

2007

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Recommended Citation

Katherine E. Kenny, Code or Contract: Whether Wal-Mart's Code of Conduct Creates a Contractual Obligation between Wal-Mart and the Employees of Its Foreign Suppliers, 27 Nw. J. Int'l L. & Bus. 453 (2006-2007)

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Code or Contract: Whether Wal-Mart's Code of Conduct Creates a Contractual Obligation Between Wal-Mart and the Employees of its Foreign Suppliers

*Katherine E. Kenny**

I. INTRODUCTION

On September 13, 2005, workers from China, Bangladesh, Indonesia, Swaziland, and Nicaragua sued Wal-Mart in Superior Court in Los Angeles for breach of contract as third-party beneficiaries to Wal-Mart Stores, Inc.'s supply contract with garment factories located in those respective countries.¹ The suit, brought by the International Labor Rights Fund ("ILRF"), makes the novel claim that Wal-Mart's Standards for Suppliers Agreement, also known as the Code of Conduct, created contractual obligations between it and potentially hundreds of thousands of workers employed by Wal-Mart's foreign suppliers who had agreed to comply with the Code of Conduct.²

Wal-Mart's Code of Conduct sets forth five standards relating to compliance with applicable law and practices, employment conditions, workplace environment, concern for environment, factory inspection, and Wal-Mart's gift and gratuity policy.³ Wal-Mart's supply contract requires that the foreign suppliers in the identified countries producing goods for Wal-Mart adhere to Wal-Mart's Code of Conduct as a direct condition of

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¹ Class Action Complaint for Injunctive Relief and Damages, *Doe v. Wal-Mart Stores, Inc.*, No. CV 05-7307 GPS (C.D. Cal. 2005), available at <http://www.laborrights.org/projects/corporate/walmart/WalMartComplaint091305.pdf> [hereinafter *Complaint*].

² Steven Greenhouse, *Suit Says Wal-Mart is Lax on Labor Abuses Overseas*, N.Y. TIMES, Sept. 14, 2005, at C3.

³ *Id.*

supplying merchandise to Wal-Mart.⁴ In addition, Wal-Mart asks suppliers to sign the Code of Conduct for Wal-Mart's records and to display a poster version of the Code of Conduct in the local language and English in each production facility servicing Wal-Mart. The suit alleges that Wal-Mart was in turn "obligated to ensure supplier compliance with its Code of Conduct, and adequately monitor working conditions in supplier factories."⁵

Workers claim that because Wal-Mart failed to leverage its "economic position and actual control over supplier factories," the workers were subject to employment conditions that violated the Code of Conduct.⁶ The suit outlines eight causes of action brought on behalf of the foreign workers: (1) Breach of Contract for Denial of Minimum and Overtime Wages, (2) Breach of Contract for Forced Labor, (3) Breach of Contract for Denial of Fundamental Right to Freely Associate, (4) Negligence and Recklessness, (5) Negligence Per Se, (6) Negligent Hiring and Supervision, (7) Unjust Enrichment and Violation of Business, and (8) Professions Code § 17200.⁷ The ILRF, who brought the suit on behalf of the workers, outlines the workers' demands. According to the ILRF, the workers demand that Wal-Mart enforce its Code of Conduct, create a dispute resolution system by which workers could air their grievances, reform its pricing practices to ensure that the prices provided to suppliers would still allow workers to receive the benefits of Wal-Mart's Code of Conduct, and provide workers with restitution and a commitment to sourcing from union shops and worker co-ops worldwide.⁸

In recent years, the apparel and garment industry has experienced increased criticism and scrutiny due to allegations of sweatshop labor conditions, unfair wages, unreasonable hours, unsafe working conditions, and physical or mental abuse of workers.⁹ Some of these criticisms resulted in lawsuits brought against multiple garment manufacturers, including J.Crew, Gap, Tommy Hilfiger, and Wal-Mart.¹⁰ Wal-Mart settled a 1999

⁴ Wal-Mart Standards for Suppliers, (Jan. 10, 2005), <http://walmartstores.com/Files/SupplierStandards.pdf> (last visited Nov. 14, 2006) [hereinafter Code of Conduct].

⁵ Complaint, *supra* note 1, at 1.

⁶ *Id.*

⁷ *Id.* at 34–43. This comment will only discuss the breach of contract claims in causes 1–3.

⁸ International Labor Rights Fund, Wal-Mart Worker's Demands, <http://www.laborrights.org/> (follow "Hot off the Presses . . . Wal-Mart in China: Rolling Back Labor Rights: Report" hyperlink) (last visited Nov. 21, 2006).

⁹ See Seth Faison, *Stretching Federal Labor Law Far into South Pacific*, N.Y. TIMES, Feb. 20, 1999, at A3 (discussing the suit brought by workers in Saipan); see also Lisa Girion, *1780 Law Acquires Human Rights Role: Alien Tort Claims Act is the Basis for Suit Against Unocal Over Abuses in Myanmar*, L.A. TIMES, June 16, 2003, at A4.

¹⁰ Steven Greenhouse, *4 Companies Gain Accord in Labor Suit*, N.Y. TIMES, Aug. 10, 1999, at A10 (discussing the lawsuit brought by workers in the Northern Mariana Islands).

lawsuit brought by workers in the Northern Mariana Islands out of court for an undisclosed amount. For many multi-national corporations, internally created codes of conduct are seen as a way not only to self-regulate, but also to bolster their image and reputation among consumers and shareholders with respect to foreign business practices as a means to counter such criticisms and lawsuits.¹¹ Although “[i]ndividual corporate codes of conduct vary from brief, value policy statements to comprehensive guidelines . . . the uniform policy behind them is to show the [multi-national corporation’s] support for the labor rights of workers.”¹² Historically, the main criticism levied against codes of conduct stems from the prior notion that they are self-imposed and voluntary, and thus lack a hard enforcement mechanism. According to Terry Collingsworth, ILRF’s general counsel, the premise of the current lawsuit against Wal-Mart “is that Wal-Mart and many other companies issued these codes of conduct as public relations devices. They never expected that someone would take the codes seriously and use it as an affirmative tool to actually make them do what they promised to do.”¹³ As a result, this case is likely to cause alarm among MNCs, which have increasingly “relied on codes of conduct to assert their commitment to socially responsible behavior without incurring legal liability.”¹⁴

This comment examines whether corporate codes of conduct and more specifically, Wal-Mart’s Code of Conduct, are binding contracts between foreign suppliers and their employees or whether they are voluntary and non-contractual devices. An analysis of U.S. law and the text and implementation of Wal-Mart’s Code of Conduct reveals that the Code should not be interpreted as a contract binding on foreign suppliers and their employees for the breach of contract for denial of minimum and overtime wages, the breach of contract for forced labor, and the breach of contract for denial of the fundamental right to freely associate. The comment goes on to discuss the ramifications of this type of suit and other possibilities for bringing about the successful reform of labor conditions for foreign workers. This comment concludes that the best means for reform is not litigation but legislation. Part II of this comment discusses the historical origins of corporate codes of conduct and the role that they currently play within MNCs. Part III discusses how courts in the United States have

¹¹ Jane C. Hong, *Enforcement of Corporate Codes of Conduct: Finding a Private Right of Action for International Laborers Against MNCs for Labor Rights Violations*, 19 WIS. INT’L L.J. 41, 50 (2000–2001).

¹² See *id.* at 52.

¹³ Keith Ecker, *Labor Group Holds Wal-Mart to Code of Conduct*, INSIDE COUNSEL, (Nov. 2005), http://www.insidecounsel.com/issues/insidecounsel/15_168/circuits/224-1.html (quoting Terry Collingsworth, Director International Labor Rights Fund).

¹⁴ Jonathan Birchall, *Wal-Mart Faces Sweat-Shop Lawsuit*, FIN. TIMES, Sept. 14, 2005, at 15.

interpreted corporate codes of conduct. Part IV analyzes the text and implementation of Wal-Mart's Code of Conduct and determines whether it should be interpreted as a contract or mere guidelines in light of recent court rulings. Part V analyzes the impact of the lawsuit and discusses the appropriateness of other possible means for reforming foreign working conditions. Part VI draws conclusions with respect to the most effective means of impacting workers' conditions, such as grassroot efforts.

II. HISTORICAL ORIGINS OF INTERNAL AND EXTERNAL CORPORATE CODES OF CONDUCT AND THEIR ROLE WITHIN MULTI-NATIONAL CORPORATIONS

MNCs use "corporate codes of conduct" to set out ethical standards in their conduct. For the most part, MNCs that adopt codes of conduct voluntarily create a written pledge or establish standards to respect labor rights outlined in the code. Underlying these codes is a fundamental premise: that "corporations, due to their dominance as global institutions, should address the social and environmental problems affecting humankind."¹⁵

A. Internal Codes of Conduct

International corporations in the 1970s put forth the first wave of corporate codes of conduct, "which focused generally on principles of honesty and fair dealing as a response to developing countries' fears of abuse and exploitation by multi-national corporations."¹⁶ Among the first companies to formulate corporate codes of conduct were General Electric and Martin Marietta in the 1980s.¹⁷ Procurement scandals generated widespread interest in corporate conduct.¹⁸ However, it was not until the enactment in 1991 of the U.S. Sentencing Guidelines, which provided potential monetary incentives for companies that instituted ethics programs, that U.S. companies began establishing codes of conduct with more frequency.¹⁹ Under the U.S. Sentencing Guidelines, a company could gain some leniency in sentencing based on several "mitigating factors," including, but not limited to, having a program "to prevent and detect

¹⁵ Hong, *supra* note 11, at 42.

¹⁶ *Developments in the Law—Jobs and Borders: III. Legal Tools for Altering Labor Conditions Abroad*, 118 HARV. L. REV. 2202, 2220 (2005) [hereinafter *Developments in the Law—Jobs and Borders*] (referring to GEORGE TSOGAS, LABOR REGULATION IN A GLOBAL ECONOMY 60 (2001)).

¹⁷ *Id.* at 2181.

¹⁸ *Id.*

¹⁹ International Labour Organization, Corporate Codes of Conduct, <http://www.itcilo.it/english/actrav/telearn/global/ilo/code/main.htm> (last visited Nov. 14, 2006).

violations of the law.”²⁰ The Guidelines detail seven criteria by which such programs will be judged, including: the existence of standards or codes of conduct, training or other communication regarding standards, and the designation of a high-level individual to oversee compliance.²¹ Consumer concerns and the potential for media exposure of substandard labor conditions in MNCs’ global supply chains also motivated this second wave of codes of conduct. Moreover, codes of conduct arose either as a direct result of private campaigns or in anticipation of such campaigns. Companies saw codes of conduct as a means to garner public favor by appearing as if they were cleaning up their acts.²² Whereas in the past, a company might have been able to keep unethical behavior quiet, now a greater likelihood exists that company employees or a nongovernmental organization (“NGO”) watch group will alert relevant pressure groups of a company’s unethical behavior.

Levi-Strauss’s Code of Conduct, the first of its kind, emerged after the change in the U.S. Sentencing Guidelines and as a result of public pressure. Levi-Strauss was the first MNC to institute a comprehensive corporate Code of Conduct in 1991.²³ The Code addresses seven aspects of employment: wages and benefits, working hours, child labor, forced labor, health and safety, discrimination, and disciplinary practices.²⁴ Personnel from Levi-Strauss monitor compliance with the Code through the use of questionnaires, audits, and surprise visits. In addition, Levi-Strauss participates in the Ethical Trading Initiative, an alliance of companies and NGOs that seeks to promote and implement corporate codes of conduct.²⁵ As of 2000, Levi-Strauss had discontinued contracts with thirty-five of approximately 700 subcontractors due to repeated Code violations.

Wal-Mart’s own Code of Conduct was developed in 1992, arguably in reaction to the sweatshop allegations involving clothing manufactured as part of the Kathie Lee Gifford clothing line.²⁶ At its inception, the Code was to apply to all suppliers both nationally and internationally.²⁷ The Code of Conduct, whose elements were discussed earlier, was meant to be

²⁰ United States Sentencing Commission, Federal Sentencing Guidelines, 482–84, available at <http://www.ussc.gov> (follow “Federal Sentencing Guidelines Manual and Appendices (2006)” hyperlink).

²¹ *Id.*

²² INGEBJÖRG DARROW, IMPLEMENTATION OF ETHICS CODES IN GERMANY: THE WAL-MART CASE (Mar. 2005), <http://upf.edu/iuslabor/032005/art11.htm> (last visited Jan. 30, 2007).

²³ Levi Strauss, Social Responsibility/Social Guidelines, <http://www.levistrauss.com/responsibility/conduct/> (last visited Nov. 21, 2005).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Complaint, *supra* note 1, at 13.

²⁷ *Id.*

incorporated into its supply contracts with foreign suppliers.²⁸ Although the Code has undergone numerous revisions since 1992, all of the versions claim to extend fundamental rights to workers in Wal-Mart supplier factories.²⁹

Internal codes of conduct put forth voluntarily are not the only codes of conduct present in the global arena. There are also external codes of conduct by which some companies abide. External codes of conduct typically fall into the following two categories: (1) those created in multilateral government settings, and (2) those created by either single governments or by NGOs.³⁰ The United Nations or the International Labor Organization (“ILO”) usually create the codes in the former category. The ILO is a specialized agency of the United Nations that “seeks the promotion of social justice and internationally recognized human and labour rights.”³¹ However, an ILO convention only binds ratifying states and many countries have refused to ratify it. Even though the United States has agreed to ratify it, the ILO has little power to enforce its conventions.³² Of the latter type of external codes, one of the most prevalent in the apparel industry is the Apparel Industry Partnership (“AIP”), formed in 1996 under the direction of then-President Clinton. The AIP is a coalition of footwear and apparel industry members, labor unions, NGOs, religious groups, and consumer groups that formulates common labor standards and common monitoring and enforcement mechanisms for MNCs’ subsidiaries and subcontractors.³³ Critics of AIP, such as Sweatshop Watch, have been most critical of its Principles of Monitoring because they fail to provide effective monitoring and the rules add little weight to those already in place by the U.S. Department of Labor.³⁴ Moreover, there is no neutral party to “blow the whistle on human rights violations” and therefore, no assurance that monitors will not be unduly influenced by corporate pressure on inspection reports.³⁵ As a result, many similarly situated external codes have been largely ineffective.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Hong, *supra* note 11, at 50.

³¹ Director-General: Mr. Juan Somavia, International Labour Organization, <http://www.ilo.org/public/english/about/index.htm> (last visited Nov. 14, 2006).

³² Lance Compa & Tashia Hinchliffe-Darricarrere, *Enforcing International Labor Rights Through Corporate Codes of Conduct*, 33 COLUM. J. TRANSNAT’L L. 663, 665 (1995).

³³ International Labour Organization, Apparel Industry Partnership’s Agreement, (Apr. 14, 1997), <http://www.itcilo.it/english/actrav/telearn/global/ilo/guide/apparell.htm> (last visited Nov. 13, 2006).

³⁴ Heidi S. Bloomfield, “Sweating” the International Garment Industry: A Critique of the Presidential Task Force’s Workplace Codes of Conduct and Monitoring System, 22 HASTINGS INT’L & COMP. L. REV. 567, 584 (1999).

³⁵ *Id.* at 584–85.

B. External Codes of Conduct

Compared to internal codes of conduct many of the external codes of conduct discussed in the previous section have not done well to recruit participation by companies. MNCs are reluctant to declare their support for such broad and overly general approaches.³⁶ Instead, companies are inclined to take a more proactive and self-motivated approach in which they create their own rules and regulations in an internal corporate code of conduct.

Unfortunately, corporate codes of conduct are not without their critics. Historically the main criticism of codes of conduct was that they were self-imposed, self-regulated, and voluntary, and thus lacked a definitive enforcement mechanism.³⁷ For most companies, the primary incentive to comply with a code of conduct was to avoid negative attention and harm to their public image. After all, companies like Levi-Strauss, Nike, and Wal-Mart logically want to avoid lawsuits and repeated images of sweatshop laborers making their apparel on the evening news. Ultimately, the “conflict that each company faces is one between striving to set a higher standard for human and labor rights, and the criticism it will face for falling short of the higher standard.”³⁸

III. HOW COURTS INTERPRET CORPORATE CODES OF CONDUCT

In order to determine whether or not Wal-Mart’s Code of Conduct could be interpreted as establishing a contractual obligation to employees of foreign suppliers, it is necessary to evaluate how codes of conduct are interpreted. Recently, a federal district court in the Northern District of Illinois laid out a framework under which employer codes of conduct would be considered contractually binding.³⁹ The court determined that in order for an employee handbook or other employment policies, such as a code of conduct, to create enforceable contractual rights, the language of the policy must conform to the traditional requirements of contract formation. Therefore, the code of conduct must:

First, contain a promise clear enough that an employee would reasonably believe that an offer has been made. Second, the statement must be disseminated to the employee in such a manner that the employee is aware of its contents and reasonably believes it to be an offer. Third, the employee must accept the offer by commencing or continuing to work after learning of the policy

³⁶ See Compa & Hinchliffe-Darricarrere, *supra* note 32, at 186.

³⁷ *Developments in the Law—Jobs and Borders*, *supra* note 16, at 2220.

³⁸ Ryan P. Toftoy, *Now Playing: Corporate Codes of Conduct in the Global Theater. Is Nike Just Doing It?* 15 ARIZ. J. INT’L & COMP. L. 905, 917 (1998).

³⁹ *Weber Shandwick Worldwide v. Reid*, No. 05 C 709, 2005 U.S. Dist LEXIS 14482, at *1–*13,*8 (N.D. Ill. May 12, 2005).

statement.⁴⁰

In determining that the disputed Code of Conduct, from the company Weber Shandwick, was not a contract, the court pointed out that the Code of Conduct did not contain clear promissory language. Rather, the Code's use of the phrase "may result in disciplinary action" was just a general statement of company policy or practice and was therefore too indefinite to create a binding contractual obligation.⁴¹ Because Weber Shandwick's Code of Conduct contained general statements of company policy and guidelines for employer-employee conduct, it did not constitute a binding contract. The court concluded that if the language had been more precise to include phrasing like *will result in disciplinary action*, it would have been considered precise enough.⁴² The court argued that "language that merely gives examples of the kinds of conduct that subject an employer to discharge does not amount to a contractual promise."⁴³ Furthermore, when the purpose of a handbook or code of conduct is not to confer rights, but to warn employees about conduct that could result in termination or adverse action, the language does not constitute a contract.⁴⁴

Similarly, the Court of Appeals for the Ninth Circuit expressed the importance of looking at the specific language of the code of conduct when determining whether or not it was a contract. In order for statements in employment manuals and codes of conduct to be binding, the court ruled, in an unreported case that they must "constitute promises of specific treatment in specific situations, not merely policy statements."⁴⁵ As a result, the court ruled that the statement contained in the manual, "Honeywell will make every effort in terms of counseling employees whose work is unsatisfactory," did not constitute a specific promise because it did not provide "detailed or specific procedure to be followed prior to terminating an employee."⁴⁶ In determining that the language was too vague, the court focused on the specific term "make every effort" to infer that under some circumstances "every effort" might mean that there is still nothing that can be done to prevent termination.⁴⁷

⁴⁰ *Id.* at *9 (quoting *Duldulao v. St. Mary of Nazareth Hosp. Ctr.*, 505 N.E.2d 314, 318 (Ill. 1987)).

⁴¹ *Id.* at *11.

⁴² *See Id.* (referencing *Hicks v. Methodist Med. Ctr.*, 593 N.E.2d 119, 120 (Ill. App. Ct. 1992)).

⁴³ *Id.* at *12.

⁴⁴ *Id.*

⁴⁵ *Brinkley v. Honeywell, Inc.*, No. 93-35402, 1994 U.S. App. LEXIS 23834, at *1-10 (9th Cir. 1994) (unpublished opinion) (quoting *Stewart v. Chevron Chemical Co.*, 762 P.2d 1143 (Wash. 1988)).

⁴⁶ *Id.* at *7.

⁴⁷ *Id.*

The Ninth Circuit also laid out a framework by which employers can escape contractual obligations for their employee codes of conduct.⁴⁸ Employers can avoid contractual obligations if they “specifically state, in a conspicuous manner that nothing contained therein is intended to be part of the employment relationship and are simply general statements of company policy.”⁴⁹ However, if an employer promises specific treatment in specific circumstances and an employee is induced thereby to remain on the job and not actively seek alternative employment, those promises are enforceable as contracts.⁵⁰ In the specific instance, the court concluded that the employer was not bound by statements in an employment manual because the Code of Conduct stated specifically that it was not “to be construed as limiting [the employer’s] right to terminate without cause.”⁵¹

Although the courts have not specifically addressed a case where an implied contract modified an at-will employment relationship, court opinions still provide a framework from which inferences can be drawn to decide whether an implied contract modified an at-will employment relationship.⁵² Even if a worker cannot prove that an express contract existed, a worker may be able to prove that a code of conduct established an implied contract. This possibility might give some insight into how a court would interpret whether a code of conduct created an implied contract with an employee. To determine whether there is an implied contract, courts will look at:

(1) length of service; (2) actions or communications by the employer reflecting assurances of continued employment; (3) the employer’s personnel policies and practices; (4) whether the employee gave independent consideration for the employer’s promise; and (5) practices in the industry in which the employee is engaged.⁵³

Although the Ninth Circuit has ruled that statements must contain promises of specific treatment for specific instances in order for a contractual relationship to be created from employer codes of conduct, some court decisions indicate that when an employer puts forth formal personnel policies and procedures in codes of conduct, those policies and procedures will be viewed as contractually binding. In *Guz v. Bechtel National, Inc.*, the California Supreme Court held that “when an employer promulgates formal personnel policies and procedures in handbooks,

⁴⁸ *Laul v. Battelle Mem’l Inst.*, No. 95-35156, 1996 U.S. App. LEXIS 16520 (9th Cir. June 14, 1996) (unpublished opinion).

⁴⁹ *Id.* at *4 (quoting *Thompson v. St. Regis Paper Co.*, 685 P.2d 1081, 1084 (1984)).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *See Reid v. Smithkline Beecham Corp.*, 366 F. Supp. 2d 989, 994 (S.D. Cal. 2005).

⁵³ *Id.* at 995.

manuals and memoranda disseminated to employees, a strong inference may arise that the employer intended workers to rely on these policies as terms and conditions of their employment.”⁵⁴ In *Guz*, the company’s written personnel documents were seen as contractually binding and therefore modified the original conditions of the employee’s contract.⁵⁵

In addition to rulings in the United States, a 2005 ruling in Wuppertal, Germany by a local labour court offers some insight into whether codes of conduct should be seen as contractually binding overseas. The court found that the Code of Conduct given to Wal-Mart’s employees in Germany, which is similar to the one implemented in stores in the United States, violated German labor laws.⁵⁶ In February 2005, Wal-Mart’s German workers were given a thirty-three-page Code of Conduct attached to their pay checks.⁵⁷ In addition, all store managers were provided with a special poster regarding the company’s Code of Conduct. This poster was supposed to go on permanent display in German Wal-Marts’ Human Resources departments.⁵⁸ The guidelines on ethics forced Wal-Mart’s employees to adhere to rules about behavior and their private and sexual relationships.⁵⁹ One of the provisions of the company’s Code for employees forbids intimate relationships among co-workers and requires employees to inform Wal-Mart via a telephone hotline if they suspect violations.⁶⁰ The German workers’ council filed the suit against Wal-Mart Germany in protest of the controversial provisions.⁶¹ The Local Labour Court of Wuppertal ruled in favor of the employees.⁶² The Court ruled that provisions in the Code violated the German Constitution and more specifically German law, which says that anything regulating the personal lives of employees should first be agreed upon between employers and workers.⁶³ In addition, the Court ruled that the Code breached the right of co-determination because it required staff to report Code violations via a so-called ethics hotline.⁶⁴ In order for the provisions to pass constitutional

⁵⁴ *Guz v. Bechtel Nat’l Inc.*, 8 P.3d 1089, 1106 (Cal. 2000).

⁵⁵ *Id.*

⁵⁶ See DARSOW, *supra* note 22.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Press Release, United Food and Commercial Workers, Wal-Mart Imposes KGB Style-Informant System on German Employees (Mar. 18, 2005), http://www.ufcw.org/press_room/index.cfm?pressReleaseID=128; see also WakeupWalMart.com, Wal-Mart Imposes KGB Style-Informant System on German Employees (Mar. 18, 2005) <http://wakeupwalmart.com/press/20050318b-release.html> (last visited Nov. 14, 2006).

⁶¹ See DARSOW, *supra* note 22.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

muster in Germany, the “works council” would have to agreed upon the provisions.⁶⁵

Even though the ruling was in Germany and not the United States, let alone California where the complaint was filed, the ruling is important because it shows that Wal-Mart considers its Code of Conduct to be binding on employees. Thus, a violation of that Code can result in termination of employment. For Wal-Mart employees in Germany, as well as the United States, the Code of Conduct is not merely a suggestion, but a binding obligation of employees when they accept the job. This obligation gives insight into Wal-Mart’s intent in creating a code of conduct for suppliers. This case is also relevant because it shows a tendency for courts to see codes of conduct, particularly ones that are distributed and displayed to employees, as having some binding force on those employees. In addition, codes are held to be illegal if they contain a clause that violates local law.

IV. SHOULD WAL-MART’S CODE OF CONDUCT BE INTERPRETED AS A CONTRACT OR MERELY AS GUIDELINES?

In order to determine whether Wal-Mart’s Code of Conduct for foreign suppliers should be viewed as contractually binding, an analysis of the text and implementation of Wal-Mart’s Code of Conduct in light of recent court rulings must take place. Based on recent court rulings, it seems that the contractual determination will hinge on whether Wal-Mart’s Code of Conduct (1) made a promise clear enough for an offer; (2) was disseminated in a manner that employees knew of its contents and reasonably relied on it; and (3) whether employees accepted the offer either by commencing or continuing to work.

Based on Wal-Mart’s own admissions, it appears that the Code of Conduct was disseminated in such a manner that employees knew of its contents and reasonably relied on it. Wal-Mart’s own “Supplier’s Responsibilities” make clear that Wal-Mart requires that a poster version of the Supplier Standards in the local language and English be placed in each production facility serving Wal-Mart.⁶⁶ The poster version has already been translated into twenty-five languages.⁶⁷ The filed complaint alleged that all “plaintiffs either saw posted in the supplier factory or were otherwise made aware of Wal-Mart’s Code of Conduct and understood that the worker rights protections contained therein . . . were for their direct benefit.”⁶⁸ Specifically for the Indonesian plaintiffs, the complaint alleges that Wal-Mart’s Code of Conduct is posted on the walls of factories in Indonesia, and

⁶⁵ *Id.*

⁶⁶ Code of Conduct, *supra* note 4, at 25.

⁶⁷ *Id.*

⁶⁸ Complaint, *supra* note 1, at 34.

that one of the plaintiff's supervisors provided him a copy of the Code of Conduct to "distribute to the employees for whom he served as foreman."⁶⁹ Even if the argument can be made that some of the workers did not see the poster or were not provided with a copy of the Code of Conduct, by Wal-Mart's own admission the Code was supposed to be distributed to all employees. Therefore, it seems likely that the requirement for contract formation was satisfied.

Similarly, because the plaintiffs in the complaint all continue to work at Wal-Mart, it appears that there can be little debate about whether the employees actually ever accepted their offer. Because they maintained their employment, it seems that if the court rules that Wal-Mart indeed made an offer, then acceptance was also made.

The primary issue in this case will likely center on whether Wal-Mart's Code of Conduct was a promise clear enough to constitute an offer. As courts have analyzed codes of conduct for general or specific terms,⁷⁰ the court will likely find that Wal-Mart's Code of Conduct is not a contract, as long as the Code merely contains general statements of company policy and guidelines for employer-employee conduct. Wal-Mart's Code of Conduct says that Wal-Mart "reserves the right to make periodic, unannounced inspections" and that "Wal-Mart will favor suppliers who meet such industry practices."⁷¹ Such language seems analogous to the language in *Shandwick* where the court ruled that the code of conduct did not create a contract because it was too general and seemed only to be a general statement of company policy.⁷²

To determine if the language created a contract, the court will also look at whether the language merely gave examples of the types of conduct that could result in disciplinary action. Wal-Mart's Code of Conduct says that "failure to supply complete and accurate commercial invoices may result in cancellation of orders."⁷³ Because violation of Wal-Mart's Code of Conduct is not an automatic bar from being a Wal-Mart supplier it seems likely the Code just gives examples of the types of conduct that could result in disciplinary action. If non-compliance with the Code were a direct bar from being a Wal-Mart supplier, then perhaps the workers would have a better argument that the Code was a binding contract. In addition, it could be argued that the "will not" and "will" language is not an offer to employees but merely a means to lay out for suppliers the type of activity that can result in termination, and therefore, it is not an offer to confer a right to workers. This line of reasoning seems more appropriate

⁶⁹ *Id.* at 25.

⁷⁰ See *supra* Part III.

⁷¹ Code of Conduct, *supra* note 4, at 26.

⁷² See *Shandwick*, 2005 U.S. Dist LEXIS 14482, at *12.

⁷³ Code of Conduct, *supra* note 4, at 26 (emphasis added).

considering that suppliers are asked to sign the Code of Conduct, and it is contained in the supplier contract. In this regard, the Code seems more like suggested guidelines that merely put suppliers on notice, rather than a binding contract that if violated would result in termination of the supply relationship.

Despite those arguments in favor of not finding a contract, at times, the Code contains clear promissory language similar to a contract. The Code of Conduct states that “Wal-Mart *will not* accept products from suppliers who directly or indirectly use in any manner forced labor or prison labor.”⁷⁴ The Code also states “[s]uppliers *will* respect the rights of employees regarding their decision of whether to associate or not to associate with any group, as long as such groups are legal in their own country.”⁷⁵ That precise and absolute phrasing appears to be the type of phrasing that the court in *Shandwick* said would create a contract.

While the court could follow *Shandwick* and find a contract, the court could also conclude that the language is not precise enough to form a contract. The language in the “Forced Labor/Prison Labor” and “Freedom of Association and Collective Bargaining” section of Wal-Mart’s Code of Conduct is not precise enough to constitute a contract because, similar to *Honeywell*, Wal-Mart’s language leaves too much room for interpretation.⁷⁶ The Code of Conduct merely states that “Wal-Mart will not accept products from suppliers who directly or indirectly use in any manner forced labor or prison labor” and that “suppliers will respect the rights of employees.”⁷⁷ Under the Ninth Circuit’s ruling in *Honeywell*, this phrasing does not seem to be a contract because the code’s phrasing has numerous possible interpretations. The “Forced Labor/Prison Labor” section simply says “[f]orced or prison labor will not be tolerated,” but provides no groundwork for what that means and what actions Wal-Mart will take if there is a violation of the provision.⁷⁸ Furthermore, the phrase “will respect” under the “Freedom of Association and Collective Bargaining” also is too vague. The sections do not lay out specific requirements or actions. The phrasing in the sections offers no guidance as to how the company must go about respecting a worker’s rights. As a result, Wal-Mart can make the claim that the wording is too vague to be interpreted as a contract under the standards set forth by the court in *Honeywell*.

Moreover, Wal-Mart could successfully argue that the sections were not intended to confer a right on the employees of foreign suppliers, but were simply intended as examples of conduct that may result in termination

⁷⁴ *Id.* at 27 (emphasis added).

⁷⁵ *Id.* (emphasis added).

⁷⁶ *Honeywell*, 1994 U.S. App. LEXIS 23834, at *47.

⁷⁷ Code of Conduct, *supra* note 4, at 27.

⁷⁸ *Id.*

of the supplier contract. The reasoning against these sections forming a contract seems to be stronger because the wording that “Wal-Mart will not accept products” and “[s]uppliers will respect” seems to be more of a warning to suppliers rather than a right conferred on the supplier’s workers.⁷⁹ As a result, Wal-Mart’s Code of Conduct should not be viewed as contractually binding in the context of “Forced Labor/Prison Labor” and “Freedom of Association,” but should merely be seen as non-contractual guidelines for suppliers to follow.

Although Wal-Mart’s Code of Conduct does not create a contract regarding “suppliers” and “products,” the question still remains whether the Code confers rights to employees with respect to “Compensation.” The Code of Conduct Compensation section under “Employment Conditions” states that:

Suppliers *shall* fairly compensate their employees by providing wages and benefits that are in compliance with the local and national laws of the jurisdictions in which the suppliers are doing business or which are consistent with the prevailing local standards in the country if the prevailing local standard is higher.⁸⁰

The word “shall” appears to confer a right on workers. However, like the “Forced Labor/Prison Labor” and “Freedom of Association and Collective Bargaining” sections, this section also seems directed at suppliers and not at workers. The language is precise and does not contain any suggestion that might be construed as only giving an example of conduct that could lead to punishment. Nonetheless, because the language of the section seems to give an example of the type of conduct that could lead to negative consequences for suppliers, it also does not seem to confer a contractual right. Perhaps if the section stated that “all employees shall be fairly compensated” or that “employees have a right to fair compensation,” then this section could be seen as containing a contractual right. Unlike the Code of Conduct in Germany that was specifically directed at Wal-Mart’s employees and their permitted conduct, the Code of Conduct for foreign suppliers seems solely directed at the supplier’s conduct. As is, this is not a promise for specific treatment, but yet another mention of the optimum working environment that Wal-Mart wants from its suppliers and the type of conduct, if violated, that could result in termination of the foreign supplier’s contract.

Most likely, the foreign workers will still assert that the Code creates an implied contract with workers because it is visibly displayed in the factory and personally distributed to each individual worker, and therefore

⁷⁹ *Id.*

⁸⁰ *Id.* (emphasis added).

Wal-Mart intends for it to be binding upon workers. The code, however, makes no guarantees of enforcement to workers. The Code states, “[a]ny person with knowledge of a violation of any of these practices by a Supplier, factory or a Wal-Mart associate should call the appropriate number.”⁸¹ In light of the German court’s ruling, the workers may assert that the Code was an implied contract.⁸² However, the German employee Code and the foreign supplier Code are not analogous. The German employee Code outlined specific rules that the employees must follow or they would be terminated.⁸³ In contrast, violation of the foreign supplier Code does not necessarily warrant termination of the supplier relationship.⁸⁴ The specifications in the German Code were detailed and elaborate, rather than the general provisions detailed in the supplier contract.⁸⁵ Wal-Mart will likely assert that this language implies not that there is an implied contract between Wal-Mart and the employees, but merely that employees are given the contract to support Wal-Mart in enforcing the code. Even if an employee did report a violation, Wal-Mart is not under any obligation to then terminate the supplier relationship. Moreover, the Code does not outline any specific remedies, even in the event that an employee reports a violation. Therefore, it does not appear that the posting and distribution of the Code necessarily create an implied contract with employees.

Even if foreign workers assert that the Code of Conduct creates an implied contract, their claim would likely fail because the court would look at the practice in the industry.⁸⁶ As noted in Part II, *supra*, MNCs have historically adopted codes of conduct voluntarily, using them as guidelines for suppliers, employees, and executives. Until now, employees of foreign suppliers had not alleged that a code of conduct created a contractual obligation. Therefore, it is highly unlikely that the Wal-Mart Code of Conduct created an implied contract, because it is unreasonable to think that the practice in the industry is for codes of conduct to be contractually binding.

Ultimately, because the wording in Wal-Mart’s Code of Conduct is too vague and merely gives examples of the type of conduct that could result in disciplinary action by Wal-Mart rather than confers a right on workers, Wal-Mart’s Code of Conduct for foreign suppliers does not create a contractual obligation with the employees of Wal-Mart’s foreign suppliers.

⁸¹ *Id.* at 29.

⁸² *See* Code of Conduct, *supra* note 4.

⁸³ *See* DARSOW, *supra* note 22.

⁸⁴ *See* Code of Conduct, *supra* note 4.

⁸⁵ *Id.*

⁸⁶ *See* Reid v. Smithkline Beecham Corp., 366 F. Supp. 2d at 994–95.

V. THE IMPACT OF THE LAWSUIT AND APPROPRIATENESS OF OTHER MEANS FOR REFORMING FOREIGN WORKING CONDITIONS

Although a California court will eventually answer the debate over whether corporate codes of conduct can be contractually binding, the question remains as to what the most effective means are for bringing about positive changes in the working conditions of foreign workers. In recent years, foreign workers have been successful using civil litigation against MNCs to bring about changes in workers' conditions. For example, in the mid-1990s, U.S. human rights groups filed suit against Unocal Corp. for alleged human rights violations against Burmese villagers, including torture, rape, and murder to enslave villagers, even throwing one woman's baby in a fire after killing her husband.⁸⁷ After years of courtroom sparring with pipeline workers over whether Unocal had acquiesced in or benefited from human rights violations committed by the Burmese government, Unocal agreed to pay workers a \$30 million settlement.⁸⁸ The case hinged largely on the Alien Tort Claims Act ("ATCA"),⁸⁹ that allows foreign litigants to seek damages in U.S. court for crimes against the law of nations.⁹⁰ The ATCA provides that "[t]he district courts shall have 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."⁹¹ The ILRF, the same group behind the Wal-Mart class action discussed in this comment, represented the plaintiffs against Unocal. Although the case against Unocal was ultimately successful, it took years to litigate and did not necessarily create proactive change.

In addition to cost and time constraints, pursuing suits against manufacturing firms under the ATCA may be less successful because no U.S. court has recognized international labor standards as binding international law. However, if employers treat their workers violently, fail to pay them, coerce them into working, or restrain them, then these human rights abuses could be subject to ATCA jurisdiction.⁹² It appears, therefore, that a set of labor rights have emerged "that seem to be gaining general recognition and acceptance throughout the world."⁹³ In light of the trend to

⁸⁷ Paul Magnusson, *A Milestone for Human Rights*, BUS. WK., Jan. 24, 2005, at 63.

⁸⁸ *Id.*

⁸⁹ 28 U.S.C. § 1350 (2000).

⁹⁰ Magnusson, *supra* note 87, at 44.

⁹¹ 28 U.S.C. § 1350 (2000).

⁹² See Magnusson, *supra* note 87.

⁹³ Hong, *supra* note 11, at 68.

interpret the ATCA more expansively, observers theorize that future courts may be willing to consider the labor rights promulgated in corporate codes of conduct as binding international norms.⁹⁴

Proponents of litigation strategies could point out the changes that some companies institute simply as a reaction to litigation. Just over a month after the complaint in question was filed, Wal-Mart CEO H. Lee Scott, Jr. told suppliers at a business conference that Wal-Mart would start holding suppliers more accountable for environmental and social standards at foreign factories as public expectations in the United States rise.⁹⁵ In speaking to the conference of suppliers, Scott stated, "Are you running your factories in a way that promotes environmental sustainability? Are you sourcing from people that causes there to be inclusion and opportunity for women and minority-owned businesses . . . ? You'll see Wal-Mart making a stronger stand over the next several months in these areas."⁹⁶ Scott also reassured suppliers that he would fly to Shanghai to visit Wal-Mart's fast-growing store operations in China.⁹⁷

Scott's comments reflect why litigation strategies are more appealing than traditional grass-roots approaches. In theory, the mere filing of a complaint prompted Wal-Mart's CEO to make public statements assuring that Wal-Mart would hold suppliers more accountable. The complaint points a spotlight at a perceived problem that company officials must then address. Commentators are skeptical that public assurances, such as the one given by Scott, are actually legitimate rather than just sound bites.⁹⁸ For that reason, activists such as Paul Blank, the director of Wake-Up Wal-Mart, insist that they are "building a sea of public pressure to force Wal-Mart to end its race-to-the-bottom business model."⁹⁹ Even if the class action discussed in this comment is dismissed, the ILRF wins because the lawsuit motivates, if not forces, Wal-Mart to reform to avoid criticism by the court of public and private opinion. After all, when the lawsuit was filed it appeared in major newspapers across the country.¹⁰⁰ Wal-Mart's response to the suit, as well as Blank's criticism of Wal-Mart's response, also made headlines.¹⁰¹ The mere lodging of allegations in the complaint

⁹⁴ *Id.*

⁹⁵ *Wal-Mart to Press Its Manufacturers*, L.A. TIMES, Oct. 21, 2005, at C3.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Marcus Kabel, *Wal-Mart to Toughen Overseas Standards*, L.A. TIMES ONLINE, Oct. 20, 2005, <http://www.latimes.com/business/investing/wire/sns-ap-wal-martscott,1,3524478.story?coll=sns-ap-investing-headlines>.

⁹⁹ *Wal-Mart to Press Its Manufacturers*, L.A. TIMES, Oct. 21, 2005, at C3.

¹⁰⁰ See, e.g., Steven Greenhouse, *Suit Says Wal-Mart is Lax on Labor Abuses Overseas*, N.Y. TIMES, Sept. 14, 2005, at C3.

¹⁰¹ See Kabel, *supra* note 98.

creates results because the allegations garner public and private attention to the cause of worker's rights.

Lawsuits such as the one discussed in this comment will continue to be popular avenues for change, because even if a verdict is never reached, a settlement can create lasting change. For example, as of March 2000, seventeen retailers including Gap, J.Crew, and Nordstrom reached a settlement with workers in Saipan for alleged violations of the Fair Labor Standards Act.¹⁰² The settlement included some \$8 million to finance an independent monitoring program and to provide for partial damages to the workers, public education, and costs and attorney's fees.¹⁰³ Although settlement offers some positive solutions, a low minimum wage, a virtually unlimited supply of labor from new workers, and the unwillingness of the local government to enforce existing labor laws in the future will cause the core problems to remain.¹⁰⁴ In circumstances such as Wal-Mart's, the question remains whether an independent contractor approved in a settlement can effectively monitor hundreds of factories. The threat of new litigation and public pressure seems like a more effective tool in bringing about change.

Although lawsuits have been successful, some commentators question whether the courts are the best venue to hold a retailer responsible for the behavior of its suppliers. According to Susan Aaronson, director of the Kenan Institute's Washington Center for Globalization Studies, "[t]he government might be able to do more to promote responsible corporate behavior . . . by, for example, giving procurement preference to companies that can demonstrate that their suppliers respect workers rights."¹⁰⁵ This approach could lead to changes in corporate behavior similar to those that were seen in the early 1990s after the changes in U.S. Sentencing Guidelines gave incentives to companies that created codes of conduct. Already some U.S. cities, such as San Francisco, are adopting anti-sweatshop ordinances to prevent sweatshop labor abroad.¹⁰⁶ San Francisco's Board of Supervisors approved the measure requiring the city only to use contractors that commit to safe, legal work environments and provide fair wages.¹⁰⁷ Out of San Francisco's \$600 million of annual

¹⁰² Deborah J. Karet, Comment, *Privatizing Law on the Commonwealth of the Northern Mariana Islands: Is Litigation the Best Channel for Reforming the Garment Industry?*, 48 *BUFF. L. REV.* 1047, 1080-81 (2000).

¹⁰³ *Id.*

¹⁰⁴ *See id.* at 1084.

¹⁰⁵ Molly Selvin, *Wal-Mart Faces Suit by Labor Group*, *L.A. TIMES*, Sept. 14, 2005, at C3 (quoting Susan Aaronson).

¹⁰⁶ *See* Brendan Coyne, *San Francisco Approves Anti-Sweatshop Ordinance*, *NEWSTANDARD*, Aug. 19, 2005, available at http://newstandardnews.net/content/?action=show_item&itemid=2254.

¹⁰⁷ *Id.*

contracting, only \$2.1 million directly affects garments and textiles, which would be the focus of the first year of the ordinance.¹⁰⁸ San Francisco's Global Exchange's sweat-free campaign organizer, Valerie Orth, stated that in passing the bill, "San Francisco will be setting the highest standard in the country," and explained that "[u]pward of [seventy] anti-sweatshop ordinances exist across the nation, but they fail to set such strict standards and generally lack the means of enforcement."¹⁰⁹ Although the ordinance has ambitious goals, it will likely face the same challenges with enforcement that other similar national legislation has faced. Still, the strong language of the ordinance and its lofty goals are likely to send a message to subcontractors who profit from selling goods to San Francisco. Moreover, San Francisco Mayor Gavin Newsom is trying to convince other mayors to pass similar legislation. In a letter sent to mayors across the United States, Newsom encouraged other cities to enact legislation similar to San Francisco in an effort to consolidate purchasing power and coordinate enforcement across jurisdictional boundaries.¹¹⁰ According to Newsom's letter, a multi-jurisdictional legislative approach to preventing sweatshop labor could prove a strong tactic in overcoming enforcement obstacles.¹¹¹ Legislation could be an effective approach because it is proactive rather than reactionary and gives corporations, local businesses, and politicians an opportunity to win public favor.

In addition to legislation adopted by cities, other scholars argue that bolstering international mechanisms already in place, such as the ILO, can lead to successful reform of labor standards.¹¹² Traditionally, the ILO adopted conventions that "created legally binding obligations and supported a comprehensive program of labor standards."¹¹³ Following the 1995 World Summit on Social Development, the ILO adopted a new approach that focused on promoting eight "core" labor conventions including:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and

¹⁰⁸ Jo Stanley, *S.F. Close in Anti-Sweatshop Rules*, S.F. EXAMINER, Aug. 4, 2005, available at <http://www.globalexchange.org/campaigns/sweatshops/3380.html>.

¹⁰⁹ Camille T. Taiara, *Sweating Slave Labor*, S.F. BAY GUARDIAN, Aug. 10, 2005, available at http://www.sfbg.com/39/45/news_sweatshops.html.

¹¹⁰ Letter from Gavin Newsom, Mayor, City and County of San Francisco (Nov. 17, 2005), <http://www.sweatfree.org/docs/lettertomayors.pdf>.

¹¹¹ *Id.*

¹¹² *Developments in the Law-Jobs and Borders*, *supra* note 16, at 2205.

¹¹³ *Id.*

occupation.¹¹⁴

Proponents of making labor reforms through the ILO want to utilize the core conventions in order to include “stronger labor provisions in preferential trade agreements that encourage the reform of domestic labor laws as necessary to guarantee fundamental workers rights.”¹¹⁵ However, this objective could prove more difficult than traditional litigation, considering that the United States remains one of only seven countries that has ratified two or fewer core conventions, and that as of 2005 fewer than sixty percent of ILO member countries had ratified all eight core conventions.¹¹⁶

Reform resulting from grass-roots pressure seems more likely to succeed than ILO reform. During the week of November 13, 2005, a coalition of more than four hundred national and local groups, spearheaded by Wal-MartWatch, an umbrella group started early in 2005 by maverick union leader Andy Stern, mounted hundreds of actions nationwide against Wal-Mart, calling the week of action “Higher Expectations Week.”¹¹⁷ According to Wal-MartWatch Executive Director Andy Grossman, the goal of the campaign was “to use a wide range of grass-roots actions to raise awareness of the problems Wal-Mart causes for our society.”¹¹⁸ Although it is too soon to measure the impact of the week of action, the sheer volume of participants will likely cause concern for Wal-Mart. Grass-roots pressure against Wal-Mart even includes a “Wal-Mart Sweatshop Workers Speaking Tour” in which former workers of Wal-Mart’s foreign suppliers speak about their experiences at scheduled visits to various college campuses, and an e-mail campaign in which individuals can send e-mails directly to Wal-Mart executives, presumably to express concern.¹¹⁹ According to ILRF, the goal of the speaking tour and an e-mail campaign is to “hold Wal-Mart accountable.”¹²⁰ Similar to the role that litigation plays in garnering Wal-Mart’s attention and reaction, this grass-roots action could push Wal-Mart to reform if its executives are leery of seeing the company’s values-rich reputation diminished. However, it is questionable how much a speaking tour at various prestigious universities and e-mail campaign will truly

¹¹⁴ A. Trebilcock, *The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, in INTERNATIONAL LABOUR STANDARDS: A GLOBAL APPROACH 18 (2002).

¹¹⁵ *Developments in the Law-Jobs and Borders*, *supra* note 16, at 2223.

¹¹⁶ *Id.* at 2206–07.

¹¹⁷ Aaron Bernstein, *A Stepped-Up Assault on Wal-Mart*, BUS. WK. ONLINE, Oct. 20, 2005, http://www.businessweek.com/bwdaily/dnflash/oct2005/nf20051020_3732_db016.htm?chan=search.

¹¹⁸ *Id.*

¹¹⁹ Stop Wal-Mart Sweatshops Globally, <http://www.laborrights.org> (follow “Current Projects” hyperlink; then follow “Wal-Mart” hyperlink) (last visited Oct. 28, 2006).

¹²⁰ *Id.*

impact Wal-Mart's consumers. Arguably, Wal-Mart will not sincerely react beyond mere lip service until the primary consumer becomes negatively affected to the extent that he or she no longer wants to shop at Wal-Mart. For that reason, litigation is still a necessary part of any grass-roots campaign because it gives a larger voice to a small group of activists.

Although this type of grass-roots movement has been effective in the past, even against Wal-Mart in the case of the Kathie Lee Gifford sweatshop claims of the early 1990s,¹²¹ the threat of costly litigation still seems to be the most pervasive and effective tool for reform. Ultimately litigation, especially if spearheaded by a grass-roots organization, can have the double effect of changing public opinion while also hitting the corporation where it truly matters—in its pocket books. In addition, litigation, like that in Unocal or Saipan, demonstrates that even when a company denies wrongdoing, the mere continued threat of litigation and the negative stigma it creates can be enough to settle a case. In some cases, litigation can even create lasting reform, as Wal-Mart's CEO demonstrated with his recent public comments about stepping up supplier standards.

VI. CONCLUSION

Although Wal-Mart is not likely to be found liable for breach of contract in the present matter, the relevance of this suit goes beyond any court ruling. As globalization increases and MNCs increasingly expand their operations into foreign countries, they are more, not less, likely to face similar suits from labor groups, NGOs, and foreign workers who want to force corporations to be accountable for what takes place on foreign soil. Although MNCs like Wal-Mart may be able to avoid some suits, they will not be able to avoid them all. Ultimately, MNCs will have to be proactive with their own enforcement and monitoring mechanisms if they wish to avoid the perpetual onslaught of public criticism.

¹²¹ Complaint, *supra* note 1, at 13.

