Overview of Pending and Closed ATS Cases by Federal Circuit Court

What follows is a listing of cases brought under the Alien Tort Statute (ATS) against corporations and links to amicus briefs filed by USA*Engage and the NFTC, as well as an amicus brief in a case where a ruling violates the Supreme Court decision in *Crosby v. NFTC.*

Circuit	**Total Cases**	**Pending Cases**	**Closed Cases**
D.C. Circuit	4	4	-
Second Circuit	20	1	19
Third Circuit	2	-	2
Fourth Circuit	7	2	5
Fifth Circuit	3	-	3
Sixth Circuit	3	1	2
Seventh Circuit	6	-	6
Ninth Circuit	17	6	11
Tenth Circuit	0	-	-
Eleventh Circuit	13	2	11
Total	**75**	**16**	**59**

ALIEN TORT STATUTE CASE LIST

Following is a list of current and recent ATS cases organized by Federal Circuit, some of which also involve the TVPA. Each case description contains a brief summary of the allegations and proceedings and a status update.

I. D.C. CIRCUIT

A. SUMMARY OF D.C. CIRCUIT CASES

At times the D.C. Circuit has been more willing than other courts to dismiss ATS claims, including dismissal on political question grounds, *e.g.*, *Joo v. Japan*, and *Doe v. State of Israel*. The D.C. Circuit also dismissed ATS claims for failure to allege actionable claims, *e.g.*, *Saleh v. Titan Corp, Ibrahim v. Titan Corp.* In *Saleh v. Titan Corp,* a case that began in the Southern District of California and was decided by the D.C. Circuit. The court dismissed several individual defendants from the case for lack of personal jurisdiction on the ground that "none of them lives in the District of Columbia or has meaningful contacts here . . ."

B. PENDING D.C. CIRCUIT CASES

1. *Doe v. ExxonMobil*

Summary: The plaintiffs, eleven John and Jane Does, filed suit in 2001, alleging that Exxon Mobil and three subsidiaries were liable for human rights abuses allegedly committed by the Indonesian military in Aceh. The plaintiffs alleged that an Indonesian military unit was assigned to protect gas production facilities, and in doing so committed human rights abuses during the civil war in Aceh. The plaintiffs made ATS claims for murder, genocide, torture, kidnapping, and crimes against humanity and TVPA claims for torture and extrajudicial killing.

Status: In July, 2011, the D.C. Circuit reinstated *Doe v. Exxon Mobil Corporation.* The court found that "aiding and abetting liability is well established under the ATS…contrary to its (ExxonMobil) view and that of the Second Circuit (see discussion below of the Second Circuit). We join the Eleventh Circuit in holding that neither the text, history nor purpose of the ATS supports corporate immunity for torts based on heinous conduct allegedly committed by its agents in violation of the law of nations." Amicus briefs have been filed supporting an en banc hearing. The fact that this D.C. Circuit ruling is in conflict with other circuits (*Faculty Senate of Florida International University v. State of Florida* in the Eleventh Circuit, *Kiobel v. Royal Dutch Shell* in the Second Circuit, and *Balintulo v. Daimler, et al.* in the 2nd Circuit) lay behind the Supreme Court's decision to hear *Kiobel.*

2. *Arias v. DynCorp*

Summary: DynCorp, a contractor under "Plan Colombia," a program of the Colombian and US Governments to combat production of illicit drugs, was hired to spray coca and poppy plants with herbicide in parts of Colombia. In 2001, Ecuadorian plaintiffs filed a class action suit claiming that DynCorp, under a U.S. government contract, unlawfully sprayed toxic herbicides over their residences. According to the plaintiffs' complaint, the herbicides caused a variety of medical problems, some resulting in death, as well as lost crops and livestock. The plaintiffs

filed suit under the ATS for torture, crimes against humanity, and cultural genocide. They also filed claims under the TVPA for extrajudicial killing and torture, along with ordinary torts under state law.

Status: The plaintiffs filed their complaint in September, 2001 in the D.C. District Court. In January, 2002, the defendants filed a motion to dismiss or, in the alternative, for summary judgment. In November, 2002, the defendants filed a motion to stay discovery pending a decision on the motion to dismiss.

In May, 2007, the court denied in part and granted in part the defendants' motion to dismiss and denied the defendants' motion to stay discovery as moot. The court allowed the plaintiffs' ATS claim to proceed based on three findings. First, it held that although the Congress had authorized the aerial spraying in Colombia, the defendants had not established that Congress specifically intended to override international agreements that the defendants supposedly violated. Second, it found that the plaintiffs had alleged sufficient facts to state a claim that the defendants were operating as a "willful participant in joint activity with the State or its agents," were "controlled by an agency of the state," or were "entwined with governmental policies." Third, the court held that the plaintiffs' state law claims were not preempted by federal law. The court dismissed the TVPA claim, however, stating that the plaintiffs had not established that the injured individuals were in the defendants' custody or physical control, nor had they alleged that the pain was inflicted to obtain information or confessions, or to punish or intimidate anyone. Citing the Southern District of Florida's transfer of the *Quinteros* case to the district court in DC, the court denied plaintiff's motion to transfer the case to the Southern District of Florida. In November, 2007, the court denied the defendants' motion to consolidate filings and issued a new scheduling order.

To gather facts, the defense attorneys requested questionnaires from the class members and the vast majority of the plaintiffs provided incomplete responses. In January, 2010, the Court ruled that the plaintiffs were given ample opportunities to answer the questionnaires and the D. C. Circuit dismissed with prejudice the class action plaintiffs who failed to complete defense discovery questionnaires, and the defendants asked the court to dismiss with prejudice the remaining plaintiffs. A decision on the defendants' request is pending.

3. Doe v. Chiquita Brands Int'l, Inc.

Summary: Plaintiffs alleged in a June, 2007, filing that their relatives were either killed or "disappeared" by the Fuerzas Armadas Revolucionarias de Colombia ("FARC"), a left-wing Colombian guerrilla group, or by right-wing Colombian paramilitary groups, including the Autodefensas Unidas de Colombia ("AUC"). The 144 plaintiffs, all relatives of these victims, alleged that Chiquita and its wholly owned subsidiary, Banadex, acted as agents of the FARC because they made payments to the guerrilla group. The plaintiffs also alleged that from 1997 until 2004, Chiquita and Banadex made payments on a nearly monthly basis to the AUC to ensure that Chiquita's business ran smoothly. The complaint listed 10 David Does as defendants, who were identified as officers, board members, or employees of Chiquita and Banadex. The suit alleged violations of the ATS, the TVPA, and state tort law.

In 2001, the State Department classified the AUC as a foreign terrorist organization, making it a federal crime to knowingly provide material support and resources to the group. The Department also designated the AUC as a specially-designated global terrorist in 2001, prohibiting any transactions with the group without prior approval of the Treasury Department's Office of Foreign Assets Control. Chiquita voluntarily disclosed its AUC payments to the Department of Justice in 2003, prompting an investigation by DOJ. The DOJ found that Chiquita had paid the AUC more than $1.7 million in "security payments" between 1997 and 2004 in order to avoid physical harm to Banadex's personnel and property. According to the DOJ, $825,000 of the payments to the AUC was made after the State Department's designation as a terrorist organization. Under a plea agreement, Chiquita pled guilty to engaging in transactions with a Specially Designated Foreign Terrorist," received five years' probation, and agreed to pay a $25 million fine. The company also agreed to implement and maintain a compliance and ethics program. .

Status: The plaintiffs filed a motion to proceed with pseudonyms on in June, 2007 and in December, 2008 the defendants moved to dismiss. In January, 2008, the court denied plaintiffs' motion to quash the motion to dismiss.

In March 2011, two new lawsuits against Chiquita were filed in D.C. District court on behalf of the families of 931 people, who were allegedly killed by the FARC and AUC between 1990 and 2004. In response to the filings, Chiquita said that the company and its employees were targeted by FARC and AUC, alleging that the groups demanded protection money. Chiquita once again asked the court to dismiss the case based on their protection money claim.

In April, 2011, National Security Archive published internal Chiquita documents, obtained under the Freedom of Information Act which appear to contradict the company's contention that its payments to the FARC and AUC amounted to "protection" money and that Chiquita never received any actual services in exchange for them. In June 2011, the District Court denied Chiquita's motion to dismiss, finding that claims for extrajudicial killing, torture, crimes against humanity and war crimes could proceed.

4. Saleh v. Titan Corp., Saleh v. Titan Corporation, and Ibrahim v. Titan Corporation

Summary: Several plaintiffs filed class actions alleging that the Titan Corporation, CACI International, and their employees conspired with U.S. government officials to torture and commit other violations of international law at the Abu Ghraib prison and elsewhere in Iraq. The plaintiffs filed claims under RICO, the ATS, the Geneva Convention, the U.S. Constitution, and the Religious Land Use and Institutionalized Persons Act. In filing the ATS claims, the plaintiffs claimed summary execution, torture, cruel, inhuman and degrading treatment, disappearance, arbitrary detention, war crimes, and crimes against humanity.

Status: In *Saleh*, the court in June, 2006, granted the defendants' motions to dismiss certain individual defendants for lack of personal jurisdiction; granted in part and denied in part the motions to dismiss for failure to state a claim, and denied the plaintiffs' motion for summary judgment on the defendants' government contractor defense. *See Saleh v. Titan Corp.* The court relied heavily on its opinion in *Ibrahim v. Titan Corp.*, in dismissing the plaintiffs' ATS and RICO claims. The court also expressed skepticism as to whether the plaintiffs could pierce the

corporate veil and hold a parent corporation liable for the allegedly tortious acts of its subsidiary. In January, 2007, the court denied the plaintiffs' motion for reconsideration of a June, 2006, order. In May, 2007, the plaintiffs opposed Titan's earlier motion for summary judgment.

In *Ibrahim*, the court dismissed the ATS claims in 2005 on the grounds that the law of nations does not apply to private actors. The court also dismissed the plaintiffs' RICO claims for lack of injury to "business or property," and it dismissed the plaintiffs' false imprisonment and conversion claims. The court, however, allowed the plaintiffs' other state claims (*e.g.*, wrongful death, battery, negligence, assault, intentional infliction of emotional distress), and it permitted the plaintiffs to amend their complaint for $75,000 in damages. In allowing these claims, the court rejected the applicability of the "political question" doctrine, but noted that the "government contractor defense" might preempt the remaining claims and allowed limited discovery to determine the applicability of that defense.

In December 2005, Titan and CACI moved for summary judgment and in October, 2007, the court granted Titan's motion for summary judgment, but denied CACI's motion. In granting Titan's motion, the court noted that translation for interrogation of individuals detained by the U.S. military in a combat zone "clearly has a 'direct connection with actual hostilities'" and that Titan's linguists were fully integrated into the military units and "performed their duties under the direct command and exclusive operational control of military personnel." While the court also found that CACI interrogators met the threshold requirement for exception, the court found the military control of CACI interrogators differed considerably from that of Titan and denied CACI's motion to dismiss. The court denied the plaintiffs' motions for reconsideration in November, 2007.

In January, 2008, CACI filed a notice of interlocutory appeal and the plaintiffs filed notice of appeal of the court's grant of summary judgment to Titan. In September, 2009, in a 2-1 decision, a panel of the D.C. Court affirmed the dismissal of all claims against Titan/L-3, and, reversing the district court, also dismissed all claims against CACI. Judge Garland issued a 39-page dissent, in which he argued that plaintiffs' state law claims should not be preempted and the case against both Titan/L-3 and CACI should be allowed to proceed.

In January, 2010, the D.C. Circuit issued an order denying the plaintiffs' petition for rehearing *en banc*. In April, 2010, CCR filed a petition for a writ of certiorari in the Supreme Court on behalf of the plaintiffs and against CACI and Titan. In October 2010, the Court invited the Acting Solicitor General to file an amicus brief which was filed in May 2011, arguing that cert should be denied. Plaintiffs filed a brief in response to the US brief in June, 2011.

II. SECOND CIRCUIT

A. SUMMARY OF SECOND CIRCUIT CASES

More ATS cases have been brought in the Second Circuit than in any other circuit. In dismissing *Kiobel v. Royal Dutch Petroleum* in September, 2010, the Second Circuit issued a landmark decision holding that corporations are not subject to suit under the ATS because they are not subject to liability under customary international law. In April 2013, the Supreme Court upheld

the Second Circuit's dismissal of the case and based this ruling on extraterritoriality and not the libailiy of corporations under the ATS.

In *Presbyterian Church of Sudan v. Talisman Energy, Inc.* the Second Circuit ruled that defendants may only be found liable for violations of customary international law under an aiding and abetting theory of liability and could not be indirectly liable for aiding and abetting under the ATS. In discussing indirect liability, the court held that "conspiracy" claims only apply to ATS claims for "genocide" and "waging of aggressive war." The court also recognized "aiding and abetting" liability under the ATS but granted summary judgment for the defendants on those claims. Lastly, the court refused to allow the plaintiffs to amend their complaint and refused to "pierce the corporate veil."

B. PENDING SECOND CIRCUIT CASES

1. *Balintulo et al., v. Daimler, et al.*

Summary: The litigation was filed in Federal court in New York in June, 2002, by New Jersey attorney Edward Fagan and numerous individual South African plaintiffs asking $200 billion in compensatory damages for aiding and abetting the apartheid regime in violating international law. The plaintiffs alleged that the 88 defendant companies, in virtually all sectors of the economy, were liable under the ATS for aiding and abetting extra-judicial killings, torture, and war crimes by the South African government. The litigation included several complaints filed in different jurisdictions. The lead complaints were *Digwamaje v. Bank of America*; *Ntzebesa v. Citigroup, Inc.*; *Brown v. Amdahl Corp.*; and *Khulumani Group v. Barclay National Bank*. The plaintiffs also asserted claims TVPA and RICO.

Status: In May, 2003, the cases were consolidated and in November, 2004, Judge Sprizzo of the Federal District Court for the Southern District of New York dismissed the plaintiffs' claims. In light of the Supreme Court's decision in *Sosa* the previous June, the court held that "none of the theories pleaded by the plaintiffs support jurisdiction under [the ATS]," and that the plaintiffs failed make a case that would allow the court to find "state action by acting under color of law." The court rejected liability under the ATS for aiding and abetting and refused to establish new causes of action that would punish companies merely for operating in countries with poor human rights records. The court also dismissed the plaintiffs' TVPA RICO claims. After the dismissal, the plaintiffs appealed to the Second Circuit which re-solicited the views of the U.S., German and South African governments. The German government submitted a strong letter opposing litigation of the case. However, the newly-elected U.S. and South African governments changed the positions of their predecessors. The U.S. had previously strongly opposed the litigation, as had the South African government. Former South African Justice Minister Penuel Maduna's "Declaration" to Judge Sprizzo in July 2003, urging dismissal of the case was cited by Justice Breyer in his opinion in the 2004 *Sosa* case.

In October, 2007, the Second Circuit remanded the case to the District court, directing it to conduct a case-specific analysis of the political question and international comity arguments raised by the plaintiffs. The defendants filed a petition for *certiorari* to the Supreme Court in January 2008, asking the Court to take the case immediately rather than wait for the District Court to rehear the case and have it appealed again. The *cert* petition was based in part on the

South African government's strong and repeatedly stated opposition to the case and the significantly broader implications for the conduct of international business if Judge Sprizzo's ruling were not upheld. In May 2008, the Supreme Court denied cert because four of the nine justices recused themselves for conflicts of interest and the case proceeded in District Court. In April, 2009, the District court dismissed claims against several defendants, but allowed the case to continue against Daimler, Ford, General Motors, IBM and the Rheinmetall Group. The new South African government insisted that its position had not changed, despite the letter Justice Minister Radebe wrote to District Court Judge Scheindlin in the summer of 2009 arguing that New York was the proper venue for the case. In response to the court's request for a statement of interest, in November, 2009, the South African government replied that "as of this date the Republic of South Africa has not determined whether it intends to make a further submission to the court." The U.S. Justice Department likewise demurred. The case remains in Federal District Court.

C. CLOSED SECOND CIRCUIT CASES

1. *Abrams v. Societe Nationale Des Chemins De Fer Francais*

Summary: In September, 2000, Holocaust victims field a class action suit against the National French Railroad Company for alleged violations of the law of nations under the ATS. The plaintiffs asserted a number of claims arising from the deportation of Jews and others to Nazi death camps during WWII.

Status: In November, 2001, district court dismissed the case under the Foreign Sovereign Immunities Act (FISA). The plaintiffs appealed the lower court's ruling in December 2001. In July, 2003, the Second Circuit vacated the district court's dismissal, but the Supreme Court, vacated the Second Circuit's decision after its own decision in *Republic of Austria v. Altmann*. In late 2004 the Second Circuit affirmed the district court's dismissal based on the defendant's immunity under the FSIA. In April, 2005, the Supreme Court denied the plaintiffs' petition for writ of *certiorari*.

2. *Arar v Ashcroft*

Summary: *Arar v. Ashcroft* was brought against former Attorney General John Ashcroft, FBI Director Robert Mueller, and then-Secretary of Homeland Security Tom Ridge, as well as numerous U.S. immigration officials. It charges the plaintiffs with violating Mr. Arar's constitutional right to due process, his right to choose a country of removal other than one in which he would be tortured, as guaranteed under the Torture Victims Protection Act, and his rights under international law.

Status: In February, 2006, district court dismissed the TVPA claims . Because the district court dismissed three of the four counts in Arar's complaint and dismissed a fourth count with leave to replead, Arar could not appeal the final judgment. In April, 2006, Arar's appeal to the Second Circuit was denied and in August, 2006, the court ordered that the plaintiffs' claims for declaratory relief against the defendants were dismissed with prejudice, that the plaintiffs' claims against various named officials, including John Ashcroft, were dismissed with prejudice, and finally, dismissed the plaintiffs' claims against ten John Doe defendants. Arar appealed in

September, 2006 and in June, 2008, the court found that adjudicating Mr. Arar's claims would interfere with national security and foreign policy and that as a foreigner, Mr. Arar had no constitutional due process rights regarding the government's interference with his access to a lawyer. The court reversed the district court and ruled Arar had made a *prima facie* showing sufficient to establish personal jurisdiction over Thompson, Ashcroft, and Mueller, but upheld the dismissal on its merits.[5]

In August, 2008, the Second Circuit ordered a rehearing *en banc* and in November, 2009, the Second Circuit upheld the District court. In June 2010 the Supreme Court denied Arar's petition for *certiorari*.

3. *Arndt v. UBS*

Summary: The plaintiffs contend that UBS, as a successor-in-interest to I.G. Farben, a German company which profited during the Nazi regime, failed to turn over assets which rightfully belong to Holocaust victims. The Court granted the Defendant's motion to dismiss the amended complaint for lack of subject matter jurisdiction.

4. *Bano v. Union Carbide Corp.,*

Summary: The plaintiffs assert that they are victims of the 1984 toxic gas disaster at a chemical plant in Bhopal, India. The plaintiffs allege that Union Carbide's conduct leading up to the disaster violated various norms of international law and seek relief under the Alien Tort Claims act. The district court granted defendant's motion of dismissal and the circuit court affirmed the district court.

5. *Bigio v. Coca-Cola Company*

Summary: The plaintiffs claimed that the Egyptian government unlawfully seized and nationalized their property in 1962 in violation of international law. According to the plaintiffs, the Egyptian government seized their property as part of a campaign of religious persecution against Jews. The plaintiffs alleged that in 1993 Coca-Cola purchased or leased their property with knowledge that the Egyptian government had nationalized it. The plaintiffs' sole allegation against Coca-Cola was that it acquired or leased the property with knowledge that the government had expropriated the property in violation of international law.

Status: District court held that the complaint failed to plead a violation of international law by Coca-Cola and that it did not have jurisdiction over the plaintiffs' ATS claims. In December, 2000, the Second Circuit upheld the District court. The Second Circuit, however, found that the lower court had other bases for jurisdiction and remanded the case. In February, 2005, the district court dismissed the case based on international comity and *forum non conveniens* grounds.

In May, 2005, the plaintiffs filed notice of appeal with the Second Circuit which reversed the district court and remanded the case. The defendants filed a petition for rehearing and rehearing *en banc*, which the Second Circuit denied in October, 2006. The next month the defendants moved to stay the mandate with the plaintiffs opposing. In December, 2006, the Second Circuit denied the stay of mandate. In 2009, after boycotts against Coca-Cola products by the Jewish

community, the two parties participated in mediation. Having failed to reach an agreement, the plaintiffs continued to press their case. In August, 2010, the District Court granted the defendants' motion to dismiss the case.

6. *Bodner v. Banque Paribas*

Summary: The plaintiffs, Bodner and Benisti, filed to damages, an accounting, and to recover assets that were allegedly wrongfully taken and withheld from them and their families by the defendants, banking institutions operating in France and their successors, during the German occupation of France. The court denied the defendant's motions for dismissal.

7. *Chowdhury v. WorldTel Bangladesh Holding. Ltd.*

Summary: The individual plaintiff and his corporate employer, and its corporate shareholder, allege that the defendants, to gain an advantage in a business dispute between the parties, made a false complaint of criminal conduct by plaintiffs to the Bangladeshi police. As a result of this criminal complaint, the individual plaintiff was arrested and tortured. The Plaintiff brings action alleging violations under ATS and TVPA. The court dismissed all claims of the plaintiff corporations, Chowdhury's aiding and abetting claims and Chowdhury's TVPA claim against the defendant corporation

8. *Flores v. Southern Peru Copper Corp.*

Summary: The plaintiffs, residents of Ilo, Peru and representatives of the deceased Ilo residents brought personal injury claims against the defendant, Southern Peru Copper Corp, a United States company. The plaintiffs alleged that pollution from the defendants' cooper mining, refining, and smelting operations around Ilo caused plaintiffs' severe lung disease. The plaintiffs claimed that the defendant's conduct infringed upon their customary international law "right to health." The US District Court for the Southern District of New York held that the plaintiffs had failed to establish subject matter jurisdiction and held that the case had to be dismissed on forum non conveniens ground. The district court granted defendant's motion to dismiss.

9. *Licci v. American Exp. Bank Ltd.*

Summary: The Plaintiffs, American, Canadian and Israeli civilians who were injured in terrorist attacks while in Israel, commenced under the Antiterrorism Act and ATS, alleged that defendant intentionally and/or negligently provided Hizbollah with wire transfer services and such funds enabled Hizbollah to carry out its attacks. The defendants are American Express Bank and the Lebanese Canadian Bank. The court granted the defendant LCB's motion to dismiss the complaint for lack of personal jurisdiction and granted defendant Amex Bank's motion to dismiss the complaint for failure to state a claim.

10. *Linde v. Arab Bank, PLC*

Summary: The Plaintiffs are US citizens who have been victims of terrorist attacks since 2000. The defendant in this case is a financial institution headquartered in Jordan with federally licensed and regulated branch office in New York. The motions to dismiss were granted in part

and denied in part.

11. *Liu Bo Shan v. China Construction Bank Corp.,*

Summary: The plaintiff, Chinese national Liu Bo Shan, sued his former employer, defendant China Construction Bank Corp. alleging torture, prolonged arbitrary detention, and cruel, inhumane and degrading treatment. Plaintiff brought these claims pursuant to the Alien Tort Statue and Torture Victim Protection Act. On March 19, 2010, the bank moved to dismiss the amend complaint. China Construction Bank Corp. motion to dismiss was granted.

12. *Mastafa v. Chevron Corp.*

Summary: The plaintiffs alleged that the defendants, Chevron Corp. and Banque Nationale de Paris Paribas, provided support and aid to the Saddam Hussein regime during a period of time which such support was utilized to help commit various human rights abuses, including the torture and killing of the plaintiffs and/or the plaintiffs' family members. Plaintiffs brought claims under ATS and TVPA. The court dismissed all ATS and TVPA claims.

13. *The Presbyterian Church of Sudan v. Talisman Energy, Inc.*

Summary: The plaintiffs alleged that the Sudanese military undertook a war of genocide against the non-Muslim population of southern Sudan and that Talisman aided and abetted the genocide. The plaintiffs argued that the Sudanese government financed its war of genocide with oil revenues in southern Sudan. The plaintiffs also alleged that Talisman aided and abetted, facilitated and conspired in alleged ethnic cleansing by Islamic Sudanese forces against the southern Christians. They alleged that Talisman built an airport and roads that the army used to commit human rights violations, that it contracted with the Sudanese army to protect its oil operations, and that it provided the army with vehicles and fuel. According to the plaintiffs, Talisman knew that the troops and logistical support it provided would be used to commit atrocities.

Status: The plaintiffs filed the complaint in U.S. District Court for the Southern District of New York in November, 2001. In February, 2002, the plaintiffs filed an amended complaint and included the Government of Sudan as a defendant. In March, 2005, the State Department filed a Statement of Interest in the case, and the defendants moved for judgment based on the Statement of Interest. The court denied the motion and refused to allow an interlocutory appeal. Fact discovery concluded in March, 2006, and the next month Talisman Energy moved for summary judgment.

In September, 2006, the court granted Talisman's summary judgment motion and denied the plaintiffs' motion to amend their complaint. The court held that the plaintiffs had not supplied sufficient admissible evidence to support their claims. In rejecting the plaintiffs' conspiracy claims, the court held that conspiracy does not provide a basis for indirect liability under international law, except for claims of genocide and waging of aggressive war. In dismissing the plaintiffs' aiding and abetting claims, the court recognized aiding and abetting claims under international law, but held that the plaintiffs failed to provide sufficient evidence to survive summary judgment. In September, 2006, the court also ordered that the claims against the

Republic of Sudan, which had failed to answer or appear, be referred to a magistrate judge for an inquest and the next month the plaintiffs appealed to the Second Circuit.
In October, 2009, a panel of the Second Circuit Court of Appeals affirmed the district court's dismissal of the case, ruling that Talisman could not be held liable for aiding and abetting the abuses because the plaintiffs had not shown that Talisman acted with the purpose of assisting human rights abuses. In October, 2009, ERI asked the full Court of Appeals to review the case, which was denied. The plaintiffs then petitioned the Supreme Court to hear the case, which was denied.

14. *Turedi v. Coca-Cola Co.*

Summary: The plaintiffs, trade union members once employed by CCI, brought action asserting claims under ATS and TVPA. The plaintiffs alleged that violent attacks were done to them by Turkish police during a labor dispute. The defendant, Coca Cola and its subsidiaries, moved to dismiss the complaint on the ground of international comity, act of state doctrine, absence of subject matter and failure to state any claim on which relief may be granted. The defendant's motion for dismissal was granted.

15. *Tamam v. Fransabank Sal.*

Summary: The plaintiffs, fifty-seven Israeli citizens who were injured in or survive family members killed by missile attacks launched by Hizbullah in 2006, brought suit against the defendants, five foreign banks, under the ATS. The plaintiffs claimed that their provision of financial services to parties associated with Hizbullah constituted terrorism financing. The defendants' motioned to dismiss the amended complaint and the motions were granted.

16. *Vietnam Association for Victims of Agent Orange v. Dow Chemical Co.*

Summary: The Plaintiffs under the ATS brought suit against the defendants for injuries allegedly sustained by their exposure to Agent Orange and other herbicides manufactured by the defendants and deployed by the U.S. during the Vietnam War. The court denied relief and dismissed the complaint on the ground the plaintiffs failed to allege a violation of international law and the plaintiff's domestic tort law claims barred by the government contractor defense.

17. *Abdullahi v. Pfizer; Adamu v. Pfizer*

Summary: The plaintiffs claim to be the legal representatives of children who died or were injured as a result of unwitting participation in tests of Pfizer's experimental drug Trovan in Nigeria. The plaintiffs filed suit in Nigeria and in the United States. In the U.S. action, the plaintiffs alleged that Pfizer violated international law under the ATS when, in conjunction with the Nigerian government, it used unsafe methods and treatments to test Trovan. In a related case ("*Adamu*"), the plaintiffs asserted identical claims under the ATS, the Connecticut Unfair Trade Practices Act, and the Connecticut Products Liability Act.

Status: In September, 2002, the district court dismissed the *Abdullahi* case on *forum non conveniens* grounds. The court cited an ongoing lawsuit addressing similar issues in Nigeria. In October 2003 the Second Circuit Court of Appeals vacated the dismissal by the district court,

noting the dismissal of the lawsuit in Nigeria. In March, 2004, the district court requested a briefing on what precipitated the dismissal of the lawsuit in Nigeria.

In August, 2005, the district court again dismissed the *Abdullahi* complaint, this time for lack of subject matter jurisdiction. In considering the plaintiffs' ATS claims, the court held that "non-consensual medical experimentation violates the law of nations." The court, however, refused to imply a private right of action for the violation. Alternatively, the court dismissed the complaint on *forum non conveniens* grounds, holding that Nigeria constituted an adequate, alternative forum. The plaintiffs filed a notice of appeal in September 2005.

In *Adamu*, the district court similarly granted the defendants' motion to dismiss. The court refused to imply a private right of action for the torts alleged in the suit, and it dismissed the case on *forum non conveniens* grounds. The court also dismissed the state law claims filed under the Connecticut statutes. In applying standard choice-of-law principles, the court found that Nigerian law – not Connecticut law – governed the claims. Nigerian law, however, did not allow the plaintiffs to assert any claim for relief. In December, 2005, the plaintiffs filed a notice of appeal to the Second Circuit. In February, 2006, the court ordered that the *Adamu* and *Abdullahi* appeals be consolidated. The case was heard in July, 2007.

In a rare decision in 2009, the United States Second Circuit decided to reverse the earlier dismissal for lack of subject matter and remanded the case to District court. The court held that the District court incorrectly determined the prohibition in customary international law against nonconsensual human medical experimentation could not be enforced through the ATS, that changed circumstances in Nigeria since the filing of this appeal required re-examination of the appropriate forum, and, finally, that the District court incorrectly applied Connecticut's choice of law rules in the Connecticut Products Liability Act. In February, 2011, Pfizer filed a stipulation of dismissal after the parties agreed to settle all claims**.**

18. *Wiwa v. Royal Dutch Petroleum Co., Wiwa v. Shell Petroleum Development Co. of Nigeria, Ltd.,Wiwa v. Anderson*

Summary: The plaintiffs, three former citizens and residents of Nigeria and a Nigerian citizen identified as Jane Doe, filed suit in 2004, alleging violations of international, federal, and state law in connection with the Nigerian government's activities in the Ogoni region of Nigeria during the 1990s. The plaintiffs alleged that Royal Dutch Shell, its London subsidiary, and the former head of its Nigerian subsidiary conspired with the Nigerian military government to arrest and convict nine members of a Nigerian opposition movement, who were later hanged, and to suppress that movement in violation of international human rights law.

Status: In *Wiwa v. Royal Dutch Petroleum Co.*, the district court held in 1998 that it had personal jurisdiction over the corporate defendants in New York but nonetheless dismissed the case on *forum non conveniens* grounds. On appeal, the Second Circuit affirmed the district court's ruling on personal jurisdiction but reversed the district court's ruling on the *forum non conveniens* issue. The court subsequently remanded the case to the district court.
In February, 2002, the district court granted the defendants' motion to dismiss with respect to two ATS claims by plaintiff Owens Wiwa against Royal Dutch Petroleum Co. for alleged violation of his right to life, liberty and security of person, and for arbitrary arrest and detention.

The court, however, denied the defendants' motion to dismiss on all of the remaining claims. In September, 2006, in *Wiwa v. Royal Dutch Petroleum* the court dismissed several of the plaintiffs 'claims.

In January 2007 the defendant moved to dismiss for lack of jurisdiction. In March 2008 the court granted SPDC's motion to dismiss in both Kiobel and Wiwahe court found that the plaintiffs failed to establish that SPDC had sufficient minimum contacts with the United States, and thus under a due process analysis, the court did not have personal jurisdiction. The court held that the five categories of behavior identified by the plaintiffs as the basis for general jurisdiction failed to meet the "continuous and systematic" standard. The court noted the conduct relied on by the plaintiffs included: 1) crude oil and natural gas produced by SPDC in Nigeria eventually reached the United States market through transactions conducted by other third parties; 2) an SPDC public relations campaign was aimed at the United States; 3) Shell People Services, a purported "sister company" based in Houston, TX, engaged in recruiting activities in the United States on behalf of SPDC; 4) SPDC employees visited the United States on an annual basis to attend trade shows and conferences, and to participate in training session; and 5) SPDC has contracted with four U.S.-based companies, and has participated in projects that receive significant financial assistance from one federal government agency. The court evaluated each category of conduct and determined that they did not amount to systematic and continuous conduct in the U.S. and dismissed the case for lack of jurisdiction.

In March, 2009, CCR and ERI filed An amended complaint in *Wiwa v. Royal Dutch Petroleum Co.* and in *Wiwa v. Anderson.* On June 8, 2009, on the eve of trial, the parties in Wiwa v. Shell agreed to a settlement for all three of the lawsuits. The settlement provided a total of $15.5 million to compensate the plaintiffs, establish a trust for the benefit of the Ogoni people, and cover some of the legal costs and fees associated with the case.

19. *Kiobel v. Royal Dutch Petroleum*

Summary: Plaintiffs, residents of the Ogoni district of Nigeria, filed this class action complaint in September, 2002 alleging that Royal Dutch Shell had aided and abetted, or were otherwise complicit in, violations of international law by the Nigerian government. The allegations included extra-judicial killing, crimes against humanity, and torture.

Status: In September, 2006, district court dismissed plaintiffs' claims for aiding and abetting property destruction, forced exile, extrajudicial killing and violations of the rights of life, liberty, security and association, holding that these claims were not actionable under *Sosa*. It denied the defendants' motion to dismiss the remaining claims of crimes against humanity, torture, and arbitrary arrest and detention. The district court also denied the defendants' motion to dismiss the remaining claims. The court held that a basis for actionable claims under the ATS post-*Sosa* included at least some forms of torture and arbitrary detention that is both prolonged and a result of state policy. It concluded that crimes against humanity were actionable where the plaintiffs could sustain claims of torture and arbitrary detention, and that the crimes were committed as part of an "intentional, systematic attack against a particular civilian population." The case was appealed to the Second Circuit, which ruled that jurisdiction under the ATS does not extend to civil actions brought against corporations. The court reasoned that because customary

international law has been from the beginning limited to natural persons rather than "juridical persons" such as corporations, jurisdiction under the ATS does not extend to corporations.

On April 17, 2013, the Supreme Court ruled that the ATS does not apply extraterritorially, and therefore, plaintiffs could not bring cases involving actions committed by foreign parties on foreign soil. Justices Scalia, Kennedy, Thomas and Alito joined in Justice Roberts's conclusion that there is no evidence that "Congress expected causes of action to be brought under the statute for violations of the law of nations occurring abroad."

The *Kiobel* decision does not, however, entirely close the door on ATS claims against U.S. companies. Justice Roberts suggested that it may still be possible for wrongdoing that occurs overseas to fall under the ATS if there is a demonstrable nexus to the United States. He wrote that "where the claims touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application of U.S. law." This opens the possibility that even foreign corporations with an office in the United States could be sued under the ATS if plaintiffs could prove that company decisions that led to the alleged violations were made in the United States. Liability may also extend to instances in which U.S. corporate officers sit on the boards of a local subsidiary.

Importantly the decision did not address the original claim that was appealed from the Second Circuit, which had ruled that corporations were not liable under the ATS. Justice Kennedy wrote in his concurrence that "the opinion of the court is careful to leave open a number of significant questions regarding the reach of the ATS." Justice Breyer wrote a concurring opinion along with Justices Ginsburg, Sotomayor and Kagan that agreed "with the Court's conclusion, but not with its reasoning." Rejecting Justice Roberts focus on extraterritoriality, Breyer laid out three tests for jurisdiction under the ATS: (1) where the alleged tort occurs on American soil; (2) when the defendant is an American national; and (3) when the defendant's conduct substantially and adversely affects an important American national interest. Breyer included in his final category the U.S. interest in preventing the United States from becoming a safe harbor for a tortfeaser "or other common enemy of mankind." This Breyer finds analogous to violations by pirates, which was an original intent of the ATS, writing that in Sosa the Court "provided a framework …by setting down principles drawn from international norms and designed to limit the ATS claims to those that are similar in character and specificity to piracy." The concurring statements of these Justices do not therefore definitively close the door on future ATS lawsuits, either against corporations or against individuals, including corporate officials.

III. THIRD CIRCUIT

CLOSED THIRD CIRCUIT CASES

1. *Hereros ex rel. Riruako v. Deutsche Afrika-Linien Gmblt & Co.*

Summary: The Plaintiffs, the Herero Tribe from Namibia, Africa, sued the defendants, Woermann Lines, also known as Deutsche Afrika-Linien, for enslavement and crimes against humanity during the time Germany occupied the South Africa region between 1890-1915. The plaintiffs further alleged that the defendants were an integral part of the German colonial

enterprise. The plaintiffs sued under the ATS and common law for damages suffered. The Third Circuit Court affirmed the district court's motion to dismiss.

2. *Iwanowa v. Ford Motor Co.*

Summary: The Plaintiff, Elsa Iwanowa, filed a complaint against defendant, Ford Motor Co., and its German subsidiary, Ford Werke A.G. The plaintiff alleged that Ford Werke coerced her and thousands of other people to perform forced labor under inhuman conditions during WWII without compensation. The court granted the defendants motion for dismissal of all claims, and dismissed on the ground non-justiciability and international comity.

IV. FOURTH CIRCUIT

A. SUMMARY OF FOURTH CIRCUIT CASES

The Fourth Circuit has considered two ATS cases. *Lizarbe v. Rondon* is pending and *Mohammed Aziz, et al. v. Alcolac, Inc.* was dismissed on September 19, 2011.

B. PENDING FOURTH CIRCUIT CASE

1. *Doe I v. Cisco Systems, Inc.*

Summary: The plaintiffs, Chinese Falun Gong practitioners filed a lawsuit against defendants, Cisco Systems, under ATS for designing, supplying and maintaining China's Golden Shield electronic censorship and surveillance network with Cisco's police system. Which allow China to target dissidents for detention and torture. The case is currently pending before the United States District Court for the Northern District of California.

2. *Lizarbe v. Rondon*

Summary: In July, 2007, the plaintiffs sued citizens of Peru, currently residing in Maryland, under the ATS and TVPA for extrajudicial killings, torture of the plaintiffs and decedents, war crimes and crimes against humanity for acts allegedly committed during the Accomarca Massacre in Peru, in August, 1985. The plaintiffs allege that the defendants were senior military officers and commanders of troops responsible for the killing, rape and torture of local civilian villagers during the Peruvian government's crackdown on the Sendero Luminoso insurgency. The plaintiffs are villagers who were present at the alleged massacre and were suing in their own right as well as on behalf of family members and other villagers killed. Defendant Rivera Rondon is a resident of Montgomery County, Maryland. *See* companion case, *Lizarbe v. Hurtado*, alleging same facts against defendant Hurtado, a resident of Miami, Fl.

Status: The complaint was filed in July, 2007. Authorities in the U.S. opened an investigation into Rivera Rondon and initiated deportation proceedings against him for false statements he made in his immigration forms about his role in the Accomarca massacre. Rivera Rondon was deported to Peru in August 2008, where he was immediately detained in connection with a pending criminal human rights case regarding the Accomarca massacre. The criminal trial in Peru began in November, 2010. The case in the U.S. remains stayed pending the resolution of the criminal trial in Peru.

C. CLOSED FOURTH CIRCUIT CASE

1. *Al Shimari v. CACI Internationa Inc.- Al Shimari v. CACI Premier Tech., Inc*

Summary: A federal lawsuit brought by the plaintiffs, four Iraqi torture victims, against the defendant, a private US-based contractor CACI International Inc., and CACI Premier Technology, Inc. It asserts that CACI participated directly and through a conspiracy in torture and other illegal conduct while it was providing interrogation services at the notorious Abu Ghraib prison in Iraq. The court reversed and remanded with instructions to dismiss the case.

2. *Al-Quraishi v. Nakhla*

Summary: A federal lawsuit against the defendant, US-based private contractor L-3 Services, Inc. (formerly Titan Corporation) and Adel Nakhla, a former employee of Titan/L-3 Services. Brought on behalf of 72 Iraqi Plaintiffs, it brings claims of torture, war crimes and other serious abuse against both L-3 Services and Nakhla for their participation in a conspiracy to torture detainees at prisons in Iraq, including at the notorious Abu Ghraib prison. The Court denied the defendants' motions for dismissal.

3. *Estate of Manook v. Research Triangle Institute, International*

Summary: The plaintiffs, Jalal Askander Antranick and Estate of Manook, sought to recover damages from the defendants Research Triangle Institute. RTI, a non-profit research institution in North Carolina, was contracted by the USAID to provide support the Iraqi government. RTI contracted Unity to provide security to RTI personnel and in the process shot and killed Genevia Jalal Antranick. The court dismissed the complaint on lack of subject matter jurisdiction and dismisses all other pending motions as moot.

4. *Mohammed Aziz v. Alcolac Incorporated.*

Summary: The plaintiffs, a group of Kurdish Iraqis who are either victims of mustard gas attacks or family members of deceased victims, filed a class action lawsuit on August 10, 2010 under the TVPA and the ATS against the Republic of Iraq and Alcolac, Inc., the New Jersey-based manufacturer of mustard gas sold to the Iraqi government. In 1980 Alcolac, then a subsidiary of Rio Tinto Zinc, had begun selling the Iraqi government thiodiglycol (TDG), a Chemical Weapons Convention schedule 2 chemical used to produce mustard gas which the plaintiffs alleged was used in attacks on the victims.

Status: The case was dismissed by circuit court in June, 2010, and its ruling was upheld by the Fourth Circuit in September, 2011. The district court had dismissed the TVPA claims and the Fourth Circuit Court upheld the dismissal of the TVPA claims. It further upheld the district court's dismissal of ATS claims of aiding and abetting, concluding: "…the ATS imposes liability for aiding and abetting if the attendant conduct is purposeful. The Appellants, however, have failed to plead facts sufficient to support the intent element of their ATS claims." The ruling goes on, however, to summarize the different Circuit Court holdings regarding aiding and abetting since the Supreme Court's *Sosa* decision and concludes that "following the lead of our sister

circuits, we concluded that 'aiding and abetting liability is well-established under the ATS.'" The Fourth Circuit agreed, however, with the Second Circuit's ruling in the *Talisman* case that aiding and abetting is a violation of international law when the defendant provides substantial practical assistance to the commission of a crime *and* does so "with the purpose of facilitating the commission of that crime." This holding rules out a standard of "knowing assistance that has a substantial effect on the commission of a human rights violation," as held by the D.C. Circuit. By rejecting a knowledge standard for aiding and abetting liability, the Fourth Circuit adopted the Second Circuit's analysis in the *Talisman* case requiring purpose and intent to violate an international norm "and adopts it as the law of this circuit," affirming the district court's dismissal of the case.

5. *Saharkhiz v. Nokia Corp.*

Summary: The plaintiffs, Isa Saharkhiz and Mehdi Saharkhiz, brought suit against the defendant, Nokia U.S. under ATS. Alleging that defendants sold telecommunications equipment to the Telecommunications Company of Iran (TCI) that allowed TCI to intercept communications and locate persons within Iran and that TCI allegedly provided access to that information to the Iranian government. The government in turn used that information to detain and torture Isa Saharkhiz. The Second Circuit court dismissed the claims under ATS reasoning there was no specific, universal, and obligatory norm of international law that would support imposition of liability on the corporate defendants and also ruled that the ATS does not apply to actions by the Iranian government directed at its own citizens.

IV. FIFTH CIRCUIT

A. SUMMARY OF FIFTH CIRCUIT CASE

The Fifth Circuit has not been receptive to ATS claims. In *Beanal v. Freeport-McMoran, Inc,* the Fifth Circuit firmly rejected a novel ATS claim: the court refused to recognize a tort claim under the ATS based on environmental treaties.

B. CLOSED FIFTH CIRCUIT CASE

1. *Abecassis v. Wyatt*

Summary: The plaintiffs, Americans and their relatives injured in a terrorist attack in Israel, alleged that the defendants, oil and gas business, purchased oil from Iraq and made payments that violated the united Nations Oil for Food Program. The plaintiffs alleged that payments included illegal kickbacks that were placed in secret bank account controlled by Saddam Hussein. Hussein used these funds to provide money and services to Palestinian terrorist organizations. The complaints were made under TVPA, ATS and ATA. The Court denied the defendants' motion of dismissal.

2. *Adhikari v. Daoud & Partners*

Summary: Pending before the Court was the motion to dismiss the Plaintiffs' first amended complaint against the Defendants Kellogg Brown & Root et. al (KBR). The Plaintiffs, Buddi

Prasad Gurung and the surviving family members of twelve other men all Nepal citizens brought causes of action against the defendants under TVPRA, RICO and ATS. KBR moved to dismiss these actions claiming the court lacked subject matter jurisdiction and the plaintiffs failed to state a claim upon which relief could be granted. KBR's motion was denied in part and granted in part.

3. *Beanal v. Freeport-McMoran, Inc.*

Summary: The plaintiff, an Indonesian citizen, alleged in August 1996 that the defendants were liable under the ATS and the TVPA for environmental abuses, human rights violations, and genocide in connection with the defendants' copper, gold, and silver mining activities in Indonesia. Specifically, the plaintiff alleged that the defendants' mining operations had harmed the surrounding environment and habitat, that the defendants had engaged in genocide and "cultural genocide" by destroying the region's habitat and religious symbols, thus allegedly forcing the local ethnic population to relocate, and finally, that the defendants' private security force had acted with the Indonesian government to violate their human rights

Status: In April, 1997, the court dismissed the complaint and subsequently struck plaintiff's second and third amended complaints. In November, 1999, the Fifth Circuit affirmed the lower court's dismissal of the complaint and found that Beanal had failed to state claims under the ATS and the TVPA for genocide and international human rights violations. The Fifth Circuit held that the environmental treaties and agreements cited by the plaintiff did not give rise to claims under the ATS.

V. SIXTH CIRCUIT

A. PENDING SIXTH CIRCUIT CASE

1. *Okpabi v. Royal Dutch Shell*

Summary: The plaintiffs, His Royal Majesty, Emere Godwin Bebe Okpabi, and Nigerian citizens, brought suit against the defendants, Royal Dutch Shell, PLC, under ATS. Alleging that defendant's actions of pollution, contamination and environmental degradation has violated the law of nations in that it has impeded on the enjoyment of life. The plaintiffs seek economic losses, punitive and compensatory damages and other relief. The district court held that the matter is to stay pending the decision of the Supreme Court in *Kiobel* which addresses the issue of subject matter jurisdiction with respect to the ATS claim.

B. CLOSED SIXTH CIRCUIT CASE

1. *Aikpitanhi v. Airlines of Spain*

Summary: The plaintiffs, Jacob and Vero Aikpitanhi, brought wrongful death suit against Iberia Airlines of Spain. The plaintiffs are parents of deceased and living citizens and residents Nigeria. The defendant Spanish corporation is also registered in Florida. The plaintiffs filed an amended motion for Special Drawing Rights under the Montreal Convention and under ATS. Under the Montreal Convention air carriers are strictly liable for proven damages up to 113,000

Special Drawing Rights. The court granted the defendant's motion to dismiss and denied plaintiffs motion for special drawing rights.

2. *Chavez v. Carranza*

Summary: The plaintiffs, all five of whom were citizens of El Salvador, filed a claim against Colonel Nicolas Carranza, former Vice Minister of Defense of El Salvador, under the TVPA and the ATS in December, 2003, alleging that the defendant had command responsibility over Salvadoran security forces that carried out widespread human rights abuses, including torture and extrajudicial killing of civilians during the nation's civil war between 1979 and 1983.

Status: In September, 2004, the court denied the defendant's motion to dismiss on statute of limitations grounds, finding that the doctrine of equitable tolling applied to the plaintiffs' claims. In October 2005 the court denied defendant's motion for judgment. In October, 2005, the court granted summary judgment on several claims but denied it with respect to other claims for torture and extrajudicial killing. The following month the jury ruled in favor of four plaintiffs and awarded them $500,000 each in compensatory damages and $1 million each in punitive damages. The jury could not reach a verdict on the fifth plaintiff's claims. The court denied the defendant's motion for a new trial. The defendant's appeal to the Sixth Circuit was granted. In March, 2008, the government of El Salvador filed an *amicus* brief arguing that the judgment should be voided since Carranza is entitled to amnesty under El Salvador's 1993 Amnesty Law. In response, a coalition of international law experts filed an *amicus* brief arguing that the 1993 Amnesty Law violates the Salvadoran constitution and international law. In oral argument in October 2008, El Salvador contended that the U.S government's endorsement of the 1992 Peace Accords should be interpreted as a *de facto* recognition of the extraterritorial impact of the Salvadoran Amnesty Law. The court rejected their argument on the basis that the 1992 Peace Accords made no mention of amnesty and the Salvadoran Amnesty Law was not adopted until 1993. Carranza appealed the verdict to the Sixth Circuit which upheld the jury verdict. In May, 2009, Carranza petitioned for *cert* with the U.S. Supreme Court which was denied

VI. SEVENTH CIRCUIT

A. SUMMARY OF SEVENTH CIRCUIT CASES:

The Seventh Circuit has strictly construed the ATS. In *Enahoro v. Abubakar*, the Seventh Circuit held that the TVPA preempts common law ATS claims for "torture and killing." The decision is important because the TVPA only allows lawsuits against individuals, not corporations, and has an "exhaustion" requirement requiring a plaintiff to file suit in the country where the tort occurred or at least prove that the foreign country does not constitute an adequate forum.

A key case in the Seventh Circuit is *Roe v. Bridgestone Corp.,* filed in November, 2005. The case has some similarities to *Doe v. Exxon Mobil Corp.*, as both involve ATS and state law claims. In June, 2007, the lower court dismissed all claims except for the plaintiffs' child labor claim under the ATS.

B. CLOSED SEVENTH CIRCUIT CASES

1. *Enahoro v. Abubakar, considered on remand in Abiola v. Abubakar.*

Summary: Seven Nigerian plaintiffs filed suit against a Nigerian general under the TVPA and the ATS. The plaintiffs alleged "torture and killing at the hands of the military junta that ruled Nigeria between1993 and 1999." The plaintiffs asserted claims of torture, arbitrary detention, cruel, inhuman and degrading treatment, false imprisonment, assault and battery, intentional infliction of emotional distress, and wrongful death.

Status: The Seventh Circuit issued two key holdings in the case. First, the court held that the Foreign Sovereign Immunity Act ("FSIA") did not protect the defendant from ATS and TVPA claims. Second, the court held that the plaintiffs' claims were preempted under the TVPA. Although *Sosa* suggested that the plaintiffs could bring common law claims for torture and killing under the ATS, the Seventh Circuit held that field preemption barred the plaintiffs' claims under any common law theory other than the TVPA. The court remanded the case to determine whether the plaintiffs could state a claim under the TVPA.

On remand, the defendant moved for summary judgment and the district court denied the motion. In response to the defendant's argument that the plaintiffs failed to exhaust their Nigerian remedies, the court held that the plaintiffs argued that the State Department had found that the Nigerian judiciary lacked the independence to hear these claims. The court set a hearing to decide the issue before trial. In July, 2006, the defendant appealed to the Seventh Circuit the district court's denial of summary judgment and finding that Nigeria was not an adequate forum. In September 2006 the court denied the defendant's motion for certification of the interlocutory appeal and the motion to stay pending appeal. In February, 2007, the Seventh Circuit dismissed the appeal for lack of jurisdiction. In January, 2008, the court approved the parties' joint stipulation to dismiss all claims and dismissed the case.

2. *Flomo v. Firestone Natural Rubber*

Summary: The suit under the ATS pits the laintiffs, 23 Liberian children, against the defendants, Firestone Natural Rubber Company and its Liberia subsidiary, charging Firestone with utilizing hazardous child labor on a plantation in violation of customary international law. The court reaffirmed the District Court's dismissal of the complaint.

3. *Genocide Victims of Krajina v. L-3 Services, Inc.*

Summary: The Plaintiffs, Milena Jovic and Zivka Mijic, brought a putative class action against the defendant, L-3 Services Inc. L-3 is a Delaware corporation and licensed to do business in Illinois. L-3 Communications Corp., L-3's parent acquired and merged L-3 with MPRI. The Plaintiffs allege that MPRI was complicit in genocide and aided and abetted a crime against humanity. The Court denied L-3's motion for dismissal.

4. *Holocaust Victims of Bank Theft v. Magyar Nemzeti Bank*

Summary: The plaintiffs brought action against defendants, which are international banking institutions that allegedly played a role in a wealth expropriation scheme involving the theft and withholding of assets and funds from Hungarian Jews who were victims of the Holocaust. The Court denied the defendant's motion for dismissal. On August 11, 2011 the defendant motion for reconsideration, motion in the alternative for clarification, and motion in the alternative for certification. The Court denied all motions made by the defendant.

5. *Roe v. Bridgestone Corp.*

Summary: A group of anonymous plaintiffs filed a class action against Bridgestone Corp., several Bridgestone/Firestone affiliates, two named Bridgestone/Firestone employees, and a group of anonymous Bridgestone Firestone employees. The plaintiffs claimed that Bridgestone forced a group of laborers in Liberia to work on a rubber plantation against their will. The plaintiffs' ATS claim involved "forced labor" and "cruel, inhuman, or degrading treatment." The plaintiffs originally filed the case in the Central District of California.

Status: In April, 2006, the Central District of California transferred the case to the Southern District of Indiana. The defendants moved to dismiss, and in June, 2007, the court dismissed all claims except for the plaintiffs' child labor claim under the ATS. The court said that the plaintiffs did not allege physical confinement or induced indebtedness, two indicators of involuntary work, and the psychological compulsion alleged by the plaintiffs stemmed from economic necessity, which did not qualify as forced labor under international law. The court also noted that the plaintiffs' stated fear of losing their jobs indicated that the jobs were not forced labor. In dismissing the cruel, inhuman, and degrading treatment claims by both the adult and child plaintiffs under the ATS, the court found that the exploitive labor practices alleged did not rise to the actionable level of cruel, inhuman, and degrading treatment as recognized by U.S. courts. The court held that the Thirteenth Amendment did not provide a private right of action for damages and did not reach conduct outside the United States. It found that the federal law on forced labor did not apply extraterritorially.

The court held that at least some of the defendants' child labor practices, encouraging young children to do arduous work that exposed them to chemicals and kept them out of schools may violate "specific, universal, and obligatory standards of international law." The court denied the motion to dismiss the plaintiffs' child forced labor claims under ATS but granted the motion to dismiss the balance of the claims. The court granted the motion to dismiss the claims of adult forced labor finding that the plaintiffs did not sufficiently plead violations of specific, universal and obligatory norms of international law necessary for a claim under ATS. In October, 2010, the district court in Indiana dismissed the case. The court granted the defendant's motion to dismiss on the basis that, according to the decision in *Kiobel* no "corporate liability exists under" the ATS.

6. *Vieira v. Eli Lily and Co.*

Summary: The plaintiffs, Brazilian residents, filed a an amended complaint claiming to have suffered injury as a result of localized environmental pollution and contamination emanating

from manufacturing sites owned by six U.S. corporations and their Brazilian subsidiaries. The plaintiffs brought the suit under the ATS, claiming that the defendants actions were in violation of the "law of nations." The court granted in part the defendants' motion to dismiss. Dismissing the plaintiffs' claim against defendants based upon the ATS with prejudice. To the extent plaintiffs are relying on Brazilian tort law in asserting their claims of negligence, gross negligence and strict liability, the plaintiffs must file notice of reliance on foreign law.

VII. NINTH CIRCUIT

A. SUMMARY OF NINTH CIRCUIT CASES

The Ninth Circuit has taken an activist role in ATS cases. In August, 2006, the Ninth Circuit in *Sarei v. Rio Tinto PLC*, rejected the application of the political question doctrine despite the Statement of Interest filed by the State Department. On rehearing in *Sarei* the Ninth Circuit made a number of key holdings, including its reversal of the district court's dismissal of all claims as nonjusticiable political questions. The court explained that its finding that the claims were properly alleged under the ATS precluded the defendants from arguing that the claims were nonjusticiable. The court also noted that the U.S. government's Statement of Interest failed to show that political question concerns were "inextricable from the case" under the final three nonjusticiability factors laid out by *Baker v. Carr*. The court affirmed the District court's conclusion that the ATS does not contain an exhaustion requirement. In 2006 the Northern District of California issued several key decisions on the TVPA and the ATS in *Bowoto v. Chevron Corp*. The court followed the recent trend in holding that the TVPA does not apply to corporations. With respect to the ATS, the court held that a plaintiff can establish aiding and abetting liability against corporations for crimes against humanity. The court also held that other ATS claims, including claims for summary executions, torture, and cruel, inhuman or degrading treatment, do not apply to private, non-state actors.

In the Ninth Circuit, key cases include *Sarei v. Rio Tinto PLC*, *Mujica v. Occidental Petroleum Corp*,., *Bowoto v. Chevron Corp,.,* and *Doe v. Nestle*.

B. PENDING NINTH CIRCUIT CASES

1. *Bauman v. Daimler Chrysler Corp.*

Summary: The plaintiffs alleged that officials at Mercedes Benz Argentina ("MBA") conspired and acted jointly with the Argentine military junta to kidnap, kill, and torture trade union activists from 1976 to 1978. In filing suit under the ATS and the TVPA, the plaintiffs claimed that Mercedes Benz management provided information, listed the activists as subversives, and otherwise cooperated with the military regime.

Status: In April, 2005, the defendants moved to quash service and to dismiss for lack of personal jurisdiction. In November 2005 the district court tentatively dismissed the plaintiffs' claims for lack of personal jurisdiction. Before issuing a final decision, the court decided to allow limited discovery. In February 2007 the court granted the defendants' motion to dismiss, finding that the court did not have personal jurisdiction over the defendant. It ruled that Mercedes Benz USA

LLP was not an agent of Daimler Chrysler AG and, consequently, the subsidiary's contacts with California could not be imputed to the parent company. The court further found that Argentina and Germany were adequate alternative forums for the plaintiffs, and it denied the plaintiffs' request for a transfer to the Eastern District of Michigan. The plaintiffs appealed and in 2009 the Ninth Circuit ruled in favor of Daimler Chrysler, upholding the lower court's dismissal of the lawsuit against DaimlerChrysler for lack of personal jurisdiction.

In June, 2011, however, the Ninth Circuit held that personal jurisdiction existed over DaimlerChrysler Aktiengellschaft (DCAG), a German company, because DCAG maintained its wholly owned U.S. subsidiary, Mercedes-Benz USA (MBUSA), such that DCAG could be sued in California due to MBUSA's contacts with that state. Notably, the *Bauman* decision subjects DCAG to California's jurisdiction despite the fact that the events giving rise to the lawsuit did not take place in the U.S. or involve the contacts relied upon by the court in exercising general jurisdiction over DCAG in the first place. If the ruling stands, it has the potential to affect any foreign company that does business in the U.S. through subsidiaries regardless of whether those subsidiaries have anything to do with the parent's alleged actions giving rise to the lawsuit. Daimler appealed for *en banc* review in July 2011, which was denied in November, 2011 with 8 judges dissenting. Daimler has petitioned the Supreme Court for a writ of *certiorari*.

2. *Bowoto v. Chevron Corp.*

Summary: The plaintiffs alleged that Chevron provided assistance to, and participated in, two Nigerian military raids which allegedly involved human rights abuses.

Status: In March, 2004, the district court denied ChevronTexaco's 2003 motion for summary judgment. The court held that ChevronTexaco could be held vicariously liable for the actions of its subsidiary, which allegedly participated in human rights violations with the Nigerian military and that ChevronTexaco could be held liable for aiding and abetting. After the Supreme Court's decision in *Sosa*, the parties filed additional motions to dismiss in the case. In August 2006 the court the court held that the TVPA does not allow suits against corporations and dismissed the plaintiffs' TVPA claims. The court also granted the defendants' motion to dismiss in part and denied it in part with respect to the ATS claims. In ruling on the plaintiffs' ATS claims, the court held that the defendants may be indirectly liable for "crimes against humanity" under an "aiding and abetting" theory, but the defendants may not be liable under the ATS, either directly or indirectly, for summary executions, torture, cruel, inhuman or degrading treatment, or other related violations because these torts do not involve norms of customary international law that apply to private, non-state actors. The court granted the plaintiffs' request to add Chevron USA as a defendant and held that Nigerian law governed the events on the Chevron construction barge adjacent to the drilling platform while California law governed the remainder of the events.

In May, 2007, the State Department filed a Statement of Interest which requested the court not to apply injunctive relief in the case because it would effectively require compliance, "on pain of judicial enforcement and contempt," with the Voluntary Principles on Security and Human Rights. The Voluntary Principles had been adopted by Chevron. The State Department said that the imposition of the Voluntary Principles could produce a chilling effect on companies' continued efforts and would frustrate a key U.S. government foreign policy initiative.

In August, 2007, the court denied the defendants' act of state defense and ruled that the defendants failed to provide any evidence of sovereign authority via a valid chain of command directing their actions. The court specifically looked to actions of the military to determine whether the officers' actions were consistent with the authority granted them by the expulsion order. The court found the defendants failed to show they had valid orders or that their actions were consistent with such orders and thus dismissed the act of state defense for a failure to demonstrate that the actions in this case were "official acts of a foreign sovereign within its own territory." The court also refused to apply the political question doctrine in this case.

A second order issued in August, 2007, granted the defendants' motion for summary judgment on the plaintiffs' crimes against humanity claims. Finding that no reasonable jury could hold that the Nigerian Security Forces engaged in a campaign of terror of the type contemplated by the crimes against humanity claims, the court granted the defendant's motion for summary judgment. In September, 2007, the plaintiffs filed a motion for reconsideration which the court denied.

In August, 2007, a federal judge issued orders narrowing the lawsuit, but the plaintiffs' central claims regarding Chevron's complicity in human rights violations were allowed to stand. In December, 2008, the federal jury cleared Chevron of the charges in this case. In March 2009 the federal judge denied the plaintiffs' request for a new trial and the plaintiffs filed an appeal with the Ninth Circuit in April, 2009. In September, 2010, the Court of Appeals upheld the verdict of the trial court.

In June, 2011, EarthRights International filed a petition to the U.S. Supreme Court on behalf of nineteen Nigerian plaintiffs in *Bowoto v. Chevron Corp.*, asking the court to hear the case. Specifically, the petition requests that the Supreme Court to overturn the Ninth Circuit, finding that corporations such as Chevron cannot be sued for torture and extrajudicial killing under the TVPA. A decision on this case is pending.

3. *John Doe v. Nestle*

Summary: Several alleged former child slaves filed a class action against Nestle, Archer Daniels Midland ("ADM"), and Cargill alleging that the companies aided and abetted and/or were vicariously liable for forcing children, including the plaintiffs, to work on cocoa plantations in Cote d'Ivoire. The plaintiffs advanced ATS claims for forced labor, torture, and cruel, inhuman and degrading treatment, TVPA claims for torture, a U.S. Constitution Thirteenth Amendment claim for forced labor, and various statutory and common law claims.

Status: The plaintiffs filed their complaint in July, 2005. In November, 2006, the court ordered the litigation temporarily stayed pending the Ninth Circuit's decision on whether to rehear *Sarei v. Rio Tinto en banc*. In April, 2007 the plaintiffs filed notice of the *Sarei v. Rio Tinto* decision and requested the court to lift the stay in the proceedings. Following the Ninth Circuit's grant of rehearing *en banc* in *Sarei v. Rio Tinto*, the court stayed proceedings pending the outcome of the *Sarei* decision.

4. *John Doe v. Wal-Mart Stores, Inc.*

Summary: The plaintiffs, a group of workers in California, China, Bangladesh, Indonesia, Swaziland, and Nicaragua, filed suit in the District court in California alleging that Wal-Mart had failed to guarantee fair treatment of its employees. The plaintiffs alleged that Wal-Mart had not ensured that its suppliers followed the code of conduct "Standards for Suppliers." The Standards require foreign suppliers to adhere to local laws and industry standards and to comply with employment and labor conditions. The plaintiffs alleged that Wal-Mart failed to conduct the necessary audits to ensure compliance with the Standards and that Wal-Mart imposed difficult price and time requirements on suppliers that forced suppliers to violate the Standards.

The non-California plaintiffs, employees of Wal-Mart's suppliers' garment factories, alleged that they suffered excessive hours, withheld pay, overtime without pay, less than minimum-wage pay, denial of overtime pay, lack of safety equipment, and other poor working conditions as a result of Wal-Mart's failures to enforce the Standards. The California plaintiffs alleged that Wal-Mart's actions put their employers at a competitive disadvantage, causing these plaintiffs to lose pay and benefits because their employers reduced benefits to compete with the defendant. The collective plaintiffs filed claims for breach of contract, negligence, unjust enrichment, unfair competition, and violation of the ATS.

Status: In March, 2007, the district court dismissed all of the plaintiffs' claims. With respect to the ATS claim, the court ruled that the plaintiffs' did not provide evidence of their claim that the arbitrary withholding of an employee's pay qualified as "the limited and heinous conduct found actionable under the ATS." It also held that the plaintiffs' claims fell short of constituting involuntary labor and physical coercion, which have been found actionable under the ATS. Finally, it noted that courts are required under *Sosa* to consider the practical consequences of recognizing new ATS claims, and that allowing this case to proceed would "support a federal claim for relief whenever any employee was denied pay or otherwise subject to economic coercion while living under difficult circumstances." In dismissing the negligence claims, the court found that the plaintiffs had not presented any authority to show that Wal-Mart had a duty to the plaintiffs in this case. The court said that the plaintiffs' unfair competition claim essentially alleged consumer deception or false advertising, which do not produce an injury when the plaintiff is not a consumer.

In April, 2007, the plaintiffs appealed but were required by the Ninth Circuit to return to the district court and obtain a final judgment. In July, 2009, the Ninth Circuit affirmed the District Court's ruling that the plaintiffs failed to state a claim. The Ninth Circuit decided that Wal-Mart had no legal duty under the Standards or common law negligence principles to monitor its suppliers or to protect plaintiffs from the suppliers' alleged substandard labor practices. They concluded that Wal-Mart is not the plaintiffs' employer, and the relationship between Wal-Mart and the plaintiffs is too attenuated to support restitution under an unjust enrichment theory.

5. *Mujica v. Occidental Petroleum*

Summary: Plaintiff Luis Alberto Galvis Mujica filed suit on behalf of himself and his relatives who were killed in 1998 when a cluster bomb was dropped on their town by a helicopter operated by the Colombian Air Force ("CAF"). The plaintiff claimed that the CAF received

direct funding from Occidental Petroleum in return for protecting Occidental's pipeline in Colombia and was acting in the private interests of Occidental in carrying out the bombing. The plaintiff also claimed that the CAF received the coordinates for the bombing and aerial surveillance assistance from defendant Airscan, a U.S. company, in its capacity as a security contractor for Occidental, and that the bombing was jointly planned by the CAF and the defendants. The plaintiff alleged that the defendants' actions constituted extrajudicial killings in violation of the law of nations, or alternatively, military actions which failed to avoid reasonably foreseeable civilian casualties, and war crimes. The plaintiff also claimed that Occidental and Airscan had knowledge of widespread human rights violations committed in Colombia by the Colombian military.

Status: The plaintiffs filed the complaint in April, 2003. In October Occidental filed a motion asking the court to solicit the views of the State Department on the potential impact on foreign relations which the U.S. did in April, 2004. In June, 2005, the district court denied the defendants' motion to dismiss on *forum non conveniens* and international comity grounds because Colombia was not an adequate, alternative forum in the case. The court also dismissed the entire lawsuit under the political question doctrine. In July, 2005, the plaintiffs filed a notice of appeal and in March, 2007, the U. S. filed a motion to appear and argue the merits of the case. In August 2007 the court deferred further proceedings, "in light of the intervening authority of *Sarei v. Rio Tinto,* this case is remanded to the district court" to consider whether that case bars the claims in *Mujica,* as well as the Colombian courts' disposition of claims by other plaintiffs against Occidental Petroleum and whether those actions bar any claims in this case.

6. *Sarei v. Rio Tinto PLC*

Summary: In November, 2000, plaintiffs alleged that Rio Tinto and a subsidiary, acting in concert with the governments of Australia and Papua New Guinea ("PNG"), forcefully evicted the plaintiffs from their land and destroyed the surrounding rain forest through their copper mining activities in Bougainville, an island off the shore of PNG. Claims were brought under the ATS and the TVPA. The plaintiffs alleged that they were victims of numerous violations of international law including causing the PNG government to use force to reopen the copper mine, knowing that government troops were killing and abusing civilians. The plaintiffs also claimed that Rio Tinto encouraged a blockade of food and essential medical supplies, resulting in deaths and injuries to the plaintiffs as well as environmental degradation.

Status: In July, 2002, the court granted most aspects of the defendants' motion to dismiss on political question grounds and denied the plaintiffs' motion to amend their complaint. The plaintiffs appealed that ruling to the Ninth Circuit. After the Supreme Court's decision in *Sosa,* the parties submitted additional briefs.

In August, 2006, the Ninth Circuit reversed the district court, concluding that "most of plaintiffs' claims may be tried in the United States." The court held that the lower court erred in dismissing all of the plaintiffs' claims on political question grounds and in dismissing the racial discrimination claim under the act of state doctrine. In so doing the Ninth Circuit held that ATS claims are constitutionally entrusted to the judiciary. The court also discredited the State Department's statement of interest ("SOI") because by the time of the Ninth Circuit's decision in *Sarei*, the SOI was almost five years old and the State Department had failed to update it.

Moreover, the PNG government, which initially opposed the litigation, underwent a regime change and the successor regime appeared to favor the litigation. Finally, despite a lengthy dissent from Judge Bybee, the court held that ATS claims do not require exhaustion of local remedies.

In September, 2006, the defendants filed a petition for rehearing *en banc* and the following month the Ninth Circuit reversed the district court's dismissal of all claims as no justiciable political questions, as well as the district court's dismissal of the racial discrimination claim on act of state grounds, and vacated the lower court's dismissal of the racial discrimination claim on comity ground. Finally, the court affirmed the district court's conclusion that the ATS does not require exhaustion of local remedies. In August, 2007, the Ninth Circuit ordered the case to be reheard *en banc*.

In December, 2008,the Ninth Circuit remanded the case to the District court to determine whether the plaintiffs were required to exhaust the remedies in their home country prior to filing the lawsuit in the US. In October, 2010, an *en banc* panel of the Ninth Circuit referred the case to a mediator who reported the following month that mediation had failed. In February, 2011, the case was returned to the Ninth Circuit for another *en banc* hearing and in October, 2011, the Court issued a second *en banc* opinion asserting that corporations can be sued under the ATS.

C. CLOSED NINTH CIRCUIT CASES

1. *Abagninin v. AMVAC Chemical Corporation*

Summary: The plaintiff, Akebo Abagninin, brought suit against the defendants, AMVAC Chemical Corp, under the ATS alleging genocide and crimes against humanity. The laintiff alleged that DBCP caused male sterility and low sperm counts. The District Court granted with prejudice AMVAC's motion for judgment on the pleadings as to the genocide claim and claims for crimes against humanity were subsequently dismissed. The Circuit Court affirmed the decision.

2. *Chunzhu v. Yahoo! Inc.*

Summary: Plaintiffs Cunzhu Zheng and Guo Quan under ATS alleged that defendants Yahoo! Inc. and Yahoo! Hong Kong, Ltd. provided Chinese officials with access to plaintiffs' email account, thereby exposing Plaintiffs to persecution and torture by the Chinese government because the plaintiffs have advocated for democracy and multi-party government in China.

3. *Deutsch v. Turner Corp.*

Summary: The Plaintiffs, Josef Tibor Deutsch, under California statutory and ATS alleged that they were forced to work as slave laborers for German and Japanese corporation during WWII and seek damages from the Defendants, successors or affiliates of those corporations. The Circuit court affirmed the district court's ruling because the California Code of Civil Procedure is an unconstitutional intrusion on the foreign affairs power of the United States.

4. *Hamid v. Price Waterhouse*

Summary: The plaintiffs alleged that the defendants illegally acquired various banks in the United States, caused deposits to be misused and misappropriated, and, by misrepresenting fact about Bank of Credit & Commerce International, delayed the day when regulators would shut it down. This enabled it to attract deposits which it otherwise would have been unable to obtain. The complaint also included allegations of financing international terrorism, narcotics and arms dealing. The circuit court affirmed the district court's dismissal of depositors' RICO claims.

5. *Mohamed v. Jeppesen Dataplan, Inc.*

Summary: The Plaintiffs, foreign citizens who were taken by foreign governments and handed over to the CIA for interrogation for suspicion of terrorist leads, brought suit against the Defendant, Jeppesen, under ATS alleging seven theories of liability marshaled under two claims, one for force disappearance and another for torture and other cruel, inhuman or degrading treatment. The Circuit court affirmed the district court's dismissal of the Plaintiffs' claims.

6. *Sosa v Alvarez-Machain v. United States*

Summary: Plaintiff Alvarez-Machain, a Mexican national and a doctor who was abducted and transported to the United States to face prosecution for the murder of a Drug Enforcement Agency ("DEA") agent, sued the United States, the DEA agents, a former Mexican policeman, and Mexican civilians under the ATS and other federal laws, alleging that his abduction violated his civil rights. Plaintiff claimed that the Mexican nationals were liable under the ATS for kidnapping, arbitrary detention, torture, cruel, inhuman and degrading treatment or punishment, and related domestic torts.

Status: In its sole ruling on the ATS, the Supreme Court held in 2004 that the ATS does not create a private right of action for violations of international law, but merely provides jurisdiction over certain tort claims. At the same time, the Court allowed lower courts to create new claims under federal common law for violations of international law when a defendant violates norms that are "universal, obligatory and specific." The Court cautioned lower courts not to freely recognize expansive claims and warned them to take foreign policy interests into consideration. The Court's decision, therefore, did not settle an issue such as corporate liability for aiding and abetting human rights abuses, but left the door open for assertion of additional international law claims.

7. *Corrie v. Caterpillar, Inc.*

Summary: Several Palestinians and the family of an American who died in the Gaza Strip filed suit against Caterpillar, Inc. The plaintiffs alleged that they suffered "death, injury, and the loss of home and business as a result of the demolitions by Caterpillar bulldozers used by the Israeli Defense Forces. The plaintiffs brought numerous claims against Caterpillar including war crimes, extrajudicial killing, aiding and abetting and conspiring in cruel and inhuman treatment or punishment and wrongful death.

Status: The court granted Caterpillar's motion to dismiss. The court dismissed claims for war crimes, extrajudicial killing and aiding and abetting cruel, inhuman and degrading treatment because the plaintiffs failed to allege that Caterpillar had participated in or directed any of the IDF's alleged wrongful conduct. The court noted that "[s]elling products to a foreign government do not make the seller a participant in that government's alleged international law violations." Moreover, it said, the TVPA provided the exclusive remedy for the plaintiffs alleging extrajudicial killing "under color of foreign law." Finally, the U.S. citizen family members of Rachel Corrie could not bring claims under the ATS because they were not aliens, and the TVPA did not allow for a corporation to be "a victim or a perpetrator."

The court dismissed the RICO claim because the alleged acts – all of which occurred in Israel – were not "chargeable under state law" as required by RICO. Lastly, the court dismissed the plaintiffs' state law claims because a manufacturer or distributor of a legal product without defects could not be liable in tort for alleged criminal acts committed by third parties with those products. As separate grounds for dismissal, the court dismissed the claims on act of state, foreign policy and political question grounds, stating that the claims interfered with U.S. foreign policy.

The plaintiffs appealed in December, 2005 and in June, 2007, the court ordered the parties to file supplemental briefs on the applicability of *Sarei v. Rio Tinto* to the issues in the case. The Ninth Circuit affirmed the lower court's ruling to dismiss the suit under the political question doctrine and held that the plaintiffs' claims present nonjusticiable political questions. In discussing its decision, the court found dispositive the fact that the bulldozers were paid for by the United States, and ruled that to proceed would necessarily require the judicial branch to question the political branches' decisions to grant extensive military aid to Israel. The court further held whether to grant military or other aid to a foreign government is a political decision inherently entangled with the conduct of foreign relations; any liability imposed on Caterpillar would at least implicitly bring into question the propriety of the United States' decision to pay for the bulldozers which allegedly killed the plaintiffs' family members. Although the plaintiffs purport to look no further than Caterpillar for liability, resolving the suit "will necessarily require us to look beyond the lone defendant in this case and toward the foreign policy interests and judgments of the United States government itself."

8. *Zheng v. Yahoo! Inc.*

Summary: The Plaintiffs, four Chinese nationals and a California organization, sought to hold Yahoo! Inc. liable under ECPA, as well as under California's Unfair Competition Law and ATS. The Plaintiffs alleged that Yahoo! China disclosed information that aided and abetted in the PRC illegitimate criminal prosecutions. The court dismissed all remaining ECPA and UCL claims in the case with prejudice.

9. *Doe v. Unocal Corporation*

Summary: The plaintiffs, Burmese citizens, alleged that Unocal was jointly and severally liable and/or vicariously liable for human rights abuses by the Burmese military allegedly committed in conjunction with the construction of a gas pipeline. The plaintiffs alleged that the defendants were involved in constructing offshore drilling stations to extract natural gas from the Andaman

Sea and a port and a pipeline to transport the gas through Burma and into Thailand. The plaintiffs claimed that the defendants, through the Burmese military, intelligence and/or police forces, engaged in forced relocation of villages and knowingly used forced labor in furtherance of the pipeline project. The plaintiffs argued that knowing participation in a commercial venture with an agency of a government with a record of human rights abuses was sufficient to establish liability for the alleged human rights abuses by the military under either joint venture or vicarious liability theories.

Status: In August, 2000, the district court granted summary judgment in favor of Unocal and ruled that the company could not be held liable under the ATS for the Burmese government's use of forced labor. The plaintiffs appealed the district court's ruling to the Ninth Circuit, which affirmed in part and reversed in part the district court's decision. The Ninth Circuit, however, later vacated this opinion when it ordered the matter to be heard *en banc*. In December 2003 an order was filed withdrawing the case pending issuance of the Supreme Court's decision in *Sosa v. Alvarez-Machain*.

The plaintiffs also re-filed their state law claims in state court in California. The state court denied the defendants' motion for summary judgment based on an absence of vicarious liability. In January, 2004, the judge in the state court case ruled that the plaintiffs had failed to show that the relevant Unocal subsidiaries were alter egos of the Unocal corporate parent.

With motions still pending in both actions, the parties announced a settlement in March, 2005. Unocal admitted no liability in settling the cases.

10. *Doe I v. The Gap, Inc.,*

Summary: Filed in 1999 this was a class action suit brought on behalf of foreign "guest workers" from the People's Republic of China, the Philippines, Bangladesh, and Thailand working in the garment industry in the Commonwealth of the Northern Mariana Island. The plaintiffs allege terrible working conditions, including physical abuse, intimidation tactics, forced labor, involuntary servitude and discrimination. The court dismissed plaintiffs' ATS claim for involuntary servitude. The case was ultimately a settlement was reached in $20 million, plus approximately $3 million in attorneys' fees and $5 million in costs.

11. *Wang Xiaoning v. Yahoo! Inc.*

Summary: The plaintiff was the wife of man that was arrested, incarcerated and tortured for advocating for democratic reform within the country. The plaintiff alleged under ATS that defendants, Yahoo Inc., provided Chinese officials with access to her husband's private e-email records, copies of e-mail messages, e-mail addresses, user ID numbers and other identifying information knowing what the Chinese government planned to do. The district court denied the defendant's motion. The case was settled for an undisclosed amount in November 2007.

VIII. TENTH CIRCUIT

A. SUMMARY OF TENTH CIRCUIT CASES

The Tenth Circuit cases thus far have not taken an expansive approach in allowing ATS claims as in *See Tu v. Koster*; *Maugein v. Newmont Mining Corporation*.

IX. ELEVENTH CIRCUIT

A. SUMMARY OF ELEVENTH CIRCUIT CASES

The Eleventh Circuit has taken a more expansive view of liability under the ATS than most other circuits, but it has limited liability to some extent. The key case is *Aldana v. Fresh Del Monte Produce Inc.* There the Eleventh Circuit rejected ATS claims for "cruel, inhuman, degrading treatment or punishment," "arbitrary detention," and "crimes against humanity" but allowed ATS claims for "state-sponsored torture." In contrast, the Seventh Circuit has held that the plaintiffs *cannot* file ATS claims for torture – a plaintiff can only file such claims under the TVPA. *See Enahoro v. Abdulsalami*, finding that the TVPA occupies the field and thus a plaintiff cannot file common law torture or extrajudicial killing claims under the ATS. Aside from *Aldana*, other important cases include *Estate of Rodriguez v. Drummond Co.*; *Suarez v. Drummond Co.* and *Sinaltrainal v. Coca-Cola Company*.

B. PENDING ELEVENTH CIRCUIT CASES

1. *Carrizosa v. Chiquita Brands Int'l, Inc.*

Summary: A group of Colombian plaintiffs filed suit against Chiquita Brands International ("Chiquita") and Chiquita Fresh North America LLC ("Chiquita Fresh"), a Chiquita subsidiary, on behalf of deceased family members, who were banana workers and other civilians. The plaintiffs alleged similar facts to those alleged in *Doe v. Chiquita Brands Int'l Inc.* that Chiquita, through its Colombian subsidiary Banadex, made regular payments to a right-wing paramilitary group known as the Autodefensas Unidas de Colombia ("AUC"), which kidnapped and murdered the plaintiffs' relatives. The plaintiffs claimed that Chiquita's support of the AUC amounted to extrajudicial killing and material support to a terrorist organization resulting in death under the ATS, as well as negligent hiring and negligent supervision. The plaintiffs also stated that Chiquita and Chiquita Fresh had offices and conducted business in Florida.

Status: The plaintiffs filed their complaint in the District Court for the Southern District of Florida in June, 2007, and the defendants filed a motion for change of venue to the District of Columbia in July, 2007. Finding that the defendants did not demonstrate that "judicial efficiency gains will 'clearly outweigh' plaintiffs' choice" of venue, the court denied the defendants' motion to change venue. Chiquita's admission of contribution of funds to FARC and AUC led to a $25 million fine imposed by the court. In February, 2010, the District Court ruled that Chiquita knew that it was funding a terrorist organization and concluded that the funding from Chiquita strengthened the FARC movement. The court allowed the law suit to continue and dismissed Chiquita's motion to dismiss the case. The case is pending.

2. *Estate of Rodriguez v. Drummond Co. and Suarez v. Drummond Co.*

Summary: The plaintiffs, legal representatives for the estates of three murdered Colombian trade union leaders, and a trade union called "Sintraminergetica," alleged that the trade union leaders were killed by agents or employees of the defendants, who operate a coal mine, a supporting rail line, and a port in Colombia. The plaintiffs alleged that the defendants hired paramilitary security forces to silence the leaders of unions representing workers at the defendants' facilities by using violence, murder, torture and unlawful detention, and to prevent, by intimidation, other workers from joining the union or assuming union leadership positions. The plaintiffs claimed that the deaths of the trade union leaders amounted to extrajudicial killings in violation of the ATS, the TVPA, and international law.

Status: The plaintiffs filed the complaint in U.S. District Court for the Northern District of Alabama in March, 2002. In May, 2002, the defendants filed a motion to dismiss, which the court granted in part and denied in part. During discovery, the plaintiffs' counsel allegedly violated rules of the Alabama Rules of Professional Conduct by making extrajudicial statements about the case and communicating with other represented parties. The defendants moved to disqualify the plaintiffs' counsel. In June, 2004, the court denied the motion but issued a protective order in the case.

In August, 2006, the U.S. government made an *amicus curiae* appearance in the case and in September, 2006, the plaintiffs moved to dismiss defendant Garry Drummond with prejudice, which the court granted.

In November, 2006, the defendants moved for summary judgment, which the court granted in part and denied in part. The court allowed the case to proceed only with respect to the claims of the "wrongful death plaintiffs," including the union, Sintraminergetica, for extrajudicial killing under the ATS under a theory of aiding and abetting liability and for wrongful death under Colombian law. It dismissed all other claims and causes of action, including all claims against Drummond Company. A jury trial in July, 2007, resulted in a judgment in favor of the defendants.

In March, 2009, the children of three slain Colombian union leaders filed a new lawsuit in US federal court against Drummond alleging the company's complicity in the killings. Another lawsuit was filed in US federal court against Drummond in May, 2009, alleging that the company had made payments to the AUC to kill labor leaders. Drummond has denied these allegations. While a lower court dismissed the lawsuit brought by the union leaders' children, in February, 2011, the court of appeals reversed the dismissal and remanded the case to District court. The court of appeals found that the children did have standing to pursue their claims against Drummond and remanded their previously dismissed claims under the ATS and the TVPA.

C. CLOSED ELEVENTH CIRCUIT CASES

1. *Aldana v. Fresh Del Monte Produce Inc.*

Summary: The plaintiffs alleged that Del Monte and its subsidiary, Bandegua, hired security forces in Guatemala to intimidate local union leadership to influence the outcome of an ongoing

collective bargaining agreement between management and employees. Specifically, the plaintiffs alleged that Del Monte met with security forces to coordinate acts of violence, including the forced resignations of union leaders. The plaintiffs claimed that the defendants were liable under the ATS for torture, kidnapping, unlawful detention, crimes against humanity, and denial of the right to associate and organize. They also alleged violations of the TVPA for torture and extra-judicial killing and of various domestic torts. The plaintiffs asserted that Del Monte was liable for the acts of its wholly-owned subsidiaries and the acts of the subsidiaries in concert with third parties. Further, the plaintiffs alleged that Del Monte, acting through its subsidiaries, hired armed individuals to commit acts of violence against the plaintiffs and, therefore, was vicariously liable for the acts of these alleged agents.

Status: In May, 2002, the defendants filed a motion to dismiss which the District court denied. In December 2003 the court granted defendant's motion to dismiss for lack of subject matter jurisdiction, for failure to state a claim, and *forum non conveniens*, which the plaintiffs appealed.

In July, 2005, the Eleventh Circuit affirmed in part and vacated in part the district court's dismissal. After analyzing *Sosa*, the Eleventh Circuit held that the ATS could not support claims for "cruel, inhuman, degrading treatment or punishment," "arbitrary detention," or "crimes against humanity." The Eleventh Circuit also held, however, that the "state-sponsored torture" claims under the ATS and the TVPA could proceed based on a favorable reading of the complaint, and remanded the case for further proceedings. In July, 2005, the defendants filed a petition for rehearing *en banc* in the Eleventh Circuit, which denied the petition. The plaintiffs' petition for *certiorari* was likewise denied.

In October, 2007, the court dismissed the case for *forum non conveniens*. In doing so, the court held that an adequate and available alternative forum exists in Guatemala, the misconduct occurred in Guatemala, the entirety of the witnesses except the plaintiffs are located in Guatemala, the vast majority of documentary evidence is in Spanish and thus would require translation for admission in U.S. courts, and the vast majority of witnesses do not speak English. As a result, the court held that while there is a strong public interest in allowing claims under the ATS to proceed in the U.S., this case represented "positive evidence of unusually extreme circumstances' in that *all* of the evidence involved, except for the plaintiffs' testimony, is located in Guatemala."

2. *Baloco ex rel. Tapia v. Drummond Co. Inc.*

Summary: The children of three former union leaders murdered in Colombia alleged that Drummond entities and its employees hired paramilitaries from the United Self Defense Force of Colombia to assassinate their fathers. They alleged that the murders of their fathers caused them damages including emotional harm, loss of companionship and financial support. The Circuit court reversed the district court's dismissal of the Children's complaint for lack of standing on their TVPA and ATS claims and remanded the district court's dismissal of the TVPA and ATS claims on res judicata grounds.

3. *Cabello v. Fernandez-Larios*

Summary: After the 1973 *coup d'état* in Chile, military officers executed Chilean economist Winston Cabello. In February, 1999, Cabello's survivors filed a lawsuit in federal district court in Florida, alleging international law violations under the ATS and the TVPA. The plaintiffs alleged that the defendant, Fernandez-Larios, a former Chilean military officer who had been granted asylum in the U.S., participated in the execution. The plaintiff alleged "extra-judicial killing, torture, crimes against humanity, and cruel, inhuman or degrading punishment." Fernandez-Larios denied the killing, as well as participating in the assassination of the former Chilean ambassador to the U.S. in Washington.

Status: A jury awarded the plaintiffs $3 million in compensatory damages and $1 million in punitive damages. The defendant appealed on the grounds that the statute of limitations barred their claims and neither the TVPA nor the ATS provided private rights of action and that the defendant lacked command responsibility and did not participate personally in the actions. The court rejected the defendant's arguments and affirmed the judgment. The court held that the statute of limitations did not bar the claim because of "equitable tolling." The court also held that the TVPA could apply retroactively because it merely extended the ATS to allow citizens of the United States to assert claims for torture and extrajudicial killing.

On a post-judgment motion, the court upheld the verdict holding that the plaintiffs could maintain their claims based on two theories of "indirect liability" under either the ATS or the TVPA. To hold the defendant liable for aiding and abetting, the plaintiffs were required to prove active participation by a preponderance of the evidence. To hold the defendant liable for conspiracy, the plaintiffs similarly needed to prove by a preponderance of the evidence that "two or more persons agreed to commit a wrongful act, [the defendant] joined the conspiracy knowing of at least one of the goals of the conspiracy and intending to help accomplish it, and one or more of the violations was committed by someone who was a member of the conspiracy and acted in furtherance of the conspiracy." The district court found that Fernandez-Larios was liable "where a junior officer was more than merely present and instead acted to further the conspirator's objectives." The Eleventh Circuit affirmed the decision.

4. *Doe v. Drummond Company*

Summary: The plaintiffs, relatives of victims of paramilitary violence, alleged under ATS that the defendants, Drummond Company Inc., enlisted paramilitaries to pacify the area of Colombia where Drummond mines and transports coal. The defendants moved to dismiss the case on grounds including lack of basis to find that the defendants conspired, and lack of basis that these acts were "war crimes." The court denied the plaintiffs' claims and dismissed the case.

5. *Jean v. Dorelien*

Summary: Two plaintiffs filed suit against a former Haitian Armed Forces Colonel under the TVPA, the ATS, and Florida's Uniform Fraudulent Transfer Act ("FUFTA"). The plaintiffs alleged that the Colonel tortured one of the plaintiffs and murdered the husband of the other plaintiff. Moreover, the plaintiffs alleged that the Colonel and another defendant, Lump Sum Capital, LLC, violated FUFTA by transferring $3.2 million that the Colonel had won in the

Florida State Lottery to Lump Sum Capital to protect the money from a judgment that the plaintiffs had against the defendant in Haiti.

Status: The district court granted the defendants' motion to dismiss all of the plaintiffs' claims. In dismissing the ATS and TVPA claims against the colonel, the district court held that the claims were barred by the applicable statute of limitations and by the plaintiffs' failure to exhaust available remedies in Haiti. The court also dismissed the FUFTA claims against Lump Sum Capital because the plaintiffs purportedly did "not object [] to dismissal of defendant Lump Sum Capital as an innocent stakeholder whose further involvement is unnecessary to the prosecution."

The plaintiffs appealed the district court's dismissal and in December, 2005, the Eleventh Circuit reversed the district court's dismissal, holding that equitable tolling allowed the plaintiffs to state a claim under the TVPA because "the statute of limitations must be tolled at least until [the defendant] entered the United States and personal jurisdiction could be obtained over him." Moreover, because the case involved a military regime with widespread human rights violations, the plaintiffs alleged "sufficient facts" to warrant equitable tolling. The court also held that the district court had erred in dismissing the ATS claims for failure to exhaust remedies in Haiti because the "exhaustion requirement does not apply to the ATS" – it only constitutes an "affirmative defense" under the TVPA. The Eleventh Circuit further commented that the defendants could not meet the "substantial" burden of proof required to establish "exhaustion" as an affirmative defense. Finally, the court reinstated the FUFTA claim, because the district court based its decision on an erroneous review of the record. The court remanded the case to the district court for further proceedings.

A jury trial was held in February, 2007, which found the defendant liable for extrajudicial killing, crimes against humanity, torture, and arbitrary detention, awarding the plaintiffs $3.5 million in compensatory damages and $800,000 in punitive damages. In August 2007 the court awarded the plaintiffs $3 million in compensatory damages and $700,000 in punitive damages. Simultaneously the Haitian Raboteau Massacre Trial convicted Dorélien and 52 other soldiers and death squad members of human rights violations. The plaintiffs then moved to domesticate the Haitian civil judgment in the Raboteau Massacre Trial in order to make it enforceable in Florida. In August, 2006, the state court ruled that the Haitian judgment was enforceable in the U.S. Dorélien appealed. In August, 2007, the Florida First District Court affirmed the lower court's enforcement of the Haitian judgment, thus exhausting Dorélien's appeals. Based on the domesticated Haitian judgment, plaintiffs recovered Dorelien's lottery winnings.

6. *Licea v. Curacao Drydock Co. Inc.*

Summary: The Plaintiffs sought compensatory and punitive damages for physical and psychological injuries they suffered as victims of a forced labor scheme. The Defendants, Curacao Drydock Company, in concert with the Fidel Castro regime, trafficked them to Curacao and extracted their labor. The courts found in favor of the plaintiffs.

7. *Magnifico v. Villanueva*

Summary: The Plaintiffs, citizens of the Philippines, seek damages from the defendants, Star One Staffing Inc., alleging forced labor and human trafficking in addition to violations of both

federal and state fair labor laws for denial of overtime compensation and other common law claims. Plaintiffs assert claims under TVPA, ATS and Racketeer Influenced and Corrupt Organizations Act. The court denied the defendants' motion to dismiss.

8. *Minor R.M. v. Bin Rashid,*

Summary: The plaintiffs alleged that thousands of young boys were abducted from South Asia and Africa, trafficked to the United Arab Emirates ("UAE"), and enslaved as camel jockeys, camel trainers, and camel tenders. They alleged that the defendants, both members of the UAE's wealthy elite who owned businesses and property in Florida, enslaved the boys to care for, train, and race camels, and also caused the enslavement of boys by other sheiks. The plaintiffs filed a class action suit on behalf of all minors, or their guardians, abducted from Bangladesh, Pakistan, Sudan, or other South Asian or African countries and taken to the UAE, or induced to leave these countries to travel to the UAE to work in the camel industry.

Status: In November 2006 the court referred the case to mediation and to a magistrate judge and set a jury trial for July 2008. In December 2006 the defendants filed a motion to dismiss the complaint. The court dismissed the complaint without prejudice in July 2007.

9. *Prince Hotel, SA v. Blake Marine Group*

Summary: The Plaintiff, Price Hotel, sued the Defendant, Blake Marine Group, for nonpayment of hotel charges incurred during a relief work in Port-au-Prince, Haiti. Prince Hotel asserts that under ATS, the district court had subject matter jurisdiction to hear the case. The district court concluded that it lacked jurisdiction and dismissed the action without prejudice. The circuit court affirmed the district court's decision.

10. *Sinaltrainal v. Coca-Cola Company*

Summary: In 2001, the plaintiff, Sinaltrainal, a Colombian trade union, and individual plaintiffs alleged that Coca-Cola, either through its agents or its alleged alter egos, hired paramilitary units to terrorize and murder union organizers at bottling plants in Colombia. The plaintiffs alleged that Coca-Cola and its affiliates were liable under the ATS and the TVPA for human rights abuses, including murder, extrajudicial killing, kidnapping, unlawful detention and torture. The plaintiffs further alleged that Coca-Cola and its affiliates were liable for the denial of the plaintiffs' right to associate and organize, and, under RICO, for an alleged pattern of threats and extortion and various domestic torts. The plaintiffs alleged that Coca-Cola was jointly and severally liable for all the acts of its subsidiaries and/or vicariously liable for the acts of its alleged agents, the paramilitary units.

Status: In March, 2003, the court removed the Coca-Cola Company as a defendant because the murder occurred outside the United States, but allowed the case to go forward against two Coca-Cola bottlers in Colombia.

In September, 2006, the court dismissed the case against the Colombian bottlers for lack of subject matter jurisdiction. The court held that the plaintiffs' allegations were too conclusory, vague, and attenuated to adequately plead a violation of the law of nations. It highlighted the

similarities with *Aldana,* and then noted that the Eleventh Circuit's decision in *Aldana* left "some uncertainty" as to the proper pleading standard for ATS claims that rely on theories of vicarious liability, contain allegations of "attenuated connections between the tortfeasors and the defendants," and require a showing of state action. It concluded, however, that it "appears that the heightened pleading standard in the context of certain cases... is still the law of this Circuit," and it was appropriate to apply such a standard for cases involving law of nations violations. The court then found that the plaintiffs had alleged only "colorable" violations of the law of nations. For claims that did not require state action, the court held that the plaintiffs had failed to allege facts that could give rise to war crimes, genocide, or crimes against humanity by private actors under the heightened pleading standard or even lesser standards. With respect to claims requiring state action, the court found that the plaintiffs had failed to plead facts to sufficiently show the existence of a relationship between the defendants and Colombian paramilitaries such that state action could be imputed to the defendants. It added that the plaintiffs' agency theories were "wholly conclusory" and the conspiracy allegations were insufficient to provide subject matter jurisdiction. The court also dismissed the TVPA claims, stating that claims for torture can only be heard if they fall within the jurisdiction conferred by the ATS, which was not present in this case.

The plaintiffs appealed the ruling and in March, 2007, the court granted the plaintiffs' motion to stay the proceedings, noting that status reports were due on the fifteenth of every month. In August, 2009, the Eleventh Circuit affirmed the lower court's dismissal of the lawsuit.

11. *Ungaro-Benages v. Dresdner Bank AG*

Summary: The plaintiff Ursula Ungaro-Benages filed suit against two German banks, Dresdner Bank and Deutsche Bank, to recover assets for her family's estate. Plaintiff alleged that the banks, though the Nazi Regime's program of "Aryanization," stole her family's interest in its manufacturing company, Orenstein & Koppel.

Status: The district court granted summary judgment for the defendant on multiple grounds, including the political question doctrine, international comity, statute of limitations, and failure to state a claim. The district court, however, rejected the defendants' act of state argument. The Eleventh Circuit affirmed the district court's dismissal. The court held that the political question doctrine did not bar the plaintiffs' claims, but it found that the lower court had properly dismissed the case on international comity grounds because Germany was an adequate, alternative forum. The court noted that the case took place entirely in Germany, and the German government and the Executive Branch agreed to an alternative mechanism for resolving the claims. In addition, the court said, the Supreme Court had determined that the agreement preempted any contrary state law because the state laws would interfere with the President's foreign affairs powers. Accordingly, the court affirmed the dismissal of the claims.