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## Ford, IBM, Daimler Dealt Setback In Apartheid Case

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### By **Pete Brush**

Law360, New York (January 04, 2010) -- A federal judge has refused to certify a bid by [Ford Motor Co.](#), Daimler AG and [IBM Corp.](#) for an interlocutory appeal on corporate statutory liability, a pivotal issue in a case accusing those corporations and others of aiding and abetting South Africa's former apartheid government.

Judge Shira A. Scheindlin's order, issued Dec. 31 in the U.S. District Court for the Southern District of New York, referenced an April 8 opinion in which she rejected arguments by the three companies that the U.S. Alien Tort Statute cannot impose liability on corporations.

"In that opinion I stated that the issue of corporate liability 'is a long-settled question in this circuit,' " Judge Scheindlin wrote.

Judge Scheindlin's April opinion, which weighed in at 144 pages, dismissed several major corporate defendants accused of doing business with the South African regime. But claims that Daimler and Ford aided and abetted torture and apartheid, among other things, survived. Claims that IBM aided and abetted apartheid also survived.

Plaintiffs in the multidistrict case, consolidated in 2002, claim jurisdiction in U.S. courts under the Alien Tort Statute. The lawsuits take up the obligations of corporations under the law of nations, the roles of U.S. courts in enforcing international law and the legacy of South African apartheid.

An appeal before the U.S. Court of Appeals for the Second Circuit is currently pending on other issues in the case. Judge Scheindlin noted in her Dec. 31 order that, with oral arguments set for Jan.

11 before the appellate court, "deciding [on the interlocutory appeal] in a timely manner was of the utmost importance.

"The Second Circuit has made clear that it has not yet decided the question of corporate liability," Judge Scheindlin wrote. "However, it has not provided any reason to believe that there are substantial grounds for disagreement about the correct result."

In a memorandum dated Dec. 23, attorneys for the corporate defendants argued that the criteria for an interlocutory appeal were satisfied because the corporate liability issue involves a controlling question of law, because there is substantial ground for difference of opinion and because such an appeal would advance the litigation.

"If the [Alien Tort Statute] does not extend liability to corporations, these actions must be dismissed," the defendants reasoned.

But their argument was turned aside by Judge Scheindlin, who did not ask for a reply brief from counsel for the plaintiffs in the multibillion-dollar litigation.

The plaintiffs allege that by doing business in South Africa, the companies actively and willingly collaborated with the South African government to break international law through apartheid, which repressed the black South African population while providing benefits to the white population.

The plaintiffs are represented by [Hausfeld LLP](#), Schonbrun DeSimone Seplow Harris & Hoffman LLP, Nagel Rice LLP, the International Human Rights Clinic at Harvard Law School and others.

Ford is represented by [O'Melveny & Myers LLP](#). Daimler is represented by [Arnold & Porter LLP](#) and [Skadden Arps](#) Slate Meagher & Flom LLP, and IBM is represented by [Cravath Swaine & Moore LLP](#).

Calls seeking comment were not immediately returned on Monday.

The case is In re: South African Apartheid Litigation, case number 02-md-1449, in the U.S. District Court for the Southern District of New York.



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