



Supreme Court Holds That Foreign Corporations Cannot Be Sued Under The Alien Tort Statute

Jesner v. Arab Bank, PLC,
No. 16-499

Decided April 24, 2018

Today, the Supreme Court held 5-4 that a foreign corporation may not be sued under the Alien Tort Statute.

Background:

The Alien Tort Statute of 1789 (ATS) provides that foreign nationals may sue in federal court “for a tort only, committed in violation of the law of nations or a treaty of the United States.” 28 U.S.C. § 1350. In recent years, plaintiffs increasingly have relied on the ATS to sue multinational corporations and banks in federal courts for alleged terrorist activities and human rights violations abroad. In this case, the plaintiffs sued Arab Bank, PLC—a Jordanian financial institution with a branch in New York—alleging that the bank helped finance terrorist attacks in the Middle East.

Issue:

Whether foreign corporations can be sued in federal court in the United States under the ATS.

Court's Holding:

No. Neither the language of the ATS nor the Court’s precedents interpreting it supports extending the statute to reach suits against foreign corporations. The political branches, rather than the courts, are responsible for weighing foreign-policy concerns and deciding whether foreign corporations should face liability for acts like those at issue in this case. The Judiciary is “not well suited to make the required policy judgments that are implicated by corporate liability in cases like this one.”

“[A]bsent further action from Congress it would be inappropriate for courts to extend ATS liability to foreign corporations.”

Justice Kennedy,
writing for the majority

Gibson Dunn Named
Appellate Firm of the Year



What It Means:

- Although the decision does not resolve whether plaintiffs may sue U.S. corporations under the ATS, it does stop the recent trend of plaintiffs using the ATS to sue foreign corporations and foreign financial institutions in the United States.
- *Jesner* joins a line of recent precedents refusing to create new private rights of action and reiterating that the decision to attach liability to certain conduct is best left to Congress.
- By clearly prohibiting ATS liability against foreign corporations, the decision may strengthen the arguments of U.S. corporations seeking to dismiss an ATS suit when the underlying claim is based on the conduct of a foreign affiliate.
- The decision may place greater pressure on Congress to legislate in this area.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

Appellate and Constitutional Law Practice

Caitlin J. Halligan
+1 212.351.3909
challigan@gibsondunn.com

Mark A. Perry
+1 202.887.3667
mperry@gibsondunn.com

Nicole A. Saharsky
+1 202.887.3669
nsaharsky@gibsondunn.com

Related Practice: Transnational Litigation

William E. Thomson
+1 213.229.7891
wthomson@gibsondunn.com

Andrea E. Neuman
+1 212.351.3883
aneuman@gibsondunn.com

Perlette Michèle Jura
+1 213.229.7121
pjura@gibsondunn.com

© 2018 Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, CA 90071

Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice.

If you would like NOT to receive future e-mail alerts from the firm, please reply to this email with the word "UNSUBSCRIBE" in the subject line. Thank you.

Please visit our website at www.gibsondunn.com. | [Legal Notice](#). [Please Read](#).