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COURT WILL DECIDE IF HUMAN RIGHTS LAW APPLIES TO OVERSEAS CONDUCT

(*Rio Tinto plc v. Sarei*; *Kiobel v. Royal Dutch Petroleum*)

The U.S. Supreme Court yesterday agreed to decide an important issue that arises repeatedly in lawsuits raising human rights claims: whether the Alien Tort Statute (ATS, a law adopted by Congress in 1789) authorizes tort suits to be filed in U.S. courts based on events that took place in a foreign country.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in *Rio Tinto plc v. Sarei*, urging the Court to review the extraterritoriality issue. WLF argued that the ATS does not permit nonresident aliens to file tort suits in federal court based on overseas events having no connection to the United States.

Rio Tinto raises claims that a mining company aided and abetted human rights violations in Papua New Guinea by the governments of Papua New Guinea and Australia, by providing financial support to security forces during a civil war. It is one of two major cases before the Supreme Court that raise ATS issues. The other case is *Kiobel v. Royal Dutch Petroleum*, which raises claims that an oil company aided and abetted human rights violations in Nigeria by the government of Nigeria when government forces sought to prevent disruption of oil production. Last Wednesday, the Court heard oral arguments in *Kiobel* on a different issue: whether corporations are subject to suit under the ATS, or whether suit can only be filed against individuals. The next day, the Court held a private conference to decide both *Kiobel*'s corporate-liability issue and whether to review the *Rio Tinto* case (which raised the extraterritoriality).

In its order issued today, the Court announced that it would defer a ruling on the *Kiobel* case until its 2012-13 Term. (The Court normally decides all granted cases before its term ends each June.) It announced that it would review the extraterritoriality issue (the issue raised in *Rio Tinto*) by directing the parties in *Kiobel* (as well as any interested *amici curiae*) to file additional briefs on that issue this spring. The Court will then conduct a new oral argument in *Kiobel* next fall. In the meantime, the Court has placed on hold its consideration of the *Rio Tinto* petition for review; it is unlikely to rule on the petition until after it issues its final decision in *Kiobel*.

“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 following

the Court's action today. "It has been transformed by activist attorneys into a tool for second-guessing American foreign policy and for attacking the overseas conduct of corporations. Today's order is a sign that the Courts is ready to step in to bring a halt to this perversion of the ATS," Samp said.

Much of the legal dispute between human rights activists and multinational corporations (the usual targets of ATS suits) 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 urging review of the extraterritoriality issue, WLF argued to the contrary that *Sosa* held 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.