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Tip of the Month

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Claims of Foreign Workers Get Mixed Reception in California Federal Courts

Foreign workers toiling (directly or indirectly) for multinational corporations continue to seek access to the U.S. courts to pursue claims for damages for their working conditions. Two recent decisions from federal courts in California highlight the uncertainty that still pervades this area of the law.

In *Jane Doe I v. Wal-Mart Stores Inc.*, Cal. Super. Ct. No. BC339737 (complaint filed 13 September 2005), employees of Wal-Mart suppliers in Bangladesh, Indonesia, Swaziland, and Nicaragua filed suit in California, seeking to hold Wal-Mart liable for its suppliers' substandard labor conditions. The theory of the complaint is that Wal-Mart breached a contract with its suppliers' employees when it failed to monitor those suppliers with adequate vigor and that it then made false and deceptive statements to the American public, claiming to be a good corporate citizen when, according to the plaintiffs, it really isn't.

The Wal-Mart plaintiffs deployed a novel strategy by basing their allegations on Wal-Mart's alleged noncompliance with its own code of conduct for suppliers. Wal-Mart requires its suppliers to accept its "Standards for Suppliers," which specifies that the suppliers will comply with applicable local labor laws and gives Wal-Mart the right to monitor their compliance and to discontinue their services if violations are found. The plaintiffs alleged that they were third-party beneficiaries of the contracts between Wal-Mart and its suppliers, and that Wal-Mart breached this contract with them by failing to force the suppliers to live up to their commitments. Responding to the suit, a spokesman for Wal-Mart had countered that two hundred inspectors made twelve thousand monitoring visits a year and that, "if a violation is observed, Wal-Mart works constructively with suppliers so their factories correct the problems. We discontinue business with them if they fail to change their practices."

In a recent unpublished decision, the District Court for the Central District of California dismissed all of the plaintiffs' claims. Judge Andrew J. Guilford, appointed to the bench a year ago by President George W. Bush, held that language in Wal-Mart's contracts with its suppliers giving Wal-Mart the *right* to inspect factories was insufficient to establish that Wal-Mart had a contractual *obligation* to inspect them.

The basic problem, the Court noted, was that it was the *suppliers* who had promised to maintain minimum labor standards. So, if anyone had made a promise on which the workers might hang a claim, it had to be the

This Month's CHALLENGE

Foreign workers continue to seek access to plaintiff-friendly U.S. courts to hold multinational companies liable for claims of abuse at the hands of foreign factory owners and governments.

Best Practice Tip of the Month

Multinationals should give careful consideration to both legal disclaimers in supplier codes of conduct and aggressive enforcement of their codes.

suppliers, not Wal-Mart. Judge Guilford scorned the notion that the suppliers had extracted a promise from Wal-Mart to inspect their factories and force them to comply with Wal-Mart's Standards for Suppliers. "It is sufficiently difficult just to articulate such a concept," Judge Guilford wrote, noting that the workers "do not even make such reality-bending allegations regarding the suppliers' motivation or intent."

The Court also dismissed the claim that the workers had been injured by Wal-Mart's negligence in its enforcement of the suppliers' obligations. Judge Guilford rejected the call for a "duty of a retailer to be reasonably careful when contracting with suppliers to prevent intentional labor violations by those suppliers," saying that such a claim would "go well beyond the recognized limits of liability and cannot be accepted."

The workers' claims of unfair business practices under California law (Section 17200 of the California Business and Professions Code) were also dismissed, on the grounds that the workers could not show that they personally lost money as a result of Wal-Mart's allegedly deceptive advertising that it was using only responsible suppliers.

Finally, the Court dismissed the plaintiffs' claims under the Alien Tort Claims Act ("ATCA"). This hitherto obscure and rarely-used statute, originally passed by the first Congress in 1789, gives the federal courts jurisdiction to hear claims by foreigners seeking damages for wrongful conduct "committed in violation of the law of nations or a treaty of the United States." Although sympathetic to the claims of the suppliers' employees who said they had been forced to work long hours without pay, Judge Guilford refused to open the federal courts to foreigners' claims of unpaid wages.

Any appeal from the dismissal of the *Wal-Mart* suit will go to the Ninth Circuit Court of Appeals, which has recently issued a decision decidedly more friendly to the claims of foreign workers. Just ten days after the decision was issued in *Wal-Mart*, the Ninth Circuit reversed the dismissal of a suit by workers from Papua New Guinea ("PNG") against the London-based international mining firm, Rio Tinto. *Sarei v. Rio Tinto PLC*, 2007 U.S. App. LEXIS 8430 (April 12, 2007). The *Rio Tinto* plaintiffs alleged that during a ten-year civil war in the 1990's, the PNG military, at the behest of Rio Tinto, committed gross violations of international law and war crimes, including "a blockade, aerial bombardment of civilian targets, burning of villages, rape and pillage." Writing for the two-judge majority, Judge Fisher declared these claims were "the least controversial core of modern day ATCA jurisdiction." Nor did the claims represent nonjusticiable political questions, even though the U.S. Department of State had filed a statement with the district court asserting that the *Rio Tinto* litigation could impact foreign relations with PNG – a statement that may no longer be operative with a new government in Papua New Guinea. The six-year-old lawsuit can now proceed to the discovery phase.

Conclusion

The resounding rejection of the plaintiffs' claims against Wal-Mart signals a reluctance to get involved in suits by foreign workers based on foreign working conditions, but it is too early to declare this type of claim a dead letter. Multinational companies relying on foreign labor should bear in mind that the workers will continue to search for ways to hold the American deep pocket liable for their alleged injuries.

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