

---

---

CIVIL PROCEDURE — PLEADING REQUIREMENTS — ELEVENTH CIRCUIT DISMISSES ALIEN TORT STATUTE CLAIMS AGAINST COCA-COLA UNDER *IQBAL*'S PLAUSIBILITY PLEADING STANDARD. — *Sinaltrainal v. Coca-Cola Co.*, No. 06-15851, 2009 WL 2431463 (11th Cir. Aug. 11, 2009).

According to the Federal Rules of Civil Procedure, pleadings that state a claim for relief must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.”<sup>1</sup> For half a century, this requirement was minimal: to state a valid claim and survive early motions to dismiss, a claimant needed to provide notice of the general nature and basis of the claim but no significant amount of evidentiary support.<sup>2</sup> Two years ago, however, in *Bell Atlantic Corp. v. Twombly*,<sup>3</sup> the Supreme Court unsettled black-letter pleading liberality by requiring pleadings to contain “enough facts to state a claim to relief that is plausible on its face.”<sup>4</sup> The Court’s decision last Term in *Ashcroft v. Iqbal*<sup>5</sup> firmly entrenched *Twombly*’s demand for greater factual specificity.<sup>6</sup> Recently, in *Sinaltrainal v. Coca-Cola Co.*,<sup>7</sup> the Eleventh Circuit gave an early indication of how *Iqbal* and *Twombly* might be applied within the context of human rights litigation. The court dismissed claims brought under the Alien Tort Statute<sup>8</sup> (ATS) and the Torture Victim Protection Act<sup>9</sup> (TVPA) against The Coca-Cola Company and two Colombian bottling companies for alleged collaboration with paramilitaries and local police in the torture and murder of local union leaders. Although some observers may view the arrival of plausibility pleading as an unwelcome burden on ATS plaintiffs, an insistence on greater factual specificity in human rights pleadings will have several positive effects in this controversial type of litigation.

---

<sup>1</sup> FED. R. CIV. P. 8(a)(2).

<sup>2</sup> See *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957) (“[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”); 5 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1215, at 190–93 (3d ed. 2004) (“In federal practice, the test of a complaint’s sufficiency simply is whether the document’s allegations are detailed and informative enough to enable the defendant to respond.”).

<sup>3</sup> 127 S. Ct. 1955 (2007).

<sup>4</sup> *Id.* at 1974. In so ruling, the Supreme Court also forced the “no set of facts” test from *Conley v. Gibson*, 355 U.S. at 45, into “retirement.” *Twombly*, 127 S. Ct. at 1969.

<sup>5</sup> 129 S. Ct. 1937 (2009).

<sup>6</sup> *Id.* at 1949.

<sup>7</sup> No. 06-15851, 2009 WL 2431463 (11th Cir. Aug. 11, 2009).

<sup>8</sup> 28 U.S.C. § 1350 (2006).

<sup>9</sup> Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note).

For decades, Colombia has been embroiled in a bloody civil conflict driven by drug cartels, guerillas, and paramilitary forces.<sup>10</sup> Colombian unions have often been targets of political violence: more than 4000 union members have been killed since 1986.<sup>11</sup> One such victim was Isidro Segundo Gil, a local union leader who allegedly was murdered by paramilitary forces inside the Coca-Cola bottling facility of Bebidas y Alimentos de Urabá, S.A. (Bebidas).<sup>12</sup> Gil's estate and his former union, Sindicato Nacional de Trabajadores de la Industria de Alimentos (Sinaltrainal), sued Bebidas, The Coca-Cola Company (Coca-Cola USA), and Coca-Cola de Colombia, S.A. (Coca-Cola Colombia).<sup>13</sup> In three other complaints, Sinaltrainal sued the Coca-Cola defendants and Panamco Colombia, S.A. (Panamco) because paramilitaries and local police had also allegedly tortured and intimidated union leaders at Panamco Coca-Cola bottling facilities.<sup>14</sup> All four complaints alleged that bottling facility managers had conspired with the armed groups,<sup>15</sup> and endeavored to connect the various defendants to the violence through a series of conspiracy and agency theories.<sup>16</sup> The plaintiffs contended that the ATS and the TVPA provided the district court with subject matter jurisdiction.<sup>17</sup>

In 2003, the district court dismissed the claims against Coca-Cola USA and Coca-Cola Colombia for want of subject matter jurisdiction because the plaintiffs' agency theories were too attenuated to state a

---

<sup>10</sup> See U.S. Dep't of State, Background Note: Colombia (2009), <http://www.state.gov/r/pa/ei/bgn/35754.htm>.

<sup>11</sup> *Sinaltrainal*, 2009 WL 2431463, at \*8.

<sup>12</sup> *Id.* at \*2.

<sup>13</sup> See *Sinaltrainal v. Coca-Cola Co.*, 256 F. Supp. 2d 1345, 1348 (S.D. Fla. 2003). Richard Kirby, the owner of Bebidas, also was named as a defendant. *Id.*

<sup>14</sup> *Sinaltrainal*, 2009 WL 2431463, at \*2. Panamerican Beverages Company, LLC and Panamco, LLC, the owners of Panamco Colombia, also were named as defendants. *Id.*

<sup>15</sup> See *In re Sinaltrainal Litig.*, 474 F. Supp. 2d 1273, 1274 (S.D. Fla. 2006).

<sup>16</sup> The circuit court summarized one of the alleged conspiratorial networks as follows:

[T]he bottling facility, Bebidas, is responsible for the acts of its employees, including conspiring with local paramilitaries to rid the facility of unions. Bebidas, in turn, is an alter ego or agent of Richard Kirby, Bebidas' owner and manager, such that Kirby is liable for any wrongful conduct by Bebidas employees that resulted in the murder of Gil. Bebidas and Kirby, in turn, are the alter egos or agents of Coca-Cola Colombia because Coca-Cola Colombia is responsible for manufacturing and distributing Coca-Cola products to Bebidas and all other bottlers in Colombia. Coca-Cola Colombia, a wholly-owned subsidiary of Coca-Cola USA, in turn, is an alter ego or agent of Coca-Cola USA because Coca-Cola Colombia is under the management, control, and direction of Coca-Cola USA to the extent that its separateness is illusory.

*Sinaltrainal*, 2009 WL 2431463, at \*2.

<sup>17</sup> The ATS 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." 28 U.S.C. § 1350 (2006). The TVPA provides a cause of action for state-sponsored torture, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note), and federal question jurisdiction exists for that cause of action under 28 U.S.C. § 1331. *Sinaltrainal*, 2009 WL 2431463, at \*12.

valid ATS or TVPA claim.<sup>18</sup> According to the court, the bottler's agreements gave the Coca-Cola companies a limited right to protect their products in the marketplace but did not give them the degree of control over the bottling facilities' operations and labor policies that the plaintiffs alleged.<sup>19</sup> Without such control, the plaintiffs could not show that the Coca-Cola defendants had acted in concert with the paramilitaries and local police.<sup>20</sup> The same court dismissed the plaintiffs' remaining claims in 2006,<sup>21</sup> apparently uncomfortable<sup>22</sup> with the increasingly common use of the ATS to sue corporations for human rights violations committed by other actors in foreign countries.<sup>23</sup> The court decided it was "appropriate to require some heightened pleading standard," and dismissed all remaining ATS and TVPA claims for want of subject matter jurisdiction because the plaintiffs' conspiracy and agency allegations were "too conclusory and lack[ed] sufficient specificity."<sup>24</sup>

The Eleventh Circuit affirmed in part and vacated and remanded in part.<sup>25</sup> Writing for a unanimous panel, Judge Black<sup>26</sup> adopted much of the district court's 2006 reasoning. The circuit court did object, however, to the district court's dismissal of the TVPA claims for want of subject matter jurisdiction and instead dismissed those claims for failure to state a claim upon which relief can be granted.<sup>27</sup> The circuit court also refrained from deciding whether ATS and TVPA claims were subject to a heightened pleading standard.<sup>28</sup> But the circuit court affirmed the crux of the district court's decisions without relying on heightened pleading. While the *Sinaltrainal* appeal was pending, the Supreme Court's decisions in *Twombly* and *Iqbal* raised the baseline pleading standard for all civil litigation.<sup>29</sup> Because the defendants had mounted a "facial attack" on the district court's subject matter jurisdiction, the panel examined the complaint to see whether the plaintiffs had alleged facts that would establish the court's juris-

---

<sup>18</sup> *Sinaltrainal*, 256 F. Supp. 2d at 1352–57.

<sup>19</sup> *Id.* at 1354.

<sup>20</sup> *Id.* at 1355.

<sup>21</sup> *In re Sinaltrainal Litig.*, 474 F. Supp. 2d 1273 (S.D. Fla. 2006).

<sup>22</sup> *See id.* at 1282 ("[I]t bears emphasis that there are very few instances in which *private conduct* can constitute a violation of the law of nations.").

<sup>23</sup> In its conclusion, the court referred to the "growing number of [ATS] lawsuits involving corporate defendants" and even called upon the Eleventh Circuit to address the "increasingly urgent" issue of pleading requirements in this area. *Id.* at 1302.

<sup>24</sup> *Id.* at 1287.

<sup>25</sup> *Sinaltrainal*, 2009 WL 2431463.

<sup>26</sup> Judge Black was joined by Judges Tjoflat and Cox.

<sup>27</sup> *Sinaltrainal*, 2009 WL 2431463, at \*12.

<sup>28</sup> *Id.* at \*8 n.14.

<sup>29</sup> *See* *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009); *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007).

diction if true.<sup>30</sup> The court adopted *Twombly* and *Iqbal*'s facial plausibility pleading standard for this scrutiny.<sup>31</sup>

The court dismissed all four complaints for insufficient pleading, beginning with the ATS claims.<sup>32</sup> ATS jurisdiction requires a violation of the law of nations, which could be shown in this case only through state action or if private individuals had committed war crimes.<sup>33</sup> Three of the complaints alleged that the defendants had conspired with unspecified paramilitaries tolerated by the Colombian government.<sup>34</sup> But the court observed that state toleration is distinct from state action, and therefore rejected the plaintiffs' insistence that the paramilitaries acted under color of law as a "conclusory allegation."<sup>35</sup> Under *Iqbal*, such allegations are "not entitled to be assumed true" absent greater factual support.<sup>36</sup> The court also rejected the plaintiffs' assertion that the paramilitaries had committed war crimes.<sup>37</sup> The fourth complaint, however, alleged a conspiracy between defendants and unnamed local police, who undoubtedly are state actors.<sup>38</sup> Invoking *Twombly*, the court also dismissed this complaint's ATS claims because its "attenuated chain of conspiracy" did not "nudge [plaintiffs'] claims across the line from conceivable to plausible."<sup>39</sup> The court proclaimed the plaintiffs' allegations vague, their deductions unwarranted, and their supposed conspiracy too indefinite in scope.<sup>40</sup> Even on the plaintiffs' assumption that the defendants had conspired with local police to *arrest* the union leaders initially, the court said it still would have demanded further facts to suggest that the subsequent unlawful imprisonment and mistreatment were also part of the conspiratorial agreement.<sup>41</sup> Lastly, the court dismissed the TVPA claims for similar factual deficiencies because the complaints failed sufficiently to allege that the unidentified paramilitaries were state actors and that the defendants had conspired with local police to commit torture.<sup>42</sup>

---

<sup>30</sup> *Sinaltrainal*, 2009 WL 2431463, at \*3.

<sup>31</sup> *Id.* at \*4. The court also quoted those opinions extensively, citing them twenty-three times.

<sup>32</sup> *Id.* at \*9-11.

<sup>33</sup> *Id.* at \*9. In other circumstances, a violation of the law of nations may also occur when a private individual commits genocide. *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* (citing *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1951 (2009)).

<sup>37</sup> *Id.* at \*10. In so doing, the court noted the Supreme Court's admonition in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), that U.S. courts should be cautious when recognizing novel violations of the law of nations. *Sinaltrainal*, 2009 WL 2431463, at \*10 (citing *Sosa*, 542 U.S. at 729).

<sup>38</sup> *Sinaltrainal*, 2009 WL 2431463, at \*11.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at \*12.

Although insisting on greater factual specificity in pleading undoubtedly increases the burdens faced by ATS plaintiffs, the Eleventh Circuit's decision will likely have positive effects. Most ATS claims revolve around events that took place in foreign countries,<sup>43</sup> yet plaintiffs pursue their human rights claims in U.S. courts, which until recently have been unmatched in pleading liberality. Because of notice pleading, ATS plaintiffs saved, and ATS defendants faced, significant upfront legal costs. On top of discovery burdens, corporate ATS defendants have also confronted public relations nightmares, even in meritless cases in which the accusations were undeserved. Lax pleading standards made U.S. courts a uniquely attractive venue for human rights plaintiffs, but sometimes at the cost of placing unjustified settlement pressures on defendants or ignoring other sovereign states' legitimate desires to adjudicate disputes arising within their borders. The Eleventh Circuit's approach to the *Iqbal* and *Twombly* pleading standard in human rights cases may help allay these problems.

The *Sinaltrainal* court's enthusiasm for plausible pleading requirements portends future difficulties for would-be ATS plaintiffs in the Eleventh Circuit. As in any type of civil litigation, notice pleading and liberal discovery rules relieved ATS plaintiffs of the expense of investigating facts essential to their cases. In the wake of *Iqbal* and *Twombly*, however, plaintiffs will have to arrive in federal courts already armed with enough information to convince judges that their allegations are plausible. This new requirement will probably make it practically infeasible to bring some cases that would have been brought under the notice pleading regime.<sup>44</sup> To some, insisting on greater factual specificity may seem excessive in light of the obvious risk that plausibility pleading will chill meritorious lawsuits by placing unreasonable investigatory burdens on plaintiffs.<sup>45</sup> The effects of *Twombly* and *Iqbal* will be especially pronounced in ATS lawsuits, in which defendants are frequently much better positioned than plaintiffs to provide facts crucial to resolving such suits on their merits. Certainly a bottling company has better access than a union does to in-

---

<sup>43</sup> See Note, *The Alien Tort Statute, Forum Shopping, and the Exhaustion of Local Remedies Norm*, 121 HARV. L. REV. 2110, 2119 (2008) ("ATS suits nearly always involve claims growing from human rights abuses outside the United States.").

<sup>44</sup> See Kevin M. Clermont & Stephen C. Yeazell, *Inventing Tests, Destabilizing Systems*, 95 IOWA L. REV. (forthcoming Mar. 2010) (manuscript at 14), available at <http://ssrn.com/abstract=1448796> (predicting that the pleading regime likely to emerge from *Iqbal* will reduce the frequency of "weakly founded suits" as well as "well-founded suits that now require the assistance of discovery to make their merits clear").

<sup>45</sup> Cf. Robert G. Bone, *Twombly, Pleading Rules, and the Regulation of Court Access*, 94 IOWA L. REV. 873, 908 (2009) ("Critics of *Twombly*, and more generally of pleading rules stricter than liberal notice pleading, argue (or assume) that dismissal of a lawsuit is unfair when the plaintiff cannot obtain the information necessary to meet the applicable pleading standard.").

formation about the nature of any conspiracy between the bottling company and local police. Such information asymmetries might counsel in favor of applying the Supreme Court's plausibility standard leniently in ATS cases — that is, giving plaintiffs the benefit of the doubt so they can try to prove their allegations through discovery.

The plausibility pleading standard indeed gives judges considerable discretion at the threshold stages of litigation,<sup>46</sup> and some judges will probably be too insensitive to the understandable investigative difficulties that plaintiffs face. It is not clear, however, that the factual deficiencies in the *Sinaltrainal* complaints were all justified by information asymmetries. For example, the bottling company was not obviously more capable than the union of providing information about whether the unnamed, murderous, torturing paramilitaries were acting under the color of law or committing war crimes. Furthermore, the risk of chilling meritorious human rights claims may be offset by two significant benefits that will ensue from applying the new pleading standards in ATS cases more strictly.

First, among the cases surest to be chilled by plausibility pleading are those that lack merit but exhibit the potential to force a settlement. As the Supreme Court noted in *Twombly*, complex cases often entail exorbitant discovery expenses, which in certain circumstances will induce guiltless defendants to settle early rather than put up a long and costly fight.<sup>47</sup> Although discovery costs in ATS cases like *Sinaltrainal* probably do not compare with those in colossal antitrust class actions like *Twombly*,<sup>48</sup> ATS cases still have the potential to force *in terrorem* settlements because they threaten a defendant's good name — especially when that defendant is a corporation, as in most ATS cases.<sup>49</sup> The *Sinaltrainal* litigation, for example, has inspired the "Campaign to Stop Killer Coke," which urges consumers to boycott Coca-Cola products.<sup>50</sup> This campaign has evidently had significant success with college students, who have used the *Sinaltrainal* allegations to convince around forty universities to end their purchaser relationships and ex-

---

<sup>46</sup> The Supreme Court has not given judges extremely detailed direction with its use of concepts like "possibility," "plausibility," and "probability," which are not separated by the clearest of boundaries. See *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) ("The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." (quoting *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007))).

<sup>47</sup> See *Twombly*, 127 S. Ct. at 1967 ("[T]he threat of discovery expense will push cost-conscious defendants to settle even anemic cases . . .").

<sup>48</sup> Cf. *id.* at 1966–67 (collecting cases and articles warning of high discovery costs in antitrust cases specifically).

<sup>49</sup> According to some estimates, over seventy-five percent of ATS and TVPA litigation involves corporate defendants. E.g., Roger P. Alford, *Arbitrating Human Rights*, 83 NOTRE DAME L. REV. 505, 516 (2008).

<sup>50</sup> See *Killer Coke*, <http://www.killercoke.org/> (last visited Oct. 31, 2009).

clusive contracts with Coca-Cola USA.<sup>51</sup> While this campaign did not extract an early settlement in *Sinaltrainal*, another corporation in a different case might be more inclined to settle weak or unfounded claims rather than to spend years in the spotlight fighting off widely publicized but unproven accusations. Under plausibility pleading, those accusations are less likely to live past early motions to dismiss and thus less likely to yield *in terrorem* settlements.

The second foreseeable benefit of plausibility pleading in ATS litigation arises from the fact that ATS litigants do not necessarily choose U.S. courts because they cannot find justice elsewhere: plaintiffs generally need not exhaust local or transnational remedies before pursuing ATS claims in the United States.<sup>52</sup> ATS litigation is sometimes criticized for infringing upon state sovereignty and U.S. foreign policy, since U.S. adjudication can seem disrespectful toward other judicial systems.<sup>53</sup> Nations often have good reasons for wanting to adjudicate disputes that originated within their borders. Consider the recent ATS class actions that have accused IBM, General Motors, and other multinational corporations of aiding and abetting apartheid by doing business with the South African government during the second half of the twentieth century.<sup>54</sup> The Supreme Court has noted the South African government's criticism of this litigation for its interference with the "Truth and Reconciliation" policies adopted in the wake of apartheid.<sup>55</sup> Plausibility pleading may discourage such controversial lawsuits. Previously, the ATS could entice human rights plaintiffs with the world's only procedural system premised on notice pleading and liberal dis-

---

<sup>51</sup> Meg Massey, *A Student Backlash Against Coke*, TIME, Aug. 9, 2007, [http://www.time.com/time/specials/2007/article/0,28804,1651473\\_1651472\\_1651479,00.html](http://www.time.com/time/specials/2007/article/0,28804,1651473_1651472_1651479,00.html).

<sup>52</sup> At the behest of the European Commission on Human Rights, the U.S. Supreme Court contemplated imposing an exhaustion requirement for ATS litigation in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), but it refrained from doing so in that particular case. *Id.* at 733 n.21. A fractured Ninth Circuit recently decided to impose not a general exhaustion requirement in all ATS cases but an instruction that lower courts consider imposing an exhaustion requirement in specific cases for prudential reasons. *See Sarei v. Rio Tinto, PLC*, 550 F.3d 822, 824–25 (9th Cir. 2008) (en banc); *see also Sarei v. Rio Tinto, PLC*, No. CV 00-11695 MMM (MANX), 2009 WL 2762635, at \*5 (C.D. Cal. July 31, 2009) ("In the end, seven of the eleven members of the en banc panel declined to impose an exhaustion *requirement* in every [ATS] case. Six, however, agreed to remand the case to this court for the limited purpose of having the court consider whether to impose a *prudential* exhaustion requirement." (footnote omitted) (citing *Sarei*, 550 F.3d at 832 n.10)).

<sup>53</sup> *See, e.g., Sarei v. Rio Tinto, PLC*, 487 F.3d 1193, 1239–40 (9th Cir. 2007) (Bybee, J., dissenting) ("By accepting jurisdiction over foreign suits that can be appropriately handled locally, the federal courts embroil the nation in a kind of judicial 'imperialism' that suggests the United States does not respect or recognize a foreign government's ability to administer justice."), *remanded en banc*, 550 F.3d 822; Note, *supra* note 43, at 2126–28.

<sup>54</sup> *In re S. African Apartheid Litig.*, 617 F. Supp. 2d 228 (S.D.N.Y. 2009).

<sup>55</sup> *Sosa*, 542 U.S. at 733 n.21. The Court also noted the federal government's concerns about the diplomacy repercussions of that litigation. *Id.*

covery.<sup>56</sup> If other circuits exhibit the Eleventh Circuit's willingness to dismiss ATS complaints for implausibility, human rights victims — who often may choose from a variety of venues empowered to address human rights abuses<sup>57</sup> — will no longer come to U.S. courts for the opportunity to file a claim prior to developing its factual basis, at the defendant's expense.<sup>58</sup> Plausibility pleading thus disincentivizes U.S. adjudication of foreign disputes by removing an advantage that foreign human rights plaintiffs formerly gained by litigating in U.S. courts.<sup>59</sup> By bringing U.S. pleading practice closer to the procedural systems of the rest of the world, plausibility pleading may assuage state sovereignty worries that often accompany ATS cases.

To be sure, the overall wisdom of having ATS litigation in general or one human rights dispute in particular go forward in U.S. courts is a complex question that implicates a wide range of concerns. The views of foreign governments and the rights of defendants represent only two concerns among many. Plausibility pleading will not solve these difficulties, and it may create new ones if stricter pleading requirements are applied too aggressively. ATS plaintiffs and their supporters will surely lament the arrival of plausibility pleading. But in human rights litigation, stakes are high not only for the accusers, but also for the accused. Pleading rules should strive to balance these rival interests. Requiring ATS plaintiffs to make plausible accusations will address some legitimate defendant concerns by reducing the likelihood that blameless defendants will have to confront litigation that lacks a basis in law and fact.

---

<sup>56</sup> See Scott Dodson, *Comparative Convergences in Pleading Standards*, 158 U. PA. L. REV. (forthcoming 2009) (manuscript at 16), available at <http://ssrn.com/abstract=1351994> (“[N]o other country has (nor, apparently, wants) the kind of liberalized pleading, focused on notice rather than facts, that America has chosen to reaffirm repeatedly and emphatically — at least until recently.”). Professor Scott Dodson observed that the procedural systems of France, Germany, non-U.S. common law nations, and Japan, as well as the ALI/UNIDROIT international procedural system, all reject notice pleading. *Id.* at 13–16.

<sup>57</sup> See Laurence R. Helfer, *Forum Shopping for Human Rights*, 148 U. PA. L. REV. 285, 296–307 (1999) (describing the plethora of fora typically available to individual human rights litigants because of overlapping human rights treaties and claims tribunals).

<sup>58</sup> See Beth Stephens, *Translating Filártiga: A Comparative and International Law Analysis of Domestic Remedies for International Human Rights Violations*, 27 YALE J. INT'L L. 1, 15–16 (2002) (noting that “[b]road U.S. discovery rules,” *id.* at 15, encourage human rights litigation to proceed in U.S. courts).

<sup>59</sup> Other aspects of the U.S. procedural system also attract foreign human rights plaintiffs, including the absence of “loser pays” fee shifting, the possibility of contingency fee arrangements with plaintiff's counsel, and the availability of punitive damages. *Id.* at 14–15. Features of U.S. substantive law surely also attract foreign plaintiffs: notably, it is possible in some federal jurisdictions to hold corporations civilly liable using theories of secondary liability. See, e.g., *S. African Apartheid Litig.*, 617 F. Supp. 2d 228. Because of these other attractions, U.S. courts may continue to be a magnet for human rights claims, but the disappearance of notice pleading will nevertheless diminish some of U.S. courts' distinctive appeal.