

STATEMENT OF
DOMINIC BARAGONA
BEFORE THE
SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT
November 18, 2009

Chairman McCaskill, Ranking Member Bennett, and members of the Subcommittee, I am Dominic Baragona, father of West Point graduate, the late Lt. Col. Dominic “Rocky” Baragona, Commander of the 19th Maintenance Battalion, and I appreciate the opportunity to appear before you to discuss the proposed bill named for my late son. I want to first introduce my wife, Vilma, our son, John, and our daughter, Pam, sitting behind me. Chairman McCaskill, we are humbled and honored that you chose to name this important legislation after our beloved Rocky and that you asked me to testify here today. It is our hope that in telling our story we can, for Rocky, achieve justice through a criminal investigation into Rocky’s death; give him a legacy with the passage of the bill; and influence your future policymaking so our soldiers will be protected from contractors who use trafficking and other illegal practices that put our soldiers in harm’s way.

That May 19th, 2003 was the last time I spoke to my son. He was just a few hours away from the border. I asked him if there was anything I had to worry about, he answered by saying, “Not unless something stupid happens.” The next day two officers came to tell us our son was dead, and I realized that something stupid had happened. Near Safwan, a tractor-trailer owned and operated Kuwait & Gulf Lines Transport (KGL) careened across three lanes of the highway and destroyed my son’s Humvee, killing him. Never could I have imagined that I would sit here six years later with no justice, no criminal investigation, few answers and my testimony here today.

That day we asked the officer the first questions about the accident. Had the accident occurred in the United States, it would have been investigated as a vehicular homicide, with potential imprisonment for the driver and civil liability for KGL and the driver. But in the crush of a wartime environment, the Army did not commit enough resources to investigating and determining the criminal liability for the accident – the official Defense Department press release merely says, “A tractor-trailer jackknifed on the road and collided with Baragona’s Humvee causing his death.” The Army didn’t take possession of the KGL truck for investigation, and it disappeared the day after the accident. The Army didn’t interview the truck driver; he disappeared and has never been seen since that day. The first accident report did not include any information about KGL or a criminal investigation as required. At our insistence, another Army office reviewed that report, and concluded that the initial accident investigation report was riddled with errors and failed to gather critical evidence. I have attached that report to my testimony.

The Army assured us that we would receive all of the answers through an official Army criminal investigation, known as a “15-6.” So we waited patiently while Rocky was honored in three funerals, in Florida, Ft. Sill in Oklahoma, and at Arlington National Cemetery. We decided Arlington is appropriate because everyone goes to Washington and we knew he would want to be among his men.

We learned a number of disturbing facts about the accident later:

- The KGL truck did not have a license plate at the time of the accident, which is a violation of Kuwaiti law. The truck could not have crossed into Iraq without a

- license plate, which leads us to believe that the license plate was removed after crossing the checkpoint for illicit activities.
- We believe that KGL was not properly insured for the accident, as was required by U.S. procurement law.
 - The driver did not have the valid truck driver’s license that all DOD contractors are required to have in order to be employed.

Army officers who investigated the accident concluded that the loss of evidence critically hindered the investigation. The investigators were unable to ascertain why a KGL truck was driving on that road without license plates by an unlicensed driver. The report did conclude that the KGL driver’s negligence caused the accident that killed Rocky.

KGL has always refused to accept responsibility for Rocky’s death – no admission, no apology, no communication, nothing. Angered by KGL’s silence and insensitivity, and frustrated by the lack of a proper criminal investigation by the Army, we sued KGL in federal court in May 2005. KGL ignored the suit and did not respond to our complaint. KGL hired US counsel and closely monitored the suit, but then refused to participate in the jurisdictional briefing, even though the Court made KGL aware of briefing well before it occurred. In 2007, the federal judge openly admonished KGL for its bad behavior, and the judge awarded a summary judgment against KGL for almost \$5 million in damages. Attending the hearings and testifying at trial over the years of the lawsuit was emotionally and physically exhausting for me and my wife of 54 years, Vilma, but we were willing to walk through hell to make sure Rocky received his day in court. Testifying in court about Rocky was especially hard on us; it brought back a lot of memories and difficult emotions.

Then, in February 2008, after the Court found KGL liable for my son’s death, KGL filed a motion to vacate the judgment on the grounds of lack of jurisdiction by federal courts. In other words, we had made incredible sacrifices and gone through the grueling ordeal of reliving my son’s death for nothing, and even though KGL could have argued about jurisdiction before the trial, they stood on the sidelines waiting for the opportune time to sweep into court. In May of this year, the court reluctantly agreed with KGL and vacated the judgment, but noted that KGL’s conduct was “indignant and callous” and questioned KGL’s “blind eye to the death caused by a KGL employee of a United States service member.” Our attorneys have filed an appeal in the case.

Over the past six-plus years, we have learned of other very disturbing facts about KGL:

- In 2004, while Americans and other Westerners were being beheaded in Iraq by Sunni terrorists, KGL paid one group \$500,000 ransom to release 7 kidnapped employees working in Iraq on contracts for the U.S. and United Nations (see attached story). In other words, KGL received our tax dollars through contracts and gave it to Sunni terrorists, who no doubt used it to finance more terrorist attacks against our men and women in Iraq.
- The Government of India banned KGL from operating in India after KGL lied to Indian nationals by saying they were being recruited to work in Kuwait but then forced them to work in the extremely dangerous conditions that prevailed in Iraq. Similar reports of human trafficking by KGL emerged in the Philippines and were investigated by the Philippine Senate.

The Army has not been blind to KGL’s improprieties but seems willing to overlook them, because KGL is still a defense contractor and is being considered for a new 10-year, multi-billion contract to

feed our troops in the region. In 2006 and again in 2008, the Army sent letters to KGL demanding more information as part of an investigation into debarring KGL from future contracts. KGL responded to the 2006 letter by hiring retired General Richard Bednar, a former U.S. Army debarment official, who held off-the-record conversations with the debarment office, and that debarment inquiry ended. We do not know how KGL responded to the Army's 2008 letter, but we do know that KGL is still in the running for the 10-year, multi-billion contract. We consider KGL to be a dirty company and unworthy of any contract for the care and feeding of our soldiers. What happens the next time that KGL kills or injures one of our soldiers? The family will have no recourse.

Numerous Members of Congress have tried to help us over the years: former Senators Mike DeWine and Mel Martinez; Senators Bill Nelson and George Voinovich; and Representatives Tim Ryan, Steve Driehaus, Dennis Kucinich and of course Senator Claire McCaskill. We applaud and thank you, Chairman McCaskill and Senator Bennett, for your letters this year and for Chairman McCaskill's questioning of the new Army Secretary during his confirmation hearing. We deeply appreciate the recent letter by Representatives Ryan and Driehaus to the Attorney General requesting a real criminal investigation into the accident and KGL's potential liability for contract fraud. At one point in 2004, Rocky's sister Pam was able to talk with President Bush and his White House military liaison, and we understood that the President personally ordered the debarment review. But nothing happened, perhaps because of Gen. Bednar's connections.

We are not trying to pick on the Army. We had 2 sons graduate from West Point, and Senator McCain nominated our grandson to the Naval Academy – who will be leaving to serve in Iraq sometime next month. We love the military and know that in the fog of war mistakes can and will be made. We are just asking for justice. We get renewed energy from the bill being named in our son's honor. Even though we know this bill would not help our case, since it is not retroactive, we know the passage would level the playing field between domestic and foreign contractors,

This bill will not bring us justice or peace. But it will ensure that no family of an American soldier will ever have to go through the hell that we have endured for over six years, thanks to KGL's inhuman silence.