

THE AM LAW LITIGATION DAILY

Litigator of the (Past) Week: Bracewell's Warren Harris Revives Sex-Trafficking Suit Against Salesforce

By Ross Todd
August 16, 2023

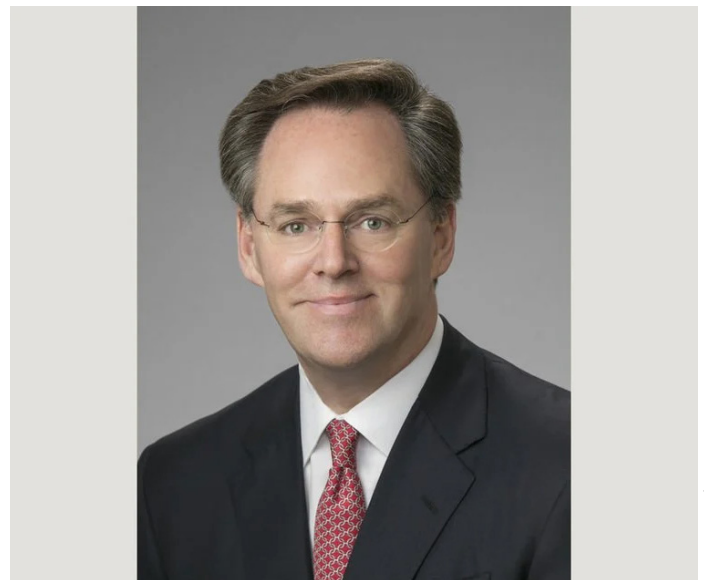
Salesforce cannot lean on Section 230 of the Communications Decency Act—a go-to defense for technology companies—to shield itself from civil liability stemming from its work for defunct website Backpage.

In a 2-1 decision on Aug. 3, the U.S. Court of Appeals for the Seventh Circuit Court reversed an Illinois district court that had found Salesforce couldn't be held liable for participant liability in a case brought on behalf G.G., who was trafficked on Backpage when she was 13-years old. In particular, the court's majority held that G.G. and her mother were not required to show that Salesforce, which allegedly provided custom software to Backpage, specifically knew that the site was trafficking the plaintiff. To survive a motion to dismiss, she need only allege Salesforce knew that Backpage was a trafficking venture it was profiting from.

Our Litigator of the Week, **Warren Harris** of **Bracewell**, led the appellate team that revived the case for G.G. and her mother.

Lit Daily: Who are your clients and what was at stake?

Warren Harris: We represent G.G. and her mother. G.G. was thirteen when she was sex trafficked through the website Backpage. Plaintiffs brought a beneficiary liability claim against Salesforce based



Courtesy photo

Warren W. Harris of **Bracewell**.

on its role in facilitating Backpage's trafficking operation. The district court granted Salesforce's motion to dismiss so we were fighting for G.G.'s right to have her case heard by a jury.

How did this matter come to you and the firm?

The lead trial lawyer, **Tommy Fibich** [of **Fibich, Leebron, Copeland & Briggs**], asked us to work with the trial team on the motion to dismiss and to handle any appeal.

Who is on your team and how did you divide the work?

Our appellate team was **Walter Simons**, an associate at Bracewell, and me. Walter is an outstand-

ing writer and advocate, and he took lead on drafting our briefing. We worked together to get ready for oral argument, and I presented the argument.

How does your clients' case differ from some of those against hotel owners and chains that some appellate courts have been turning back due to the defendants' lack of knowledge of the plaintiffs' specific victimization?

As the Court recognized, the hotel sex-trafficking cases do not support requiring knowledge of the specific victim.

Judge Kirsch, the judge who ultimately dissented here, pretty much let you know out of the gate during oral argument where he stood on that "constructive knowledge" issue. How did you feel coming out of that argument? Did you have much hope that the court would revive this case?

We all felt very good coming out of the oral argument and thought we had a great chance of a reversal. The panel was incredibly prepared on the issues and asked probing questions. They got it. I appreciated Judge Kirsch being so direct in his questioning. It allowed me to take my best shot at addressing his concern and trying to persuade him. That is what oral argument should be about.

How did you navigate Salesforce's Section 230 defense, especially with the U.S. Supreme Court still considering its *Gonzalez v. Google* case while you were handling this appeal?

Gonzalez v. Google was argued the day before my oral argument, and I had listened to that argument. In light of the way the oral argument went in *Gonzalez*, it was unclear whether *Gonzalez* would have any meaningful impact on our case. Our position on

Section 230 has always been that G.G.'s allegations do not treat Salesforce as a publisher, but rather claim Salesforce is accountable for its actions in assisting Backpage and facilitating sex trafficking. We were pleased the court properly held that Section 230(c) did not give Salesforce a defense.

What's important here in the court's decision to other plaintiffs like G.G. and her mother?

This case is important because it confirms that sex trafficking victims will get their day in court on claims against parties that knowingly benefit from participating in a venture which the party knew or should have known has engaged in sex trafficking. This case clarifies several important legal points where little appellate guidance exists regarding the elements of beneficiary liability claims and the interaction between these claims and Section 230.

What role will you and the firm play in the case as it moves forward back at the district court?

We will assist the trial team on legal issues and preservation of error and work with them when the case goes to trial.

What will you remember most about this matter?

This was a great oral argument from the perspective of an appellate lawyer. The court was so knowledgeable about the case and the law at argument. The panel spent the time to study the issues and probed the positions of both sides. We were the third case argued that day and the panel was just as prepared on the cases ahead of us. Each judge was active and asked hard, but relevant questions. That is what an advocate wants from an appellate court at oral argument. And it allows courts to reach the right result.