

# ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



## Estate of Alvarez v. The Rockefeller Foundation, 4th Cir. Ct. of Apps., No. 2201678, 3/20/24

**United States Court of Appeals for the Fourth Circuit, Wilkinson and Heytens, Circuit Judges, and Hudson, Senior District Judge, 20 March 2024**

A class action by victims of uninformed, non-consensual medical experimentation in Guatemala seeking damages from a Foundation whose staff member was involved in the experimentation appealed a summary dismissal.

**Key words: Foundation, United States of America, Alien Torts Statute, Agency, Medical Experiments**

1. Judge Hudson wrote the opinion, in which Judge Wilkinson and Judge Heytens joined. Judge Wilkinson wrote a concurring opinion.
2. A class action of 842 persons (the Class) brought claims under the [Alien Tort Statute](#) (ATS) and the [Guatemalan Civil Code](#) against Johns Hopkins, The Rockefeller Foundation (Rockefeller), and Bristol-Myers Squibb Company (Bristol-Myers), alleging that they were involved in facilitating nonconsensual human medical experiments regarding sexually transmitted diseases (STDs) in Guatemala from 1946 to 1948 (the Experiments).
3. In 1946, the Surgeon General of the United States Public Health Service approved a proposal and recommended a project to the National Advisory Health Council (NAHC) for funding. The NAHC recommended funding the proposal, and the grant was ultimately approved, including \$110,450 to be provided to the Pan-American Sanitary Bureau (PASB) for venereal disease studies in Guatemala.
4. Researchers infected Guatemalan prisoners by arranging sexual intercourse between the volunteer prisoners and commercial sex workers, or by injecting or directly applying the STD to the test subject. There is no contemporary record of the prisoners consenting to their participation in the Guatemala Experiments. Nor are there records indicating that the prisoners knew or understood that the Guatemala Experiments were ongoing.
5. Later experiments were conducted on patients at the Guatemalan psychiatric hospital between May 1947 to October 1948. Again, there was no evidence of informed consent, but they were given cigarettes, and items were purchased for the benefit of the psychiatric hospital.
6. Further, members of the Guatemalan Army were exposed to gonorrhoea through sexual intercourse with commercial sex workers, and again, there was no evidence that the soldiers consented or were compensated for their participation.

7. Subject testing continued until 1949, and the observation and study of human test subjects at the psychiatric hospital continued until at least 1953.
8. An earlier case by a class of victims of the Guatemala Experiments failed against the Secretary of Health and Human Services, the Surgeon General of the PHS, the Director of the Pan-American Health Organization, and other federal officials.<sup>1</sup> The United States had not waived sovereign immunity for the tort claims, the victims failed to allege the requisite personal involvement necessary to maintain the constitutional claims, and the Pan-American Health Organization was entitled to immunity under the [International Organizations Immunities Act of 1945](#).
9. This proceeding was claimed under the ATS and the Guatemalan Civil Code against Johns Hopkins, Rockefeller, and Bristol-Myers, alleging that physicians, researchers, and other employees and agents designed, developed, approved, encouraged, directed, oversaw, and aided and abetted nonconsensual, nontherapeutic, human subject experiments in Guatemala.
10. The Primary Court dismissed most claims, but a claim against Rockefeller remained.
11. Rockefeller is a foundation involved in national and international research in public health. During the mid-1900s, it was particularly interested in discovering a cure for syphilis.
12. Some doctors held positions as members of Rockefeller's Board of Trustees and were employed in the Rockefeller organisation. They also worked on the bodies involved with the experiments. Evidence suggests that Rockefeller funded the salary of some staff while they were researching the Experiment.
13. The class appealed the summary judgment of the Primary Court.
14. The Appeal Court reviewed de novo the Primary Court's decision.
15. The Class argued that the doctor was an agent of Rockefeller while working on the experiment as it paid his salary and benefits.
16. The Appeal Court found that payment of wages alone was insufficient to establish an agency, and there was no indication that Rockefeller was directing or controlling his work on the experiment.
17. The Class also argued that the doctor was a dual agent. While Rockefeller did not exercise control, they could have done so. The Appeal Court found that the evidence did not support this conclusion.
18. Judge Hudson concluded his opinion by saying:

The Court sympathizes with the victims of the Guatemala Experiments who suffered inhumane and unacceptable treatment at the hands of Dr. Soper and others. However, [Rockefeller's] connection to the Experiments is too tenuous to be held liable for them. Because the Court finds that Dr. Soper was not an agent of [Rockefeller], it need not reach [Rockefeller's] alternative arguments.

19. Judge Wilkinson, in his concurring opinion, chronicled the horrors of World War II and Nazi Germany's eugenic horrors and wrote:

These incongruous thoughts of American exposure to the world of the full depravity of the Holocaust and American participation in the experimentation in Guatemala and elsewhere reveal the most and least

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<sup>1</sup> See *Garcia v. Sebelius*, 867 F. Supp. 2d 125, 130–31 (D.D.C. 2012), vacated in part, 919 F. Supp. 2d 43 (D.D.C. 2013)

admirable features of our wonderful country. There is a temptation in cases involving grievous harms such as these to cast the net of liability wide so as to maximally deter perpetrators and compensate victims. But the record here simply cannot support an extension of liability to the Rockefeller Foundation.

20. The appeal was dismissed.

## COMMENT



The Alien Tort Statute (codified in 1948 as [28 U.S.C. § 1350](#); ATS), also called the Alien Tort Claims Act, was part of the [Judiciary Act of 1789](#), which the First U.S. Congress passed to establish the federal court system.

The courts have generally interpreted the ATS to allow foreign nationals to seek remedies in U.S. courts for human rights violations committed outside the United States, provided there is a sufficient connection to the United States.

The U.S. Supreme Court has interpreted the Act's primary purpose as "[promoting] harmony in international relations by ensuring foreign plaintiffs a remedy for international-law violations in circumstances where the absence of such a remedy might provoke foreign nations to hold the United States accountable." [Jesner v. Arab Bank, PLC](#), No. 16-499, 584 U.S. \_\_\_ (2018).

## VIEW THE CASE



This case may be viewed at: <https://law.justia.com/cases/federal/appellate-courts/ca4/22-1678/22-1678-2024-03-20.html>

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