

## Corporate & Financial Weekly Digest

Posted at 1:16 PM on September 24, 2010 by [Steven Shiffman](#)

### **Second Circuit Holds That Corporations Cannot Be Sued under Alien Tort Statute**

*Co-authored by [Brian Schmidt](#)*

The U.S. Court of Appeals for the Second Circuit has ruled that corporations are not subject to liability under “customary international law”, otherwise known as the “law of nations” and that, as such, corporations cannot be held liable under the U.S. Alien Tort Statute. Although he concurred in the result, Judge Leval vigorously disputed the majority’s conclusion on this issue.

Plaintiffs asserted claims against corporate defendants affiliated with the Royal Dutch Petroleum Company for aiding and abetting violations of the law of nations. According to the plaintiffs, Royal Dutch engaged in extensive oil exploration and production in a region of Nigeria since 1958. During this period, a local movement was organized to protest the environmental effects of oil exploration. The plaintiffs alleged that from 1993 to 1994, the Nigerian military, with the assistance of the defendants, organized and executed a brutally violent campaign against the local resistance and asserted claims against the defendants, all of whom were corporations, under the Alien Tort Statute in an action in the Southern District of New York.

Under the Alien Tort Statute, a unique statute passed by the first Congress of the United States in 1789, “district courts have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” 28 U.S.C. Section 1350. The Second Circuit held that in order to determine whether jurisdiction existed under the Alien Tort Statute, the court first had to determine whether corporations were subject to liability under the law of nations. The court, in an extensive opinion, found that while international law recognized individual liability in cases under the law of nations, such as for human rights violations, liability under the law of nations had never been extended to include a corporation. Accordingly, the court held that claims against corporations could not be asserted under the Alien Tort Statute and ruled that dismissal of all claims against the defendants was warranted. (*Kiobel v. Royal Dutch Petroleum Co.*, Nos. 06 Civ. 4800, 06 Civ. 4876, 2010 WL 3611392 (2d Cir. Sept. 17, 2010))