

Win or Lose in Court

Alien Tort Claims Act Pushes Corporate Respect for Human Rights. **BY BILL BAUE**

IT'S A LAW THAT'S BEEN on the books since 1789 — a law that has the potential to dramatically increase corporate accountability for human-rights abuses. But, amazingly, some 200 years later, we know very little about how courts will interpret the Alien Tort Claims Act (ATCA) in cases against corporations. Is it the silver bullet human-rights activists hope for — or just a weak weapon, as some multinational corporations might want to believe?

"I think ATCA is the *only* effective tool out there right now for advancing corporate respect for human rights, and I think it will continue to be a very effective tool," says Terry Collingsworth, executive director of the International Labor Rights Fund. "We spent years negotiating with companies, working on voluntary codes, and at the end of the day, the companies viewed those as public relations devices."

Collingsworth's view has yet to be validated by the courts. Of the 36 corporate ATCA cases brought over the past 13 years, 20 have been dismissed (three quarters of these on substantive legal grounds and one quarter on procedural grounds). Three have been settled out of court and 13 are ongoing. In other words, not a single company has yet to lose — or win for that matter — a single ATCA case.

ATCA first surfaced on the corporate front in 1993, when Cristóbal Bonifaz and fellow lawyers filed the first ATCA case against a company, Texaco (now owned by Chevron). Since that time, businesses linked to human-rights abuses around the globe have been vulnerable to being labeled *hostis humani generis* — "an enemy of

all mankind." This characterization harkens back to the 1980 judgment in the *Filártiga v. Peña-Irala* case, which exhumed from obscurity the 1789 ATCA law (intended to curb piracy on the high seas by extending U.S. jurisdiction to cover breaches of international law outside its borders) and applied it to human-rights violations abroad.

Companies Winning Legal Skirmishes While Losing Moral Battles

From the broader perspective of "moral liability" (a term coined in a 2004 report by the United Kingdom think tank SustainAbility), companies can "win" the legal battle but "lose" in the court of public opinion. This is because ATCA lawyers seek not only to advance the human rights of their individual plaintiffs, but also to publicly expose corporate complicity with human-rights abuses as a way of forcing companies to improve their procedures.

Collingsworth also sees the public relations value of ATCA cases to help force companies to truly respect human rights. He partnered with Bonifaz to file the second corporate ATCA case in 1995, *Doe v. Unocal*, arguing the company commissioned Burmese soldiers to protect its Yadana gas pipeline, with knowledge that they forced labor and committed murder and rape. While



Attorney Daniel Petrocelli, representing U.S. oil company Unocal, gestures during a court hearing in Los Angeles in January 2004. Unocal had been accused of human rights violations in connection with a natural gas pipeline in Burma.

PHOTO BY HECTOR MATA/ATP/GETTY IMAGES

Bonifaz argued in the 1993 *Aguinda v. Texaco* case that environmental pollution from three decades of corporate oil exploitation *in effect* violated the human rights of Ecuadorian villagers, the Unocal case focused squarely on clear human rights abuses.

Neither case has been won or lost in courts. Jurisdiction for the *Aguinda* case was transferred to Ecuador, where it is currently on trial (though no longer under ATCA). Unocal settled in 2004, reportedly for millions of dollars (although the terms were not disclosed). While that sum may seem like chump change to a multinational corporation, it appears that those companies challenged by ATCA cases continue to pay more dearly in non-financial terms.

ATCA Litigation: Reputation and Rectification

"Frankly, the greatest risk to companies facing ATCA litigation is reputational," says Phil Rudolph of corporate social responsibil-

ity consultancy the Ethical Leadership Group and former international general counsel for McDonald's. "The truth or falsity of the claims against Unocal was never established, because the case never went to trial, but in the court of public opinion, Unocal suffered mightily by the steady drumbeat of stories about the pending litigation."

"However, I'm not confident that ATCA cases are, in fact, advancing corporate human rights policies and practices to any great extent," says Rudolph. "I believe that litigation is a profoundly inefficient and ineffective tool for addressing and resolving challenges of this nature."

Rudolph thinks that smart companies are improving their performance on human rights independent of potential ATCA liability, and the ATCA is too obscure and poorly understood to inspire action from less forward-thinking companies. Indeed, the 2004 U.S. Supreme Court decision in *Sosa v. Alvarez-Machain* clearly validated

ATCA for individuals, but only addressed companies in a footnote that left the status of corporate ATCA cases frustratingly unresolved.

On the other side, Collingsworth sees ATCA as a means to an end, and hopes to curtail filings when he can start achieving the objective outside the courtroom.

"We're asking, 'How many ATCA cases do we have to bring until we have the track record to make a credible threat that if companies don't clean up their acts, we are going to sue them?'" says Collingsworth, who has filed ATCA cases against the likes of Coca-Cola, Wal-Mart, and ExxonMobil.

"Our endgame is to have corporations stop violating human rights in their foreign operations," Collingsworth concludes. **BE**

Bill Baue (bbaue@socialfunds.com) of Sunderland, Mass., writes about social investing for *SocialFunds.com* and co-hosts the nationally syndicated *Corporate Watchdog Radio* show.

• EQUAL OPPORTUNITY • IMPROVE QUALITY OF LIFE • CONSERVE EARTH'S RESOURCES • CLEAN AIR, CLEAN WATER, CLEAN ENERGY •

FAIR HIRING PRACTICES • SHAREHOLDER ADVOCACY • REDUCE TOXIC WASTES

WORKPLACE DIVERSITY • PROTECT OLD-GROWTH FORESTS • NO WEAPONS



Planning a rollover? Take the high road.

It's surprisingly easy to roll over to one of our low-fee IRAs. Just call 800-767-1729 and request our free rollover kit. Or ask for one of our rollover specialists. They can quickly help you find your way.

You should consider a fund's investment objectives, risks, charges and expenses carefully before investing.

For a free prospectus that contains this and other important information please call or visit our web site. Read the prospectus carefully before investing.

If you're nearing a life-changing crossroads, such as a job change or retirement, it may be time to choose a new direction for your retirement fund.

How do you know which road to take?

May we suggest Pax World Funds. Since our founding in 1971, we've subjected potential investments to robust social- and environmental-responsibility screens in addition to rigorous financial scrutiny. So we hope to help you retire comfortably and in good conscience.

Pax World Balanced Fund

Average Annual Total Returns (6/30/06)

1-year	5-year	10-year	20-year
7.91%	4.73%	9.34%	9.43%

Performance data quoted represents past performance, which does not guarantee future results. Investment return and principal value of an investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost. Current performance may be lower or higher than the data quoted. For most recent month-end performance information visit www.paxworld.com.

PAX WORLD
MUTUAL FUNDS

Principles + Performance.

1-800-767-1729 www.paxworld.com

Distributor: H.G. Wellington & Co., Inc., Member NASD/SIPC. July 2006

• PROMOTE PEACE • REDUCE, REUSE, RECYCLE • REDUCE POVERTY • NO TOBACCO • ENVIRONMENTAL STEWARDSHIP