ELIMINATING FORCED LABOR FROM YOUR COMPANY'S SUPPLY CHAINS: LESSONS LEARNED FROM 2018 AND THE TRENDS DEVELOPING FOR 2019

Date: 4 March 2019

Global Ethical Supply Chain Alert

By: Gregory T. Lewis, John F. Sullivan, Hannah T. Warren

"Forced labor"[1] is a significant component of "modern slavery."[2] According to the International Labour Organization, forced labor accounts for approximately 25 million of the estimated 40 million people who are in bondage or servitude around the world. Due to the efforts of both governmental and nongovernmental organizations in bringing awareness to the issue of forced labor, this tragic fact is becoming well known. But perhaps less well known is the fact that the majority of these modern-day slaves are hidden in the private sector. Some organizations, like the Mekong Club, estimate that 60% of all modern slaves can be found in the supply chains of multinational corporations. 2018 was a significant year — not only because of heightened awareness of the business risks that contribute to modern slavery, but also because of some of the innovative measures businesses employed to clean their supply chains and set free modern-day slaves. This article looks at various aspects of these measures and how ethical supply-chain practices are trending into 2019.

GOVERNMENTS ARE STEPPING UP IN THE BATTLE TO CURB MODERN SLAVERY THROUGH LAWS AIMED AT BUSINESSES

Governments around the world continue to consider laws that, at a minimum, require businesses to disclose their efforts (if any) to curtail modern slavery in supply chains.

Australia

2018's most significant legislative development occurred on November 29, 2018, when the Australian Senate and House of Representatives passed the *Modern Slavery Act 2018* (the "Australian Act"), which commenced on the first day of this year after receiving Royal Assent. The Australian Act now joins California's Transparency in Supply Chains Act of 2010, the United Kingdom's Modern Slavery Act of 2015 (the "UK Act"), and France's Duty of Vigilance Law of 2017 as laws that require certain businesses to take action regarding their supply-chain practices.

Similar to the UK Act, the Australian Act requires businesses and other organizations with consolidated revenue of AUS$100 million to annually report on the risks of modern slavery in both their operations and supply chains and to outline what actions, if any, have been taken to assess and address those risks in disclosures called "Modern Slavery Statements." These annual statements must be approved by organizations' boards of directors or equivalent bodies and then signed by either a director or designated member, respectively.

Unlike the UK Act, however, the Australian Act requires the Australian government to make all Modern Slavery Statements available online through a centralized, government-managed register. The lack of a consolidated document repository has been one of the principal criticisms of the UK Act, as interested parties can view a supply-chain transparency statement only on a company's website or, if the company does not have a website, by requesting a copy of the statement. Such a decentralized process makes it difficult for interested parties to determine which companies are complying with the law.

Canada

Canada is another jurisdiction that is considering regulating business in order to address modern slavery concerns. On December 13, 2018, John McKay, a member of Canada's House of Commons, introduced a private member's bill, Bill C-423, the "Modern Slavery Act." The act would require Canadian companies of a certain size to file an annual statement with the minister of public safety, certifying that the company has examined its supply chain and that there is no child or forced labor present. Unlike other modern slavery legislation, the Canadian bill includes penalties for noncompliance, such as monetary fines and the potential for director and officer liability.

The Canadian government more recently announced that it would undertake serious consultations on corporate supply chain legislation this year. This was a response to an October 2018 parliamentary report entitled A Call to Action: Ending the Use of All Forms of Child Labour in Supply Chains, which received cross-party support. Since December, 50,000 Canadians have signed a petition in favor of supply chain legislation, and 91% of Canadians who were polled support it.

United States

In October 2018, Representative Carolyn Maloney (D-NY) from the U.S. House of Representatives introduced H.R. 7089, the "Business Supply Chain Transparency on Trafficking and Slavery Act of 2018." Had the bill not expired at the conclusion of the 115th Congress, it would have required certain companies to disclose whether they had taken measures to identify and address forced labor, slavery, human trafficking, and the worst forms of child labor in their supply chains and, if so, what measures had been taken. Specifically, the bill would have amended the Securities Exchange Act of 1934 to require the Securities and Exchange Commission ("SEC") to issue regulations imposing disclosure requirements on certain issuers that must report to the SEC and that have annual global receipts exceeding US$100 million. While the law would not have required these companies to implement any policies or to have engaged in any efforts with respect to their supply chains, it would have required them to disclose publicly if they had done nothing to identify or address modern slavery in their supply chains. Even though this bill expired in the 115th Congress, the introduction of similar bills in the past to combat human trafficking and modern slavery by Representative Maloney and other legislators reflect a congressional will to address this issue; Representative Maloney, for her part, has already committed to reintroduce her bill and related legislation in the 116th Congress. (For more information on H.R. 7089 and similar transparency legislation that has been introduced to Congress in the past, please see this article published by our colleague Amy Groff.)

State of Washington

Washington State Senator Rebecca Saldana recently introduced a bill that would require farmers to report any incidents of slavery, indentured servitude, or human trafficking to retailers with more than $200,000 in global sales. Farmers responded that they were offended by the bill, claiming it impugns the character of an entire industry. The Washington State Senate Labor and Commerce Committee amended the bill to remove commodities like wheat, onions, potatoes and other vegetables from the definition of agricultural products, but the Committee did not remove fruit and dairy (two sectors often accused of worker abuses). Under the bill, a retailer of fruit or dairy products who receives a report of slavery, trafficking, or servitude would be required to take action and report on its website the specific actions that it took in response to the reports. The Attorney General of Washington State could sue the retailers or farmers for failing to report, but the provision in the original bill that granted private citizens a cause of action has been removed. The labor committee is sending the bill to the full Washington State Senate in its narrowed, but still controversial, form. The United Farm Workers endorsed the bill.

Switzerland

In Switzerland, a coalition for corporate justice gathered over 100,000 citizen signatures on the Responsible Business Initiative, a petition that would amend the Swiss Federal Constitution to bolster the nation's efforts to combat modern slavery. The Responsible Business Initiative would impose due diligence obligations on Swiss companies consistent with their responsibilities under the UN Guiding Principles on Business and Human Rights along with liability for breaches by them or their subsidiaries. In response, the Swiss Senate adopted a narrower proposal. The Swiss will be asked to vote on the Responsible Business Initiative in a referendum.

Hong Kong

Although similar to the UK Modern Slavery Act in many respects, Hong Kong's draft Modern Slavery Bill 2017 includes proposed criminal offenses under Hong Kong's Organized and Serious Crimes Ordinance. It also establishes a civil cause of action that would permit victims to bring tort-like claims against persons who committed one or more of the proscribed offenses and who benefited financially from participating in a venture they knew or should have known would violate one of the laws. The bill's sponsor, Dennis Kwok, a member of Hong Kong's Legislative Council, recently expressed frustration at the delay in the City's action on the bill last year in light of the many victims of human trafficking and modern slavery suffering in Hong Kong, and vowed to renew efforts to see the bill enacted into law. In late January, he presented the bill to the Chief Executive of the Legislative Council for action.

* * *

The above jurisdictions have either joined or are considering joining California, the United Kingdom, and France in enacting modern slavery legislation. Needless to say, because the trend of enacting supply chain legislation is clearly gaining momentum, it would be prudent for multinational corporations to pay particular attention to the burgeoning body of modern slavery legislation and, in particular, each jurisdiction's legal requirements. The various acts and bills, though aimed at a common goal, often differ with regard to which business entities are covered, what constitutes sufficient compliance, and the penalties, if any, for failing to comply.

REPORTS AND INDICES ARE INCREASING AWARENESS OF MODERN SLAVERY AND MOTIVATING ACTION

The world's increasing awareness of the scourge of modern slavery (typically a hidden crime) and its staggering global scope is driving much of the action to eradicate it — from legislation to industry benchmarks and from human rights guidelines, policies, and procedures to activism by consumers, investors, shareholders, employees, and litigants. Comprehensive and authoritative slavery reports and indices are playing perhaps the greatest role in increasing the public's awareness. Here are a few of the reports and indices that were published in 2018:

The Global Slavery Index 2018 (The Walk Free Foundation)

The Walk Free Foundation is a global organization with a mission to end modern slavery in this generation by mobilizing a global activist movement. Andrew Forrest, one of the founders of the Walk Free Foundation, is a prominent businessman and philanthropist in Australia who championed the Australian Act described above.

The Global Slavery Index 2018 (the “Index”) reported that there were 40.3 million people in modern slavery in 2016. Seventy-one percent of slaves were female and 29% were male, with 15.4 million people forced into marriages and 24.9 million found in forced labor.

The Index also measured the extent of modern slavery country by country and the steps governments are taking to respond to the issue. It made the somewhat surprising finding that the prevalence of modern slavery in high-GDP countries, such as the United Kingdom and the United States, was higher than previously believed. The Index also found that G20 countries are importing vast amounts of products at risk for human trafficking, with these nations collectively importing US$354 billion worth of products that may have been produced, at least in part, with slave labor.

U.S. Department of State 2018 Trafficking in Persons Report

The U.S. government uses its Trafficking in Persons ("TIP") Report to engage foreign governments on human trafficking. The TIP Report purports to be the world's most comprehensive resource of governmental anti-trafficking efforts. Its ultimate goals are freeing victims, preventing trafficking, and bringing traffickers to justice.

The TIP Report places each country into one of three tiers based on the extent of its government's efforts to comply with the "minimum standards for the elimination of trafficking" found in Section 108 of the Trafficking Victim's Protection Act.

United Nations Report on Trafficking in Persons

The United Nations Office on Drugs and Crime issued a global report on trafficking in persons based upon data gathered from 155 countries. The report purports to offer the first global assessment of the scope of human trafficking and what is being done to fight it. It includes an overview of trafficking patterns, legal steps taken in response, and country-specific information on reported cases of trafficking in persons, victims, and prosecutions.

U.S. Department of Labor's 2018 List of Goods Produced by Child Labor or Forced Labor

The Trafficking Victim's Protection Reauthorization Act of 2005 requires the U.S. Department of Labor, and specifically the Bureau of International Labor Affairs ("ILAB"), to maintain a list of the goods, in addition to their source countries, which ILAB has reason to believe are produced by child labor or forced labor in violation of international standards. As of September 20, 2018, the List of Goods Produced by Child Labor or Forced Labor comprises 148 goods from 76 countries. The ILAB maintains the list both to raise awareness about forced labor and child labor around the world and to promote efforts to combat them. The list is also a valuable resource for companies that are conducting risk assessments of their supply chains and implementing ethical sourcing initiatives.

INVESTMENT INDUSTRY SIGNALS BULL MARKET EXISTS FOR INCREASED ENVIRONMENTAL, SOCIAL, AND GOVERNANCE ("ESG") DISCLOSURES

The investment industry increased its efforts in 2018 to encourage companies to disclose their ESG policies and strategies so it can evaluate this information in making investment decisions. In October 2018, law professors, investors, and state government officials filed an official rulemaking petition to the SEC requesting that the agency develop a new legal framework for companies to disclose information related to the ESG aspects of their operations. The petition noted that there is a significant industry demand for these rules to be developed: A 2016 concept release by the SEC presenting the idea for ESG disclosures was one of only seven proposals over the last decade to generate more than 25,000 comments. The petition asserted that although ESG information is material to investors, companies produce this information infrequently, and when they do disclose this information, it is often irrelevant, inadequate, or unhelpful for investors' assessments of the companies. The SEC has not yet taken official action in response to this petition, but investors and companies will want to carefully watch for developments on this matter.

Even while the SEC considers action regarding ESG disclosures, the investment industry it regulates is already taking action to evaluate companies' ESG strategies. BlackRock, Inc. is both the world's largest investment management company (with US$6.317 trillion in assets under management as of March 2018) and the company leading the push for greater disclosures. In January 2018, Larry Fink — BlackRock's chairman, founder, and CEO — wrote an open letter to corporate CEOs, calling for “[a] new model for corporate governance.” In this letter, Mr. Fink announced that BlackRock would begin evaluating the companies in which it chooses to invest based in part on whether the corporation makes “a positive contribution to society.” In March, BlackRock provided greater guidance for these statements by releasing its approach to engagement on human capital management. BlackRock presented findings demonstrating that corporations that “consistently promoted workers' well-being” and were concerned about their supply-chain labor standards performed better in the market than those that did not. For this reason, BlackRock announced it would begin asking questions to corporate boards and management personnel regarding their policies and strategies for maximizing human capital, including about their “[s]ystems to oversee matters related to the supply chain (including contingent workers, contractors and subcontractors),” whenever it engages companies for investment purposes.

A study by Thomson Reuters suggests that most companies would struggle to provide well-supported answers to investors' questions regarding the “Social” category compliance issues, particularly with respect to the ethical conduct of their suppliers and other global business partners. The report found that less than half of all companies surveyed had developed training for slave labor and human trafficking risks. Furthermore, although the report found that “[t]he need to screen third parties regularly, rather than just at the onboarding stage, is widely recognized as being an important tool in the continuing fight against financial crime,” including slavery and human trafficking, it discovered that regular screening is not widely implemented. Corporations participating in the survey regularly screened only about one-third of their relationships with global third parties (e.g., vendors, customers, suppliers, and partners), and 41% of these relationships never received any screening. Because multinational corporations have thousands of business relationships with global third parties, the magnitude of potential ethical sourcing issues is evident.

In 2019, industry participants would be well-served to begin bolstering and developing reports regarding their ESG policies. Even if the SEC does not promulgate regulations addressing ESG disclosures in 2019, companies may expect other investment managers to follow BlackRock's example and begin inquiring about ESG policies when making investment decisions. Importantly, although investors previously focused more on the “Environmental” and “Governance” categories of ESG, leaders in the investment industry, from law professors to fund CEOs, have recently been placing much greater emphasis on the “Social” category (which includes global ethical supply chain management) — a trend that will likely continue to increase in 2019. Companies should therefore review and if appropriate enhance their strategies for addressing ESG issues, including giving more attention to ethical supply chain management to eliminate forced labor from supply chains.

INDUSTRY BENCHMARKS AND COMPANY RANKINGS CONTINUE TO GROW PRESSURING COMPANIES TO INVEST IN ETHICAL SUPPLY-CHAIN MANAGEMENT

Benchmarking organizations — drawing expertise from think tanks, ESG-focused investors, and business foundations — have also continued to grow in number and scope.

In 2018, Corporate Human Rights Benchmark (“CHRB”), a UK-based multi-stakeholder initiative, published its second study of the top 101 of the world's largest publicly traded companies, which the study divided into three at-risk sectors: apparel, agriculture products, and extractives. As an example of CHRB's comprehensiveness, the study tracked how the companies performed across 100 different factors, which are based on the United Nations Guiding Principles on Business and Human Rights.

The CHRB results generally showed that the majority of companies are lagging behind international standards for human rights with the average company's score being just 27%. In addition, there was surprising evidence that companies still lack awareness as 40% of the companies did not demonstrate any evidence of identifying or mitigating human rights risks in their supply chains.

2018 was also the first year that the CHRB included the oil and gas industry as part of the extractives sector. Oil and gas industry participants are often ranked based on market value and asset production performance, among other things, but not based upon their track records in creating ethical supply chains. The average score for the extractives sector was actually lower than the CHRB benchmark-wide average partly because several oil and gas companies fell into the lowest-scoring brackets.

Another organization, KnowTheChain, also released its 2018 benchmarking report, focusing on three different industries: the information and communication technology industry, the food and beverage industry, and the apparel and footwear industry. None of the industries fared notably better than another, each one hovering around the 30–35% mark.

Given the growing number of benchmarking organizations that are grading transparency and ethical due diligence in supply chains, it is fair to assume that there will continue to be a rise in the types of rankings and industries included, not to mention increased publicity surrounding them. Companies' boards of directors are naturally paying attention to these benchmarks as well when evaluating their companies' positions and determining future direction, especially since most modern slavery legislation requires a board member (or equivalent) to sign off on a company's transparency statement. By tapping into the competitive nature of companies and the increasing demands of both consumers and investors for sustainable and ethically manufactured and/or sourced products, benchmarks will continue to play a powerful role in facilitating a “race to the top” for companies for ethical supply chains. The benchmarks can also serve as an educational tool for companies and investors by informing them of the human rights issues, providing them with examples of good practices, and guiding them to the relevant international principles.

INDUSTRY GROUPS TAKE ACTION TO PREVENT MODERN SLAVERY AND FORCED LABOR IN SUPPLY CHAINS

The issue of forced labor in company supply chains was a hot topic for companies to address in 2018. In addition to the investment markets' push for greater ESG disclosures and benchmark reports evaluating supply-chain transparency at both company and industry levels, several organizations published reports documenting human rights abuses in a myriad of industry groups, including the fashion industry, fishing industry, chocolate industry, and cobalt industry. Investors and the general public have become increasingly interested in learning from companies about the ethical sourcing issues in their supply chains. Companies across various industries have therefore responded by making the detection and eradication of forced labor a priority for their operations in 2018 and into 2019.

Child Labor Afflicts the Cobalt Industry

As the demand for cobalt has increased, so too has the public's awareness of human rights abuses in its production. Cobalt is the key mineral used in lithium-ion batteries, which are used to power smartphones, electric vehicles, and other devices. The human rights abuses in the cobalt industry captured the world's attention when Amnesty International released a report in 2016 detailing the extent of child labor in the Democratic Republic of the Congo ("DRC")'s cobalt industry and the extent to which these consumer products utilized cobalt mined through child labor. Amnesty International released an update to its report in 2017, and in 2018 other prominent organizations, including CNN, *Fortune*, and *The Guardian*, released their own feature pieces on the subject and brought greater exposure to the often harsh, and sometimes fatal working conditions these children experience.

2018's increase in awareness about child labor in the cobalt industry was not limited only to the news media: Companies whose products use cobalt began implementing new strategies to diminish the prevalence of child labor in their supply chains. Samsung and Tesla, for example, announced in 2018 that their companies are developing cobalt-free batteries. Other companies entered into partnerships with blockchain firms, such as Cobalt Blockchain, to create and utilize blockchain-based "ethical sourcing platforms" to track their cobalt supplies throughout their supply chains and thereby ensure their supply chains are free of child labor and other human rights abuses. Still other companies began exploring cobalt production in Canada and Australia as alternative sources to the DRC. Without widespread adoption of new strategies like these, however, the impact in eliminating child labor from the cobalt industry will be minimal. Experts estimate the DRC currently provides more than 60% of the world's cobalt supply, and demand for cobalt is booming: Cobalt prices have increased by over 147% since 2017 — with prices at certain points during that time exceeding US$81,000 per ton — and demand is expected to quadruple by 2030 due primarily to increased demand for electric cars.

Consumer Goods and Services Industries Increase Involvement in Combatting Forced Labor

2018 marked a year in which the consumer goods and service industries demonstrated greater initiative to tackle modern slavery-related issues. The Consumer Goods Forum ("CGF") delivered a Call to Action (the "Call") to its 400 member organizations, challenging them to take increased efforts to end the "global scourge" of modern slavery. Although the Call's language was mostly aspirational, CGF member organizations have actively answered its request for "multi-stakeholder collaboration" by engaging "key institutions and partners" regarding anti-trafficking efforts. For example, the anti-slavery organization International Justice Mission announced in a September press release that it developed a three-year partnership with Target, a popular retail company and CGF-member, to develop and fund programs designed to fight labor trafficking in India. The Call also challenged member organizations to eradicate worker-paid recruitment fees in their supply chains within the next 10 years.

The apparel and tourism industries also announced industry-wide initiatives to eradicate forced labor from their supply chains. In October 2018, the American Apparel & Footwear Association announced its "Commitment to Responsible Recruitment," a collaborative effort with the Fair Labor Association ("FLA"). The commitment states that the signatories will work alongside their global supply-chain partners to ensure (1) "[n]o workers pay for their job," (2) "[w]orkers retain control of their travel documents and have full freedom of movement," and (3) "[a]ll workers are informed of the basic terms of their employment before leaving home." Participating companies, which include industry leaders such as Nike, Nordstrom, and Patagonia, agree to incorporate these standards into their social compliance standards by December 31, 2019, and to periodically report on their efforts through sustainability reports, modern slavery legal disclosures, or both methods. The International Tourism Partnership also launched its own efforts to combat forced labor in the hotel industry by announcing its member organizations would follow the Principles on Forced Labour. The principles contain language aligning with the Commitment to Responsible Recruitment, stating that "[e]very worker should have freedom of movement," "[n]o worker should have to pay for a job," and "[n]o worker should be indebted or coerced into work."

Several consumer goods companies received individualized recognition from anti-trafficking organizations for their efforts to combat forced labor in their supply chains. Volcom announced in February 2018 that the FLA awarded the company with the status of an "accredited" member. The recognition follows Volcom's completion of a four-year process to align the company's supply-chain policies with FLA standards, which seek to address inhumane conditions such as forced labor and child labor in corporate supply chains. Additionally, the Ethical Trading Initiative released its independent evaluation of H&M's Fair Living Wage Roadmap, which praised the company "in becoming the first apparel brand to address the complex wage issue" and offered continued steps for improving these policies. Finally, Apple, Unilever, and Thai Union each received the Thomson Reuters Foundation's 2018 Stop Slavery Award at the organization's annual trust conference in November.

Observers May Anticipate More Substantial Corporate Engagement with Developing Ethical Supply-Chain Practices in 2019

The early weeks of 2019 have already demonstrated that developing an ethical supply chain is a priority for a number of companies. Tiffany & Co. announced its Diamond Source Initiative, in which the company will provide its customers with the provenance (region or country of origin) for each of its diamonds larger than 0.18 carats. Tiffany & Co. is the first company in the jewelry industry to implement such a program, and it expects to complete the program's launch by 2020. In addition to certain cobalt producers, other mining companies are also pursuing blockchain technologies to help trace their products along their supply chains. Another company, Tradeshift, announced a partnership with FRDM (formerly known as Made In A Free World) to create a mobile app that will allow companies to monitor human trafficking risks along their supply chains. As the year progresses, industry participants should expect to see more companies announce their own efforts to combat human trafficking and forced labor in their supply chains.

COURT DECISIONS THAT SPEAK TO LITIGATION RISKS FOR CORPORATE DEFENDANTS UNDER THE ALIEN TORT STATUTE ("ATS") FOR CLAIMS OF HUMAN RIGHTS ABUSES

Human rights abuses in supply chains were the subject of several significant cases before the courts in 2018 that domestic corporations with multi-national operations or supply chains should consider. In *Jesner v. Arab Bank*, the U.S. Supreme Court (the "Court") held that *foreign* corporations could not be sued under the ATS.[3] In *Jesner*, a group of 6,000 individuals sued Arab Bank, a financial institution based in Jordan, under the ATS.[4] The plaintiffs alleged that Arab Bank had utilized its operation centers in the United States to finance terrorist organizations that subsequently used this money to commit terrorist attacks in the Middle East that injured the plaintiffs' relatives.[5] The Court, however, found that allowing the plaintiffs to sue Arab Bank under the ATS would achieve the opposite result of the ATS's intended purpose of "promot[ing] harmony in international relations."[6] The Court also reasoned that the responsibility of determining whether corporations should be held liable for international law violations belongs to Congress, rather than to the courts.[7]

The Court's holding continued a trend of increasing protection for foreign corporate defendants under the ATS. Previously, in *Kiobel v. Royal Dutch Petroleum Co.*, the Court held that a foreign corporation could not be sued under the ATS if the tortious conduct arose entirely in a foreign nation.[8] Post-*Jesner*, however, a foreign corporation can no longer be sued as a defendant under the ATS under any circumstances, even for conduct arising in the United States. In a recent case, however, the Ninth Circuit held that plaintiffs can sue domestic corporations under the ATS for allegedly tortious actions occurring in the United States, including the aiding and abetting of human rights abuses abroad.[9] Domestic corporations, therefore, should remain diligent about policing their stateside business practices — even if those practices affect foreign activities — or else risk exposure to tort liability claims. For a more in-depth discussion of the facts and reasoning in the Jesner decision, please see this article published by our colleagues Amy Groff and Kristi Nickodem.

CONCLUSION

There are more modern slaves in the world today than at any other time in history. In response to studies demonstrating that a majority of these slaves are found in forced labor, governments, advocacy organizations, media outlets, and market forces are bringing pressure to compel businesses around the world to take steps to ensure that their supply chains are "ethical" — that is, free of forced labor. In 2018, these efforts helped to raise awareness and inspire initiatives to curb human rights abuses in supply chains. These trends are clearly continuing this year, and they will likely gain even more momentum in the years to come. Businesses now have an opportunity to invest in efforts to join this movement, reduce business risk, satisfy global and industry initiatives, comply with new legislation, and answer the growing concerns of stakeholders and investors with respect to ethical supply-chain risk management.

* * *

The views expressed in the article are the views of the authors, not K&L Gates or any of its partners, employees, and clients. This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

Notes

[1] The Global Slavery Index provides a helpful summary regarding what is and what is not "forced labor":

> Forced labour is defined in the International Labour Organization Convention on Forced Labor 1930 as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." This excludes compulsory military service, normal civil obligations, penalties imposed by a court action taken in an emergency, and minor communal services.

[2] The Global Slavery Index similarly provides a working definition for what situations constitute "modern slavery":

> [M]odern slavery covers a set of specific legal concepts including forced labour, debt bondage, forced marriage, slavery and slavery-like practices, and human trafficking. Although modern slavery is not defined in law, it is used as an umbrella term that focuses attention on commonalities across these legal concepts. Essentially, it refers to situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power. For example, their passport might be taken away if they are in a foreign country, they might experience or be threatened with violence, or their family might be threatened.

[3] 138 S. Ct. 1386, 1407 (2018).
[4] *Id.* at 1394.
[5] *Id.*
[6] *Id.* at 1406–07.
[7] *Id.* at 1407–08.
[8] 569 U.S. 108 (2013).
[9] Doe v. Nestle, S.A., 906 F.3d 1120, 1125–26 (9th Cir. 2018). It should be noted that the Ninth Circuit did not address the question of what constitutes such aiding and abetting, and the case was remanded to the District Court for further consideration of the merits. *Id.* at 1126–27.

KEY CONTACTS

GREGORY T. LEWIS
ASSOCIATE

AUSTIN
+1.512.482.6809
GREG.LEWIS@KLGATES.COM

