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December 29, 2011

COURT URGED NOT TO PERMIT TORT SUIT ALLEGING HUMAN RIGHTS LAW VIOLATIONS

(Rio Tinto plc v. Sarei)

The Washington Legal Foundation (WLF) yesterday urged the U.S. Supreme Court to review (and ultimately overturn) an appeals court decision that permits activists to go forward with a suit claiming that a multinational corporation aided and abetted human rights violations by the governments of Papua New Guinea and Australia, by providing financial support to security forces.

In a brief filed in *Rio Tinto plc v. Sarei*, WLF argued that federal law does not permit nonresident aliens to file tort suits in federal court based on overseas events having no connection to the United States. WLF noted that the only connection between this suit and the U.S. is that the defendants (Rio Tinto, a group of mining companies based in Australia and Great Britain) conduct a small amount of business in the U.S. WLF urged the court to reject claims that such suits are authorized by the Alien Tort Statute (ATS), a 1789 law that lay dormant for nearly 200 years before activists began seeking to invoke it in the past several decades.

“The ATS was adopted in 1789 to allow the federal courts to hear cases involving piracy and assaults on ambassadors,” said WLF Chief Counsel Richard Samp after filing WLF’s brief. “It has been transformed by activist attorneys into a tool for second-guessing American foreign policy and for attacking the overseas conduct of corporations. The courts need to step in to bring a halt to this perversion of the ATS,” Samp said.

In this case, Rio Tinto was hired by the government of Papua New Guinea (PNG) to build a mine on Bougainville, an island off the nation’s coast. A civil war broke out on the island in 1988, and the mine became a target of separatist who sought independence from PNG. The war lasted for over a decade, and thousands of residents of Bougainville died. A group of Bougainville residents charged that PNG (and its military ally, Australia) committed human rights violations during the course of the war. But instead of suing those governments, the group in 2002 filed suit against Rio Tinto under the ATS in federal court in California, alleging that Rio Tinto aided and abetted the human rights violations through its financial support of the PNG government.

In an October 2011 decision, an 11-judge panel of the U.S. Court of Appeals for the Ninth Circuit (sitting *en banc*) voted 6-5 to permit the lawsuit to proceed. Among other things, the appeals court held that the ATS permits federal courts to decide cases raising human rights claims even when the events at issue have no connection to the United States. Rio Tinto has asked the Supreme Court to review that decision.

Much of the legal dispute between the parties centers around the meaning of the U.S. Supreme Court's 2004 decision in *Sosa v. Alvarez-Machain*, which dismissed the claims of a Mexican doctor who sued under the ATS after he was kidnaped in Mexico at the instigation of U.S. law enforcement authorities and brought to this country to face criminal charges. The plaintiffs' bar has insisted that *Sosa* actually endorsed a broad reading of the ATS. In its brief, WLF argued that, to the contrary, *Sosa* made clear that alleged violations of international law only rarely are actionable in federal court.

In particular, WLF argued that when Congress adopted the ATS, it intended to limit the law's application to events taking place either in the United States (*e.g.*, an attack on a foreign ambassador on the streets of an American city) or on the high seas in areas not under the control of any country (*e.g.*, attacks by pirates on shipping). WLF argued that in adopting the ATS, Congress never intended to permit foreigners to sue in United States courts based on events that took place overseas; rather, such suits should be filed in the country where the events took place, WLF argued.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 States. It devotes a substantial portion of its resources to defending free enterprise, individual rights, and a limited and accountable government. WLF filed its brief on behalf of itself and the Allied Educational Foundation

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.