

Organization for International Investment Summary of Recent Amicus Brief Submissions

Updated: December 5, 2013

Active Cases:

BP Exploration & Production Company v. McCarthy

Key Issue: Whether the EPA's disbarment of BP and its all worldwide affiliates without doing an individualized review is justified under applicable laws/regulations or necessary to protect the government?

OFII Action: Submitted amicus brief in support of BP's appeal

OFII Brief: https://www.ofii.org/sites/default/files/BP%20v%20McCarthy_DE%2038-1_Exhibit%20Brief%20Amici%20Curiae.pdf

Date Submitted: December 3, 2013

Court Submitted: United States District Court for the Southern District of Texas

Cosigners: API; NAM; National Ocean Industries Association; TechAmerica U.S. Chamber of Commerce

Status: Awaiting Texas Southern District Court's decision

Background: The EPA disbarred BP and all of its worldwide affiliates from either entering into a new contract with any government agency or working with any company involved in a federal program after the company pled guilty to the 2010 Deepwater Horizon oil spill. BP sued the EPA in Texas Federal Court in August to challenge its exclusion from new federal procurement contracts, claiming the EPA violated the Administrative Procedure Act by applying excessive and arbitrary suspensions to the company and its subsidiaries, the majority of which were not involved in the Deepwater Horizon incident.

U.S. v. Volvo Powertrain Corporation

Key Issue: Whether consent decrees can be enforced and interpreted outside the scope of originally written terms.

OFII Action: Submitted amicus brief in support of Volvo Powertrain's appeal.

OFII Brief: www.ofii.org/docs/US_v_Volvo_Powertrain_amicus.pdf

Date Submitted: December 20, 2012

Court Submitted: United States Court of Appeals for the District of Columbia Circuit

Cosigners: NAM; API; U.S. Chamber of Commerce

Status: Awaiting the Court of Appeal's decision

Background: The U.S. District Court for the District of Columbia awarded the United States and California \$72 million for alleged violations of an EPA consent decree. Volvo Powertrain appealed arguing the Court's decision violated norms of predictability and undermined longstanding rules governing consent decrees.

Bauman v. DaimlerChrysler:

Key Issue: Whether it violates due process for a court to exercise general personal jurisdiction over a foreign corporation based solely on the fact that an indirect corporate subsidiary performs services on behalf of the defendant in the forum state.

OFII Action: Submitted amicus brief in support of Daimler's petition for rehearing.

OFII Brief: http://www.ofii.org/docs/Bauman_NFTC_OFII_Amicus_Brief.pdf

Date Submitted: July 11, 2011

Court Submitted: United States Courts of Appeals for the Ninth Circuit

Co-signers: NFTC

Status: The Supreme Court [agreed](#) to hear the case.

Court's Ruling: <http://www.ca9.uscourts.gov/datastore/opinions/2011/11/09/07-15386.pdf>

Resolved Cases:

Kiobel v. Royal Dutch Petroleum:

Key Issue: Whether corporations may be held liable under the Alien Tort Statute (ATS) for the violations alleged.

OFII Action: Submitted an amicus brief in support of the respondents when the case was first heard by the Court in February 2012.

OFII Brief: www.ofii.org/docs/Kiobel_v_Shell_Final_Brief.pdf

Date Submitted: February 3, 2012

Court Submitted: United States Supreme Court

Co-signers: NFTC, USA Engage, USCIB, NAM, American Insurance Association, American Petroleum Institute

U.S. Government Action: Submitted a [brief](#) in support of the petitioners, arguing corporations can be held liable under the ATS based on federal-common-law.

Outcome decided on April 17, 2013: The Court unanimously held that the presumption against extraterritoriality applies to claims under the ATS, and nothing in the statute rebuts that presumption. Essentially, U.S. courts have no jurisdiction against claims arising from human rights violations committed overseas.

Court's Ruling: http://www.supremecourt.gov/opinions/12pdf/10-1491_8n59.pdf

Rio Tinto PLC v. Alexis Holyweek Sarei

Key Issue: Whether U.S. courts should recognize a federal common law claim under the Alien Tort Statute (ATS) based on aiding-and-abetting liability, even absent concrete factual allegations establishing that the purpose of the defendant's conduct was to advance the principal actor's violations of international law.

OFII Action: Submitted amicus brief in support of Rio Tinto's cert petition.

OFII Brief: www.ofii.org/docs/RioTinto_v_Sarei_Final_Brief.pdf

Date Submitted: February 3, 2012

Court Submitted: United States Supreme Court

Cosigners: NFTC, American Petroleum Institute, National Mining Institute

Outcome decided on June 28, 2013: The U.S. Ninth Circuit Court of Appeals affirmed "the district court's judgment of dismissal with prejudice." This decision follows the U.S. Supreme Court's decision to [vacate](#) the Ninth Circuit's ruling, which sent the case back to the Ninth Circuit for further consideration in light of *Kiobel v. Royal Dutch Petroleum*.

Court's Ruling: <http://cdn.ca9.uscourts.gov/datastore/opinions/2013/06/28/02-56256%20web.pdf>

Asid Mohamad v. Palestinian Authority

Key Issue: Whether the Torture Victim Protection Act (TVPA) of 1991 permits actions against defendants that are not natural persons. This case was argued in tandem with the *Kiobel* case. The D.C. Circuit Court of Appeals ruled only a natural person is amenable to sue under the TVPA.

OFII Action: Submitted amicus brief – in support of neither party – to assert that the term "individual" as used in the TVPA does not include private companies.

OFII Brief: www.ofii.org/docs/Mohamad_amicus.pdf

Date Submitted: December 21, 2011

Court Submitted: United States Supreme Court

Co-signers: American Petroleum Institute, U.S. Chamber of Commerce, NFTC, USCIB, and USA Engage

U.S. Government Action: Submitted a [brief](#) that parallels a number of arguments made by OFII and our coalition partners. This position is a surprise as the Government argued contradicting points in its earlier brief submission in *Kiobel*.

Outcome decided on April 18, 2012: The Court unanimously affirmed the Circuit Court's ruling. The term "individual" as used in the Act encompasses only natural persons.

Consequently, the Act does not impose liability against organizations.

Court's Ruling: <http://www.supremecourt.gov/opinions/11pdf/11-88.pdf>

Carijano v. Occidental Petroleum Corp

Key Issue: Whether a court has a right to dismiss a case based on the doctrine of *forum non conveniens* because the suit would be more appropriately litigated in a foreign court with a closer connection to the case's parties and facts. Carijano requested a rehearing because the District Court for the Central District of California dismissed the case based on *forum non conveniens*.

OFII Action: Submitted amicus brief in support of a Carijano's request for a rehearing.

OFII Brief: http://www.ofii.org/docs/EnBanc_Petition.pdf

Date Submitted: January 20, 2011

Court Submitted: United States Court of Appeals for the Ninth Circuit

Co-signers: NAM, NFTC, USCIB, and USA Engage

Outcome decided on June 1, 2011: Petition for rehearing was granted after the Ninth Circuit found that the District Court abused its discretion by dismissing the lawsuit without imposing mitigating conditions for the dismissal.

Court's Ruling: <http://www.ca9.uscourts.gov/datastore/opinions/2011/06/01/08-56187.pdf>

Rasmussen v. Nissan

Key Issue: Whether the state has the authority to exercise personal jurisdiction over a foreign corporation based on the acts of its subsidiaries. Rasmussen appealed Wisconsin's Court of Appeals ruling.

OFII Action: Submitted amicus brief in support of Nissan.

OFII Brief: http://www.appellate.net/briefs/RasmussenvNissanMotor_amicus.pdf

Date Submitted: December 17, 2010

Court Submitted: Supreme Court of Wisconsin

Co-signers: AIAM

Outcome decided on July 1, 2011: The Appeals Court's ruling was upheld. The activities of the "subsidiary corporation are insufficient to subject its nonresident parent corporation to general personal jurisdiction." Ultimately, the "substantial and not isolated activities" of Nissan North America are insufficient cause for Rasmussen to sue Nissan Japan.

Court's Ruling:

<http://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=67136>

McIntyre Machinery v Robert Nicastr

Key Issue: Whether the state has the authority to exercise personal jurisdiction over a foreign corporation in product liability cases. McIntyre appealed New Jersey Supreme Court's ruling.

OFII Action: Submitted amicus brief in support of McIntyre.

OFII Brief: http://www.ofii.org/docs/OFII_AIAM_Amicus_McIntyre_v_Nicastr_No_09-1343.pdf

Date Submitted: November 19, 2010

Court Submitted: United States Supreme Court

Co-signers: AIAM

Outcome decided on June 27, 2011: The New Jersey Supreme Court's ruling was reversed. The state could not exercise personal jurisdiction against a foreign manufacturer based on the mere fact that its products ended up in a forum state through the actions of an independent distributor. Mere knowledge that a product "might" end up reaching a state is insufficient cause to exercise personal jurisdiction.

Court's Ruling: <http://www.supremecourt.gov/opinions/10pdf/09-1343.pdf>

Goodyear Luxembourg Tires vs. Edgar D. Brown

Key Issue: Whether the state has the authority to exercise personal jurisdiction over a foreign corporation in product liability cases. Goodyear appealed North Carolina's Court of Appeals ruling.

OFII Action: Submitted amicus brief in support of Goodyear.

OFII Brief: http://www.ofii.org/docs/OFII_AIAM_Amicus_Goodyear_v_Brown_No_10-76.pdf

Date Submitted: November 19, 2010

Court Submitted: United States Supreme Court

Co-signers: AIAM

Outcome decided on June 27, 2011: The North Carolina Court of Appeals' ruling was reversed. Goodyear's foreign subsidiaries were not amenable to suit in North Carolina on claims that were unrelated to any activity by them in that state.

Court's Ruling: <http://www.supremecourt.gov/opinions/10pdf/10-76.pdf>