

# DAILY BUSINESS REVIEW

**ON APPEAL** Miami judge's dismissal of cases upheld

## Coke wins in test case of Alien Tort laws

by Alison Frankel

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In a 34-page ruling that one defense lawyer describes as “a sweeping review of the Alien Tort statute,” the 11th U.S. Circuit Court of Appeals has upheld a Miami judge’s dismissal of four cases claiming Coca-Cola and its two Colombian bottling subsidiaries were liable for the murder and torture of union members by Colombian paramilitary forces.

Citing the U.S. Supreme Court’s May ruling in a detainee case, the three-judge panel concluded the plaintiffs’ complaints “fail to sufficiently plead factual allegations” to establish subject matter jurisdiction and state a valid claim.

The plaintiffs, represented by veteran Alien Tort Claims lawyer Terry Collingsworth of Conrad & Scherer in Washington, alleged in four suits that bottlers Panamco and Bebidas collaborated with paramilitary forces in what the 11th Circuit called “the systematic intimidation, kidnapping, detention, torture and murder of Colombian trade unionists.”

The complaints didn’t accuse Coke or its bottlers of direct responsibility for the crimes but sought compensation under the Alien Tort Claims Act and the Torture Victims Protection Act for the corporations’ alleged aiding and abetting of the paramilitary forces.

“These were heinous accusations,” said Faith Gay of Quinn Emanuel Urquhart Oliver & Hedges, who has represented Coca-Cola since the suits were filed in 2001. Quinn partner Kathleen Sullivan worked with her at the appellate stage. “Coca-Cola was four levels removed from what was happening. We knew nothing about these events until we were sued.



A.M. HOLT

**Robert Brochin, who represented one of the bottlers, says the plaintiffs failed to form a plausible legal theory.**

... It was defamation through legal pleadings.”

Gay said the appellate opinion establishes Alien Tort plaintiffs “must in order to state a claim show links at every level.”

Robert Brochin of Morgan Lewis & Bockius, who represents Panamco, said: “The ruling reiterates that before you can

file a lawsuit, particularly one brought under the banner of human-rights abuses, you have to be able to plead facts that form a plausible legal theory. The plaintiffs in this case did not do that.”

The third defendant, Bebidas, was represented by William McCaughan of K&L Gates.

The three firms, which split the defense time when the case was argued last February, worked well together, Gay and Brochin said. Coca-Cola was dismissed as a defendant in a 2003 ruling and the bottlers in a 2006 ruling. The case started with U.S. District Judge Paul Huck and moved to Judge Jose Martinez.

“We were really happy to keep both Coca-Cola and the bottlers out” in the 11th Circuit ruling, Gay said.

Collingsworth said the appellate court’s reliance on *Iqbal* is troubling since the Supreme Court didn’t issue its ruling until after this case was argued.

“*Iqbal* drastically changes the pleading standard,” he said. “At a minimum, we should get the chance to replead.”

In any event, he added, he plans to file new cases that make similar accusations against Coca-Cola and the Colombian bottlers.

“There’s nothing in what the court said to exonerate the bottlers or Coca-Cola in what happened,” he said. “The court took a technical legal path.”

The opinion was written by Judge Susan Black. Judge Gerald Bard Tjoflat and Senior Judge Emmett Ripley Cox concurred.

**Alison Frankel reports for the Daily Report in Atlanta, an Incisive Media affiliate of the Daily Business Review.**