



## Corporate Liability for Human Rights Abuses by Foreign Operatives? U.S. Supreme Court to Consider if Victims Can Recover Damages from Corporations

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On October 18, 2011, the Supreme Court of the United States agreed to consider whether corporations can be sued in U.S. courts for acts that take place outside of the country. *Kiobel v. Royal Dutch Petroleum*, S. Ct. Dkt. No. 10-1491. The Supreme Court arguments will most likely be heard in early 2012, followed by the Court's written decision sometime before the Court's term ends in June 2012.

*Kiobel* involves the Alien Tort Statute, 28 U.S.C. § 1350, a law enacted in 1789 which allows U.S. courts to adjudicate tort claims based on violations of "the law of nations" or international treaties. In 1980, the Supreme Court clarified that the "law of nations" means customary international law. Since then, victims of heinous international human rights abuses — including torture, war crimes, and genocide — have recovered damages from foreign individuals in U.S. courts.

The plaintiffs in *Kiobel* are Nigerian residents; the defendants are Dutch, British, and Nigerian corporations involved in oil exploration and production. The plaintiffs argue that the defendants were complicit in human rights violations committed by Nigerian government personnel. Specifically, members of the Nigerian police/army were allegedly called upon to protect the defendants' facilities, were reimbursed by the defendants, and subsequently assaulted and abused the plaintiffs. The acts allegedly occurred in the delta region of the Niger River in violation of United Nations codes of fundamental human rights. Factually similar claims have been made against corporations relating to alleged acts in Liberia, Indonesia, and Papua New Guinea.

The primary issue presented in the *Kiobel* case is whether corporations are subject to civil tort liability under the Alien Tort Statute. The U.S. Court of Appeals for the 2nd Circuit dismissed the plaintiffs' claims in a split decision. *Kiobel v. Royal Dutch Petroleum*, 621 F.3d 111 (2d Cir. 2010). Other U.S. Circuit Courts (the 7th Circuit, the 9th Circuit, the 11th Circuit, and the D.C. Circuit) have applied

the Alien Tort Statute to corporations. The 2nd Circuit, by contrast, reasoned that customary international law "has steadfastly rejected the notion of corporate liability for international crimes," and that "no international tribunal has ever held a corporation liable for a violation of the law of nations." On this basis, the majority opinion concluded that corporations are immune from tort liability under the Alien Tort Statute. One judge strongly disagreed, raising concerns that the ruling will allow perpetrators of international human rights abuses to shield themselves from Alien Tort Statute liability:

According to the rule my colleagues have created, one who earns profits by commercial exploitation of abuse of fundamental human rights can successfully shield those profits from victims' claims for compensation simply by taking the precaution of conducting the heinous operation in the corporate form.

It appears that the Supreme Court accepted review of the *Kiobel* case to resolve the Circuit Court split over whether corporations are subject to the Alien Tort Statute. If the Supreme Court determines that the Alien Tort Statute allows lawsuits to proceed in U.S. courts against allegedly complicit corporations when the actual human rights offenses were carried out by foreign operatives, a new arena of liability exposures must be anticipated. As the Court's forthcoming decision could greatly impact corporate and insurer clients, Cozen O'Connor will continue to monitor the *Kiobel* case and will provide updates on new developments.

*To discuss any questions you may have regarding the issues discussed in this alert, or how they may apply to your particular circumstances, please contact Richard F. Allen at 206.373.7204 or [rallen@cozen.com](mailto:rallen@cozen.com); Melissa O'Loughlin White, Chair of the Appellate Practice Area, at 206.373.7240 or [mwhite@cozen.com](mailto:mwhite@cozen.com); or Ilan Rosenberg at 215.665.4621 or [irosenberg@cozen.com](mailto:irosenberg@cozen.com).*