

# Environmental Terrorists Unmasked !

## Special Report.

21/07/2009

### Pesticide cases could be upended

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**Los Angeles Times**

An L.A. judge's dismissal of Nicaraguan banana workers' litigation against Dole puts numerous related cases in jeopardy.

The unraveling of **multimillion-dollar** Los Angeles cases alleging that **Nicaraguan** men had been sterilized by pesticide exposure is now threatening to upend hundreds of other claims in U.S. courts, as judges examine charges that plaintiffs' lawyers orchestrated an extraordinary international fraud.

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At the center of the claims is the pesticide **DBCP** and allegations that workers in banana plantations in Central America and Africa were harmed by exposure to the chemical.

In **November 2007**, a **Los Angeles** jury awarded **\$5.7 million** to six **Nicaraguan** men who sued **Dole Food Co.** and chemical companies, alleging they had been made sterile by **DBCP** on **Dole's** plantations. The amount was later reduced by a judge and is now on appeal. The case will probably be thrown out entirely in the wake of a judge's findings of fraud in two related cases.

Those cases against **Dole**, **Dow Chemical Co.** and **AMVAC Chemical Corp.** were set to go to trial this year. Then, in **April**, Superior Court Judge Victoria Chaney **dismissed** the claims, ruling that **U.S.** lawyers and their **Nicaraguan** partners had concocted the cases through an audacious fraud, recruiting plaintiffs who had never worked on banana plantations, training them to lie on the witness stand and then waging a campaign of intimidation to prevent the scheme from being uncovered.

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Chaney's ruling could now affect hundreds of similar claims by plaintiffs from **Nicaragua, Panama, Guatemala, Honduras, Costa Rica** and **Ivory Coast** that are pending in **U.S.** courts, legal experts said.

The judge's ruling has already become a focal point in a federal court in **Florida**, where a judge is considering whether **Dole** and four other multinational fruit and chemical firms should pay **\$97 million** awarded to **151 plaintiffs** by a court in **Nicaragua** in **2005**. Those cases have been on hold since early this year, when the **Florida** judge decided to await the outcome here before taking further action.

Nicaraguan courts have awarded more than **\$2 billion** to thousands of peasants with **DBCP** claims since **2001** — but with no means to help them collect. The plaintiffs turned to the federal court in **Florida** to try to enforce the **Nicaraguan** judgment. If they prevail, it is likely that other winners in the **Nicaraguan** system will attempt to collect judgments in **U.S.** courts.

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In addition to its effect on those cases, the **Los Angeles** ruling will probably dissuade other plaintiffs' attorneys and make other **U.S.** judges more skeptical about **DBCP** claims brought before their courts, experts said.

*" Once you see fire, you look closer to see if there's smoke in other cases like this one,"* said Stephen Yeazell, a **UCLA** law professor who specializes in international civil litigation.

**DBCP**, or dibromochloropropane, was used on banana farms in the developing world until at least **1979**, two years after it was linked to sperm damage in factory workers who produced the chemical.

Litigation over **DBCP** has become something of an international industry in recent years, with **U.S.** lawyers competing for clients abroad with the goal of getting **U.S.** courts to try their cases or enforce foreign judgments.

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The claims of the farmworkers had been portrayed sympathetically in the media, including in a documentary film — premiered at the **Los Angeles Film Festival last month** — that told the story from the point of view of plaintiffs in Nicaragua. Last week, attorneys for **Dole** sued the **Swedish** filmmaker behind the documentary for slander and libel, arguing that Chaney's ruling proved it was inaccurate and defamatory.

Chaney's ruling could lead to the end of the workers' litigation against Dole entirely or, at minimum, severely cloud plaintiffs' cases. The cases in **Los Angeles Superior Court**, spearheaded by Juan Dominguez, a personal-injury lawyer best known for his ads on **Los Angeles** buses, consumed months of court time and millions of dollars. Dominguez is now being investigated by the **California** state bar, under an order from Chaney.

The scam, Chaney wrote, was part of a much wider fraud in Nicaragua — a thriving industry of manufacturing plaintiffs to capitalize on a justice system rigged against multinational corporations.

At the center of that system, she wrote, is a law passed by the **Nicaraguan** government in **2001** that ordered the courts to fast-track **DBCP claims**.

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Anybody claiming to have been exposed to the chemical on a banana farm who can produce a lab report showing he is sterile is entitled to damages. Evidence presentation is limited to eight days, after which the court has three days to decide the case. Defendants, such as **Dole**, must deposit millions of dollars in a trust for the right to defend themselves. They generally don't bother because it is almost impossible for them to win.

As the **Florida** case is set to restart, attorneys for **Dole** have already submitted Chaney's ruling to bolster their argument that the **\$97-million** judgment in **Nicaragua** was a sham.

The plaintiffs' attorneys countered that Chaney's ruling is full of inaccuracies and overly broad.

*"It's amazing to me that a judge can criticize in a sweeping way an entire country's integrity and make a ruling on every individual's honesty and integrity, even those who aren't before her,"* said plaintiffs' attorney Steven Marks of the **Miami**-based firm Podhurst Orseck.

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Chaney's ruling implicates Provost and Umphrey, a **Texas** law firm representing plaintiffs in the **Florida** case along with Podhurst Orseck, in the **alleged fraud** in **Nicaragua**. Chaney wrote that one of its attorneys, Mark Sparks, was present in a **2003** meeting in **Nicaragua** at which lawyers, medical laboratory officials and a judge set out a plan to manufacture evidence and bolster cases in the **Nicaraguan** courts.

In court filings, Sparks and his firm denied he ever attended such a meeting, and argued that Chaney's ruling was fundamentally unfair because it did not offer them the right to defend themselves.

The ruling was based primarily on information from witnesses whose names and unredacted testimony to **Dole** lawyers remain sealed under an order by Chaney, who became convinced that their lives would be in danger if their identities were made public.

In any case, the plaintiffs' lawyers in the **Florida** case said they had no involvement in the California cases.

Sparks and his firm released a statement saying they "*are confident that our investigation, testing and diagnosis protocols were superior to other firms in this litigation.*"

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The battle over **DBCP** is part of a murky debate in international law about how justice should be administered when a company is accused of wrongdoing on foreign soil.

International law prefers that cases be tried where they happen. But many courts in the Third World are ill-equipped to handle complex cases, have little authority to enforce judgments and often do not afford attorneys the powers they would have in U.S. courts to gather evidence.

"*There are alleged international, global wrongful acts, but we don't have a proper forum, and it's ping-pong between countries, between the courts of developing and developed countries,*" said Alejandro Garro, a **Columbia University** law professor who has testified on behalf of banana workers.

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Before the **Nicaraguan** fast-track law went into effect, multinational defendants were generally able to keep their cases out of **U.S.** courts and stalled in the **Nicaraguan** system.

However, the fast-track law made the prospect of a **Nicaraguan** trial so unappealing to multinational corporations that they began agreeing to have such cases heard in **U.S.** courts.

That, of course, is no guarantee of success.

In addition to the cases from **Nicaragua**, a **DBCP** lawsuit brought before Chaney by nearly **700 men** from **Ivory Coast** is also unraveling.

In **April**, a man claiming to represent workers there contacted **Dole**, offering information about the plaintiffs' lawyer in that case, Raphael Metzger.

*" We are ready to collaborate with any initiative to expose and prosecute corrupt lawyers,"* Jean Pierre Nassoue wrote in an e-mail to a **Dole** executive.

Attorneys for **Dole** asked Chaney for permission to look into Nassoue's claims and bring him to the **U.S.** to testify. Metzger objected, saying Nassoue was a dangerous, disgruntled former legal assistant who was trying to **blackmail** him for more money.

In **June**, Metzger indicated that he would like to withdraw as the plaintiffs' counsel on the case, telling the court that the allegations by Nassoue makes it impossible for his firm to effectively represent them.

### FOR THE RECORD:

**Pesticide cases** : A **July 12** article in Section A described the unraveling of lawsuits brought against U.S. corporations by **Nicaraguan** men alleging chemical exposure left them sterile. The article said that a ruling by a **Los Angeles County Superior Court** judge finding fraud in the cases was having an effect on suits pending elsewhere in the country, including some in Florida. The article said the judge's ruling *"implicates Provost and Umphrey, a Texas law firm representing plaintiffs in the Florida case along with Podhurst Orseck, in the alleged fraud."* Podhurst Orseck, a firm based in **Miami**, is representing plaintiffs in **Florida** along with the **Texas** firm. The judge's ruling did not implicate Podhurst Orseck along with Provost and Umphrey.

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Juan Dominguez, a personal-injury lawyer who has represented Nicaraguan farmworkers in L.A. Superior Court, is now being investigated by the California state bar.