

US: Testimony in Drummond Coal lawsuit on murders of Colombian union leaders

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Five years after its filing, a civil lawsuit against Drummond Coal, an Alabama-based energy corporation, began in US District Court in Birmingham, Alabama on Monday, July 9, before a 10-member jury. The suit, filed by the United Steelworkers (USW) and the International Labor Rights Fund (ILRF)—representing families of the victims—alleges that the coal giant's Colombian subsidiary arranged and financed the assassinations of three union leaders in Colombia in 2001.

In April of that year, members of the right-wing paramilitary organization Autodefensas Unidas de Colombia (AUC) stopped a bus carrying workers at the firm's La Loma operation. The gunmen pulled Valmore Locarno, local president of the Sintamienergética miners union, and Vice President Victor Orcasita off the bus and murdered them. Gustavo Soler, who replaced Mr. Locarno as president of the local, was shot later that year.

The lawsuit was filed under the Alien Tort Claims Act (ATCA), a 1789 law originally crafted to fight piracy. The act provides for tort claims actions against US citizens who are alleged to have wronged non-US citizens while in the plaintiff's country. In recent years, human rights and labor rights groups have filed ATCA lawsuits against a number of US-based corporations, among them Coca Cola, Chiquita International, Exxon Mobil and Unocal.

The lawsuit encountered a number of obstacles and setbacks in its tortuous journey to the courthouse. Drummond's attorneys brought motions to dismiss. Judge Karon Browde, a Bush appointee, ruled for gag orders and the sealing of documents containing allegations against the company made by Rafael García, a former technology director of the DAS state security agency currently in prison for erasing drug-related data from the agency's computer. The Bush administration has also spoken out against the suit going forward.

García claimed in an affidavit that he witnessed the presence of Augusto Jiménez, president of Drummond, in

Colombia when the money was handed over to paramilitary hit men. Garcia further claimed that he saw Jimenez give "a suitcase full of cash" to paramilitary commanders "to assassinate specific union leaders," naming Locarno and Orcasita.

The corporation's officers and lawyers vehemently deny the charges. "Lies, damnable lies," maintained Drummond attorney William Jeffress, Jr. of the Baker-Botts law firm. Mr. Jeffress is also a member of the Lewis Libby legal team.

In June, Judge Browde threw out the wrongful death portion of the lawsuit, leaving only the war crimes claim (that portion concerning Drummond's alliance with the AUC, thus inserting itself into the ongoing civil war between the Colombian government and the guerrilla organization Fuerzas Armadas Revolucionarias de Colombia—FARC) to go to trial.

The case's profile has risen due to recent Congressional subcommittee hearings on violence in Colombia, and the addition of four witnesses—former military, paramilitary and security personnel—in recent months.

In the first day of testimony, former employee Mack Pierce described the company's attitude to the union as "hostile." The second witness, former union education secretary Juan Aguas Romero, claimed that Augusto Jimenez, president of Drummond's Colombian operations, made threatening comments at meetings with union members. Both men quoted Jimenez as saying that "a fish that swims with its mouth open soon dies." Aguas escaped an assassination attempt in 2002 and has not gone back to work since.

Under cross-examination by defense lawyers, Aguas testified that, for some union members, Drummond provided security after the murders. The defense attorneys also tried to discredit Aguas by pointing out that his testimony that the paramilitary groups were paid to kill the union leaders contradicted his former statement that

Locarno was murdered simply for criticizing the paramilitary groups.

Two components of the defense strategy became apparent as additional witnesses took the stand to question the motives of the witnesses and present the coal company as concerned and caring about workers' conditions and safety.

For example, on Monday, July 16, Francisco Ruiz, the union's treasurer, who had previously testified regarding Drummond's resistance to efforts to improve dormitories and locker rooms, was asked about receiving monthly payments of \$1,500 after the murders from the Solidarity Center, an AFL-CIO organization, which he acknowledged. Drummond attorneys also couched questions related to Ruiz's involvement in a rally against Coca Cola in a similar suit to imply that the motive behind the lawsuit was more about monetary damages than about justice. Ruiz answered that it was about both.

Later in Ruiz's testimony, a Drummond attorney asked him about the company's provision of utilities for the workers and a hospital that Drummond had built. Ruiz replied that he was unaware of them.

The deposition of another witness, former Drummond security manager James Adkins, was subsequently read in court. According to the deposition, right-wing militias tried to make "extortion demands" to Augusto Jimenez and to the Colombian security chief, but that, to Adkins' knowledge, the militias never talked to either one.

Testimony is expected to last up to a month.

Compared to firms like Chiquita International and Coca Cola, Drummond is a relative newcomer to Latin America. Having operated mines in Alabama since 1935, Drummond bought the open-pit mine near La Loma in the late 1980s. In the ensuing years, it closed five mines in Alabama—where wages were \$18 per hour—to take advantage of the \$2.45 per hour (without benefits) it paid its Colombian workers. With annual production of 25 million tons, its profits from its Colombian mines come to more than \$1.7 billion a year.

The company has contributed substantially to both the Democratic and Republican parties.

As noted above, a number of human rights and labor groups have attempted to use ATCA for redress in cases of corporate malfeasance.

One example is the case of Chiquita International Brands. After the US Justice Department fined the banana giant \$25 million for having enlisted AUC's services to assassinate union leaders—and for having attempted to supply the paramilitaries with thousands of machine

guns—the families and friends of 173 victims of the death squads brought a multibillion-dollar lawsuit against Chiquita in federal court in Washington DC in June of this year.

Though the goals may be laudable, and any relief for the victims' families is welcome, these actions are hampered by the limitations of seeking justice for workers through the US court system.

First, there is the matter of expense. The virtually bottomless coffers of corporations guarantee that they can purchase the services of batteries of highly experienced and ruthless attorneys.

As in the Drummond case, corporate lawyers can force lawsuits to drag on for years, using a variety of ploys to exhaust the plaintiffs' resources and determination. If the case does come to trial, the focus may have been so narrowed—in the Drummond case, the claim that Drummond committed "war crimes"—to put an extremely heavy burden of proof on the plaintiff.

If the jury rules in favor of the plaintiff, the defense will immediately file appeals, which will continue to delay resolution. In the meantime, Drummond will continue to reap super-profits, workers will continue to face exploitation, threats and violence, and the families of the victims will be forced to endure months or years of uncertainty.

In fact, it is not inconceivable that the Drummond case could make its way to the US Supreme Court, where Drummond's lawyers—with the support of the Bush administration—could argue before the current corporate-friendly Court majority that the ATCA, a 218-year-old maritime law enacted to combat piracy on the high seas, is an inappropriate vehicle for this type of lawsuit, and even unconstitutional. Throwing out the Drummond case on these grounds would squelch any efforts to rectify corporate crimes through the use of ATCA.



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