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# Corporate Human Rights Litigation in Non-U.S. Courts: A Comparative Scorecard

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# Corporate Human Rights Litigation in Non-U.S. Courts: A Comparative Scorecard

Michael D. Goldhaber\*

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## INTRODUCTION

In the mid-1990s, activist lawyers on both sides of the Atlantic were trying to figure out a way to hold multinational corporations liable for human rights and environmental abuses committed in other nations. Lawyers in the United States primarily chose to use the vehicle of the Alien Tort Statute (ATS).<sup>1</sup> Meanwhile, lawyers in the United Kingdom began filing old-fashioned common law tort suits. Despite the rivers of ink devoted to alien tort, a strong argument may be made

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1. Alien Tort Statute, 28 U.S.C. § 1350 (2006).

that the common law approach has been more effective. Currently, the Supreme Court is questioning the applicability of the ATS to either companies or overseas conduct. Reviewing the non-U.S. experience may help to evaluate the prospects of success for human rights plaintiffs pursuing common law theories in any court.

#### I. WHAT ALIEN TORT SUITS AGAINST CORPORATIONS HAVE ACHIEVED

In 1995, the U.S. Court of Appeals for the Second Circuit first applied the ATS to a non-state actor: a Bosnian Serb general named Radovan Karadžić.<sup>2</sup> That gave advocates an opening to try extending the ATS to corporate, non-state actors. Unfortunately, it would be fifteen years before the theory was tested in court.<sup>3</sup>

In 1996, in *Wiwa v. Royal Dutch Petroleum Co.*, the Center for Constitutional Rights filed an ATS suit against Shell for its conduct in Nigeria.<sup>4</sup> Private counsel followed by filing *Kiobel v. Royal Dutch Petroleum Co.*, based on overlapping facts, in 2002.<sup>5</sup> *Wiwa* settled for \$15.5 million before trial in 2009.<sup>6</sup> *Kiobel* provided the occasion for the Second Circuit to repudiate the ATS's application to corporations in 2010, and may now provide the occasion for the U.S. Supreme Court to narrow the doctrine in one way or another.<sup>7</sup>

All told, about 180 alien tort disputes have been filed against business entities, according to the invaluable research of alien tort commentator Jonathan Drimmer.<sup>8</sup> These suits have resulted in two default judgments on ATS grounds<sup>9</sup> and thirteen settlements.<sup>10</sup> Most of the settlements are confidential, but the six

2. Kadic v. Karadžić, 70 F.3d 232 (2d Cir. 1995).

3. See Michael Goldhaber, *The Life and Death of the Corporate Alien Tort*, LAW.COM, (Oct. 12, 2010), [http://www.law.com/jsp/article.jsp?id=1202473215797&The\\_Life\\_and\\_Death\\_of\\_t](http://www.law.com/jsp/article.jsp?id=1202473215797&The_Life_and_Death_of_t).

4. *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000).

5. *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 11 (2d Cir. 2010), *cert. granted*, 80 U.S.L.W. 3237 (Oct. 17, 2011) (No. 10-1491).

6. See Michael D. Goldhaber, *A Win for Wiwa, a Win for Shell, a Win for Corporate Human Rights*, AM. LAW DAILY (June 10, 2009, 12:00 AM), <http://amlawdaily.typepad.com/amlawdaily/2009/06/a-win-for-wiwa-a-win-for-shell-a-win-for-corporate-human-rights.html>.

7. See Michael D. Goldhaber, *The Global Lawyer: Human Rights Plaintiffs Can't Even Pick Their Poison*, AM. LAW DAILY (Mar. 19, 2012, 4:00 PM), <http://amlawdaily.typepad.com/amlawdaily/2012/03/the-global-lawyer-human-rights-plaintiffs-cant-even-pick-their-poison.html>.

8. Jonathan Drimmer, *Corporate ATS Cases*, Appendix A, *infra*.

9. *Licea v. Curaçao Drydock Co.*, 584 F. Supp. 2d 1355, 1366 (S.D. Fla. 2008) (entering an \$80 million default judgment against a business entity in an alien tort claim); *Aguilar v. Imperial Nurseries*, No. 3-07-cv-193 (JCH), 2008 WL 2572250 (D. Conn. May 28, 2008) (entering default judgments against defendants Pro Tree Forestry Services, William Forero, and Hernando Aranda).

10. *In re Xe Servs. Alien Tort Litig.*, 665 F. Supp. 2d 569 (E.D. Va. 2009) (settled with consolidated cases *Estate of Abtan v. Blackwater Lodge & Training Ctr.*, 611 F. Supp. 2d 1 (D.D.C. 2009), *Estate of Hassoon v. Prince*, No. 1:09-CV-01696 (E.D. Va. June 2, 2009), *Estate of Rabea v. Prince*, No. 1:209-cv-00645 (E.D. Va. 2009), and *Estate of Albazzaz v. Blackwater Worldwide*, No. 1:2007-cv-02273 (E.D. Va. 2007)); *Shiguago v. Occidental Petroleum Corp.*, No. 206CV04982, 2009 WL 2921372 (C.D. Cal. Aug. 25, 2009); *Mainawal Rahman Bldg. & Constr. Co. v. Dyncorp Int'l*, No. 1:08-cv-01064 (E.D. Va. Oct. 10, 2008); *Aguilar*, 2008 WL 2572250; Joint Stipulation of

sums that have leaked into the public domain total about eighty million dollars, averaging \$13.3 million per suit.<sup>11</sup> The highest<sup>12</sup> was Unocal Corporation's \$30 million settlement of its Burmese pipeline cases on the eve of its merger with Chevron Corporation.<sup>13</sup>

In fairness, the modest non-Holocaust-related sums understate the cost imposed on businesses by the ATS. All corporate expenditures may deter corporate misconduct—the legal fees in these 180-odd cases almost surely dwarfed the thirteen non-Holocaust settlements in size. In *Wina* alone, Royal Dutch Shell (Shell) paid about as much in attorneys' fees as it paid in settlement, even without reaching trial. It's fair to estimate that the collective cost of alien tort defense has risen into the hundreds of millions of dollars.

Nor can a price tag be put on the human rights consciousness raised by the alien tort cases that were brought against corporations. Hearts and minds were won in both the street and the boardroom. New and perhaps more effective legal strategies to promote corporate accountability were inspired and cross-fertilized.

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Dismissal, *Xiaoning v. Yahoo!, Inc.*, No. C07-02151 CW (N.D. Cal. Nov. 28, 2007); Gov't of the Dom. Rep. v. AES Corp., 466 F. Supp. 2d 680 (E.D. Va. 2006); *Does v. Gap, Inc.*, No. CV-01-0031, 2003 WL 22997250 (D. N. Mar. I. Sept. 11, 2003); *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163 (S.D.N.Y. 2001) (settled with companion case *Adamu v. Pfizer, Inc.*, 562 F.3d 163 (S.D.N.Y. 2001)); *Doe v. Reddy*, No. C 02-05570 WHA, 2004 WL 5512966 (N.D. Cal. Mar. 24, 2004); *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000); *Eastman Kodak Co. v. Kavlin*, 978 F. Supp. 1078 (S.D. Fla. 1997); *Bodner v. Banque Paribas*, 114 F. Supp. 2d 117 (E.D.N.Y. 1997); *Doe v. Unocal Corp.*, 395 F. Supp. 932 (C.D. Cal. 1996) (settled with companion case *Roe v. Unocal Corp.*, 70 F. Supp. 2d 1073 (C.D. Cal. 1996)).

11. See Paul Magnusson, *A Milestone for Human Rights*, BLOOMBERG, Jan. 23, 2005, at 63 (noting the \$30 million combined settlement in *Unocal*, 395 F. Supp. 932, and *Unocal*, 70 F. Supp. 2d 1073); Janice Podsada, *Granby Firm Pays Migrants' Wages; Federal Suit Led to Settlement*, HARTFORD COURANT, Aug. 2, 2007, at E2 (giving the amount of settlement resolving *Aguilar v. Imperial Nurseries*, No. 3-07-cv-193 (JCH), 2008 WL 2572250 (D. Conn. May 28, 2008), and a parallel suit by the U.S. Department of Labor as \$40,000); Liz Sly, *Iraqis Want Blackwater Deal Voided*, L.A. TIMES, Jan. 11, 2010, at A16 (noting settlement payments of \$100,000 each to nineteen families, and \$20,000 to \$30,000 each to forty-five individuals); Mark Spencer, *Settlement Ends Workers' Suit*, HARTFORD COURANT, June 26, 2007, at 6 (noting settlement in *Aguilar*, 2008 WL 2572250); Jenny Strasburg, *Saipan Lawsuit Terms OK'd*, S.F. CHRON., Apr. 25, 2003, at B1 (noting the \$20 million settlement in *Gap, Inc.*, 2003 WL 22997250); Goldhaber, *supra* note 6 (noting the \$15.5 million settlement in *Wina*, 226 F.3d 88); *Victories*, ALTSHULER BERZON LLP, [http://altshulerberzon.com/case/victories?case\\_type=campaign\\_and\\_election](http://altshulerberzon.com/case/victories?case_type=campaign_and_election) (last visited Feb. 12, 2013) (noting an \$11 million settlement in *Reddy*, 2004 WL 5512966).

12. I am notably excluding Holocaust-related alien tort settlements, which amounted to billions of dollars, but depended in significant part on diplomatic pressure and negotiation. See *Unfinished Justice: A Conversation with Michael Bazzyler*, REFORM JUDAISM, <http://reformjudaism.org/Articles/index.cfm?id=1316> (last visited Feb. 12, 2013) (stating that the Swiss banks' Holocaust settlement that finalized on January 26, 1999 "ushered in a . . . wave of new class-action suits, resulting in \$8 to \$10 billion in new funds"). See generally MICHAEL J. BAZZYLER, HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA'S COURTS (2003) (providing an in-depth study of Holocaust restitution litigation in America).

13. Total, which collaborated with Unocal on the Burmese pipeline, struck a separate settlement in French court for \$6.1 million. See *Total to Pay Burmese Compensation*, BBC NEWS (Nov. 29, 2005, 5:29 AM), <http://news.bbc.co.uk/1/hi/business/4482536.stm>.

## II. ACHIEVEMENTS OF U.K. COMMON LAW SUITS AGAINST CORPORATIONS

In August 2011, four months after farmers and fishermen from the Nigerian village of Bodo filed a common law complaint in the London High Court of Justice, Shell's Nigerian subsidiary, the Shell Petroleum Development Company, admitted liability for a pair of oil spills in return for the parent company's dismissal from the suit.<sup>14</sup> The *Financial Times* trumpeted the potential payout of over \$400 million,<sup>15</sup> but the Shell Petroleum Development Company called this number massively exaggerated.<sup>16</sup> As of January 2013, the case was reportedly still headed for trial,<sup>17</sup> suggesting that the plaintiffs and Shell's subsidiary were unable to reach an agreement as to damages following the settlement as to liability.

Although the final outcome of the *Bodo Community v. Shell Petroleum Development Co. of Nigeria* case is shrouded in mystery, even a massively exaggerated \$400 million after four months compares quite favorably to the \$15.5 million after thirteen years that Shell paid in *Wina*, let alone the ruin wrought by *Kiobel* on the alien tort movement after a decade of litigation.

Richard Meeran of Leigh, Day & Co., the law firm that filed *Bodo*, has pushed four prior human rights common law disputes to a complete resolution in London High Court.<sup>18</sup> Only one was defeated on legal grounds.<sup>19</sup> Claims by forty-one South African workers against a mercury-based chemical manufacturer resulted in settlements in 1997 and 2000 worth about £3.3 million, excluding legal fees.<sup>20</sup> A London suit by 7,500 South African asbestos miners (and their intervention in a South African suit) led to a pair of settlements in 2003 worth about £10.5 million, excluding fees.<sup>21</sup> A suit by thirty-three Peruvians alleging

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14. *Bodo Cmty. v. Shell Petroleum Dev. Co. of Nigeria*, [2012] EWHC (QB) HQ11X01280; Michael D. Goldhaber, *The Global Lawyer: U.K. Shell Deal Spotlights Value of Common Law Model for Human Rights Litigation*, CORP. COUNS. (Aug. 31, 2011), [http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202512820360&UK\\_Shell\\_Deal\\_Spotlights\\_Value\\_of\\_Common\\_Law\\_Model\\_for\\_Human\\_Rights\\_Litigation](http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202512820360&UK_Shell_Deal_Spotlights_Value_of_Common_Law_Model_for_Human_Rights_Litigation).

15. Sylvia Pfeifer & Jane Croft, *Shell's Nigeria Pay-Out Could Top £250m*, FIN. TIMES (Aug. 3, 2011, 7:21 PM), <http://www.ft.com/cms/s/0/4209f536-bde8-11e0-ab9f-00144feabdc0.html#axzz25RHY8JAs>.

16. An Open Letter on Oil Spills from the Managing Director of the Shell Petroleum Development Company of Nigeria Ltd, SHELL (Apr. 8, 2011), [http://www.shell.com.ng/home/content/nga/aboutshell/media\\_centre/news\\_and\\_media\\_releases/2011/open\\_letter\\_04082011.html](http://www.shell.com.ng/home/content/nga/aboutshell/media_centre/news_and_media_releases/2011/open_letter_04082011.html).

17. Ivana Sekularac & Anthony Deusch, *Dutch Court Says Shell Responsible for Nigeria Spills*, REUTERS (Jan. 30, 2013), <http://www.reuters.com/article/2013/01/30/us-shell-nigeria-lawsuit-idUSBRE90S16X20130130> (reporting that "Bodo's case could be heard in the High Court in London next year").

18. See Richard Meeran, *Tort Litigation Against Multinational Corporations for Violation of Human Rights: An Overview of the Position Outside the United States*, 3 CITY U. H.K. L. REV. 1, 26, 34, 39, 41 (2011).

19. See *Connelly v. RTZ Corp.*, [1998] A.C. 854 (H.L.) (appeal taken from Eng.) (personal injury suit by Namibian uranium miners barred by statute of limitations).

20. See, e.g., *Ngcobo v. Thor Chems. Holdings Ltd*, T.L.R. 10 (Eng.); *Sithole v. Thor Chems. Holdings*, [1999] EWCA (Civ) 706, (appeal taken from Eng.).

21. *Lubbe v. Cape Plc*, [2000] UKHL 41 (H.L.).

corporate complicity in their torture by the Peruvian police for protesting a copper mine resulted in a confidential settlement in 2011.<sup>22</sup>

But Leigh Day's biggest known win for business human rights came when Martyn Day obtained a settlement of £30 million (equivalent to \$48 million U.S.) from the commodities trader Trafigura Beheer B.V. on behalf of nearly 30,000 Ivorians who were allegedly sickened by toxic waste dumped off the coast of Abidjan.<sup>23</sup> Subsequent litigation revealed that the £30 million allotted for victims was in addition to an insurance premium of nearly £10 million and legal fees costing tens of millions.<sup>24</sup> By contrast, the U.S. lawyers' contingency fees were subtracted from the \$30 million headline figure in the *Unocal* settlement.

By any monetary measure, the U.S. *Unocal* settlement was outstripped by the U.K. *Trafigura* agreement. The *Financial Times* projects that it will also be substantially outstripped by the final *Bodo* settlement.<sup>25</sup> Although the sample size is small, the rate of settlement in the U.K. court is even more impressive. Leigh Day is the only law firm known to have brought U.K. human rights litigation,<sup>26</sup> and 80% (four out of five) of its U.K. business human rights disputes litigated to a full conclusion have resulted in a payout.<sup>27</sup> The comparable figure for U.S. corporate alien tort suits is 9.5%.<sup>28</sup> This may reflect poor case selection by U.S. plaintiffs' lawyers or greater resistance by U.S. defendants. But this may also reflect the vulnerability of an antiquated statute that requires sympathetic interpretation to serve the modern goal of corporate accountability for human rights abuse overseas.

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22. *Guerrero v. Monterrico Metals Plc*, [2009] EWHC (QB) 2475; *Guerrero v. Monterrico Metals Plc*, [2010] EWHC 3228.

23. Loucoumane Coulibaly & Reed Stevenson, *Trader Trafigura Says Settles Ivorian Waste Case*, REUTERS (Sept. 20, 2009), <http://www.reuters.com/article/2009/09/20/us-trafigura-ivorycoast-idUSTRE58J1C820090920>.

24. Leigh Day claimed fees and costs of over £104 million, including an insurance premium of £9.6 million and a 100% success fee. The Court of Appeal reduced the success fee from 100% to 58% and remanded the case to a costs judge on a variety of other issues. *See Motto v. Trafigura Ltd.* [2011] EWCA (Civ) 1150; Katy Dowell, *Co.A Agrees That Leigh Day Must Reduce Trafigura Success Fee*, LAWYER (Oct. 12, 2011), <http://www.thelawyer.com/coa-agrees-that-leigh-day-must-reduce-trafigura-success-fee/1009750.article>.

25. Pfifer & Croft, *supra* note 15.

26. *Response by Leigh Day & Co. to: 1. The Proposals for the Reform of Legal Aid in England and Wales; 2. The Proposals for Reform of Civil Litigation Funding and Costs in England and Wales*, LEIGH DAY 14 (Feb. 23, 2011), <http://www.leighday.co.uk/leighday/media/leighday/documents/response-by-leigh-day-8-02-11.doc> (noting that "other UK firms have not undertaken such cases to date").

27. *See supra* notes 17–22.

28. *See Drimmer, supra* note 8. Appendix A includes 148 fully resolved legal disputes in the United States involving alien tort claims against business entities. For the purposes of this accounting, consolidated cases are treated as a single dispute, as are the parallel filings against Pfizer and parallel filings against Unocal. Fourteen of those 148 disputes ended in a settlement or default judgment, and in one instance, *Aguilar v. Imperial Nurseries*, No. 3-07-cv-193 JCH, 2008 WL 2572250 (D. Conn. May 28, 2008), both.

### III. TWO GAINS AND TWO SETBACKS FOR THE U.K. COMMON LAW THEORY

European human rights plaintiffs operate in a multilevel legal environment, and developments at each level can help or hinder their cause. One relatively recent European Union (EU) regulation confers a procedural advantage that U.S. plaintiffs can only dream of, but another cuts back on the available damages. In 2012, the movement for corporate accountability experienced a big doctrinal breakthrough in English court, but an equally big funding setback in Parliament.

#### *A. Europe Largely Abolishes Forum Non Conveniens . . .*

In 2005, the European Court of Justice interpreted the Brussels I regulation on jurisdiction to require courts in each European nation to assert jurisdiction over corporations that are domiciled or centrally administered in the EU.<sup>29</sup> For such defendants, the English doctrine of forum non conveniens was effectively abolished. Of course, as alien tort plaintiffs have learned many times, the doctrine remains alive and well in the United States.

#### *B. . . . But Europe Chooses Lex Loci Delicti for the Measure of Damages.*

English courts used to consider damages to be a procedural matter governed by the law of the forum. However, for injuries occurring after January 11, 2009, European law now mandates that damages be calculated under the law of the nation where the injury occurred.<sup>30</sup> In most cases, the damages available in a developing nation will be sharply lower.

#### *C. An English Court Finally Endorses the Theory Underpinning the Settlements . . .*

All of Meeran's cases have been premised on the theory sometimes known as foreign direct liability.<sup>31</sup> Broadly, the notion is that when a parent company is directly involved in its subsidiary's operations or exercises de facto control, then it owes a duty of care to its employees or anyone affected by its operations. Accordingly, it may be held liable for harm flowing from its failure to competently perform the functions it controls, or to give foreign subsidiaries sound advice on environmental, worker safety, and human rights policies.

For an observer of U.S. alien tort law, it was nerve-racking to watch the project for corporate accountability outside the United States relying so

29. *Owusu v. Jackson*, [2005] ECR 1383 (interpreting Council Regulation 44/2001, 2000 O.J. (L12/1) (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters).

30. Regulation 864/2007, of the European Parliament and of the Council of 11 July 2007 on the Law Applicable to Non-Contractual Obligations, 2007 O.J. (L 199) 40, 40 (EC).

31. This is not true of Day's *Trafigura* case, which was able to allege that the harm was committed directly by the parent company. *See Motto v. Trafigura*, [2011] EWCA Civ 1150, [2011] 6 Costs L.R. 1028, 1033 (U.K.) (quoting a final order by Justice MacDuff, which stated, "[T]he defendants may not raise any issue as to the indemnity principle.").

completely on a legal proposition that had yet to be directly addressed in court. And, until the U.K. Supreme Court weighs in on the subject, the possibility of a *Kiobel* moment in the U.K. cannot be foreclosed.

However, the theory of foreign direct liability was at last directly addressed on April 25, 2012 in the case of *Chandler v. Cape PLC*—and was resoundingly endorsed by the English Court of Appeal.<sup>32</sup>

*D. . . . But Parliament Destroys the Existing Model of Litigation Funding.*

Six days later, on May 1, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) received royal assent.<sup>33</sup> One effect of LASPO was to slash the recovery of fees and costs available to human rights plaintiffs as of April 1, 2013.

The three keys to Leigh Day's funding model were the ability to recover from defendants' full legal costs, success fees, and litigation insurance premiums (which protected plaintiffs against the risk of covering a victorious defendant's costs). Sure enough, LASPO generally eliminated the recovery of success fees and insurance premiums while limiting cost recovery to "proportionate" costs.<sup>34</sup>

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32. Writing for the court, Justice Mary Howarth Arden concluded:

In summary, this case demonstrates that in appropriate circumstances the law may impose on a parent company responsibility for the health and safety of its subsidiary's employees. Those circumstances include a situation where, as in the present case, (1) the businesses of the parent and subsidiary are in a relevant respect the same; (2) the parent has, or ought to have, superior knowledge on some relevant aspect of health and safety in the particular industry; (3) the subsidiary's system of work is unsafe as the parent company knew, or ought to have known; and (4) the parent knew or ought to have foreseen that the subsidiary or its employees would rely on its using that superior knowledge for the employees' protection. For the purposes of (4) it is not necessary to show that the parent is in the practice of intervening in the health and safety policies of the subsidiary. The court will look at the relationship between the companies more widely. The court may find that element (4) is established where the evidence shows that the parent has a practice of intervening in the trading operations of the subsidiary, for example production and funding issues.

*Chandler v. Cape PLC*, No. [2012] EWCA Civ 525, England and Wales App.

33. U.K. Ministry of Justice, *Royal Assent for Legal Aid, Sentencing and Punishment of Offenders Bill*, JUSTICE (May 1, 2012), <http://www.justice.gov.uk/news/press-releases/moj/royal-assent-for-legal-aid-sentencing-and-punishment-of-offenders-bill>. Although human rights claims were directly affected, Meeran believes that the hurtful provisions resulted from a general campaign by the insurance industry against "ambulance-chasing lawyers," rather than a design by multinational corporate lobbyists to discourage human rights lawsuits. E-mail from Richard Meeran to the author (July 5, 2012, 4:33 AM) (on file with author).

34. According to proposed Civil Procedure Rule 44.4(5),

Costs incurred are proportionate if they bear a reasonable relationship to: (a) the sums in issue in the proceedings; (b) the value of any non-monetary relief in issue in the proceedings; (c) the complexity of the litigation; (d) any additional work generated by the conduct of the paying party; and (e) any wider factors involved in the proceedings, such as reputation or public importance.

Lord Neuberger of Abbotsbury, *Proportionate Costs: Fifteenth Lecture in the Implementation Programme*, LAW SOCIETY, ¶ 7 (May 29, 2012) <http://www.scribd.com/doc/99904790/Proportionate-Costs-Fifteenth-Lecture-30052012-1>.



Parliament somewhat softened the blow by mostly eliminating the “loser pays” rule for personal injury (but not environmental) plaintiffs.

On the whole, the new restrictions on litigation funding, combined with the new European choice of law rule on damages, make it less likely for Leigh Day to bring human rights claims with small numbers of claimants, like the *Monterrico* or *Thor* cases.<sup>35</sup> They also make human rights a less attractive field for new U.K. plaintiffs’ law firms to enter.

#### IV. THE EXPERIENCE ELSEWHERE

This section spotlights a few instructive cases outside U.S. and U.K. courts, without presuming to be exhaustive.

##### *A. The Dutch Variation*

As in the U.K., the leading legal question in the Netherlands is foreign direct liability, and, as in so many places, the leading defendant is Shell. In the trial of *Akpan v. Royal Dutch Shell PLC*, a handful of Nigerian villagers and Dutch non-governmental organizations argued that Shell should be liable for cleaning up its subsidiary’s spills in the Niger Delta.<sup>36</sup> On January 30, 2013, Shell’s Nigerian subsidiary was held liable for damage to the fishing ponds of plaintiff Friday Akpan in the village of Ikot Ada Udo because it failed to install a concrete plug to prevent sabotage of an abandoned oil well.<sup>37</sup> However, the parent company was not held liable. In a statement, the plaintiff Friends of the Earth Netherlands said that it had been unable to establish the liability of the parent because it had been denied access to internal company documents that would prove that the parent determines the daily affairs of its subsidiary.<sup>38</sup> Friends of the Earth Netherlands said it would appeal on parental liability, and Friends of the Earth Europe argued that the ruling exposed a gap in European legislation.<sup>39</sup>

##### *B. The Australian Conundrum*

By far the largest verified human rights settlement (excluding Holocaust agreements) came in the Australian case known as *Ok Tedi*, alleging that a mine operated by a subsidiary of BHP Billiton Limited (BHP) polluted the Ok Tedi

35. E-mail from Richard Meeran to the author, *supra* note 33.

36. *Akpan v. Royal Dutch Shell Plc*, No. 337050/HA ZA 09-1580 (District Court of the Hague, Jan. 30, 2013).

37. *Id.* The amount of damages remained to be negotiated between the parties. Sekularac & Deutsch, *supra* note 17.

38. *Watershed Dutch Court Ruling Against Shell*, FOE EUROPE (Jan. 30, 2013), <http://www.foeeurope.org/Watershed-Dutch-court-ruling-against-Shell-300113>.

39. *Id.*

River in Papua New Guinea.<sup>40</sup> On June 12, 1996, BHP agreed to a cleanup projected to cost about \$350 million.<sup>41</sup>

It is a mystery worth pondering why there have been no significant business human rights cases in Australia in the sixteen years since. One possibility is that the plaintiffs' firms, in the absence of a contingency fee, lacked the incentive to take on the risk of having to pay the defense's fees, which BHP threatened in its arguments. But the current availability of third-party litigation funding ought to remove that concern. A simpler explanation is that two of the most motivated plaintiffs' lawyers (Richard Meeran and Nick Styant-Browne) moved to other countries, where they became involved in new suits for corporate accountability.

### C. Canada's Contribution

The handful of business human rights cases so far decided in Canada have all failed.<sup>42</sup> But *Anvil Mining Ltd. v. Ass'n Canadienne Contre l'Impunité* suggests an interesting path forward for common law human rights plaintiffs. In *Anvil Mining*, the plaintiffs argued that Canada should be considered a "forum of necessity."<sup>43</sup>

The forum of necessity doctrine allows a court to hear a claim, even when the standard tests for jurisdiction are not fully satisfied, if there is no other forum where the plaintiff could reasonably seek relief. It is thus the mirror image of forum non conveniens, which allows defendants to establish that a court should not hear a claim, despite the tests for jurisdiction being met, based on a range of discretionary factors. While the doctrines operate on similar principles, forum non conveniens gives defendants an extra chance to kill a case, whereas forum of necessity gives plaintiffs an extra chance to save it.

Forum of necessity has flowed freely across borders, and across the divide between civil and common law. According to Matt Eisenbrandt of the Canadian Centre for International Justice, it appears in the law of France, Germany, Netherlands, Ireland, Portugal, and Switzerland.<sup>44</sup> It migrated from Switzerland to Quebec in 1991, and from there to Canada's model act on jurisdiction, as well as the codes of Nova Scotia and British Columbia.<sup>45</sup> In the recent tort case of *Club*

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40. See *Dagi v. Broken Hill Proprietary Co.*, (1997) 428 VR 1 (Austl.).

41. Stuart Kirsch, *Cleaning Up Ok Tedi: Settlement Favors Yonggom People*, J. INT'L INST. (Fall 1996), <http://hdl.handle.net/2027/spo.4750978.0004.104>.

42. See, e.g., *Piedra v. Copper Mesa Mining Corp.*, 2010 ONSC 2421, 2010 CarswellOnt 3623 (Can. Ont. Sup. Ct.) (WL); *Recherches Internationales Québec v. Cambior Inc.*, 1998 CarswellQue 1430 (Can. Que. Sup. Ct.) (WL); *Bil'in (Village Council) v. Green Park Int'l Ltd.*, 2009 QCCS 4151, [2009] R.J.Q. 2579; *Anvil Mining Ltd. v. Ass'n Canadienne Contre l'Impunité*, 2012 QCCA 117, 2012 CarswellQue 255 (Can. Que. C.A.) (WL), application for leave to appeal denied, (Nov. 1, 2013).

43. See *Anvil Mining*, 2012 QCCA 117, at para. 95–103.

44. *Factum of the Interveners, Canadian Centre for International Justice, et al. at 3–4, Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 343 D.L.R. 4th 577 (No. 33692/33606), [http://www.cci.ca/programs/cases/index.php?WEBYEP\\_DI=15](http://www.cci.ca/programs/cases/index.php?WEBYEP_DI=15).

45. *Id.*

*Resorts Ltd. v. Van Breda*, the Ontario Court of Appeal recognized forum of necessity as a matter of common law.<sup>46</sup> And to the delight of human rights advocates, the Canadian Supreme Court let that precedent stand by avoiding the issue on final appeal.<sup>47</sup> In theory, there is no reason why forum of necessity couldn't be adopted by U.S. courts or legislatures.

#### CONCLUSION

Measured by both the size and probability of settlement, the common law approach to business human rights compares quite favorably with the alien tort approach. The largest known U.K. settlement to date was much larger than the largest known alien tort settlement, as was the *Ok Tedi* deal in Australia. Although the sample size is small, the rate of settlement in English court is even more impressive. In the five known U.K. disputes litigated to completion, plaintiffs have won four settlements, for a success rate of 80%.<sup>48</sup> Historically, U.K. business human rights suits are over eight times more likely than alien tort suits to result in a payout.

To be sure, it is not easy for human rights plaintiffs to sue corporations in English court, and Parliament is not making it any easier. The fact that England has seen fewer than ten business human rights disputes, all pursued by the same law firm, should serve as a reminder that the legal ecosystem in the U.K. is less friendly to plaintiffs than in the United States.<sup>49</sup> Recent parliamentary changes to the system of litigation funding, discussed above, have only made human rights cases less viable in the absence of mass claims.

Still, the bigger news is that the English courts last year ratified the legal theory that undergirds business human rights claims. In that respect, the contrast to the United States could hardly be greater.

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46. *Van Breda v. Village Resorts*, 2010 ONCA 84, [2010] 316 D.L.R. 4th 201 (Can. Ont. C.A.).

47. *Van Breda v. Village Resorts*, 2012 SCC 17, [2012] 343 D.L.R. 4th 577 (Can. S.C.C.).

48. *See supra* Part II.

49. One excellent review of the factors creating a hostile climate to such litigation in non-U.S. courts may be found at Robert C. Thompson, *Translating Unocal: The Expanding Web of Liability for Business Entities Implicated in International Business Crimes*, 40 GEO. WASH. INT'L L. REV. 841, 889–91 (2009). *See also* Beth Stephens, *Translating Filártiga: A Comparative and International Law Analysis of Domestic Remedies for International Human Rights Violations*, 27 YALE J. INT'L L. 1, 10–16 (2002) (discussing U.S. courts' advantages as a forum for human rights lawsuits on the model of *Filártiga v. Peña-Irala*).

**Appendix A:**  
**Corporate ATS Cases\***

Case Name	Citation <sup>1</sup>	Year <sup>2</sup>	Jdx. <sup>3</sup>	Resolution <sup>4</sup>
Khedivial Line, S.A.E. v. Seafarers' Int'l Union	278 F.2d 49 (2d Cir. 1960)	1960	S.D.N.Y.	Dismissed
Seth v. British Overseas Airways Corp.	329 F.2d 302 (1st Cir. 1964)	1961	D. Mass.	Did not consider ATS claim
Lopes v. Schroder	225 F. Supp. 292 (E.D. Pa. 1963)	1963	E.D. Pa.	Dismissed
Damaskinos v. Societa Navigacion Interamericana, S.A.	255 F. Supp. 919 (S.D.N.Y. 1966)	1964	S.D.N.Y.	Dismissed
Valanga v. Metro. Life Ins. Co.	259 F. Supp. 324 (E.D. Pa. 1966)	1966	E.D. Pa.	Dismissed
Upper Lakes Shipping Ltd. v. Int'l Longshoremen's Ass'n	293 F. Supp. 207 (S.D.N.Y. 1968)	1968	S.D.N.Y.	Dismissed
Abiodun v. Martin Oil Serv., Inc.	475 F.2d 142 (7th Cir. 1973)	1971	N.D. Ill.	Dismissed
Dreyfus v. Von Finck	534 F.2d 24 (2d Cir. 1976)	1973	S.D.N.Y.	Dismissed
Benjamins v. British European Airways	572 F.2d 913 (2d Cir. 1978)	1974	E.D.N.Y.	Dismissed
Fund of Funds, Ltd. v. Vesco	No. 74 Civ. 1980, 1976 WL 800 (S.D.N.Y. July 12, 1976)	1974	S.D.N.Y.	Dismissed
IIT v. Vencap, Ltd.	519 F.2d 1001 (2d Cir. 1975)	1974	S.D.N.Y.	Dismissed (ATS claim)

\* Jonathan Drimmer, an attorney and Adjunct Professor at Georgetown University Law Center, compiled this list.

This list includes cases in which at least one defendant is a corporate entity, and in which the Alien Tort Statute (ATS) was invoked as a basis for jurisdiction. The information was compiled over a period of years using public source information, including published decisions, news articles, and docket sheets. Given methodological limitations, the list cannot be considered truly comprehensive, either as to the number of cases or the results. In addition, the list counts consolidated cases as one matter; thus, the many individual ATS lawsuits against Arab Bank are counted as one matter on this chart. If these individual lawsuits were disaggregated, there would be well in excess of 200 cases on the list.

1. Citations are not necessarily to the final or most recent decision, but are presented to enable identification of the cases.

2. The data in the "Year" column represents the year the complaint was filed.

3. The data in the "Jdx." column represents the jurisdiction where the complaint was filed.

4. The data in the "Resolution" column represents the most recent public information on the status of the case. Abbreviations: Alien Tort Statute (ATS); Foreign Sovereign Immunities Act (FSIA); motion for summary judgment (MSJ); motion to dismiss (MTD); multi-district litigation (MDL); Torture Victims Protection Act (TVPA); Racketeer Influenced and Corrupt Organizations Act (RICO).

## Appendix A (continued)

Case Name	Citation	Year	Jdx.	Resolution
Papageorgiou v. Lloyds of London	436 F. Supp. 701 (E.D. Pa. 1977)	1975	E.D. Pa.	Dismissed
Soultanoglou v. Liberty Transp. Co.	No. 75 Civ. 2259, 1980 U.S. Dist. LEXIS 9177 (S.D.N.Y. June 13, 1980)	1975	S.D.N.Y.	Dismissed
Canadian Overseas Ores Ltd. v. Compania de Acero del Pacifico S.A.	528 F. Supp. 1337 (S.D.N.Y. 1982)	1978	S.D.N.Y.	Dismissed (forum non conveniens & FSIA)
Akbar v. N.Y. Magazine Co.	490 F. Supp. 60 (D.D.C. 1980)	1979	D.D.C.	Dismissed
Viet. Ass'n for Victims of Agent Orange v. Dow Chem. Co.	517 F.3d 104 (2d Cir. 2008)	1979	E.D.N.Y.	Dismissed
Trans-Cont'l Inv. Corp., S.A. v. Bank of Commonwealth	500 F. Supp. 565 (C.D. Cal. 1980)	1980	C.D. Cal.	Dismissed
Tamari v. Bache & Co. (Lebanon) S.A.L.	730 F.2d 1103 (7th Cir. 1984)	1982	N.D. Ill.	Dismissed (ATS claim)
Hedge v. British Airways	No. 82 C 1410, 1982 U.S. Dist. LEXIS 16469 (N.D. Ill. Dec. 27, 1982)	1982	N.D. Ill.	Dismissed
De Wit v. KLM Royal Dutch Airlines, N.V.	570 F. Supp. 613 (S.D.N.Y. 1983)	1983	S.D.N.Y.	Dismissed
Munusamy v. McClelland Eng'rs, Inc.	579 F. Supp. 149 (E.D. Tex. 1984)	1984	E.D. Tex.	No ATS relief
Jaffe v. Boyles	616 F. Supp. 1371 (W.D.N.Y. 1985)	1984	W.D.N.Y.	ATS case not rejected
Jones v. Petty Ray Geophysical Geosource, Inc.	722 F. Supp. 343 (S.D. Tex. 1989)	1986	S.D. Tex.	Dismissed
Carmichael v. United Tech. Corp.	835 F.2d 109 (5th Cir. 1988)	1986	S.D. Tex.	Dismissed
Castillo v. Spiliada Mar. Corp.	732 F. Supp. 50 (E.D. La. 1990)	1989	E.D. La.	MTD denied, but not on ATS grounds
Amlon Metals, Inc. v. FMC Corp.	775 F. Supp. 668 (S.D.N.Y. 1991)	1991	S.D.N.Y.	Dismissed
Hamid v. Price Waterhouse	51 F.3d 1411 (9th Cir. 1995)	1991	C.D. Cal.	Dismissed
Aguinda v. Texaco, Inc.	303 F.3d 470 (2d Cir. 2002)	1993	S.D.N.Y.	Dismissal on forum non conveniens grounds affirmed
United Bank of Afr. PLC v. Coker	No. 94 Civ. 0655, 2003 WL 22741575 (S.D.N.Y. Nov. 18, 2003)	1994	S.D.N.Y.	ATS claim dismissed, forum non conveniens
Beanal v. Freeport-McMoran, Inc.	197 F.3d 161 (5th Cir. 1999)	1996	E.D. La.	Dismissed

## Appendix A (continued)

Case Name	Citation	Year	Jdx.	Resolution
Alomang v. Freeport-McMoran Inc.	Civ. A. No. 96-2139, 1996 WL 601431 (E.D. La. Oct. 17, 1996)	1996	E.D. La.	Dismissed
Eastman Kodak Co. v. Kavlin	978 F. Supp. 1078 (S.D. Fla. 1997)	1996	S.D. Fla.	Settled, ATS case not rejected
Nat'l Coal. Gov't of Burma v. Unocal, Inc.	176 F.R.D. 329 (C.D. Cal. 1997)	1996	C.D. Cal.	Settled
Doe I v. Unocal Corp.	395 F.3d 932 (9th Cir. 2002)	1996	C.D. Cal.	MSJ affirmed in part, reversed in part; settled
Wiwa v. Royal Dutch Petrol. Co.	226 F.3d 88 (2d Cir. 2000)	1996	S.D.N.Y.	Settled
Bigio v. Coca-Cola Co.	675 F.3d 163 (2d Cir. 2012)	1997	S.D.N.Y.	Dismissed
Jama v. Esmor Corr. Servs. Inc.	549 F. Supp. 2d 602 (D.N.J. 2008)	1997	D.N.J.	Jury verdict for defendant on ATS, plaintiff on negligence
Doe v. Bolkiah	74 F. Supp. 2d 969 (D. Haw. 1998)	1997	D. Haw.	No jurisdiction under ATS
Bodner v. Banque Paribas	114 F. Supp. 2d 117 (E.D.N.Y. 2000)	1997	E.D.N.Y.	Settled
Iwanowa v. Ford Motor Co.	67 F. Supp. 2d 424 (D.N.J. 1999)	1998	D.N.J.	Dismissed (statute of limitations, comity, political question doctrine)
Bao Ge v. Li Peng	201 F. Supp. 2d 14 (D.D.C. 2000)	1998	D.D.C.	Dismissed
Burger-Fischer v. Degussa AG	65 F. Supp. 2d 248 (D.N.J. 1999)	1998	D.N.J.	Dismissed (political question doctrine)
Wong-Opasi v. Tenn. State Univ.	Nos. 99-5658, 99-5660, 2000 WL 1182827 (6th Cir. Aug. 16, 2000)	1998	M.D. Tenn.	Dismissed
Bowoto v. Chevron Corp.	621 F.3d 1116 (9th Cir. 2010)	1999	N.D. Cal.	MSJ denied in part, allowed in part; jury verdict for defendant; upheld on appeal
Friedman v. Bayer Corp.	No. 99-CV-3675, 1999 WL 33457825 (E.D.N.Y. Dec. 15, 1999)	1999	E.D.N.Y.	Dismissed
Alperin v. Vatican Bank	No. C-99-04941, 2008 WL 509300 (N.D. Cal. Feb. 21, 2008)	1999	N.D. Cal.	Dismissed
<i>In re</i> World War II Era Japanese Forced Labor Litig.	114 F. Supp. 2d 939 (N.D. Cal. 2000)	2000	N.D. Cal.	Dismissed

## Appendix A (continued)

Case Name	Citation	Year	Jdx.	Resolution
Empagran S.A. v. F. Hoffman-La Roche, Ltd.	No. Civ. 001686, 2001 WL 761360 (D.D.C. June 7, 2001)	2000	D.D.C.	Dismissed
Mendonca v. Tidewater, Inc.	159 F. Supp. 2d 299 (E.D. La. 2001)	2000	E.D. La.	Dismissed
Kruman v. Christie's Int'l PLC	129 F. Supp. 2d 620 (S.D.N.Y. 2001)	2000	S.D.N.Y.	No ATS relief
Abrams v. Société Nationale des Chemins de fer Francais	389 F.3d 61 (2d Cir. 2004)	2000	E.D.N.Y.	Dismissed FSIA; affirmed
Sarei v. Rio Tinto, PLC	671 F.3d 736 (9th Cir. 2011)	2000	N.D. Cal.	Pending
Tercero v. C&Y Sportswear, Inc.	Order re Stipulation for Dismissal, No. CV-0012715-NM (C.D. Cal. May 25, 2001)	2000	C.D. Cal.	Dismissed
Flores v. S. Peru Copper Corp.	414 F.3d 233 (2d Cir. 2003)	2000	S.D.N.Y.	Dismissed (ATS claim not sufficiently definite)
Anderman v. Fed. Republic of Austria	256 F. Supp. 2d 1098 (C.D. Cal. 2003)	2001	C.D. Cal.	Dismissed
Does I v. Gap, Inc.	No. CV-01-0031, 2003 WL 22997250 (D. N. Mar. I. Sept. 11, 2003)	2001	D. N. Mar. I.	MTD granted as to ATS (no state action); later settlement, favorable for defendants
Ungaro-Benages v. Dresdner Bank AG	379 F.3d 1227 (11th Cir. 2004)	2001	S.D. Fla.	Dismissed
Doe v. Exxon Mobil Corp.	654 F.3d 11 (D.C. Cir. 2011)	2001	D.D.C.	TVPA dismissal affirmed, pending
Sinaltrainal v. Coca-Cola Co.	578 F.3d 1252 (11th Cir. 2009)	2001	S.D. Fla.	ATS dismissal affirmed, TVPA claims remanded for dismissal
Aldana v. Del Monte Fresh Produce, N.A., Inc.	452 F.3d 1284 (11th Cir. 2006)	2001	S.D. Fla.	Dismissal affirmed
Robert v. Bell Helicopter Textron, Inc.	No. Civ.A.3:01-CV-1576-L, 2002 WL 1268030 (N.D. Tex. May 31, 2002)	2001	N.D. Tex.	ATS claim rejected
Abdullahi v. Pfizer, Inc.	562 F.3d 163 (2d Cir. 2009)	2001	S.D.N.Y.	Settled
Herero People's Reparations Corp. v. Deutsche Bank, A.G.	370 F.3d 1192 (D.C. Cir. 2004)	2001	D.D.C.	Dismissal affirmed
Adamu v. Pfizer, Inc.	399 F. Supp. 2d 495 (S.D.N.Y. 2005)	2001	S.D.N.Y.	Settled

## Appendix A (continued)

Case Name	Citation	Year	Jdx.	Resolution
Arias v. Dyncorp	517 F. Supp. 2d 221 (D.D.C. 2007)	2001	D.D.C.	MSJ denied in part, allowed in part; pending
Presbyterian Church of Sudan v. Talisman Energy, Inc.	582 F.3d 244 (2d Cir. 2009)	2001	S.D.N.Y.	Dismissed
Maugein v. Newmont Mining Corp.	298 F. Supp. 2d 1124 (D. Colo. 2004)	2002	D. Colo.	Dismissed
Estate of Rodriquez v. Drummond Co., Inc.	256 F. Supp. 2d 1250 (N.D. Ala. 2003)	2002	N.D. Ala.	Summary judgment denied, trial verdict for defendant
Khulumani v. Barclay Nat'l Bank Ltd.	504 F.3d 254 (2d Cir. 2007)	2002	S.D.N.Y.	Remanded; on appeal
Javier H. v. Garcia-Botello	No. 02-CV-523S, 2011 WL 4344045 (W.D.N.Y. Sept. 14, 2011)	2002	W.D.N.Y.	Pending
Daventree Ltd. v. Republic of Azer.	349 F. Supp. 2d 736 (S.D.N.Y. 2004)	2002	S.D.N.Y.	Dismissed in part, jurisdictional discovery in part
Burnett v. Al Baraka Inv. & Dev. Corp.	274 F. Supp. 2d 86 (D.D.C. 2003)	2002	D.D.C.	MTD denied; MDL to NY
<i>In re</i> Terrorist Attacks on Sept. 11, 2001	392 F. Supp. 2d 539 (S.D.N.Y. 2005)	2002	S.D.N.Y.	MTD denied in part, granted in part for various defendants
Kiobel v. Royal Dutch Petroleum Co.	132 S. Ct. 472 (2011)	2002	S.D.N.Y.	Pending
<i>In re</i> African-Am. Slave Descendants Litig.	471 F.3d 754 (7th Cir. 2006)	2002	E.D.N.Y.	MDL; dismissed
Whiteman v. Fed. Republic of Austria	No. 00 Civ. 8006, 2002 WL 31368236 (S.D.N.Y. Oct. 21, 2002)	2002	S.D.N.Y.	Dismissed
Doe v. Reddy	No. C 02-05570, 2004 WL 5512966 (N.D. Cal. Mar. 24, 2004)	2002	N.D. Cal.	Settled
Mujica v. Occidental Petroleum Corp.	381 F. Supp. 2d 1164 (C.D. Cal. 2005)	2003	C.D. Cal.	Amended complaint dismissed in part, allowed in part, including certain ATS claims; pending
Ponce-Rubio v. N. Brevard, Inc.	Order of Dismissal, No. 6:03-cv-738- ORL-31KRS (M.D. Fla. July 14, 2004)	2003	M.D. Fla.	Dismissed
Stutts v. De Dietrich Grp.	No. 03-CV-4058, 2006 WL 1867060 (E.D.N.Y. June 30, 2006)	2003	E.D.N.Y.	Banks dismissed



## Appendix A (continued)

Case Name	Citation	Year	Jdx.	Resolution
Ganguly v. Charles Schwab & Co., Inc.	No. 03 Civ. 6454 PKC, 2004 WL 213016 (S.D.N.Y. Feb 4, 2004)	2003	S.D.N.Y.	No ATS relief
Bauman v. Daimlerchrysler AG	No. C-04-00194 RMW, 2007 WL 486389 (N.D. Cal. Feb. 12, 2007)	2004	N.D. Cal.	Pending
Arndt v. UBS AG	342 F. Supp. 2d 132 (E.D.N.Y. 2004)	2004	E.D.N.Y.	Dismissed
Brooks-McCollum <i>ex rel.</i> Emerald Ridge Serv. Corp. v. Emerald Ridge Serv. Corp. Bd. of Dirs.	166 F. App'x 618 (3d Cir. 2006)	2004	D. Del.	Dismissal affirmed
Saleh v. Titan Corp.	436 F. Supp. 2d 55 (D.D.C. 2006)	2004	S.D. Cal. (transferred to D.D.C.)	Dismissed
Ibrahim v. Titan Corp.	580 F.3d 1 (D.C. Cir. 2009)	2004	D.D.C.	Dismissed
Makro Capital of Am., Inc. v. UBS AG	372 F. Supp. 2d 623 (S.D. Fla. 2005)	2004	S.D. Fla.	Dismissed
Tsunami Victims Grp. v. Accor N. Am.	No.1:2005-cv-02599 (S.D.N.Y. Dec. 21, 2005), ECF No. 14	2005	S.D.N.Y.	Dismissed
Corrie v. Caterpillar, Inc.	503 F.3d 974 (9th Cir. 2007)	2005	W.D. Wash.	Dismissed (political question doctrine); affirmed
Hereros <i>ex rel.</i> Riruako v. Deutsche Afrika-Linien Gmbh & Co.	232 F. App'x 90 (3d Cir. 2007)	2005	D.N.J.	Dismissed
Doe v. Nestle, S.A.	748 F. Supp. 2d 1057 (C.D. Cal. 2010)	2005	C.D. Cal.	Dismissed with leave to amend
Siswinarti v. Jennifer Shien Ng	Complaint, No. 2:05-cv-04171-PGS-ES, 2005 WL 2511406 (D.N.J. Aug. 16, 2005)	2005	D.N.J.	Pending
Frazer v. Chi. Bridge & Iron	No. Civ.A. H-05-3109, 2006 WL 801208 (S.D. Tex. Mar. 27, 2006)	2005	S.D. Tex.	Summary judgment granted for defendant
Bano v. Union Carbide Corp.	198 F. App'x 32 (2d Cir. 2006)	2005	S.D.N.Y.	Dismissed
Doe v. Wal-Mart Stores, Inc.	572 F.3d 677 (9th Cir. 2009)	2005	C.D. Cal.	Dismissed
Keating-Traynor v. Westside Crisis Ctr.	No. C 05-04475 CRB, 2006 WL 1699561 (N.D. Cal. June 16, 2006)	2005	N.D. Cal.	Dismissed
Türedi v. Coca-Cola Co.	343 F. App'x 623 (2d Cir. 2009)	2005	S.D.N.Y.	Dismissed (forum non conveniens); affirmed

## Appendix A (continued)

Case Name	Citation	Year	Jdx.	Resolution
Fagan v. Deutsche Bundesbank	438 F. Supp. 2d 376 (S.D.N.Y. 2006)	2005	S.D.N.Y.	Dismissed (forum non conveniens & FSIA)
El-Masri v. United States	479 F.3d 296 (4th Cir. 2007)	2005	E.D. Va.	Dismissed
Chen v. China Cent. Television	320 F. App'x 71 (2d Cir. 2009)	2006	S.D.N.Y.	Dismissed
Deirmenjian v. Deutsche Bank, A.G.	526 F. Supp. 2d 1068 (C.D. Cal. 2007)	2006	C.D. Cal.	Dismissed
Flomo v. Firestone Natural Rubber Co., LLC	643 F.3d 1013 (7th Cir. 2011)	2006	S.D. Ind.	Dismissed; affirmed
Gov't of Dom. Rep. v. AES Corp.	466 F. Supp. 2d 680 (E.D. Va. 2006)	2006	E.D. Va.	Settled
Shiguago v. Occidental Petroleum Co.	Amended Complaint and Demand for Jury Trial, No. 206CV04982, 2009 WL 2921372 (C.D. Cal. Aug. 25, 2009)	2006	C.D. Cal.	Settled
Licea v. Curacao Drydock Co.	584 F. Supp. 2d 1355 (S.D. Fla. 2008)	2006	S.D. Fla.	Judgment for plaintiffs; \$80 million in damages
Abagninin v. AMVAC Chem. Corp.	545 F.3d 733 (9th Cir. 2008)	2006	C.D. Cal.	Dismissed
Barboza v. Drummond Co.	Amended Complaint, No. 06-61527-CIV- Dimitrouleas, 2007 WL 1294079 (S.D. Fla. Mar. 23, 2007)	2006	S.D. Fla.	MTD granted for lack of subject matter jurisdiction
Sinaltrainal v. Nestle U.S.A, Inc.	Complaint and Demand for Jury Trial, No. 06-61623 CIV, 2006 WL 3668381 (S.D. Fla. Oct. 31, 2006)	2006	S.D. Fla.	Withdrawn
Aguilar v. Imperial Nurseries	Complaint, No. 07CV00193, 2007 WL 1183549 (D. Conn. Feb. 8, 2007)	2007	D. Conn.	One defendant settled; default judgment for three defendants
Xiaoning v. Yahoo! Inc.	Complaint, No. C 07 2151 CW, 2007 WL 1511131 (N.D. Cal. Apr. 18, 2007)	2007	N.D. Cal.	Settled
Mohamed v. Jeppesen Dataplan, Inc.	614 F.3d 1070 (9th Cir. 2010)	2007	N.D. Cal.	Dismissed (state secrets)
<i>In re</i> Chiquita Brands Int'l, Inc.	792 F. Supp. 2d 1301 (S.D. Fla. 2011)	2007	S.D. Fla.	Appeal pending; MDL
Torrez v. Corr. Corp. of Am.	No. CV 07-1551-PHX- SMM (JRJ), 2007 WL 3046153 (D. Ariz. Oct. 16, 2007)	2007	D. Ariz.	Dismissed

## Appendix A (continued)

Case Name	Citation	Year	Jdx.	Resolution
Mastafa v. Austl. Wheat Bd. Ltd.	No. 07 Civ. 7955(GEL), 2008 WL 4378443 (S.D.N.Y. Sept. 25, 2008)	2007	S.D.N.Y.	Dismissed (comity, judicial economy, forum non conveniens)
Aikpitanhi v. Iberia Airlines of Spain	553 F. Supp. 2d 872 (E.D. Mich. 2008)	2007	E.D. Mich.	Dismissed
Park v. Korean Broad. Sys.	No. 07-2333, 2008 WL 4724374 (C.D. Ill. Oct. 24, 2008)	2007	C.D. Ill.	Dismissed
Estate of Manook v. Unity Res. Grp.	Complaint, No. 08CV00096, 2008 WL 310879 (D.D.C. Jan. 17, 2008)	2008	D.D.C./ E.D.N.C.	ATS claims dismissed
Bank Julius Baer & Co. v. Wikileaks	535 F. Supp. 2d 980 (N.D. Cal. 2008)	2008	N.D. Cal.	Voluntarily dismissed
Zheng v. Yahoo! Inc.	No. C-08-1068 MMC, 2009 WL 4430297 (N.D. Cal. Dec. 2, 2009)	2008	N.D. Cal.	Dismissed
David v. Signal Int'l	588 F. Supp. 2d 718 (E.D. La. 2008)	2008	E.D. La.	RICO case; MTID denied; pending
Chowdhury v. Worldtel Bangl. Holding, Ltd.	588 F. Supp. 2d 375 (E.D.N.Y. 2008)	2008	E.D.N.Y.	Dismissed (aiding and abetting inadequate)
Al-Janabi v. Stefanowicz	Complaint and Demand for Jury Trial, No. 2:08- CV-02913 (C.D. Cal. May 5, 2008)	2008	C.D. Cal. /E.D. Va.	Filed in C.D. Cal., transferred to E.D. Va.; voluntarily dismissed without prejudice
Ahmed v. Dubai Islamic Bank	Complaint, No. 08-21564 Civ-Altonaga, 2008 WL 2935356 (S.D. Fla. June 2, 2008)	2008	S.D. Fla.	Voluntarily dismissed without prejudice
Al-Ogaidi v. Johnson	Complaint, No. 2:08-cv-01006 (W.D. Wash. June 30, 2008)	2008	W.D. Wash.	Transferred to E.D. Va.; dismissed without prejudice
Al-Quraishi v. Nakhla	657 F.3d 201 (4th Cir. 2011)	2008	D. Md.	Dismissed
Al-Tae v. L-3 Servs., Inc.	Complaint and Jury Demand, No. 08CV12790, 2008 WL 2598173 (E.D. Mich. June 30, 2008)	2008	E.D. Mich.	Voluntarily dismissed without prejudice
Tamam v. Fransabank SAL	677 F. Supp. 2d 720 (S.D.N.Y. 2010)	2008	S.D.N.Y.	Dismissed
Al Shimari v. CACI Int'l, Inc.	679 F.3d 205 (4th Cir. 2012)	2008	E.D. Va./ D. Md.	Dismissed
Licci v. Am. Express Bank Ltd.	704 F. Supp. 2d 403 (S.D.N.Y. 2010)	2008	S.D.N.Y.	Dismissed

## Appendix A (continued)

Case Name	Citation	Year	Jdx.	Resolution
Adhikari v. Daoud & Partners	No. 09-CV-1237, 2010 WL 744237 (S.D. Tex. March 1, 2010)	2008	C.D. Cal. /S.D. Tex.	Filed in C.D. Cal., transferred to S.D. Tex.; pending
Mainawal Rahman Bldg. & Constr. Co., Ltd. v. DynCorp Int'l, LLC	Defendant's Answer and Affirmative Defenses, No. 1:08-CV-1064 (LMB/JFA), 2009 WL 256337 (E.D. Va. Jan. 23, 2009)	2008	E.D. Va.	Settled
Bleiser v. Bundesrepublik Deutschland	Complaint and Demand for Jury Trial, No. 08 C 6254, 2010 WL 3947524 (N.D. Ill. Oct. 7, 2010)	2008	N.D. Ill.	Appeal pending
Abecassis v. Wyatt	669 F. Supp. 2d 130 (D.D.C. 2009)	2009	D.D.C.	Dismissed
Margallo-Gans v. Farrell	Amended Complaint and Demand for Jury Trial, No. Civ. 09-4026, 2009 WL 5120729 (D.S.D. Oct. 16, 2009)	2009	D.S.D.	Voluntarily dismissed; possible settlement
Aziz v. Alcolac, Inc.	658 F.3d 388 (4th Cir. 2011)	2009	D. Md.	Dismissal of ATS claims affirmed
Matias v. Taylors Int'l Servs., Inc.	Civ. A. No. 09-3256, 2010 WL 3825402 (E.D. La. Sept. 24, 2010)	2009	E.D. La.	ATS/TVPA claims dismissed
Guanipa v. Chavez	Amended Class Action Complaint, No. 09-20999-CIV-ALTONAGA, 2009 WL 1392253 (S.D. Fla. May 12, 2009)	2009	S.D. Fla.	Dismissed
Viera v. Eli Lilly & Co.	No. 1:09-CV-0495-RLY-DML, 2010 WL 3893791 (S.D. Ind. Sept. 30, 2010)	2009	S.D. Ind.	Dismissed
<i>In re</i> Xe Servs. Alien Tort Litig.	665 F. Supp. 2d 569 (E.D. Va. 2009)	2009	S.D. Cal. (refiled in E.D. Va.)	Settled
Giraldo v. Drummond Co.	808 F. Supp. 2d 247 (D.D.C. 2011)	2009	N.D. Ala.	Appeal pending
Shan v. China Constr. Bank Corp.	421 F. App'x 89 (2d Cir. 2011)	2009	S.D.N.Y.	Dismissal affirmed
Krishanthi v. Rajaratnam	Civ. A. No. 09-CV-5395 (DMC)(MF), 2012 WL 503828 (D.N.J. Feb. 14, 2012)	2009	D.N.J.	MTD denied in part, including as to crimes against humanity claim; allowed as to abetting terrorism and state law tort claims; pending

## Appendix A (continued)

Case Name	Citation	Year	Jdx.	Resolution
Orkin v. Swiss Confederation	444 F. App'x 469 (2d Cir. 2011)	2009	S.D.N.Y.	Dismissal affirmed
Baloco <i>ex rel.</i> Tapia v. Drummond Co.	No. 7:09-CV-00557-RDP, 2012 WL 4009432 (N.D. Ala. Sept. 12, 2012)	2009	N.D. Ala.	Dismissed
Diaz v. Grupo Mex., Inc.	First Amended Complaint, No. 210CV00355, 2010 WL 1944094 (D. Ariz. Mar. 22, 2010)	2010	D. Ariz.	Dismissed; appeal pending
Agurenko v. Arab Bank, PLC	Complaint, No. 1:10CV00626, 2010 WL 2416041 (E.D.N.Y. Feb. 11, 2010)	2010	E.D.N.Y.	Pending
Holocaust Victims of Bank Theft v. Magyar Nemzeti Bank	807 F. Supp. 2d 689 (N.D. Ill. 2011)	2010	N.D. Ill.	Dismissed
Mohamed v. Erinys Int'l Ltd.	First Amended Complaint, No. 409CV03362, 2010 WL 2679426 (S.D. Tex. Apr. 28, 2010)	2010	S.D. Tex.	Dismissed
Jaso v. Coca-Cola Co.	435 F. App'x 346 (5th Cir. 2011)	2010	S.D. Tex.	Pending (AT'S claim waived by plaintiff on appeal for failure to raise it in response to MTD)
Magnifico v. Villanueva	783 F. Supp. 2d 1217 (S.D. Fla. 2011)	2010	S.D. Fla.	Motion for default judgment granted in favor of plaintiffs and against defendants Villanueva and Fernandez
Fiouris v. Turkish Cypriot Cmty.	Class Action Complaint, No. 10CV01225, 2010 WL 7378418 (D.D.C. July 20, 2010)	2010	D.D.C.	Pending
Mastafa v. Chevron Corp.	759 F. Supp. 2d 297 (S.D.N.Y. 2010)	2010	S.D.N.Y.	Dismissed
Prince Hotel, SA v. Blake Marine Grp.	433 F. App'x 706 (11th Cir. 2011)	2010	S.D. Ala.	Dismissed
Saharkhiz v. Nokia Corp.	Complaint for Tort Damages and Injunctive Relief, No. 1:10CV912(AJT/TRJ), 2010 WL 3375217 (E.D. Va. Aug. 16, 2010)	2010	E.D. Va.	Voluntarily dismissed without prejudice
Genocide Victims of Krajina v. L-3 Servs., Inc.	804 F. Supp. 2d 814 (N.D. Ill. 2011)	2010	N.D. Ill.	Motion to dismiss denied; motion to transfer venue denied

## Appendix A (continued)

Case Name	Citation	Year	Jdx.	Resolution
Ge Lifang Che v. Shanghai Mun. Branch Comm. of Chinese Communist Party	Complaint, No. 110CV07964, 2010 WL 4235973 (S.D.N.Y. Oct. 10, 2010)	2010	S.D.N.Y.	Dismissed
MAKS, Inc. v. EODT Gen. Sec. Co.	No. 3:10-CV-443, 2011 WL 6151424 (E.D. Tenn. Dec. 12, 2011)	2010	E.D. Tenn.	ATS claims dropped
Hidalgo v. Siemens Aktiengesellschaft	Complaint, No. 11CV20107, 2011 WL 74581 (S.D. Fla. Jan. 11, 2011)	2011	S.D. Fla.	Dismissed
Cooperhill Inv. Ltd. v. Republic of Sey.	Complaint, No. 1:11CV00962, 2011 WL 601962 (S.D.N.Y. Feb. 14, 2011)	2011	S.D.N.Y.	Voluntarily dismissed
Luu v. Int'l Inv. Trade & Serv. Grp.	Plaintiffs' Original Complaint, No. 11CV00182, 2011 WL 1398984 (S.D. Tex. Apr. 13, 2011)	2011	S.D. Tex.	Pending
Doe I v. Cisco Sys., Inc.	Demand for Jury Trial and Class Action Complaint, No. CV 11-02449 PSG, 2011 WL 1338057 (N.D. Cal. May 19, 2011)	2011	N.D. Cal.	Dismissed
Tymoshenko v. Firtash	No. 11 Civ. 2794(RJS), 2011 WL 5059180 (S.D.N.Y. Oct. 19, 2011)	2011	S.D.N.Y.	Dismissed
Daobin v. Cisco Sys., Inc.	Complaint, No. 11CV01538, 2011 WL 3962879 (D. Md. June 6, 2011)	2011	D. Md.	Pending
Singh v. Crompton Greaves Ltd.	No. 4:11CV1207SNLJ, 2011 WL 5833969 (E.D. Mo. Nov. 18, 2011)	2011	E.D. Mo.	Dismissed
Kaplan v. Al Jazeera	Second Amended Complaint, No. 10-CV-5298 (KMW), 2011 WL 2941526 (S.D.N.Y. July 18, 2011)	2011	S.D.N.Y.	Dismissed
Lim v. Gov't of Sing.	Complaint, No. 11 C 50172, 2011 WL 2428948 (N.D. Ill. June 14, 2011)	2011	N.D. Ill.	Dismissed
Ivanovic v. Overseas Mgmt. Co.	No. 11-80726-Civ., 2011 WL 5508824 (S.D. Fla. Nov. 9, 2011)	2011	S.D. Fla.	Dismissed

## Appendix A (continued)

Case Name	Citation	Year	Jdx.	Resolution
Okpabi v. Royal Dutch Shell, P.L.C.	Complaint and Jury Demand, No. 11-14572, 2011 WL 5027193 (E.D. Mich. Oct. 18, 2011)	2011	E.D. Mich.	Dismissed
Doe v. Neveleff	Complaint, No. 1:11-cv-907, 2011 WL 5027754 (W.D. Tex. Oct. 19, 2011)	2011	W.D. Tex.	Pending
Saldana v. Occidental Petroleum Corp.	Demand for Jury Trial and Complaint, No. CV111-8957 - PA (AJWx), 2011 WL 5142961 (C.D. Cal. Oct. 28, 2011)	2011	C.D. Cal.	Dismissed; appeal pending
Bera v. Shell Petroleum Dev. Co. of Nigeria	Verified Complaint, No. 11 CIV 8169, 2011 WL 5522680 (S.D.N.Y. Nov. 14, 2011)	2011	S.D.N.Y.	Pending
Guzman-Martinez v. Corr. Corp. of Am.	Complaint, No. 11CV02390, 2011 WL 6062622 (D. Ariz. Dec. 5, 2011)	2011	D. Ariz.	Dismissed
Weisskopf v. United Jewish Appeal	Complaint, No. 11CV00668, 2011 WL 6212514 (E.D. Tex. Dec. 14, 2011)	2011	E.D. Tex.	Dismissed
Thuy Thi Vu v. W & D Apparel Corp.	Plaintiffs' Original Complaint, No. 12CV00282, 2012 WL 251632 (S.D. Tex. Jan. 27, 2012)	2012	S.D. Tex.	Dismissed
Martinez v. BP P.L.C.	Demand for Jury Trial and Complaint, No. 1:12-cv-00308, 2012 WL 609438 (D.D.C. Feb. 24, 2012)	2012	D.D.C.	Pending
Turkcell Iletisim Hizmetleri A.S. v. MTN Grp., Ltd.	Complaint, No. 12CV00479, 2012 WL 1050075 (D.D.C. Mar. 28, 2012)	2012	D.D.C.	Pending
Delgado v. Villanueva	Complaint, No. 12 Civ. 3113, 2012 WL 1366755 (S.D.N.Y. Apr. 19, 2012)	2012	S.D.N.Y.	Pending
Latchford v. Turkish Republic of N. Cyprus	Complaint, No. 12CV00846, 2012 WL 1913761 (D.D.C. May 24, 2012)	2012	D.D.C.	Pending

**Appendix A** *(continued)*

<b>Case Name</b>	<b>Citation</b>	<b>Year</b>	<b>Jdx.</b>	<b>Resolution</b>
Cong v. Conocophillips Co.	Complaint, No. 12CV01976, 2012 WL 2525460 (S.D. Tex. July 2, 2012)	2012	S.D. Tex.	Pending
Fischer v. Erste Grp. Bank AG	Complaint, No. CV 12-3328, 2012 WL 2775095 (E.D.N.Y. July 5, 2012)	2012	E.D.N.Y.	Pending
Doe v. Amal	Complaint, No. 1:12CV1359, 2012 WL 6202972 (E.D. Va. Nov. 27, 2012)	2012	E.D. Va.	Pending