

For Immediate Release

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COURT URGED TO DISMISS ALIEN TORT SUIT AGAINST UNOCAL (*Doe v. Unocal Corporation*)

The Washington Legal Foundation (WLF) filed a brief with the full United States Court of Appeals for the Ninth Circuit sitting *en banc* seeking to overturn a lower court ruling and an original panel decision of the court of appeals that greatly expanded the reach of the Alien Tort Statute (ATS). ATS provides for jurisdiction in U.S. courts by aliens for torts "committed in violation of the law of nations or a treaty of the United States."

Originally intended to govern relations between nation states when the law was enacted in 1789, human rights activists are now invoking the law to hold U.S. corporations operating abroad like Unocal liable for human rights abuses allegedly suffered by aliens at the hands of the foreign country's military forces in the course of protecting a company's facilities from being damaged or vandalized. In this case, the aliens claim that injuries they suffered at the hands of the Myanmar military for protecting an oil pipeline project should be attributed to Unocal Corporation under a theory of secondary liability.

WLF argued that contrary to Ninth Circuit precedent, the Alien Tort Statute does not create a cause of action; rather, the ATS is merely a jurisdictional statute that does not create any substantive federal rights. In addition, WLF argued that contrary to the Second Circuit's seminal decision in *Filartiga v. Pena-Irala*, there is no self-executing common law of the United States; accordingly, federal courts are not free to create and enforce private rights of action for torts alleged to violate the norms of customary international human rights law. If the federal courts have jurisdiction at all, WLF argued in its brief that the federal court must apply the law of the foreign nation in determining whether secondary liability can attach to corporations for any claimed injuries or abuses allegedly caused by that nation's forces.

WLF's brief was drafted with the *pro bono* assistance of Donald Ayer and Christian Vergonis of the Washington, D.C. office of Jones Day.

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For additional information, contact Paul Kamenar, WLF Senior Executive Counsel, at 202-588-0302. WLF's brief is available on its website at www.wlf.org.