

Awakening Monster: The Alien Tort Statute of 1789

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Abstract

Within the next decade, 100,000 class action Chinese plaintiffs, organized by New York trial lawyers, could sue General Motors, Toyota, General Electric, Mitsubishi, and a host of other blue-chip corporations in a US federal court for abetting China's denial of political rights, for observing China's restrictions on trade unions, and for impairing the Chinese environment. These plaintiffs might claim actual damages of \$6 billion and punitive damages of \$20 billion. Similar blockbuster cases are already working their way through federal and state court systems. This nightmare scenario could become a reality because of a little-known, one-sentence law enacted in 1789--the Alien Tort Statute (ATS): "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." In this policy analysis, Gary Clyde Hufbauer and Nicholas K. Mitrokostas examine the chilling impact the ATS could have on trade and foreign direct investment. They trace its history from the original intent to recent court

interpretations, including a look at class action suits over asbestos and apartheid. They provide an economic picture of the potential scope of ATS litigation, cite the possible collateral damage, and review the impact that ATS rulings could have on global relations. The authors recommend measures Congress should take to limit expansive court interpretations. The study is a must-read for policymakers, international lawyers, and students.

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