

0015386 SFDJ
03
BEVERIDGE & DIAMOND
LIBRARY
456 MONTGOMERY ST STE 1800
SAN FRANCISCO CA 94104-1251

SAN FRANCISCO

Daily Journal

www.dailyjournal.com

PRODUCT LIABILITY

Carolyn Shining of Paul and Hanley argues in support of California's long tradition of requiring judicial consideration for all relevant factors involved in a strict liability analysis. **PAGE 5**

CHINA

James Wong explains the advantages of doing business in Hong Kong or Singapore, the top two choices for setting up shop in the Far East. **PAGE 6**

CHINA

Allan Marson and Fang Fang of Baker & McKenzie write about representative offices, a popular means for establishing business presence in China. **PAGE 7**

High Court Allows Torture Suit Against Former Somali Official

By Lawrence Hurley
Daily Journal Staff Writer

WASHINGTON — In a major victory for a San Francisco-based human rights group, the U.S. Supreme Court Tuesday ruled unanimously that former officials of foreign countries are barred from claiming immunity under the Foreign Sovereign Immunities Act for alleged acts of torture.

The case marked the first trip to the court for the 12-year old Center for Justice and Accountability, based on Market Street.

CJA's clients are five Somalis who accuse a former Somali prime minister Mohamed Ali Samantar of various human rights violations. They can now pursue their claims against Samantar, who

served as defense minister of Somalia during the 1980s when dictator Mohamed Siad Barre led the country. After the

nity under common law when the case returns to federal court in the Eastern District of Virginia. Under that scenario,

should be granted immunity. The issue of whether Samantar can claim common law immunity was not before the court. *Samantar v. Yousuf*, 2010 DJDAR 8076.

The case began when the relatives of one of the plaintiffs, Bashe Abdi Yousuf, heard Samantar was in the United States and wondered if there was any way of holding him accountable for his alleged actions.

Of the five plaintiffs, two — Yousuf and Aziz Deria — are United States citizens. Yousuf was detained, tortured, and kept in solitary confinement for six years, while Deria fled Somalia after his father and brother disappeared.

Of the other three plaintiffs, all of whom are Somali citizens, one survived a firing

'The United States should not provide safe haven to those who use their position of authority to commit torture.'

SEN. PATRICK J. LEAHY
U.S. SENATE JUDICIARY COMMITTEE

regime fell in 1991, Samantar ended up in Fairfax, Va.

The Supreme Court left open the possibility that Samantar could claim immu-

which is based on case law and not on any specific federal statute, the State Department traditionally plays a major role in advising the court on whether a defendant

See Page 8 — TORTURE

Torture Suit OK'd Against Somali Official

Continued from page 1

squad by hiding under dead bodies, one had two family members executed and one, a woman, was repeatedly raped and held in solitary confinement for three years.

In 2004, the CJA, with the help of Cooley Godward Kronish, filed suit under the Torture Victim Protection Act, which creates a cause of action for torture committed in "any foreign nation," and the Alien Tort Statute, which gives United States courts jurisdiction to hear certain international disputes.

Samantar countered by arguing that a foreign state's immunity from lawsuits under the FSIA extends to individuals acting in their official capacities. The district court found that Samantar had immunity under the FSIA, but on appeal the 4th U.S. Circuit Court of Appeals disagreed.

The 9th Circuit is one of five federal appellate courts that had reached the opposite conclusion from the 4th Circuit. *Chuidian v. Phil. National Bank*, 912 F.2d 1095, 1103 (1990).

Justice John Paul Stevens wrote in his majority opinion that the FSIA "does not govern the determination" of whether Samantar can invoke immunity.

That's because the FSIA only refers to "foreign state" immunity, not the immunity of individuals.

Stevens wrote that "there is nothing to suggest" that the statute should extend to "an official acting on behalf of the foreign state."

He also stressed "the narrowness of our holding," which allows Samantar to assert common law immunity. Stevens noted that "it may be the case that some actions against an official in his official capacity should be treated as actions against the foreign state." In those situations, the former official could claim immunity.

Tuesday's ruling is the CJA's most high-profile victory to date. In the past, it has filed claims in U.S. courts against human rights abusers from such countries as Bosnia, Chile, and El Salvador. The group also represents human rights victims pursuing claims in Spanish courts for alleged violations that took place in Guatemala and El Salvador.

CJA's executive director, Pamela Merchant, described the ruling as a "tremendous victory" for her group that reinforces the idea that "accountability remains a priority in our country."

She is hopeful that her clients will prevail under the Torture Victim Protection Act, which "clearly contemplates that cases like this should go forward."

Merchant's point was reinforced by Sen. Patrick J. Leahy, D-Vt., the chairman of the Senate Judiciary Committee, who stressed in a statement Tuesday that Congress intended for the statute to be used against former officials of foreign countries. "The United States should not provide safe haven to those who use their position of authority to commit torture," he added.

Samantar's attorney, Shay Dvoretzky of Jones Day in Washington, said he expects his client to successfully assert common law immunity because the lawsuit relates to Samantar's official acts while in office.

"Lower courts should continue to hold that individual foreign officials are immune from suit for their official acts, as foreign courts do when U.S. officials are sued abroad," he said.

How the case is likely to come out remains unclear because the State Department has never stated a position on whether Samantar deserves immunity. The waters are muddied further by the fact that Somalia itself has been in political turmoil since Siad Barre's regime was overthrown in 1991.

Tuesday's ruling does not make resolution of the case any easier, according to Michael J. Edney of Gibson, Dunn & Crutcher in Washington, who filed a brief in support of Samantar on behalf of three former Republican U.S. attorneys general.

The problem with the ruling is that common law immunity is so unpredictable because it relies upon case-specific input from the State Department, which judges give "nearly dispositive weight," he said.

Edney had warned in his amicus brief that a ruling against Samantar could make foreign lawsuits against former United States officials more common.

"If you can't guarantee a reliable system of sovereign immunity, then other states will reciprocate," he said.

lawrence_hurley@dailyjournal.com