

THE SODERQUIST CENTER

The Alien Tort Claims Act, Part I

Dated Law Damages U.S. Companies

John D. Copeland

Editor's note: This is the first part of a two-part series on the Alien Tort Claims Act of 1789. Author John D. Copeland examines its recent use against U.S. companies for human rights abuses in foreign countries. The second article covers the act's impact on U.S. foreign policy.

Congress passed the Alien Tort Claims Act in 1789 to redress the problem of piracy. The Act gave United States federal courts jurisdiction in civil cases brought by aliens for wrongful acts committed in violation of U.S. treaties or the law of nations. Considered obsolete, the law remained largely forgotten for more than two hundred years until its rediscovery by creative plaintiff lawyers.

Human Rights Abuses

Lawyers experienced in massive litigation actions against tobacco and asbestos companies now use the Act against U.S. companies doing business in other countries. Lawsuits filed under the act attempt to hold U.S. companies liable for human rights abuses committed by the U.S. companies' foreign business partners, suppliers, and the governments in which the companies do business.

For plaintiff lawyers the Act represents a new source for millions of dollars in fees.

Is it ethical, however, to use the act against U.S. companies doing business in foreign countries under those countries' laws? Here are five cases to consider.

Case I: In 2007, an Alabama-based coal company, Drummond, successfully defended its coal mining operations in a case filed under the Act for the deaths of union leaders killed in 2001 at the company's mine near La Loma, Columbia. The United Steel Workers of America and International Labor Rights Fund sued Drummond on behalf of the slain men's families. The plaintiffs claimed the company aided paramilitary groups involved in the slayings. A jury found no link between Drummond and the paramilitary groups.

Case II: Wal-Mart faces a class-action under the Act brought for thousands of residents of China, Bangladesh, Indonesia, Swaziland, and Nicaragua for the labor practices of Wal-Mart's suppliers. The

plaintiffs want the world's largest retailer held vicariously liable for its supplier's alleged mistreatment of foreign workers.

Case III: The relatives of 17 men killed by a Colombian military airstrike against rebel forces are suing Occidental Petroleum Corp. for the deaths. They claim a security contractor hired by Occidental worked with Columbia's military to kill leftist rebels accused of sabotaging Occidental's Colombian oil pipeline. The slain men's families contend the airstrike killed innocent civilians.

Case IV: Family members of Nigerians killed by Nigerian security forces sued Chevron for the deaths of protesters outside a refinery owned by a Chevron subsidiary.

Case V: Exxon Mobile continues to fight a lawsuit filed against it for villagers who lived near Exxon Mobile's liquid natural gas plant in the Aceh province of Indonesia. The villagers claim Exxon Mobile hired security forces from Indonesia's military to protect the plant and these forces murdered, tortured, sexually assaulted and falsely imprisoned villagers.

Improper forum

The Alien Tort Claims Act exposes U.S. businesses to financial liability and large legal defense costs under an obsolete act for legally doing business in foreign countries. U.S. Courts are not the proper forum to address human rights abuses committed in foreign countries by non-U.S. citizens against other non-U.S. citizens.