09-2778-CV

09-2779-cv; 09-2780-cv; 09-2781-cv; 09-2783-cv; 09-2785-cv; 09-2787-cv; 09-2792-cv; 09-2801-cv; 09-3037-cv

---

In the
United States Court of Appeals
For the Second Circuit

SAKWE BALINTULO, as personal representative of SABA BALINTULO, DENNIS VINCENT FREDERICK BRUTUS, MARK FRANSCH, as personal representative of ANTON FRANSCH, ELSIE GISHI, LESIBA KEKANA, ARCHINGTON MADONDO, as personal representative of MANDLA MADONDO, MPHO ALFRED MASEMOLA, MICHAEL MBELE, MAMOSADI CATHERINE MLANGENI, REUBEN MPHELA, THULANI NUNU, THANDIWE SHEZI, THOBILE SIKANI, LUNGISILE NTSEBEZA, MANTOA DOROTHY MOLEFI, individually and on behalf of her deceased son, MNCEKELELI HENYN SIMANGENTLOKO, TOZAMILE BOTHA, MPUMELELO CILIBE, WILLIAM DANIEL PETERS, SAMUEL ZOYISILE MALI, MSITHELI WELLINGTON NONYUKELA, JAMES MICHAEL TAMBOER, NOTHINI BETTY DYONASHE, individually and on behalf of her deceased son, NONKULULEKO SYLVIA NGCAKA, individually and on behalf of her deceased son, HANS LANGFORD PHIRI, MIRRIAM MZAMO, individually and on behalf of her deceased son,

Plaintiffs-Appellees,

v.

(Caption continued on inside cover)

DAIMLER AG, FORD MOTOR COMPANY,
INTERNATIONAL BUSINESS MACHINES CORPORATION

Defendants-Appellants,

GENERAL MOTORS CORPORATION, RHEINMETALL AG

Defendants.

On Appeal from the United States District Court
For the Southern District of New York

SUPPLEMENTAL BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS AND REVERSAL

Robin S. Conrad
Amar D. Sarwal
National Chamber
Litigation Center, Inc.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337

Peter B. Rutledge
Counsel of Record
100 Herty Drive
Athens, GA 30602
(706) 542-1328

Counsel for Amicus Curiae
The Chamber of Commerce of the United States of America

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the Chamber of Commerce of the United States of America states that it is a nonprofit corporation organized under the laws of the District of Columbia. It has no parent company and has issued no stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

IDENTITY, INTEREST, AND SOURCE OF AUTHORITY

***Identity*:** *Amicus Curiae* is the Chamber of Commerce of the United States of America ("Chamber"), the nation's largest federation of business companies and associations.

***Interest*:** As stated in its prior filing in these appeals, several of the Chamber's members have been named as defendants in these cases, and many more have been named as defendants in other ATS cases presenting the issue whether corporations can be liable for alleged violations of the "law of nations." 28 U.S.C. § 1350 (2006).

***Source of Authority*:** This Court's Order of December 4, 2009 inviting "amici's views" on the issue of corporate liability authorizes this brief. In a December 11, 2009 telephone conversation, the case manager for these appeals confirmed that this order obviated the need for fresh consent letters. (All parties consented to the Chamber's prior filing in these appeals).

ARGUMENT

I. THE ALIEN TORT STATUTE DOES NOT SUPPORT JURISDICTION OVER CLAIMS AGAINST CORPORATIONS BECAUSE CORPORATE LIABILITY IS NOT A "SPECIFIC, UNIVERSAL, AND OBLIGATORY NORM" RECOGNIZED BY THE COMMUNITY OF NATIONS.

In determining whether conduct satisfies the ATS's "law of nations" requirement, *Sosa* dictates, "federal courts should not recognize private claims under federal common law for violations of any international law norm with less definite content and acceptance among civilized nations than the historical paradigms familiar when § 1350 was enacted." 542 U.S. 692, 732 (2004). This standard sets a high bar —a norm must be "specific, universal, and obligatory." *Id.* (citation and internal quotation omitted). In this case, the norm of corporate criminal liability is not "specific, universal, and obligatory." Even if it were, any such norm, defined at the level of specificity required by *Sosa*, does not support civil liability in this context.

A. Customary International Law Does Not Recognize A Norm of Corporate Criminal Liability.

Societas non delinquere potest. That longstanding adage, meaning "a legal entity cannot be blameworthy," accurately portrays the current

state of customary international law on the subject of corporate criminal liability. Both international practice and the practice of nation-states support this view.

1. International practice does not support the norm of corporate criminal liability.

In ascertaining international practice on a subject, the Supreme Court and this Circuit have consulted several sources, including the experience of the post-World War II military tribunals, the International Tribunals of Yugoslavia and Rwanda, and the Rome Statute of the International Criminal Court. These sources demonstrate that international practice has failed to embrace clearly a norm of corporate criminal liability.

World War II Tribunals: Prior to World War II, customary international law comprised almost exclusively a "body of rules and principles of action which are binding upon civilized states in their relations with one another." J.L. Brierly, *The Law of Nations: An Introduction to the International Law of Peace* 1 (1928). Two of *Sosa*'s paradigmatic claims—offenses against ambassadors and violations of safe conduct—were effectively wrongs perpetrated against the state

itself, and easily fit this view. Piracy represented a special type of offense taking place on the high seas, which, by definition, lay outside the territorial boundaries of a sovereign nation-state and thus also fell by necessity within the law of nations. *See, e.g.*, *Am. Banana Co. v. United Fruit Co.*, 213 U.S. 347, 355-56 (1909) ("No doubt in regions subject to no sovereign, like the high seas . . . such countries may treat some relations between their citizens as governed by their own law . . . ."), *overruled on other grounds by W.S. Kirkpatrick & Co. v. Envtl. Tectonics Corp.*, 493 U.S. 400 (1990). Otherwise, private conduct that took place *within* the territory of a sovereign state was subject to the state's own regulation and not to the dictates of customary international law. *See, e.g.*, *Am. Banana,* 213 U.S. at 356 ("[T]he general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done.").

The military tribunals established at the end of World War II hostilities entertained the possibility that individuals too could violate international law. Proponents of using the ATS against corporations seize upon several of these cases brought against German and Japanese

industrialists. *See generally* X United Nations War Crimes Comm'n, *Law Reports of Trials of War Criminals* (1949) (detailing Nürnberg Krupp and I.G. Farben trials); Anita Ramasastry, *Corporate Complicity: From Nuremberg to Rangoon*, 20 Berkeley J. Int'l L. 91, 104-17 (2002) [hereinafter Ramasastry, *Corporate Complicity*] (arguing that these trials support corporate liability). According to this argument, the tribunals found several individuals at these companies responsible for war crimes, and, thus, the companies themselves violated customary international law. *See* Ramasastry, *Corporate Complicity* at 104-05.

This argument suffers from several flaws. First, it cannot surmount the fact that the World War II military tribunals simply lacked jurisdiction over corporations. *See* Andrew Clapham, *The Question of Jurisdiction Under International Criminal Law Over Legal Persons,* in *Liability of Multinational Corporations Under International Law* 139, 140 (Menno T. Kamminga & Saman Zia-Zarifi, eds., 2000) [hereinafter Clapham, *Question of Jurisdiction*]. While some passages in certain opinions could be read to blame the private corporations themselves, the tribunals ultimately lacked the authority to render an authoritative statement on the subject. Joseph Borkin, *The Crime and*

Punishment of I.G. Farben 139 (1978) [hereinafter Borkin, *I.G. Farben*]; Clapham, *Question of Jurisdiction* at 140. *See also United States v. Krauch*, 8 Trials of War Criminals Before the Nürnberg Military Tribunals Under Control Council Law No. 10 1081, 1152-53 (1952) ("[T]he corporate defendant, Farben is not before the bar of this Tribunal and cannot be subject to criminal penalties in these proceedings.").

Second, corporate criminal liability is inconsistent with the norm of criminal responsibility that animated the jurisprudence of the World War II tribunals. The emphasis on individual responsibility reflected a deeply felt conviction about the culpability principles underpinning these freshly minted customary international law obligations, namely that "[c]rimes against international law are committed by men, not by abstract entities … ." *The Nürnberg Trials*, 6 F.R.D. 69, 110 (1946). Applying these culpability principles to the individual defendants, the Nürnberg tribunals did not simply categorically declare them all guilty; rather, the tribunals engaged in a careful review which led to acquittals on some counts. *See* Borkin, *I.G. Farben* at 153-54. This highly individualized approach, which rejected the notion that one defendant's

behavior could automatically be imputed to another, would be inconsistent with any notion of *respondeat superior* on which corporate liability would rest.

Third, the unique dynamics of the World War II tribunals should not be overlooked. In contrast to the International Court of Justice or other more recent international tribunals, the military tribunals at Nürnberg did not comprise a diverse array of impartial jurists steeped in international law. They generally consisted of military officers or jurists from the Allied countries dispensing victors' justice. *See The Nürnberg Trials*, 6 F.R.D. at 73-74 (listing names, nationalities, and military ranks of judges and commissioners). Indeed, several of the cases against company officials were not even presided over by an international body of jurists, but instead consisted entirely of American jurists. Borkin, *I.G. Farben* at 136-40. Thus, the World War II military tribunals represent, at best, an imperfect model upon which to base any extension of customary international law, particularly in the context of the ATS where the Supreme Court has demanded that an actionable norm be defined at a high level of specificity.

In sum, the record of the World War II military tribunals did not compromise the bedrock principle that customary international law does not contain a norm of corporate criminal liability.

The Yugoslavia and Rwanda Tribunals: Both of these tribunals were established in the mid-1990's. Like the World War II military tribunals, the ICTY and the ICTR exercise jurisdiction solely over individuals, not corporations or other juridical entities. Clapham, *Question of Jurisdiction* at 189; Andrew Clapham, *Extending International Criminal Law Beyond the Individual to Corporations and Armed Opposition Groups*, 6 J. Int'l Crim. Just. 899, 901-02 (2008). Thus, nothing in the organic statutes or practices of these tribunals alters the prevailing principle of *societas non delinquere potest*.

The Rome Convention: As this Circuit recognized in its December 4 Order, Article 25(1) of the Rome Statute provides for jurisdiction over "natural persons." The Rome Statute of the International Criminal Court art. 25(1), July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute]. The choice of language represents the product of extensive deliberations in which delegates representing over one-hundred fifty countries failed to reach consensus on a proposal to include a provision

on corporate criminal liability. I *The Rome Statute of the International Criminal Court: A Commentary* 778-79 (Antonio Cassese et al. eds., 2002) [hereinafter *Rome Statute: A Commentary*].

The history behind the adoption of Article 25 is instructive. Early in the deliberations on the Statute, the French delegation introduced a proposal that would have extended criminal liability to corporations and other juridical entities. *See Rome Statute: A Commentary* at 779. A diverse array of nations opposed the proposal, citing, among other things, the lack of agreement about the existence and extent of such a principle. Clapham, *Question of Jurisdiction* at 147. This irreconcilable dissensus led the French delegation to withdraw its proposal. U.N. GAOR, 53rd Sess., 1st plen. mtg. at para 32, U.N. Doc. A/CONF.183/C.1/SR.1 (June 16, 1998).

Subsequently, the French delegation introduced a more modest proposal, modeled on the Nürnberg precedent, under which specific organizations could be declared criminal, thereby paving the way for prosecution of the organization's members. *Id.* at para 33. During deliberation on this amended proposal, several delegates again expressed concern at the prospect of international corporate criminality,

namely because "not all legal systems accepted" the concept. *Id.* at para. 51 (Venezuela delegation). Those delegates expressing reservations represented a diverse array of States, including Australia, Cuba, Denmark, El Salvador, Greece, Iran, Mexico, Portugal, Sweden, Ukraine, and Venezuela. *Id.* at paras. 32, 35, 37, 38, 43, 46, 51, 55, 57, 58, 63, 65. Many delegates specifically voiced concern about the difficulty of defining international corporate criminality because domestic standards differ to such a large degree. *See, e.g.*, *id.* at para 44 (Lebanese delegation expressing concern that "the crimes to be embodied . . . were still not clearly defined"); para 65 (Iranian delegation predicting "difficulties arising over definition, interpretation and enforcement"). Indeed, even the United States' delegate stressed that "it would be difficult to reach consensus" on standards and definitions of corporate criminality. *Id.* at para 54. That consensus was never achieved, and consequently the version of Article 25 ultimately adopted by the Rome Delegates limited criminal liability to "natural persons" and did not extend it to corporations or other juridical entities.

Thus, the Rome Statute and the history behind the adoption of Article 25 reaffirm the notion that "[c]orporations are not presently

subject to criminal liability under international law." Ronald C. Slye, *Corporations, Veils, and International Criminal Liability*, 33 Brook. J. Int'l L. 955, 955 (2008).

2. State Practice

To determine whether a norm is "universal, specific, and obligatory," *Sosa* also instructs courts to consult " 'the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience have made themselves peculiarly well acquainted with the subject of which they treat.' " *Id.* at 734 (quoting *The Paquete Habana*, 175 U.S. 677, 700 (1900)). While domestic law cannot establish an international norm (for its does not represent a "mutual" obligation), it can help illuminate why an international norm never developed. In this case, nation-states differ sharply over the availability – and extent – of corporate liability. It is evident from the works of jurists and commentators that customs and usages of civilized nations respecting corporate criminal liability are far too disparate to satisfy *Sosa*'s stringent requirement.

Even those commentators who advocate corporate criminal responsibility on an international scale concede that "[t]here does not appear to be any *universally accepted* concept of corporate criminality." Nina H. B. Jørgensen, *The Responsibility of States for International Crimes* 79 (2000) (emphasis added) [hereinafter Jørgensen, *Responsibility of States*]. At the most basic level, states disagree with respect to whether corporations face criminal responsibility at all. Legal systems that do not recognize corporate criminality include Belgium, Germany, Spain, and Ukraine. *Id.* at 78; Anita Ramasastry & Robert C. Thompson, *Commerce, Crime and Conflict: Legal Remedies for Private Sector Liability for Grave Breaches of International Law* 13 (Fafo Report Exec. Summary 2006) [hereinafter Fafo Report]. Even within these legal systems that do not subject corporations to criminal responsibility, corporations face different magnitudes of civil liability for the criminal conduct of representatives. Belgian law, for example, does not impose criminal sanctions on corporations, but provides for civil liability when a corporation violates criminal law. Jørgensen, *Responsibility of States* at 78. Germany similarly limits criminal responsibility to natural persons, but provides for administrative fines

when a corporation's representative commits a crime. *See* Gesetz über Ordnungswidrigkeiten [Administrative Offenses Act], Jan. 2, 2002, at 30 § 1 (F.R.G.). It is evident that even among those states that decline to extend criminal responsibility to corporations, the scope of a corporation's potential liability is anything but universal, varying extensively from one jurisdiction to the next.

Furthermore, legal systems that provide for corporate criminal responsibility differ in the nature and scope of that responsibility. States, for instance, take different approaches with regard to prerequisites to corporate criminal sanction. In some legal systems, such as the United Kingdom, a corporation faces criminal responsibility only if the individual perpetrator is also criminally culpable. Jørgensen, *Responsibility of States* at 77 (citing *Halsbury's Laws of England* para. 35 n.7). In other states, including France, Japan, and the Netherlands, corresponding individual responsibility is permitted but not required for corporate criminal responsibility to attach. *Id.* (citing French Penal Code § 121-2; Japan's Ryobatsu-kitei regulation; Dutch Penal Code para. 51).

States that provide for such liability—and not all states do—differ not only with respect to what acts constitute aiding and abetting, but even more so with respect to the *mens rea* standard for legal persons. *See, e.g.*, Fafo AIS, *Complicity: Elements of the Crime*, Sept. 15, 2006, at 2 (Questionnaire to Argentina) ("Argentina's laws do not impose criminal liability on legal persons . . . for acting as accomplices."). Some states utilize *respondeat superior*, imputing the *mens rea* of the culpable individual to the corporation responsible for the individual's actions. William A. Schabas, *Genocide in International Law* 444 (2000). Others focus not on the individual actor, but on the "corporate culture" of the organization itself to establish *mens rea*. *Id.*

Domestic legal systems also differ widely in the types of crimes for which a corporation faces responsibility. Some states only extend criminality to a corporation if the alleged violation is one of a select few crimes. In Argentina and Indonesia, for example, corporations may face criminal responsibility only for environmental crimes, commercial crimes, corruption, and terrorism. Fafo Report at 13. Other states are much more permissive and extend corporate criminality with little regard to the type of crime at issue. Australia, for instance, takes an

approach quite distinct from Argentina and Indonesia, attributing fault to a "body corporate that expressly, tacitly, or impliedly authorized the commission of a criminal offence," without regard to the type of offense. Criminal Code Act, 1995, § 3, sched. 3, part 2.5 section 12.2 (Austl.). This wide variation hardly creates a universal and obligatory standard.

Where deviation from a single specific, universal, and obligatory standard exists, *Sosa*'s requisite level of "acceptance among civilized nations" cannot be satisfied. 542 U.S. at 732. Nothing is universal in corporate criminal responsibility. From the theoretical underpinnings of the doctrine to its practical application, remarkable deviation exists. As such, corporate criminal responsibility does not fulfill *Sosa*'s exacting criteria.

3. The Alien Tort Statute Is Not The Proper Vehicle for Regulating Alleged Corporate Mischief.

Stripped of any legal support from the traditional sources of customary international law, arguments to extend the ATS to corporations ultimately reduce to nothing more than a naked set of policy arguments about the alleged evils perpetrated by multi-national corporations and the need for more robust transboundary regulation.

Those arguments, *amicus* submits, are better directed to the political branches in the United States and others elsewhere. To the extent this Court entertains them, however, *amicus* briefly wishes to observe both the countervailing policy considerations and the alternatives to ATS litigation whereby these ends may be more legitimately achieved.

Attempting to achieve corporate regulation through ATS litigation is not costless. As *amicus* stressed in its prior filing with this Court, such litigation chills overseas business activity, undermines economic development, and interferes with the foreign relations of the United States. Moreover, extending customary international law to corporations, as plaintiffs in these appeals seek to do, strips nation-states of an essential element of their sovereignty. As this Court has recognized and this brief has stressed throughout, the development of customary international law does not emerge through garden-variety domestic litigation but, instead, results from the gradual development of consensus among the political leadership of nation-states. Here, that lack of consensus ultimately traces to legitimate differences between nation-states about the desirability of corporate criminal liability, its viability under their respective domestic legal orders, and principles of

individual moral culpability. Extending customary international law to corporations, as plaintiffs urge this Court to do, replaces the cautious, gradual process of consensus-building among nations with a process manipulated by interest groups with no political accountability and no obligation to consider broader national or international interests.

Other, more legitimate mechanisms already exist whereby these groups can attempt to accomplish their goals. A corporation's home state might seek to regulate its extraterritorial conduct. The host state could choose to regulate the activities of the corporation or its foreign subsidiary. Finally, corporations can – and often do – develop voluntary standards which govern their conduct in developing nations. *See, e.g.*, Organisation for Economic Cooperation and Development, The OECD Guidelines for Multinational Enterprises, OECD Doc. 80761 (rev. ed. 2000). These mechanisms, rather than private litigation, provide adequate, more legitimate avenues for plaintiffs to pursue their goals.

B. Even If Customary International Law Recognized A Norm Of Corporate Criminal Liability, It Does Not Support An Actionable Civil Norm.

Even if customary international law recognized a norm of corporate criminal liability, violations of that norm would not automatically be actionable under the ATS. Rather, it is also necessary to ascertain whether nations recognize an international obligation to provide *civil* redress for the violation. *Sosa*, 542 U.S. at 715, 722 n.15, 724; *Mora v. New York*, 524 F.3d 183, 208-09 (2d Cir. 2008); *see also Sarei v. Rio Tinto, PLC*, 550 F.3d 822, 831 (9th Cir. 2008).

Doctrines developed in the international criminal context cannot be imported unreflectively to supply a theory of civil liability. *Mora*, 524 F.3d at 188 n.5, 208-09; *Rio Tinto*, 550 F.3d at 831. First, such an intellectual leap conflicts with the requirement that any international norm be defined with a high degree of "specificity." Importing a criminal norm into the civil sphere strips that norm from the context in which it was developed and, contrary to *Sosa*, defines the norm at too high a level of generality. Second, importation of norms from the criminal system overlook the separation-of-powers implications of such a decision. *Cf. Sosa*, 542 U.S. at 727 ("[T]his Court has recently and

repeatedly said that a decision to create a private right of action is one better left to legislative judgment in the great majority of cases."). Norms developed in the criminal system allow sovereign states to serve as filters through which decisions to prosecute can be made. The state thus can balance relevant policy considerations—such as the compatibility of corporate liability with the state's culpability principles; the impact on the employees, shareholders and economy of imposing a sanction on the company; and the practicability of proving matters such as *mens rea* or *actus reus* of the corporation. As the above-described debates surrounding the Rome Statute demonstrate, nation-states strike this balance in different ways. By contrast, the civil system lacks those same checks and allows private plaintiffs to proceed directly against a defendant irrespective of the impact of the lawsuit (regardless of its merits) on the broader public interest. The creation of such a civil norm through after-the-fact litigation also causes serious notice problems for corporations, particularly where the underlying economic activity was approved by their home state and the host state.

To be sure, the importation of international law norms into the civil context can occur and, indeed, has occurred. The Torture Victim

Protection Act, 28 U.S.C. § 1350 (statutory note), provides one example. Likewise, the Senate could ratify a treaty and provide for a civil cause of action for its violation. *Cf. Sosa*, 542 U.S. at 727; *Mora*, 524 F.3d at 188 n.5, 208-09; *Rio Tinto*, 550 F.3d at 831. Such norms avoid the doctrinal, policy, and notice problems attendant through judicial creation. Absent such action, however, *amicus* urges the Court to resist plaintiffs' invitation to import criminal norms—which do not even exist—into the civil context.

CONCLUSION

For the foregoing reasons (and the reasons stated in the Chamber's prior filing in these appeals), the decision below should be reversed, and the cases should be remanded with instructions to dismiss them.

Respectfully submitted,

Robin S. Conrad
Amar D. Sarwal
National Chamber Litigation Center, Inc.
1615 H Street, N.W.
Washington, D.C. 20062
Tele: (202) 463-5337

Peter B. Rutledge
100 Herty Drive
Athens, GA 30602
Tele: (706) 542-1328

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) and this Court's Order of December 4, 2009 because this brief contains 3554 words and 20 pages, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in Century Schoolbook 14-point font.

Dated: December 22, 2009

_____

Peter B. Rutledge

CERTIFICATE OF SERVICE

I, Peter B. Rutledge, hereby certify that on December 22, 2009, the attached Brief *Amicus Curiae* of the Chamber of Commerce of the United States of America in support of Appellants and Reversal was served upon the following by electronic mail and overnight mail:

Jay J. Rice
Nagel, Rice & Mazie, LLP,
103 Eisenhower Parkway
Roseland, NJ 07068
(973) 618-0400
jrice@nagelrice.com

Paul L. Hoffman
Schonbrun, Desimone, Seplow, Harris & Hoffman
723 Ocean Front Walk
Venice, California 90291
(310) 396-0731
Hoffpaul@aol.com
Attorneys for Ntsebeza Plaintiffs

Steig Olson
Hausfeld, LLP
11 Broadway, Suite 615
New York, NY 10004
(212) 830-9850
solson@hausfeldllp.com

Matt Schultz
Attorney at Law
Levin Papantonio Thomas Mitchell Echsner & Proctor, PA
316 S. Baylen St., Suite 600
Pensacola, FL 32502
(850) 435-7140
mschultz@levinlaw.com
Attorneys for Balintulo Plaintiffs

CERTIFICATE OF SERVICE (cont'd)

Sri Srinivasan
O'Melveny & Myers LLP
1625 Eye Street, NW
Washington, DC 20006
(202) 383-5300
ssrinivasan@omm.com
Attorneys for Ford Motor Company

Peter L. Zimroth
Ramon Marks
Lisa S. Blatt
Arnold & Porter LLP
399 Park Avenue
New York, NY 10022
(212) 715-1010
Peter.Zimroth@aporter.com
Attorneys for Defendant-Appellant Daimler AG

Keith R. Hummel
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
(212) 474-1000
khummel@cravath.com
Attorneys for IBM Corporation

VIRUS CERTIFICATE

I certify that all pdf files have been scanned for viruses using current Symantec software version 11.0.4000.2295 and no viruses have been detected.

Peter B. Rutledge