

W.S. Kirkpatrick & Co. v. Environmental  
Tectonics Corp. (1990)

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These two companies were competing for a contract from the Nigerian government to construct an aeromedical center at Kaduna Air Force Base in Nigeria.

Environmental Tectonics accused Kirkpatrick of getting the contract through a **bribe** of 20% of the contract price to Nigerian officials, in violation of U.S. and Nigerian law.

District Court dismissed the action because of the **act of state doctrine**, because the plaintiff would have to establish that the contract was awarded because of the bribe (and hence that Nigeria had violated its own laws).

The State Department's Legal Adviser submitted a letter saying that the doctrine did not apply here, and the Third Circuit reversed.

**W.S. Kirkpatrick & Co. v. Environmental  
Tectonics Corp. (1990)**

What is the **holding** of this decision?

The **act of state doctrine** does not prevent adjudication of this dispute because “the factual predicate for application of the act of state doctrine does not exist. Nothing in the present suit requires the court to declare invalid...the official act of a foreign sovereign.”

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**ALSO:**

The Court applies a **balancing** approach:  
“even though the validity of the act of a foreign sovereign within its own territory is called into question, the policies underlying the act of state doctrine may not justify its application.”

Was the Court applying a “**commercial activity**” **exception** to the act of state doctrine?



W.S. Kirkpatrick & Co. (D) v. Environmental Tetonics Corp. (P)  
(1990) ~~070~~ 711

Environmental Tetonics brought an action against W.S. Kirkpatrick for a RICO violation on the ground that Kirkpatrick had gained a contract (for constructing an aeromedical center in Nigeria) over Environmental Tetonics by virtue of giving a bribe to officials of the Nigerian government that amounted to 20 % of the contract price. All parties agree that bribes are prohibited by Nigerian law.

Kirkpatrick defends by arguing that the Act of State Doctrine bars this cause of action. 712 2/3

District Court decision?--~~070~~--because the inquiry into the reasons for awarding the contract to Kirkpatrick would result in embarrassments to the government of Nigeria, the Act of State Doctrine bars the suit. 712B

Third Circuit? ~~075-1-12~~--Because State Dept. Legal Adviser (sp) said that this inquiry would not be as embarrassing as declaring a foreign action to be invalid, the reasons for invoking the Act of State Doctrine were less strong. And so the Third Circuit reverses.

State Dept. position? ~~075-1-12~~ 715T--more or less agrees with the Third Circuit, but wants the court to decide on the narrowest possible ground, <sup>because</sup> motivation rather than the validity of the Act of State may in fact be important in some future litigation.

Supreme Court? Narrows the instances when the Act of State Doctrine will bar litigation. Holds that it should apply only to prevent acts of government being declared illegal. Period.