

MEDIA MENTION

Rod Thomas Discusses Impact of Abu Ghraib Case on Torture Claims Against Military Contractors

Bloomberg BNA's Federal Contracts Report
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Roderick L. Thomas, co-chair of Wiley Rein's White Collar Defense & Government Investigations Practice, was quoted in a *Bloomberg BNA* article regarding a lawsuit involving four Iraqi citizens alleging that a military contractor tortured them in Abu Ghraib prison in Iraq. The U.S. Court of Appeals for the Fourth Circuit found that conduct that was unlawful at the time it was committed is subject to judicial review whether or not the conduct was under the direct control of the military.

The finding could "open the door to more viable claims alleging unlawful conduct" against military contractors, said Mr. Thomas.

The court "was careful to say that lawful conduct under military direction is shielded from judicial review," Mr. Thomas added. "However, its conclusion that the political question doctrine does not apply to conduct that is either unlawful or not directed by the military may lead to an uptick in such allegations."

Courts may generally decide lawfulness at the motion to dismiss stage, Mr. Thomas agreed, given the court's statement that conduct that falls in the "grey area" between lawful and unlawful conduct isn't justiciable.

Mr. Thomas noted that the nature of detainees' allegations may make this a rare case for a court to hear. Nevertheless, the "question of whether the military exercised 'actual control' over contractor conduct will often require evidence, and in this way the court may have laid

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the groundwork for claims alleging unlawful contractor actions to withstand motions to dismiss," Mr. Thomas concluded.