

Back to the Federal District Court for One Alien Tort Statute Case

On December 19, 2013, the United States Court of Appeals for the Ninth Circuit issued an order in the case of *Doe I v. Nestle USA, Inc.* vacating a federal district court's dismissal of Plaintiffs' ATS claim and remanding for further proceedings. The case has been around for some time and relates to allegations of slave labor performed on plantations in the Ivory Coast in 2005. Nestle was sued by Malian children who allegedly were forced to labor on plantations that produced cocoa that was later purchased by Nestle. The suit alleged that Nestle was aware of the conditions on the plantations but nevertheless bought the cocoa. Plaintiffs did not argue that Nestle engaged in any acts of forced labor or violence. Instead, Plaintiffs argued that Nestle was liable for violations of international law under the Alien Tort Statute, specifically for aiding and abetting forced labor and child labor violations in purchasing the cocoa.

The district court had dismissed the case finding that corporations cannot be liable for violations of international law and finding that Plaintiffs had failed to plausibly plead that Nestle knew or should have known that the wrongful acts were being committed. In vacating the district court's decision and remanding for further proceedings, the Ninth Circuit explained

"In light of intervening developments in the law, we conclude that corporations can face liability for claims brought under the Alien Tort Statute. . . . Additionally, the district court erred in requiring plaintiff-appellants to allege specific intent in order to satisfy the applicable purpose *mens rea* standard. Furthermore, we grant plaintiff-appellants leave to amend their complaint in light of recent authority regarding the extraterritorial reach of the Alien Tort Statute and the *actus reus* standard for aiding and abetting. *Kiobel*, 133 S. Ct. at 1669; *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-A Judgment, at ¶ 475 (SCSL Sept. 26, 2013) ("[T]he *actus reus* of aiding and abetting liability is established by assistance that has a substantial effect on the crimes, not the particular manner in which such assistance is provided."); *Prosecutor v. Perisic*, Case No. IT-04-81-A Judgment, at ¶ 36 & n.97 (ICTY Feb. 28, 2013) (holding that "specific direction remains an element of the *actus reus* of aiding and abetting," but noting that "specific direction may be addressed implicitly in the context of analysing

substantial contribution")."

It will be interesting to see how the plaintiffs respond and what the district court ultimately does in this case.