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Unocal Alien Tort Claims Act Case Settlement Boosts Corporate Accountability

by William Baue

Some interpret the settlement between the energy company and Burmese villagers as setting a practical precedent for holding companies responsible for indirect human rights abuses.

SocialFunds.com -- Earlier this week, the plaintiffs and defendant in a precedent-setting Alien Tort Claims Act (ATCA) case jointly announced a "settlement in principle" on the day the US 9th Circuit Court of Appeals was to hear arguments by the US government to dismiss the case. The plaintiffs, 15 Burmese villagers who remain anonymous to protect their safety, used the 1789 law to allege that the defendant, Unocal (ticker: UCL), commissioned Burmese soldiers to protect its Yadana gas pipeline knowing they committed murder, rape, and forced labor.

"Although the terms are confidential, the settlement in principle will compensate plaintiffs and provide funds enabling plaintiffs and their representatives to develop programs to improve living conditions, health care, and education and protect the rights of people from the pipeline region," the statement says.

Plaintiffs' counsel, EarthRights International, expressed that it was "thrilled" and "ecstatic" at the settlement, sentiments echoed by other human rights advocates active in ATCA litigation.

"The settlement agreement announced by Unocal and the plaintiffs' representatives is undeniably a triumph for human rights," said [Sandra Coliver](#), executive director of [the Center for Justice & Accountability \(CJA\)](#). "The settlement suggests acceptance by Unocal and its corporate lawyers of the strength of the case against it, both factually and legally."

"It suggests acceptance of the fundamental premise of the lawsuit, namely that corporations can be held liable as aiders and abettors if they provided practical assistance to a foreign state actor--such as the military--knowing that that assistance would likely be used to commit human rights violations," Ms. Coliver told SocialFunds.com.

Daniel Petrocelli, a partner at O'Melveny & Myers and head of the Unocal defense team, did not respond to SocialFunds.com's requests for his commentary.

Sanford Lewis, an attorney with Strategic Counsel on Corporate Accountability who is pressing Dow Chemical (DOW) to take responsibility for the 1984 Bhopal chemical disaster, suggests that the settlement may help resolve an issue left unanswered by the *Sosa v. Alvarez-Machain* ATCA case decided in June 2004 by the US Supreme Court.

"The US Supreme Court has never specified whether corporations could be held liable for an indirect role in the human rights abuses of a nation," Mr. Sanford told SocialFunds.com. "In settling this case, Unocal must have concluded that there was a high risk that any appeals would ultimately decide in favor of the potential for corporate liability--the Supreme Court had

mentioned this potential in a footnote in the June case."

"So now any corporation that collaborates in a nation's human rights abuses may be at risk of suit," added Mr. Sanford.

On the settlement day, the US government was set to argue before the 9th Circuit Court that holding Unocal liable for aiding and abetting would discourage foreign investment and interfere with US use of economic engagement as a foreign policy tool, according to Ms. Coliver.

"That argument is outrageous," Ms. Coliver said. "The US government has a wide range of methods it can use to promote its foreign policy but there are some things it may *not* do: it may not tell the courts to tolerate bribery or other forms of corruption, and equally, it may not tell the courts to tolerate assistance by corporations for human rights atrocities."

"In other court cases, the US government has argued that those who aid and abet terrorists can be held liable for terrorism," she added. "The government cannot have it both ways--the question should not be *whether* aiders and abettors can be held liable, but rather, what is the standard for determining when assistance crosses the legal line."

Although the settlement sets a precedent in practice, it does not set legal precedent because the case did not reach a decision in court. However, earlier decisions in the case do advance legal precedents on specific aspects, for example liability for "knowing assistance" in substantially supporting human rights violations by foreign state actors such as governments or militaries

"What remains for other courts to decide is, first, whether the precedent will be recognized in jurisdictions outside of the 9th Circuit, and second, what factual circumstances constitute 'knowing assistance,'" Ms. Coliver explained.