

1 3 5 5 3 1

8 a.m. 10 a.m. Noon 2 p.m. 4 p.m. 6 p.m.  
0-2, Low 3-5, Moderate 6-7, High; 8-10, Very High; 11+, Extreme

The higher the AccuWeather.com UV Index™ number, the greater the need for eye and skin protection.

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### NATIONAL WEATHER TODAY

Shown are noon positions of weather systems and precipitation. Temperature bands are highs for the day.

**National Summary:** Rain will push eastward across the Great Lakes today with spotty showers in the South. Locally strong storms will affect parts of Oklahoma and Texas. Showers and storms are in store for the West.

**Yesterday's National Extremes:** (for the 48 contiguous states)  
High 95° in Andalusia, Ala. Low 23° in Saranac Lake, N.Y.

### NATIONAL CITIES

	Today			Sat.		
	Hi	Lo	W	Hi	Lo	W
Albuquerque	63	42	t	59	42	t
Atlanta	78	67	c	83	68	t
Atlanta City	66	61	pc	75	68	pc
Baltimore	77	60	s	87	67	t
Billings	61	46	t	50	39	r
Birmingham	81	66	c	81	67	t
Boise	61	48	t	65	48	sh
Boston	68	53	pc	73	56	sh
Charleston, SC	80	63	c	83	66	pc
Charleston, WV	86	62	t	85	64	pc
Chicago	76	60	pc	78	63	t
Cleveland	80	61	pc	80	64	pc
Dallas	79	66	t	81	68	t
Denver	65	42	t	61	41	t
Detroit	75	62	r	81	65	c
El Paso	81	60	pc	76	52	s
Fairbanks	79	47	pc	73	44	pc
Fargo	67	55	pc	78	59	t
Honolulu	83	70	s	83	69	s
Houston	85	72	t	87	74	t
Indianapolis	81	65	pc	78	65	pc
Jacksonville	81	67	t	83	66	pc
Kansas City	76	63	t	76	65	pc
Las Vegas	67	52	c	77	58	pc
Little Rock	85	68	t	83	70	c
Los Angeles	69	56	r	70	59	pc
Louisville	88	69	pc	83	69	pc
Memphis	85	71	c	81	70	t
Miami	87	77	pc	87	77	t
Millwaukee	71	55	pc	72	57	c
Minneapolis	71	60	pc	83	66	t
Nashville	85	66	pc	79	67	t
New Orleans	82	74	t	83	76	t
New York City	74	60	pc	82	68	pc
Oklahoma City	78	65	t	75	63	t
Omaha	78	63	t	77	63	t
Philadelphia	75	61	pc	86	69	pc
Phoenix	74	59	t	75	61	c
Portland, ME	68	48	pc	61	50	sh
Providence	74	53	pc	75	58	c
Raleigh	81	61	pc	87	63	pc
Rapid City	61	47	t	72	44	pc
Reno	55	44	sh	65	45	pc
Sacramento	70	51	pc	73	49	pc
St. Louis	83	69	t	82	70	t
Salt Lake City	61	46	t	60	48	sh
San Diego	66	59	r	66	59	pc
San Francisco	63	52	pc	64	52	pc
Seattle	67	51	pc	61	50	c
Tucson	75	55	t	72		