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January, 2009. After nine years of struggle and the Second Circuit Court of Appeals' solid affirmation of the garment manufacturer's responsibility for unpaid wages of its subcontractor's employees, immigrant garment workers will have their day in court in a trial which began in the Southern District of New York last week.

Zheng v. Liberty Apparel, 355 F.3d 61 (2d Cir. 2003), is a case brought by twenty-six recent immigrants to the U.S. from China, who allege that they worked over eighty hours per week assembling Liberty Apparel's garments in New York City's Chinatown. They allege they were paid in cash, that no deductions were made for Social Security taxes, that they were never paid time and one half for hours worked over 40 hours in each week, that arbitrary deductions were made from their wages and kept by their employer, and that sometimes, they were not paid at all for their work.

Liberty Apparel is a manufacturer (or jobber) of women's garments, and its business structure is typical of many garment manufacturers. Its business consists of designing and producing garments that it offers for sale to wholesalers and retail shops. When a design is offered, Liberty's in-house workers make a sample and pattern of the garment. This sample shows the material to be used and manner in which the finished garment will be cut and assembled. An order is then placed with Liberty. Liberty purchases the various materials needed for the garment, including the fabric, tags, brand and care labels, zippers and outside buttons. It has the material cut and then assembled according to precise specifications needed to conform to the patterns and designs that have been approved by the purchaser. Finally, the finished garments are delivered by Liberty to the wholesaler/retailer. Throughout this process, the cut and assembled materials are owned by Liberty. Liberty officers and employees arrange and then closely monitor each step in the production process to ensure that the specifications, manner of cutting, and manner of assembling the garments, up to and including their final quality, conform to the sample it has sold.

Liberty paid its subcontractors a piece rate price for each finished garment. The subcontractors, in turn, paid Plaintiffs a lower rate and kept the difference for their own compensation. No one kept records of hours Plaintiffs worked.

The plaintiffs argued that even though Liberty Apparel used an intermediary that arranged for the space and machines and paid the workers, it did not absolve Liberty from the wholesale substandard labor conditions under which it produced its garments. This very same question was debated during the early decades of the Twentieth Century, resulting in enforcement efforts holding businesses that used inside and outside contractors accountable for substandard conditions under which their products were produced, without regard to where the goods were assembled. These enforcement efforts used the "suffer or permit to work" language of state child labor and other state worker protection statutes to reach these business owners and culminated in the adoption of this same language in the Fair Labor Standards Act (FLSA) in 1938.

The Second Circuit agreed with the workers, finding that Liberty is not absolved from the labor violations in this case. The case has important ramifications for many workers who are employed by businesses using labor contractors and other intermediaries to perform work as part of their integrated production process. These other jobs include janitorial, agriculture, security, housekeeping, computer software, and construction, among others.

The case is being handled by Jim Reif at Gladstein, Reif & Meginness. The workers are members of the

Ain't I a Woman

campaign led by the National Mobilization Against Sweatshops and the Chinese Staff & Workers' Association.

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