

Litigator of the Week: Kellogg Hansen's Josh Branson Revives an Anti-Terrorism Act Suit Against Big Pharma Companies

The D.C. Circuit this week found that his clients, families of 395 Americans killed or injured in Iraq by the terrorist group Jaysh al-Mahdi, adequately alleged the companies aided and abetted the group by paying bribes to the country's ministry of health, which the group controlled.

By Ross Todd
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This week's Am Law Litigation Daily Litigator of the Week is **Josh Branson** of **Kellogg, Hansen, Todd, Figel & Frederick**. Branson [this week got a ruling](#) from a unanimous D.C. Circuit panel reviving claims under the Anti-Terrorism Act against five multinational pharmaceutical companies – Pfizer, Johnson & Johnson, GE Healthcare, AstraZeneca, and Roche. The suit was brought on behalf of families of 395 Americans killed or injured by the terrorist group Jaysh al-Mahdi in Iraq. Plaintiffs claims bribes and free products the companies provided to the country's Ministry of Health ended up benefiting the terrorist group, which effectively controlled the agency.

Back in 2020, U.S. District Judge Richard Leon in Washington, D.C. held the complaint failed to state claims for either direct or secondary aiding-and-abetting liability under the ATA, and that he [lacked personal jurisdiction](#) over the company's foreign affiliates. The D.C. Circuit, however, found for the plaintiffs on all those fronts this week and routed the case back to the district court for further proceedings.

Litigation Daily: Who are your clients and what is at stake?

Josh Branson: Our clients are the families of nearly 400 Americans, including both service members and civilians, who served their country in Iraq. They include more than 180 Gold Star Families and more than 1,200 individual plaintiffs. Our clients, or their family members, were each killed or injured by the Iran-backed, Hezbollah-sponsored

terrorist group Jaysh al-Mahdi. We allege that the defendants helped to finance those attacks by making corrupt payments to the Jaysh al-Mahdi terrorists who controlled Iraq's Ministry of Health.



Kellogg Hansen partner Josh Branson.

Courtesy photo

How did this case come to the firm?

The lawsuit follows an extensive investigation by Kellogg Hansen and the Washington, D.C.-based law firm **Sparacino PLLC**.

Who all was on your team and how did you split the work?

The Kellogg Hansen team includes my partner **David Frederick**, who is one of my closest mentors. I'm biased, but I consider David to be the best appellate lawyer in the country – he taught me virtually everything I know about how to brief and argue appeals. Also invaluable is my partner **Andy Goldsmith**, who is a former federal prosecutor who handled several terrorism cases for the U.S. Attorney's Office in Brooklyn. Our associate **Grace Knofczynski** is outstanding and has been instrumental at several stages of the case. Partners **Tom Schultz** and **Matt Duffy** also made important contributions to the complaint.

The Sparacino team, led by my old friend **Ryan Sparacino**, is lead investigative counsel and has been our

partner throughout the case. Ryan and his team have done an exceptional job investigating the case, gathering evidence, and engaging with our clients at every step of the way.

Tell me about the amicus backers your clients had at the D.C. Circuit: How did they help supplement the arguments you were making?

Our appeal received support from an impressive collection of amici. A bipartisan group of eight U.S. Senators, led by Senators Grassley and Blumenthal, submitted an excellent brief explaining why Congress enacted the Anti-Terrorism Act and describing how defendants' arguments defied Congress's intent. An impressive group of retired U.S. military commanders also submitted a fantastic brief detailing Hezbollah's role in planning and authorizing Jaysh al-Mahdi's attacks. Other briefs – by Professor **Steve Vladeck** and other national-security law professors, a group of anti-corruption experts, and the American Association for Justice – were also quite effective. The D.C. Circuit cited our amici several times in the opinion, and our clients are incredibly grateful for their support.

Are there any moments from the two-hour argument before the D.C. Circuit that stand out to you now that you have the opinion reviving your case?

This was the longest appellate argument I have ever participated in. It was apparent, from the outset, that the panel was very well prepared and ready to engage with the details of our 588-page complaint. Their questions were frequent, probing, and wide-ranging. The breadth of the issues on appeal made for a challenging argument: in one moment we would be discussing the details of Iraq's 2007 terrorist insurgency, and in the next we would be debating the intricacies of common-law aiding-abetting doctrine. It was an exhilarating, if exhausting, two hours.

At oral argument before the DC Circuit, Kannon Shanmugam of Paul Weiss, representing the defendants, said a ruling against the companies could affect the willingness of others “to conduct essential activities, often at the government’s request, in troubled regions.” What do you say in response to that?

Paying terrorists is not an essential activity; it is illegal. We allege, and believe the evidence will show, that defendants' corruption actively undermined U.S. policy in Iraq and helped destroy the very health system they now claim they were trying to help. Our amici who worked for the U.S. government combating corruption in Iraq explained just that in their brief. Holding the defendants accountable will in no way inhibit other actors from responsibly conducting essential activities in troubled regions. Quite the opposite: The ATA is vital to ensuring that such activities can occur as safely as possible and in a manner consistent with U.S. national security.

What’s important in this decision for other potential ATA plaintiffs?

With one exception, I don't view this opinion as especially groundbreaking for ATA plaintiffs writ large; it is consistent with other courts in adopting a straightforward application of the statute Congress wrote. I believe the most notable effect will be on one other ATA case that we and Sparacino have brought in D.D.C. alongside **Mike Gottlieb** and his team at **Willkie Farr** – again on behalf of Gold Star Families and wounded soldiers – alleging that large Western contractors made protection payments to the Afghan Taliban. The defendants there based their motions to dismiss on the trial court's decision in *Atchley*, citing it an extraordinary 225 times in their papers. Now that the D.C. Circuit has reversed that decision, I believe our Afghanistan case should and will move forward in short order.

What comes next here? Some of that, I assume, depends on the defendants’ next steps.

We're looking forward to discovery beginning as soon as possible.

What will you remember most about getting to this point in the case?

Personally, I will remember our clients. I have amazing corporate clients that I represent in the bulk of my practice. But there is something special about this case, where my firm has the privilege of representing families who sacrificed so much for our country in Iraq. I hope we are able to do them proud and obtain for them the relief they so richly deserve.