

# Chicago Daily Law Bulletin

## Court holds Alien Tort Statute applies to businesses

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A law designed to provide redress in American courts for victims of crimes against humanity and other violations of international law applies to corporations as well as to individuals, the federal appeals court based in Chicago has ruled.

In an opinion Monday, the 7th U.S. Circuit Court of Appeals became the second federal appellate court within three days to hold that corporations and other business entities may be sued under the Alien Tort Statute (ATS).

A divided D.C. Circuit reached the same conclusion last week in *John Doe VIII v. Exxon Mobil Corp.*, No. 09-7125.

In their holdings, the 7th and D.C. Circuits split ways with the New York-based 2nd Circuit. In *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010), the 2nd Circuit held that because corporations had not previously been subject to civil or criminal liability for violations of "customary international law" — law based on the general customs and practices of "civilized" nations rather than on specific treaties — they could not be held liable under the ATS. The 7th Circuit rejected that line of reasoning.

"There is always a first time for litigation to enforce a norm; there has to be," Judge [Richard A. Posner](#) wrote for a three-member panel of the 7th Circuit. "There were no multinational prosecutions for aggression and crimes against humanity before the Nuremberg Tribunal was created."

And the panel said the acceptance of an international tribunal with the authority to try defendants accused of crimes against humanity showed that there could be no valid basis for opposing corporate civil liability under the ATS.

"If a corporation complicit in Nazi war crimes could be punished criminally for violating customary international law, as we believe it could be, then a fortiori if the board of directors of a corporation directs the corporations' managers to commit war crimes, engage in piracy, abuse ambassadors or use slave labor, the corporation can be civilly liable," Posner wrote.

The ruling on the reach of the ATS was an empty victory for the 23 Liberian children named as plaintiffs in a lawsuit against Firestone Natural Rubber Co. LLC.

The suit accused Firestone of imposing such unreasonably high quotas on workers at a Liberian rubber plantation that the workers were forced to enlist their children to perform hazardous work. While holding that the children could sue Firestone under the ATS, the 7th Circuit also

concluded that they had failed to produce enough evidence to go to trial.

Joining the opinion were Judges [William J. Bauer](#) and [Daniel A. Manion](#). *Boimah Flomo, et al. v. Firestone Natural Rubber Co. LLC*, No. 10-3675.

Attorneys Paul Hoffman of Schonbrun, Desimone, Seplow, Harris, Hoffman & Harrison LLP in Venice, Calif., and Christian Levesque of Conrad & Scherer LLP in Washington, D.C., argued the case before the 7th Circuit on behalf of the plaintiffs.

Chicago attorney [Brian J. Murray](#) of Jones, Day argued the case on behalf of Firestone.

In a written statement, Firestone contended that it has been the target of false allegations made by an advocacy organization called the International Labor Rights Forum (ILRF).

A subsidiary, Firestone Liberia, is helping to rebuild Liberia and improve living standards following a civil war, the statements says.

"Further, Firestone Liberia has a strict, zero-tolerance policy against the use of minors in its operations and will continue to enforce that policy," the statement says.

Hoffman and a co-counsel, Terrence P. Collingsworth of Conrad & Scherer LLP in Washington, D.C., expressed mixed emotions about the ruling.

"We won the war, but lost the battle," Collingsworth said today. "The decisions on the ATS law were terrific and solid, but we're of course very disappointed in the ruling on the child labor claims and we're reviewing our options."

Hoffman said the 7th Circuit and D.C. Circuit rulings as well as pre- *Kiobel* rulings by the Atlanta-based 11th Circuit on the reach of the ATS will help litigants in unrelated cases.

"That's a big victory for all human rights plaintiffs that are seeking to get corporate liability," Hoffman said.

Chicago attorney [Jeffrey A. Leon](#) of Freed & Weiss LLC had the same take on the matter.

Leon is among the attorneys pursuing one suit against Hungarian banks and another suit against The Hungarian State Railways on behalf of Holocaust victims and their next of kin.

"The rejection of the 2nd Circuit's ruling in *Kiobel*, combined with last week's similar rejection in the D.C. Circuit, ensures that corporations in the 7th Circuit will continue to be held accountable when they are adjudged to have violated customary international law," Leon said in an e-mail message. "That is very important to plaintiffs who have been aggrieved and it sends an important message to corporations that they will be held accountable in courts in the United States for their actions."

One of Leon's co-counsel described *Kiobel* as "the Dred Scott decision of our time" whose reasoning the 7th Circuit and D.C. Circuit had rightly rejected.

"It stands for the proposition that no one can contract to commit genocide (which includes mass murder), commit or aid and abet genocide and be immune to suit if you incorporate," Chicago attorney [Robert J. Pavich](#) of the Pavich Law Group said of *Kiobel* in an e-mail message. "No society subscribing to the rule of law can allow this to stand."

In addition to the holding that ATS liability extends to private corporations, Pavich said, the 7th Circuit's ruling contains other holdings that will help plaintiffs pursuing human rights claims.

Those holdings are that plaintiffs do not have to exhaust their remedies in the nation in which the alleged violation occurred and that the ATS applies extraterritorially to violations committed in foreign countries, Pavich said.

A third attorney for the plaintiffs in the Holocaust suits, [Anthony D'Amato](#) of Northwestern University School of Law, indicated that the 7th Circuit's rejection of *Kiobel*'s reasoning came

as no surprise to him.

"The judges who for a while caused a stir simply didn't know their international law," D'Amato said in an e-mail message.

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