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Food & Consumer Packaged Goods Litigation

Notable Ruling: Alien Tort Statute Focus in Aiding and Abetting

On Tuesday, October 23, 2018, the Ninth Circuit Court of Appeals issued an important opinion reviving a decade-old Alien Tort Claims Act (ATS) suit based on alleged aiding and abetting slave labor in cocoa farms on the Ivory Coast. *Doe I v. Nestle, et al.*, No. 17-55435, 2018 WL 5260852 (9th Cir. Oct. 23, 2018). In doing so, the Court ruled that even if the ATS applied only to domestic conduct, the facts alleged in the case could be used, if properly plead, to support an ATS suit against domestic corporations. This lawsuit was initiated over a decade ago by former child slaves who were kidnapped and forced to work on cocoa farms. The complaint alleges that defendants, large food manufacturers, purchasers, processors, and retailers of cocoa beans, provided financial support and technical farming aid despite allegedly knowing that the farmers with which the defendants had exclusive buyer/seller relationships were utilizing child slave labor in violation of the law of nations. The United States Supreme Court, in *Jesner v. Arab Bank*, — U.S. —, 138 S.Ct. 1386, 1407, 200 L.Ed.2d 612 (2018), ruled that the ATS, which gives District Courts "original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States," is not extraterritorial and applies only to domestic conduct. Invoking this doctrine, defendants urged the Ninth Circuit to focus on the location where the principal offense or injury occurred, rather than the location where the aiding and abetting allegedly occurred. The Ninth Circuit disagreed, finding (1) that the focus of the ATS can be on conduct that constitutes aiding and abetting another's violation of the law of nations, and (2) that aiding and abetting in and of itself can constitute a tort committed in violation of the law of nations. The Court stated that defendants' alleged provision of spending money from the United States to Ivory Coast farmers to maintain buyer/seller relationships was "outside the ordinary business contract" and was done for the purpose of receiving cocoa at a price that could not be obtained without employing child slave labor, which the Court likened to "kickbacks." Furthermore, the Court noted that defendants sent representatives to regularly inspect operations in the Ivory Coast and "report back" to headquarters in the United States. Thus, these actions were "both specific and domestic." In sum, the Court reversed and remanded, allowing plaintiffs to amend their complaint to remove foreign corporations and to specifically allege what conduct is attributable to which domestic defendants. The court also permitted the plaintiffs to re-allege their aiding and abetting claims in accordance with recent precedent *Jesner* and *RJR Nabisco, Inc. v. European Community*, — U.S. —, 136 S.Ct. 2090, 195 L.Ed.2d 476 (2016).

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