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Human Rights Suits Against Corporations Hinge on How Open the Door Is

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The U.S. Supreme Court ruling that potentially opened the door to suits against international corporations has left plenty of room to widen the entranceway or narrow the crack. A series of cases will determine exactly how much give is in the hinges.

The June decision, *Sosa v. Alvarez-Machain*, No. 03-339, rejected the claims of a Mexican doctor who alleged he was wrongfully kidnapped from Mexico in 1990, taken to the United States and placed on trial for the murder of a DEA agent.

Despite the rejection, however, Justice David H. Souter wrote in his opinion for the court that “the door is still ajar” for aliens’ human rights suits under the Alien Tort Claims Act, a vestigial statute from the nation’s founding era.

The law, passed in 1789, provides: “The district courts shall 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.” Souter said the law allows tort suits for violation of international law that would have been recognized in the 18th century.

Potentially riding on *Sosa* are a host of tort claims against U.S. corporations for alleged complicity with international human rights abuses, such as slavery or torture. Among the corporations named in the lawsuits are Unocal, ExxonMobil, Coca-Cola, Del Monte and DaimlerChrysler. In addition, suits have been filed in federal court in San Diego and the District of Columbia on behalf of Iraqi prisoners claiming two U.S. contractors conspired with U.S. officials to abuse detainees in the Abu Ghraib prison scandal.

The outlook for the corporate litigation is either excellent or dismal, depending on which side is talking.

“Absolutely, *Sosa* is a victory for the human rights community,” says Terence P. Collingsworth, executive director of the Washington, D.C.-based International Labor Rights Fund, which has filed eight ATCA lawsuits against U.S. corporations, including Unocal. “It is a decision that essentially says courts have already been applying an appropriate and narrow standard for which torts are going to be actionable.”

But others say the ruling effectively shuts the ATCA cases out. “Any court that faithfully follows what the Supreme Court said in *Sosa* will dismiss virtually all of the existing cases,” including the corporate suits, says Richard Samp, attorney for the [Washington Legal Foundation](#), which filed an amicus in the case.

AIDING AND ABETTING

Nevertheless, a key legal issue still needs to be resolved. The extent of corporate complicity is tied to the notion of aiding and abetting, a well-defined concept in criminal law but a bit hazier when applied to civil suits.

“The question in many of these ATCA cases is not whether certain core wrongs are part of customary international law, such as genocide or slave labor,” says Anthony Sebok, a professor and tort law expert at Brooklyn Law School. “The question concerning corporate America is whether aiding and abetting one of these core wrongs can lead to liability under the ATCA.”

It’s a foggy notion. “Aiding and abetting is one of those concepts in tort law like proximate cause in that it is hard to precisely define what it is,” Sebok says. “Often judges say they know it when they see it. ... That is one reason why I don’t think the Sosa decision necessarily is a cause for celebration for the human rights community.”

International tort law expert William Casto agrees. “I think it is a gray area,” says Casto, a Texas Tech law professor whose scholarly work was cited in Souter’s opinion and in Justice Antonin Scalia’s concurrence. “In some areas of domestic law, the federal courts have been reluctant to infer or create an aiding-and-abetting liability. ... To the extent that the federal courts are reluctant to create new liability, they will be inclined to leave the issue to Congress.”

Whatever the outcome of the case, Sebok says it will be years before the Supreme Court will clarify Sosa. “As with punitive damages, ATCA is a subject the U.S. Supreme Court doesn’t address very often.”