

11th Circuit Court of Appeals Issues Favorable Opinion in our case against Drummond

Statement re: **Melo et al. v. Drummond Company Inc. et al., Case No 16-10921**

On September 27, 2016, in *Melo et al. v. Drummond Company Inc. et al.*, Case No 16-10921, the Court of Appeals for the Eleventh Circuit reversed in part and affirmed in part the District Court's dismissal of claims brought by the heirs of 34 decedents they allege were murdered by members of the Autodefensas Unidas de Colombia ("AUC") who were collaborating with Drummond^[1]. The case alleges that Drummond aided and abetted the AUC by providing it with significant financial support, logistical assistance, supplies and a safe haven so that the AUC would defeat FARC guerillas operating around Drummond's coal mine and railroad line in Cesar Province, Colombia. The complaint^[2] alleges that Drummond in effect sided with the AUC in its violent war against the FARC and joined in the AUC's war crimes and extrajudicial killings.

Plaintiffs' complaint included four causes of action.^[3] Plaintiffs allege that Drummond is liable for wrongful death for the murder of their decedents under Colombian law, and the trial court has mandatory diversity jurisdiction under 28 U.S.C. § 1332(a)(2). The Appeals Court agreed with Plaintiffs that the trial court could not summarily dismiss these claims and remanded for further consideration. Plaintiffs expect to prevail in their argument that the wrongful death claims are viable and timely under Colombian law.

Plaintiffs also allege a claim for extrajudicial killing under the Torture Victim Protection Act (TVPA), 28 U.S.C. § 1350, against individual defendants Garry Drummond, the now-deceased former CEO of Drummond Company, and Mike Tracy, the current CEO and former President of the company. The U.S. Supreme Court had previously ruled in *Mohamad v. Palestinian Authority*, 132 S. Ct. 1702 (2012), that corporations could not be sued under the TVPA, so the Court of Appeals affirmed the dismissal of the Drummond corporate defendants but remanded for consideration on the merits the claims against Mr. Drummond and Mr. Tracy.

Finally, Plaintiffs allege causes of action for both war crimes and extrajudicial killing against all the Drummond defendants under the Alien Tort Statute (ATS), 28 U.S.C. § 1350. The trial court, based on a ruling limiting the extraterritorial application of the ATS by the U.S. Supreme Court in *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013), dismissed those claims with prejudice. The Appeals Court reversed that holding and directed that the claims be categorized as dismissed without prejudice, leaving room for the Plaintiffs to refile and seek to meet the new standard of the *Kiobel* decision.

The Colombian Plaintiffs welcome the renewed prospect of holding the Drummond Defendants accountable for their role in the brutal murders of Plaintiffs' loved ones.

Contact Terry Collingsworth, Executive Director of the International Rights Advocates (www.IRAdvocates.org);^[4]

tc@iradvocates.org^[5] if you would like more information about the case and IRAdvocates' efforts to hold Drummond and other multinationals accountable for their alleged collaboration with the AUC in Colombia.

Referencias

- ^{1.}^the Court of Appeals for the Eleventh Circuit reversed in part and affirmed in part the District Court's dismissal of claims brought by the heirs of 34 decedents they allege were murdered by members of the Autodefensas Unidas de Colombia ("AUC") who were collaborating with Drummond (iradvocates.org)
- ^{2.}^complaint (iradvocates.org)
- ^{3.}^Plaintiffs' complaint included four causes of action. (iradvocates.org)
- ^{4.}^www.IRAdvocates.org; (www.IRAdvocates.org;)
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