

American Chemical Manufacturer Accused of Aiding Saddam Hussein

While the former leader of Iraq, Saddam Hussein, may have been executed in 2006, the effects of his legacy are still felt today. During the Gulf War, Hussein was accused of using mustard gas on U.S. military personnel, a practice that clearly violates international law. Upon their return from the conflict, these military personnel sought redress against a chemical manufacturer they believed supplied Hussein with the necessary components to create the mustard gas. However, the United States Fifth Circuit ultimately held that these veterans had no cause of action against the chemical manufacturer. *Adams v. Alcolac, Inc.*, No. 19-40899, 2020 WL 3561650 (5th Cir. Sept. 8, 2020) (per curiam).

Alcolac is an American chemical manufacturer who produced thiodiglycol (TDG) through a wholly owned subsidiary. TDG is a chemical with many uses. It is widely used in the textile industry but can also be used to produce mustard gas. Because of this potential, the exportation of TDG to Iraq was prohibited by federal law.

In 1987 and 1988, Alcolac sold 538 tons of TDG to its subsidiary which then exported it to Belgium and the Netherlands. The TDG was subsequently shipped to Jordan, and then to Iraq where it was used in the production of mustard gas. Plaintiffs alleged that Alcolac “knew or had reason to know that” the TDG would likely end up in a prohibited destination, where plaintiffs were eventually exposed to and injured by the mustard gas.

After some unsuccessful litigation in Texas state court, the plaintiffs eventually amended their complaint to allege that Alcolac conspired with agents of the Iraqi government to violate the Export Administration Act’s ban on exportation of TDG (a Texas law cause of action) and that the sale of the chemical was also a violation of the Justice Against Sponsors of Terrorism Act (JASTA). The litigation was then removed to federal court.

Plaintiffs lost on both of their claims on technical grounds. First, JASTA excludes any recovery for injuries suffered “by reason of an act of war.” Plaintiffs’ injuries undeniably occurred within the statute’s definition of “act of war,” and therefore were foreclosed. While plaintiffs tried to argue

that Iraq's use of mustard gas violated international law and therefore constituted "international terrorism" instead of an act of war, the Fifth Circuit was unpersuaded that JASTA contemplated such an exception.

With regard to plaintiffs' conspiracy cause of action, the Fifth Circuit held that under Texas law a conspiracy is only actionable if there is an underlying tort. Because the Export Administration Act does not provide a private right of action, plaintiffs could not maintain this claim against Alcolac. Accordingly, both claims were dismissed.

Legally, this case may not be of significant consequence to anyone other than the parties in the case, but it does highlight some of the considerations large chemical companies—and indeed anyone involved in matters where foreign parties are or could become involved—should contemplate to protect their image and brand. Although Alcolac was eventually absolved of any liability in this case, it has been involved in protracted litigation over this issue since at least 1994 and surely has suffered some degree of reputational harm for being associated with the production of mustard gas used against American troops. The looming penalties from various post-9/11 federal statutes and regulations—particularly those overseen by the Office of Foreign Asset Control (OFAC)—can scuttle even the largest of companies for not minding their proverbial ps and qs. Chemical companies—and all companies for that matter—should endeavor to perform due diligence to the best of their abilities to try and prevent the misuse of their products this way, lest they find themselves ensnared in a similar situation or worse.