Human Rights Litigation Under The Alien Tort Statute

Gerard Morales and Kate Hackett

Gerard Morales is a partner, and **Kate Hackett** is an associate, at Snell & Wilmer's Phoenix, Arizona office. The authors acknowledge the assistance of Arizona State University College of Law students, MacKenzie Deal and Jathan McLaughlin.

Beware of business arrangements with foreign actors that have poor human rights records.

ORIGINALLY ENACTED to provide a remedy to a very small set of claims that violated "the laws of nations," the Alien Tort Statute (ATS) has been recently used to hold private actors and foreign, government officials responsible for the torture and murder of their citizens and to hold American, foreign, and multinational corporations accountable for the human rights violations of their employees. *See* Peter Henner, Human *Rights and the Alien Tort Statute: Law, History and Analysis* (ABA 2009).

THE ALIEN TORT STATUTE • Enacted as part of the Judiciary Act of 1789, the ATS is now codified as 28 U.S.C. section 1350 and states: "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." By its terms, the ATS grants the federal courts jurisdiction over claims for torts committed anywhere in the world against a non-citizen that violate the law of nations. The courts have limited such torts to violations of international law that are as specific and universal as the torts recognized at common law. *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 724 (2004). Therefore, claims for relief under the ATS need not be based on a further statute expressly authorizing the adoption of the cause of action. *See id.* at 714. The

"law of nations," or customary international law, is defined "as a general consensus of specific, universal and obligatory norms of behavior regulating the conduct of all nations, typically established by conventions, charters, treaties and declarations of international bodies." *See* Henner, supra, at 21; *see also Filártiga v. Peña-Irala,* 630 F.2d 876, 880 (2d Cir. 1980) (citing *United States v. Smith,* 18 U.S. (5 Wheat.) 153, 160-61 (1820)).

ATS History

In 1980, the Second Circuit handed down its landmark decision in *Filártiga v. Peña-Irala,* supra, holding, for the first time, that the ATS provides jurisdiction over claims for violations of international human rights law. *Id.* at 876. In 2004, the Supreme Court in *Sosa v. Alvarez-Machain,* supra, upheld the application of the ATS to widely accepted international human rights violations and largely agreed with the reasoning in *Filártiga.*

The Court in *Sosa* emphasized that, by its plain language, the ATS is jurisdictional and held that contemporary courts have the authority to recognize a "narrow class" of common law claims for violations of international law. *Id.* at 712, 726-27. This narrow class of claims actionable under the ATS must "rest on a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th Century paradigms we have recognized." *Id.* at 725. The Court made it clear that the federal courts should use caution when exercising the discretion to recognize an ATS claim, noting that "other considerations persuade us that the judicial power should be exercised on the understanding that the door is still ajar subject to vigilant doorkeeping." *Id.* at 729. Clearly, given that ATS claims are based on contemporary norms of international law, the precise contours of which torts may be actionable is constantly developing.

WHEN DOES THE ATS APPLY? • Factors the courts generally consider in order to determine whether ATS applies include:

- Whether there is a statute in United States (like the Torture Victim Protection Act (TVPA), Pub. L. No. 102-256, 106 Stat. 73 (1991)) that authorizes the adoption of specific cause of action);
- The existence of international treaties or agreements defining the terms of the violation;
- Whether the United States and the other countries involved have ratified the treaties;
- The legal effect of the treaties in the United States;
- Other laws in the United States and in the country where the violation took place that defines the acts;
- Prior case law recognizing the claims; and
- Whether the specific facts of the case rise to a level that violates international law. Actionable claims generally fall into two categories, those that can be brought against private actors and those that can only be brought when state action is shown.

No State Action Required

There are four main categories of claims that can be made against a private actor without a showing of state action: genocide, crimes against humanity, war crimes, and slavery.

Genocide

Defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

- Imposing measures intended to prevent births with the group; and
- Forcibly transferring children of the group to another group.

Kadic v. Karadzic, 70 F.3d. 232, 241 (2d Cir. 1995), *cert.denied,* 518 U.S. 1005 (1996) (quoting Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force Jan. 12, 1951, for the United States, Feb. 23, 1989).

Crimes Against Humanity

This category encompasses a broad range of acts "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." Rome Statute of the International Criminal Court, Art. 7, available at http://untreaty.un.org/cod/icc/statute/romefra.htm (last visited Jan. 4, 2010).

War Crimes

War crimes are defined with the requisite specificity by the Rome Statute, which in section 8(2)(a) lays out eight acts that constitute "grave breaches" of the Geneva Convention when committed against persons or property. The acts are:

- Willful killing;
- Torture or inhumane treatment;
- Willfully causing great suffering or serious bodily injury;
- Extensive destruction and appropriation of property;
- Compelling a prisoner of war or other protected person to serve in the military forces of a hostile power;
- Willfully depriving a prisoner of war the right to a fair trial;
- Unlawful deportation or transfer or unlawful confinement; and
- Taking of hostages.

Slavery

Courts have included forced labor in the definition of the term "slavery" in the context of the Thirteenth Amendment. The aim of the Thirteenth Amendment was not merely to end slavery, but also to maintain a system of completely free and voluntary labor throughout the United States. *Doe I v. Unocal Corp.*, 395 F.3d 932, 946 (9th Cir. 2002) (holding that forced labor violates international law), *vacated by, rehearing en banc granted by* 395 F.3d 978 (9th Cir. 2003), *aff'd,* 517 F.3d 104 (2d Cir. 2008), *cert. denied,* 129 S.Ct 1524 (2009). Although vacated, the opinion is cited for its persuasive authority. *See, e.g., In re Agent Orange Prod. Liab. Litig.*, 373 F. Supp. 2d 7, 83 (E.D.N.Y. 2005). Another source of liability under the ATS that parallels slavery is that of forced child labor.

State Action Required

While the above violations of international law can prompt private liability without a showing of state action, they are exceptions to the rule. Generally, international law is only violated when a party acts with or under the authority of a foreign state. *Henner,* supra, at 151. Violations of international law that give rise to an ATS claim when there is state action involved include arbitrary detention, disappearance, arbitrary denationalization, cruel, inhumane, or demoralizing treatment, torture, murder, or extrajudicial killing, racial discrimination, and non-consensual medical experimentation.

Arbitrary Detention

A detention that "has a valid basis in law or where the governmental actor has good cause to detain an individual does not qualify as an arbitrary arrest." *Id.* at 166.

Disappearance

Defined by Art. 2(2)(i) of the Rome Statute of the International Criminal Court as the "arrest, detention or abduction of persons by, or with the

authorization, support or acquiescence of, a state or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time."

Arbitrary Denationalization

A state actor "commits arbitrary denationalization if it terminates the nationality of a citizen either arbitrarily or on the basis of race, religion, ethnicity, gender, or political beliefs." *In re South African Apartheid Litig.*, 617 F.Supp.2d 228, 252 (S.D.N.Y. 2009).

Cruel, Inhumane, Or Degrading Treatment (CIDT)

CIDT generally includes acts that inflict mental or physical suffering, anguish, humiliation, fear and debasement that do not rise to the level of "torture" or do not have the same purposes as "torture." Restatement (Third) of Foreign Relations Law §702 (1987).

Torture

Defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person committed, or intimidating or coercing him, or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the hands of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions." G.A. Res. 39/46, U.N. GAOR, Supp. No. 51, U.N. Doc. A/39/51 (1984).

Murder/Extrajudicial Killing

Defined as "a deliberate killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation." *Wiwa v. Royal Dutch Petroleum Co.*, 2002 WL 319887, at *3, n.3 (S.D.N.Y. Feb. 28, 2002) (quoting TPVA, 28 U.S.C. §1350, note, § 3(a)).

Racial Discrimination

Violation of customary international law occurs when racial discrimination is practiced systematically as a matter of state policy. *In re South African Apartheid Litig.,* supra, 617 F. Supp.2d at 250.

Nonconsensual Medical Experimentation

Four sources of international law categorically forbid medical experimentation on non-consenting human subjects:

- The Nuremberg Code, which states as its first principle that "[t]he voluntary consent of the human subject is absolutely essential";
- The World Medical Association's Declaration of Helsinki, which sets forth ethical principles to guide physicians world-wide and provides that human subjects should be volunteers and grant their informed consent to participate in research;
- The guidelines authored by the Council for International Organizations of Medical Services, which require "the voluntary informed consent of [a] prospective subject"; and
- Article 7 of the International Covenant on Civil and Political Rights, which provides that "no one shall be subjected without his free consent to medical or scientific experimentation."

Abdullahi v. Pfizer, Inc., 562 F.3d 163, 175 (2d Cir. 2009).

Private parties, be they corporate entities or individuals, may still be liable if they are found to have aided and abetted a state in carrying out the crime or if a private entity acted under the color of state law. *See, e.g., Kiobel v. Royal Dutch Petroleum Co.,* 456 F. Supp. 2d 457, 463-64 (S.D.N.Y. 2006) (holding, after *Sosa* that "where a cause of action for violation of an international norm is viable under the ATS, claims for aiding and abetting that violation are viable as well"); *Abdullahi v. Pfizer, Inc.*, supra, 562 F.3d at 188 ("A private individual will be held liable under the ATS if he 'acted in concert with' the state, i.e., 'under color of law'") (*citing Kadic,* 70 F.3d. at 245).

Private parties, be they corporate entities or individuals, may still be liable if they are found to have aided and abetted a state in carrying out the crime or if a private entity acted under the color of state law.

RECENT ATS DECISIONS • Several decisions have expanded the application of ATS and reveal the trend to broaden the protection of the statute.

Roe I v. Bridgestone Corp.

In *Roe I v. Bridgestone Corp.,* 492 F. Supp. 2d 988, 1021-22 (S.D. Ind. 2007), the court held that where the complaint stated that "defendants are actively encouraging — even tacitly requiring — the employment of six, seven, and ten year old children" at a rubber plantation so that their families could make enough money to survive, plaintiffs stated a claim that met the *Sosa* standard. The court pointed out that it was responding to a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim, and that the plaintiffs would have a high burden to actually prevail on their claim. *Id.* at 1022. Nevertheless the court held that "[i]n a sufficiently extreme case [of forced child labor] the court believes that *Sosa* leaves the ATS door open." *Id.*

Licea v. Curacao Drydock Co.

In *Licea v. Curacao Drydock Co.*, *Licea v. Curacao Drydock Co.,* 584 F. Supp.2d 1355 (S.D. Fla. 2008), the court awarded $80 million in compensatory and punitive damages under the ATS to three Cuban national plaintiffs who were victims of a forced labor scheme through which defendant Curacao Drydock Company, in concert with and employing the threat of the totalitarian regime of Fidel Castro, trafficked them to Curacao and extracted their labor. The court found that Defendant Curacao — one of the largest drydock companies in the Western Hemisphere — was well aware of the brutal tactics and repressive schemes that the Cuban regime employed to extract forced labor from Cubans. *Id.* at 1357-61. The court further found that Defendant Curacao conspired with Cuba to force Cuban citizens to travel to facilities that Defendant Curacao owned in Curacao, held them in captivity there, and forced them to work repairing ships and oil platforms. *Id.* This conspiracy enabled Cuba to skirt the U.S. Embargo and gave defendant Curacao the economic advantage of approximately 50-100 trafficked, captive, forced laborers for a period of approximately 15 years. *Id.* at 1357.

After holding that defendant Curacao violated the ATS, the court's analysis shifted to an award of damages. In determining the amount of damages to award plaintiffs, the *Curacao Drydock* Court noted that factfinders typically consider six factors in awarding damages under the ATS:

- Brutality of the act;
- Egregiousness of defendant's conduct;
- Unavailability of criminal remedy;
- International condemnation of act;
- Deterrence of others from committing similar acts; and

- Provision of redress to the plaintiff, country and world.

Id. at 1364.

In awarding $50 million in compensatory damages, the court noted that the plaintiffs had testified that "the extreme brutality of the Defendant's actions resulted in severe psychological damage. It is hard to imagine what it feels like to be forced into servitude…. [T]here is no doubt that the severe, ongoing physical and emotional harms and deprivations endured by Plaintiffs mandates a sizable compensatory damage award." *Id.* at 1365. Further, in awarding $30 million in punitive damages, the court noted that "[f]orced labor constitutes a violation of a well-established, universally recognized norm of international law. It is widely recognized as one of the handful of serious claims for which the ATS provides jurisdiction in U.S. district courts regardless of where it occurred. It is a brutal offense condemned by the civilized world. This Court is compelled to act strongly to punish and deter it." *Id.* at 1366.

Abdullahi v. Pfizer, Inc.

In *Abdullahi v. Pfizer, Inc.,* supra, the court held that the plaintiffs had adequately alleged a violation of the ATS when they alleged in their complaint that Pfizer violated a customary international law norm prohibiting involuntary medical experimentation on humans when it tested an experimental antibiotic on children in Nigeria without their consent or knowledge. *Abdullahi*, supra, 562 F.3d 188. The court further held that "[a] private individual will be held liable under the ATS if he 'acted in concert with' the state, i.e., 'under color of law.'" *Id.*, citing *Kadic*, 70 F.3d at 245.

Bowoto v. Chevron Texaco

The court in *Bowoto v. Chevron Texaco*, 557 F. Supp. 2d 1080 (N.D. Cal. 2008), relied heavily on Judge Barkett's dissent from the denial of rehearing en banc in *Aldana v. Del Monte Fresh Produce N.A., Inc.*, 452 F.3d 1284 (11th Cir. 2006) and explicitly refused to follow the *Aldana's* holding. *Bowoto* refused to follow *Aldana* despite finding that there is no widespread consensus regarding the elements of CIDT; instead the court determined that CIDT claims should be subjected to a fact intensive analysis of plaintiffs' claims in order to determine whether jurisdiction is possible under the ATS. *Bowoto*, 557 F. Supp. 2d at 1093-95. While there is not complete agreement on the issue, it appears that *Aldana* may have been an aberration and a prospective plaintiff will likely be successful in arguing that a court has subject matter jurisdiction over an ATS claim when they allege CIDT.

Saludes v. Republica de Cuba

In *Saludes v. Republica de Cuba, Saludes v. Republica de Cuba, et al.*, 577 F. Supp.2d 1243 (S.D. Fla. 2008), plaintiffs Olivia Saludes, a U.S. national, and her son, Omar Rodriguez Saludes, a Cuban journalist, filed suit against several named defendants, including the Republica de Cuba, Fidel Castro Ruz, and the Partido Comunista de Cuba in connection with the Cuban government's arrest and detention of Mr. Saludes. Plaintiffs brought several causes of action against defendants, including a claim for intentional infliction of emotional distress and claims for torture, arbitrary arrest, cruel and inhumane treatment, restriction on assembly, denial of the right to a fair trial, and crimes against humanity under both the ATS and TVPA. *Id.* at 1246. After defendants failed to respond to plaintiffs' complaint, Ms. Saludes moved for default judgment only as to her claim for intentional infliction of emotional distress (IIED) against the Republica de Cuba and the Partido Communista de Cuba. *Id.* The *Saludes* Court held that it had jurisdiction over the IIED claim pursuant to one of the exemptions to the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §1604. *Id.* at 1249-51. Specifically, under former 28 U.S.C. §1605(a)(7), which is now 28 U.S.C.

§1605A(a)(1), a foreign state is not entitled to sovereign immunity for claims when "money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources… for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency." *Id.* at 1251. The court then granted Ms. Saludes' motion for default judgment and held that she had established a valid claim for IIED because the treatment and incarceration of Mr. Saludes based on his journalist activities qualified as torture: Mr. Saludes was deprived of clean water, decent food, and basic healthcare, was beaten, starved, forced to live in unsanitary conditions in prison, and had at times been in solitary confinement for months at a time. *Id.* at 1254. Although the *Saludes* Court did not undertake any analysis of plaintiffs' ATS claims, in light of Ms. Saludes' motion for default judgment solely on her IIED claim, the *Saludes* decision could certainly impact future ATS claims based on torture and the analysis of those claims against foreign sovereigns.

POLICY CONSIDERATIONS • Paradoxically, despite the fact that the majority of ATS claims require a showing of state action in order for federal courts to have jurisdiction, it is almost always the case that states are immune from liability because of the act of state doctrine. The traditional act of state doctrine was first articulated in *Underhill v. Hernandez*, which held that:

"Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment of the acts of the government of another, done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves."

Underhill v. Hernandez, 168 U.S. 250, 252 (1897) quoted with approval in *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 416 (1964).

Courts traditionally deferred to the State Department when considering whether comity should be extended to a foreign state and thus preclude action against the state in U.S. courts. *See Henner*, supra, at 249-52. The decisions issued by the State Department were issued on a case-by-case basis and were often not consistent or based upon coherent standards. *Id.* at 251 (citing *Tachiona v. Mugabe*, 169 F. Supp. 2d 259, 271-72 (S.D.N.Y. 2001)). In 1976, Congress passed the FSIA in order to stop the case-by-case immunity evaluations of the State Department. 28 U.S.C. §1602. FSIA provides immunity to foreign states subject to a few exceptions (28 U.S.C. §§1605, 1607) and generally prevents a plaintiff in an ATS case from ever recovering directly from a foreign government. Instead, plaintiffs are generally only able to recover from private actors that aided and abetted or acted in concert with a foreign government. *Henner*, supra, at 256 ("ATS lawsuits alleging gross human rights violations, including genocide, forced labor, extrajudicial killing, torture, South African apartheid, could be maintained only against secondary parties; the governments themselves were plainly immune under the FSIA").

The Supreme Court in *Sosa* described five "other considerations" calling for judicial caution for courts to consider when determining whether to accept a claim as a violation of international law under the ATS. Courts may consider:

- That the "prevailing conception of the common law has changed since 1789 in a way that counsels restraint in judicially applying internationally generated norms." *See Sosa v. Alvarez-Machain*, supra, 542 U.S. at 725;

- That federal courts do not have authority to create general common law and should look to legislative guidance "before exercising innovative authority over substantive law." *Id*. at 726;
- That "a decision to create a private right of action is one better left to legislative judgment in the great majority of cases." *Id*. at 727;
- That the courts need to be mindful of the "collateral consequences" of recognizing a new private cause of action under international law, including the implications on U.S. foreign relations and "impinging on the discretion of the Legislative and Executive branches in managing foreign affairs." *Id*; and
- Whether Congress has provided the courts with authority to "seek out and define new and debatable violations of the laws of nations." *Id*. at 728.

DEFENSES • Defendants in ATS cases often raise several policy-based defenses that assert that the courts should not interfere with the other political branches in affecting foreign policy. These defenses include the act of state doctrine discussed above, the political question doctrine, comity, and the foreign affairs doctrine. With respect to the political question doctrine, courts will decline to take cases if the dispute is one that presents issues assigned to the political branches. *Baker v. Carr*, 369 U.S. 186 (1962). *See*, *e.g. Doe v. Israel*, 400 F. Supp. 2d 86, 111-12 (holding that the political question doctrine precluded the court from having jurisdiction in an ATS action by Palestinians against Israel because ruling on the questions presented would draw the court into foreign affairs). With respect to comity, the defense is available when there is a true conflict between U.S. and foreign law governing the conduct at issue. *In re Simon*, 153 F. 3d 991, 999 (9th Cir. 1998), *cert. denied*, 525 U.S. 1141 (1999). Human rights claims rarely reflect conflicts because violations of human rights law are generally violations of universally recognized norms. *See, e.g*, *Jota v. Texaco*, 157 F.3d 153, 159-60 (2d Cir. 1998). With respect the foreign affairs doctrine, state laws may not intrude "into the field of foreign affairs which the Constitution entrusts to the President and the Congress." *Mujica v. Occidental Petroleum Corp*., 381 F. Supp.2d 1164, 1171 (C.D. Cal. 2005) (*quoting Zschernig v. Miller*, 389 U.S. 429, 432 (1968)). Other frequently used defenses include lack of subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1), failure to state a claim, Fed. R. Civ. P. 12(b)(6), and forum non convenies.

Subject Matter Jurisdiction

ATS jurisdiction is based on whether the plaintiff claims a violation of international law. 28 U.S.C. §1350. When asserting that the plaintiffs lack subject matter jurisdiction, defendants will typically argue that the plaintiff's complaint does not actually allege a violation of international law that meets the standard set by the Supreme Court in *Sosa*. *See Bridgestone Corp*., supra, 492 F. Supp. 2d at 1004. Some circuits only require a "colorable or arguable claim arising under federal law to establish federal question subject matter jurisdiction." *Id*. (holding that "doubt or even invalidity of such claim does not undermine the courts subject matter jurisdiction"). Other circuits hold that it is not sufficient for plaintiffs to merely plead a colorable violation of international law, but they must adequately plead a violation of the law of nations to establish subject matter jurisdiction under the ATS. *See Bigio v. Coca-Cola Co*., 239 F.3d 440, 447-49 (2d Cir. 2000) (dismissing for lack of subject matter jurisdiction because plaintiff failed to allege that the corporate defendant could be responsible for the Egyptian government's seizure of private property).

Failure To State A Claim

Many cases are also dismissed for failure state a claim based on the failure to adequately plead a violation of the law of nations. For example, in *Bridgestone Corp*., supra, the court dismissed plain-

tiff's ATS claims for forced labor because the complaint did not allege conditions of forced labor as it is used in "any specific, universal, and obligatory norm of international law." *See Bridgestone Corp*., supra, 492 F. Supp. 2d at 1016. This defense is likely to be even more viable for defendants in future ATS litigation after the Supreme Court's decisions in *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009) and *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007). Together, the cases require the plaintiff's complaint to be plausible on its face and for the court to dismiss any of plaintiff's legal conclusions when testing the sufficiency of the allegations. *Iqbal*, supra, 129 S.Ct. at 1949-50; *Twombly*, supra, 550 U.S. at 561-62. In *Sinaltrainal v. Coca-Cola Co*., 578 F.3d 1252, 1268-69 (11th Cir. 2009), the Eleventh Circuit dismissed plaintiffs' claims that the soft drink licensor, its Columbian subsidiary, and the Columbian bottling plant collaborated with the Columbian paramilitary and local police to murder and torture union leaders. After dismissing the legal conclusions in the pleadings, the court held that the pleadings failed to reach the plausibility standard and failed to provide enough factual content to allege a violation of the law of nations. *Id*.

Forum Non Coveniens

Defendants have also successfully raised the defense of forum non coveniens. When there is an alternative forum available, the court will weigh factors such as the private interests of the parties and public interest in favor of the alternative forum to determine if the case should be dismissed in favor of the alternative forum. For example, in *Aldana v. DelMonte Fresh Produce N.A., Inc.,*, 578 F.3d 1283, 1286 (11th Cir. 2009), the Eleventh Circuit upheld the district court's dismissal on forum non conveniens grounds of an ATS action against the plaintiffs' employers involving events in Guatemala surrounding a labor dispute. The court found that Guatemalan courts had jurisdiction over the entire case, the courts in Guatemala were adequate, the majority of evidence was located in Guatemala, and considering the costs of obtaining evidence and need to translate documents, practical and logistical issues favored a dismissal on forum non conveniens grounds. *Id*. at 1294.

CONCLUSION • As federal courts continue to sort out the scope of the ATS and its defenses, employers doing business abroad should be mindful of the risks raised by the ATS with respect to any arrangements with actors with poor human rights records.

As the above decisions show, the ATS landscape, even after *Sosa*, is far from settled. Recent decisions show that the lower courts continue to find ATS jurisdiction despite the high bar set by *Sosa*. Employers doing business abroad would do well to keep abreast of the changing case law concerning the ATS and its ever-expanding reach.