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## [Second Circuit Holds That Corporations Cannot Be Held Liable For Claims Brought Under The Alien Tort Statute](#)

In [\*Kiobel v. Royal Dutch Petroleum Co.\*](#), Nos. 06-4800-CV, 06-4876-CV, 2010 WL 3611392 (2d Cir. Sept. 17, 2010), the [United States Court of Appeals for the Second Circuit](#) dismissed claims by Nigerian citizens against various multinational oil producers under the Alien Tort Statute, [28 U.S.C. § 1350](#) (“ATS”), alleging that the corporate defendants aided and abetted human rights violations by the Nigerian military. The Court held that the ATS does not provide federal subject matter jurisdiction for claims against corporations. In so holding, the Court reasoned that the scope of liability under the ATS is defined by international law, and that international law does not yet recognize the concept of corporate tort liability.

Plaintiffs were a class of residents of the Ogoni region of Nigeria, where defendants Royal Dutch Petroleum Company and Shell Transport & Trading Company PLC (collectively, “Shell”) were engaged in petroleum exploration and production operations through a Nigerian subsidiary. Plaintiffs alleged that Shell aided and abetted the Nigerian military in numerous human rights abuses against Ogoni residents – including arbitrary arrest and detention, torture, and crimes against humanity – in an effort to enhance Shell’s ability to explore for and extract oil from areas where the plaintiffs resided. Plaintiffs brought suit under the ATS, which provides federal jurisdiction over tort actions brought by aliens for violations of the law of nations or “customary international law.”

The [United States District Court for the Southern District of New York](#) dismissed certain of the claims on the ground that certain of the alleged corporate misconduct was not proscribed by international law, while permitting certain other claims to proceed. Hearing the case on interlocutory appeal, the Second Circuit affirmed in part and reversed in part, holding that all claims should be dismissed on the ground that the scope of liability under the ATS does not extend to corporations. The Court reasoned that the Supreme Court’s decision in [\*Sosa v. Alvarez-Machain\*](#), 542 U.S. 692 (2004), requires the federal courts to look to international law rather than domestic law to determine jurisdiction over ATS claims against a particular class of defendant. In surveying the traditional sources of customary international law, the Court concluded that imposing liability on corporations for violations of the law of nations has not attained a sufficiently “specific, universal, and obligatory” character so as to be considered a norm of customary international law. The Court noted, for example, that although international tribunals have extended criminal liability for violations of customary international law to natural persons, they have never done so with respect to corporations.

In a lengthy concurrence, Circuit Judge Leval agreed with the majority's premises that international law determines the scope of civil liability for violations of customary international law and that international law does not currently recognize such corporate civil liability. He nevertheless disagreed with the majority's conclusion that international law does not allow for the imposition of civil liability on corporations. In contrast to its role in establishing norms of prohibited conduct, Judge Leval argued, international law takes no position as to how such norms are to be enforced and leaves that question to individual nations to resolve. He also argued that the majority misunderstood the Supreme Court's decision in *Sosa* and that the Supreme Court had actually meant to imply that corporations and natural persons should be treated identically for purposes of civil liability under the ATS.

Although the Court noted that natural persons such as directors and officers of a corporation may still be sued under the ATS and that corporations may still be held liable for civil damages under domestic law, the decision is significant because it removes the settlement leverage that plaintiffs have typically had in ATS cases. As the court noted, the multibillion-dollar verdicts that juries are capable of awarding in ATS cases have led many corporations to settle ATS claims prior to trial, often for multimillion-dollar settlements.

The Second Circuit's decision, however, is unlikely to settle the question as to whether corporations may be held liable under the ATS. In contrast to the Second Circuit, the Eleventh Circuit held in [\*Romero v. Drummond Co., Inc.\*](#), 552 F.3d 1303 (11th Cir. 2008), that the ATS grants jurisdiction over corporate defendants, and federal district courts in Maryland and Virginia have agreed. Thus, the Second Circuit's decision creates a circuit split as to whether corporations may be held liable for claims brought under the ATS. In addition, the Supreme Court will soon decide whether to grant *certiorari* to [\*Presbyterian Church of Sudan v. Talisman Energy, Inc.\*](#), 582 F.3d 244 (2d Cir. 2009), in which the petitioner has argued that *Sosa* stands for the principle that the scope of liability in ATS cases derives from federal common law rather than international law. A clarification by the Supreme Court as to its holding in *Sosa* would have the potential to overrule the Second Circuit's recent holding in *Kiobel*.

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