

Jury awards damages to Central American Dole workers

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A jury in Los Angeles Superior Court has awarded close to \$6 million to six workers in a lawsuit against corporate giants Dole Fresh Fruit Co. and Dow Chemical Co. The suit was filed in 2004 by 12 Central American men who worked at a Dole banana plantation in Nicaragua during the 1970s. The workers claimed they were made sterile by exposure to a Dow pesticide used by Dole.

On November 5, the jury found in favor of six of the plaintiffs and awarded them \$3.3 million in compensatory damages. The following week, on November 15, the jury awarded \$2.5 million in punitive damages to five of those six workers.

Another co-defendant, Amvac Chemical Corp., had settled for \$300,000 before the trial.

The pesticide, dibromochloropropane, or DBCP, is used to kill microscopic worms on the roots of the banana trees. In the 1970s, a number of workers who worked with DBCP at Dow's processing plant in Midland, Michigan, were diagnosed as sterile. However, under the threat of a breach of contract suit, Dow continued to supply Dole's foreign operations with DBCP. It was eventually banned in 1977 due to findings that it caused cancer in animals and sterility in humans.

The jury found that Dole failed to provide the six workers with information or protective gear, thus maliciously harming them. The jury also agreed with the allegation that Dole failed to follow guidelines and applied the DBCP improperly and in excessive amounts. Dole was ordered to shoulder the entire punitive damages assessment, since the judge had declared Dow not liable for punitive damages.

Both sides in the case claimed victory. Duane Miller, the workers' attorney, called it "a tremendous victory" and said that it would send a message to corporations

about accountability. Another lawyer for the workers, Antonio Hernandez Ordeñana, said, "What really matters is that Dole sterilized these peasants and thousands more humble Nicaraguan peasants, and in the rest of Central America, and we proved it."

Dow's lawyer, Gennaro "Gus" Filice, voiced Dow's pleasure that the jury "concluded that six of the twelve plaintiffs were entitled to no recovery whatsoever." Rick McKnight, who defended Dole, called the verdict "a substantial defeat" for the plaintiffs and "quite a vindication" of Dole.

The award amount is actually very low given the damages and the size of Dole and Dow. USC law professor Clare Pastore told the *Los Angeles Times*, "Dole got out of this very cheaply. It has the potential to be a blockbuster case, and it didn't turn out that way."

In a press release following the punitive damages decision, Dole executive vice president Michael Carter claimed that "we are happy with the jury's findings as they relate to six of the twelve hand-picked plaintiffs." He then railed against the other six "flat wrong" verdicts, claiming that they were based on "junk science, raw emotional appeals and false testimony." He further stated that Dole will appeal the verdicts "to set the record straight."

The record, in fact, is already quite "straight." This suit is neither the first nor the last brought against Dole regarding its use of DBCP. Over the last two decades, courts in Nicaragua have levied \$600 million in compensatory damages against Dole in favor of banana workers. The workers have had little success in collecting the damages, which was the main reason for bringing the case to the US.

Last December, Dole announced that it had settled 16 of 25 lawsuits brought against it. One of the cases in

the settlement had been scheduled to go to trial in Galveston, Texas, in January 2007, and would have set a precedent for being the first such case to be tried in a US court. That distinction instead went to the Los Angeles lawsuit.

Additionally, there are four other lawsuits involving thousands of affected Central American workers that have been filed in Los Angeles alone. In spite of the meager amount of this particular judgment, Dole's determination to appeal the case and fight any other lawsuits vigorously in US courts must be seen in this light.

The case could have ramifications for workers around the world. A November 12 article by Loretta Tofani in the *Salt Lake Tribune* explored the possibility of Chinese workers bringing lawsuits against US businesses that contract with Chinese manufacturers. Millions of Chinese who work with toxic chemicals (such as lead-based paint) in under- or unregulated factories have already suffered from fatal occupational diseases such as silicosis and leukemia and other cancers. Many have suffered maiming and amputations of limbs due to outmoded, unsafe machinery.

Tofani quotes a Seattle-based attorney, Dan Harris, as saying, "Chinese law firms are gathering up plaintiffs now, looking for products that cause harm." Referring to the effects of globalization on corporate liability and the laws that presumably govern it, Harris says, "It's going to take a lot of cases before this works out."



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