

Alien Tort Claims Act Experience

Mayer Brown's global platform enables us to easily coordinate across borders when alien tort claims matters touch multiple jurisdictions. Our strengths in local markets mean we can call on contacts with local governments and local counsel to help us gain positive results for our clients.

The Mayer Brown cross-border litigation team has extensive experience defending claims brought under the Alien Tort Claims Act (ATCA) for purported violations of international law. We specifically focus on ATCA claims arising from alleged violations of human rights and have defended such cases in the context of, among others, World War II-era banking and insurance practices, South African apartheid, terrorist attacks in Israel, the production and importation of West African cocoa, the deaths of persons who may have been civilians in Iraq, and the mass killings of Armenians by the Ottoman Empire in the early 20th century. We are particularly familiar with putative class actions arising under the ATCA, and we have extensive class action experience in other contexts that we regularly call upon when defending ATCA class actions.

Our global platform, which includes offices in United States, Europe, Asia, and Latin America, allows us to coordinate across borders in ATCA matters that touch upon multiple jurisdictions. This global perspective—and contacts with governments and local counsel around the world—has yielded positive results for our clients. In matters involving alleged major human rights violations, we have represented clients based in countries ranging from Switzerland to Lebanon, and from Chile to Germany, to name just a few. We have played a leading role in briefing issues under the ATCA, including the scope of civil liability for aiding and abetting under international law, whether corporations (as opposed to individuals) may be held liable under international law or whether particular conduct is actionable under international law and whether the plaintiffs have alleged the state/governmental action

(as opposed to merely private, civilian action) that is an element of many crimes under international law. In addition, we have briefed other issues that commonly arise in ATCA actions, such as the federal preemption of state-law claims that plaintiffs often raise in tandem with ATCA claims.

We are sensitive to the importance of not just achieving a favorable litigation outcome, but also minimizing the reputational harm that can occur when plaintiffs attempt to “try” these cases in the media. We recognize that these two objectives require different approaches in different jurisdictions, and we tailor our strategies accordingly. In some instances, we even have been able to leverage US litigation as an opportunity for our clients to showcase their humanitarian activities, or otherwise enhance their reputation, with the public or interested legislators or regulators.

We have achieved successful outcomes for our clients in ATCA cases on a wide variety of grounds, such as lack of US jurisdiction over the defendant (meaning that the case is dismissed at the outset and without an examination of the merits of the plaintiffs’ claims). We also have pioneered certain ATCA defenses, including having persuaded the US and other affected governments to intervene and request dismissal of the litigation.

Representative ATCA matters

- **WWII bank claims against Swiss and German banks.** Well over a decade ago, members of the current Mayer Brown cross-border litigation team were among the first lawyers to become involved in the defense of the three largest Swiss banks against ATCA claims arising from WWII-era events. Subsequently, the representation expanded to include the defense of German banks in other, similar ATCA WWII-era suits.
- **WWII insurance claims against Swiss insurers.** We played a leading role in defending the Swiss insurance industry against ATCA claims concerning their WWII-era insurance practices. We engineered a unique Swiss insurance settlement that was embraced by plaintiffs’ attorneys as fair, yet was comparatively inexpensive for our clients and positioned our clients to avoid adverse legislation concerning WWII-era insurance that was targeted against other WWII-era insurers.
- **WWII insurance Legislation.** In *American Insurance Association v. Garamendi*, 539 US 396 (2003), the Supreme Court adopted Mayer Brown’s argument that California’s Holocaust Victim Insurance Relief Act—which would have required every insurance company licensed to do business in California to produce detailed information on every insurance policy issued by that company or a related company in Europe between 1920 and 1945—is unconstitutional because it intrudes on the federal government’s foreign affairs powers.
- **Armenian Genocide.** Based on the precedent in *Garamendi*, we obtained a ruling in the Ninth Circuit Court of Appeals that another California law—extending the statute of limitations by more than 80 years for claims arising out of life insurance policies issued to victims of the mass killings of Armenians by the Ottoman Empire—was invalid because it is inconsistent with the federal Executive Branch’s policy, expressed by multiple administrations, rejecting formal recognition of an “Armenian Genocide” as inconsistent with US foreign policy interests.
- **Financing terrorism claim against Lebanese banks.** In response to claims that our client violated the ATCA by allegedly executing wire transactions, the recipients of which were purportedly responsible for terrorist attacks in Israel, we obtained dismissal at the outset on the ground that our client was not subject to US jurisdiction.

- **Claims of aiding and abetting apartheid.**
In this litigation, we obtained dismissal of claims against a European Bank client for failure to properly plead aiding and abetting; following motion practice, plaintiffs dropped their claims against a European manufacturing company client; and we ultimately played a leading role in persuading the democratically elected post-apartheid South African government to oppose the US litigation as an affront to its sovereignty, and then in persuading the US government to oppose the litigation in support of South Africa's position.
- **Aiding and abetting the allegedly abusive labor practices of cocoa farmers in Côte d'Ivoire.**
Some ATCA lawsuits—such as this one—accuse US companies of complicity in human rights violations allegedly committed abroad by their non-US suppliers. In this case, importers of cocoa were accused of aiding and abetting the forced child labor practices allegedly employed on some Ivorian cocoa farms. We have played a leading role in briefing the pending motion to dismiss.
- **Shooting deaths of civilians in Iraq.** In response to claims that our client, a non governmental US State Department contractor, violated the ATCA in connection with the shooting of civilians in Baghdad, we obtained dismissal on the ground that plaintiffs had failed to adequately plead all of the elements of the offenses (e.g., war crimes, extrajudicial killings) alleged.

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