

NICARAGUA

Despite set-backs in US courts, poisoned workers continue their pursuit of justice



For several years, IRTF has been advocating on behalf of former banana workers poisoned by Nemagon, a pesticide manufactured by Dow and Shell, and sprayed on Dole plantations. RRN members have written to the Nicaraguan government and to Dole. The former workers of plantations in Leon and Chinandega (from 1970 through the mid-80s) have suffered infertility, cancers, damage to lungs and kidneys, and other infirmities resulting from Nemagon exposure. **The pesticide was banned in the US in 1979, but fruit companies continued to spray it on plantations in Central America for at least the following decade. Hundreds of former workers have died from Nemagon poisoning.** Courts in both the US and in Nicaragua have ruled several times in favor of the workers, ordering Dole and the chemical companies to pay millions of dollars in damages. The multinational companies, unwilling to admit guilt, keep stalling by filing appeal after appeal. To date, they have not respected any court ordered judgment. Their most recent tactic was to argue that workers and their lawyer used fraudulent testimony. Unfortunately, a Los Angeles judge was persuaded and in April 2009 threw out two of the cases. Dole has used the ruling to cast doubt on dozens of other Nemagon claims in US courts. Despite this recent set-back, the workers continue their marches, encampments, lawsuits, and appeals in the courts. **The hope is that the workers and their families will be justly compensated before the remaining workers die from their pesticide-related illnesses.**

POSITIVE DEVELOPMENTS FOR THE BANANA WORKERS

December 2002

A Nicaraguan court ordered the companies to pay US \$490 million in damages to 466 banana workers.

November 2003

A legal firm hired by the former banana workers went to a California Central District Court, **asking for an order to have Shell Oil Company pay the \$490 million** in compensation as ordered by a Nicaraguan judge in December 2002. (Unfortunately, in November 2005, Judge Nora M. Manella ruled the Nicaraguan court ruling "invalid" and said it cannot be processed in the US because it is "impossible to guarantee impartiality" within the Nicaraguan judicial system.)

April 2004

After marches, encampments, and support from international solidarity (such as IRTF's RRN letters), President Bolaños met with the workers. He said his administration would provide the banana workers "both moral and political" support as they defend their own claims against a frivolous libel counter suit filed against them by the three transnational companies. Additionally, **the government would offer the workers legal assistance and denounce the companies before the International Convention on Human Rights** to be held in Geneva in May. (This occurred just one month after Dole Foods tried to buy off the Nicaraguan government by offering investment and employment in return for the government's promise to take measure ensuring that the company is not affected by Nemagon victims' demands for compensation.)

September 2004

Workers continued their encampment across from the National Assembly because the Nicaraguan government had not lived up to the commitments it made in April, including a high-level commission of inquiry to be established by President Bolaños.

August 2005

Thirteen former banana workers held a five-day hunger strike in Managua. They ended the strike when the **National Assembly agreed to put the workers' demands on the Assembly's September agenda.**

Also in August, a panel of three judges in the Federal Appeals Court in Los Angeles ruled against an appeal by Dow Chemical and Shell Oil Company. Dow and Shell had asked the LA court to declare null the Managua court ruling of December 2002 that ordered the companies to pay \$490 million in damages to the workers.

September 2005

In a major step forward, several representatives of the former banana workers met with members of the **National Assembly and agreed upon a resolution in support of the workers' legal right to pursue compensation claims**, which was passed by the National Assembly on September 28. Workers also met with representatives of the Ministry of Health to discuss the possibility of free health care and treatment for all Nemagon victims and their families.

January 13, 2006

The law firm Ojeda, Gutierrez, and Espinoza **put a lien on Shell Oil Company because the company still had not begun to pay any of the \$490 million** ordered by a court in December 2002. The gasoline and other products sold at Shell gas stations in Nicaragua are sold by the company Shell Nicaragua, S.A., which pays a monthly sum to the multi-national to use the trademark. The lien applied by the Chinandega farm workers and their lawyers does not affect Shell Nicaragua's ability to continue selling its products, but the company can no longer do so under the trademark Shell unless company officials agree to start paying the Nemagon victims the monthly sum they have been paying to the Shell Oil Company.

March 21, 2006

One of the best known leaders of the former banana workers, Victoriano Espinoza, appeared at a press conference with Michael Carter, Vice President of Dole Food Company, and members of the Nicaraguan government to announce they were **attempting to reach an out-of-court agreement. In return for dropping all the lawsuits by Nicaraguan workers against Dole and repealing Law 364** (a law passed by Nicaragua's National Assembly to support the Nemagon victims in their legal cases against the multinationals), **Dole would hand over a lump sum of money to the Nicaraguan workers.** (In June 2006 Dole announced it would obey an order from a judge in Texas to suspend the out-of-court talks while another Nemagon lawsuit proceeded in a Texas court, even though Espinoza and the workers that were part of the talks had nothing to do with that particular lawsuit.)

December 20, 2006

In Nicaragua, Chinandega District **Judge Silva Toruño ruled in favor of the workers' claim** that their health had been severely affected by their exposure to the highly toxic pesticides Nemagon and Fumazone on banana plantations during the 1970s, **ordering the multinationals that exported the chemicals to Nicaragua to pay \$800 million in compensation.**

April 15, 2007

At a gathering of 1500 former banana workers in Chinandega, Juan José Domínguez, the plaintiffs' lawyer in the US, announced that **13 former Nicaraguan banana workers would receive a total of \$300,000** as a result of an out-of-court settlement in with Amvac Chemical Company in Los Angeles.

May 2007

Two hundred banana plantation workers from the northwestern region of Nicaragua, sick from pesticide exposure, **marched to Managua asking the government to support their fight to get compensation from foreign companies.** In the past ten years, over 1,700 people have died (400 of them during 2005-2007),

victims of diseases caused by the pesticide, according to the workers. The Nicaraguan government promised to help a group of 23,800 former banana plantation workers receive compensation based on health problems.

Also in May, **Los Angeles County Superior Court Judge Victoria Chaney broadened the reach of the case** (which represents 13 Nicaraguan workers) by linking it with four other pending lawsuits in Los Angeles **involving sterility claims on behalf of more than 3,000 former banana workers** from Costa Rica, Honduras, Guatemala and Panama. Also named in the cases are Del Monte Fresh Produce Inc., Chiquita Brands Inc. and Shell Oil Co. Although just 13 sterile men are named in the Los Angeles case, **it is expected to open the door for thousands of other former workers.**

November 15, 2007

The jury of a **Los Angeles Superior Court ordered further compensation payments** for five of the twelve Nicaraguans who sued the US multinational companies Dole Food Company and Dow Chemical Company (Tellez v. Dole and Dow) for physical and emotional damages after being exposed to the deadly pesticide Nemagon on banana plantations belonging to Dole in the 1970s and 1980s. On Nov. 5 **the jury initially decided that the companies must pay US\$3.3 million to six workers** in compensation for the physical and emotional damages caused. Ten days later **this sum was increased by US\$2.5 million after the jury found Dole guilty of hiding information from the workers** about the negative effects of the chemical. The case, known as the Tellez vs. Dole and Dow case, is the first of five lawsuits being considered in US courts which involve compensation claims for sterility caused by exposure to Nemagon against these and other multinational companies by thousands of former banana workers from Nicaragua, Guatemala, Honduras, Costa Rica, Panama and Ecuador.

February 11, 2008

More than 800 workers in Nicaragua marched from Chinandega to the courthouse in Leon, demanding that the Appeals Court judges rule on the appeal by Dole, Dow and Shell against Judge Toruño's ruling of the \$804 million award in December 2006. A ruling had been expected by December 2007.

May 4, 2009

The Supreme Court of Venezuela (Civil Panel) ordered the Venezuelan subsidiaries of Shell Chemical Company, Dole Food Company, and Dow Chemical Company to pay compensation to 98 former banana workers who worked on 16 Nicaraguan banana plantations for damage to their health resulting from pesticide exposure. The ruling was made based on a procedure under which the Venezuelan court can enforce a ruling made by a foreign court. In this case the court was the Second District Civil Court of Managua, presided over by Judge Vida Benavente whose decision dates from 2004.

October 13, 2009

Shortly before a Los Angeles court was scheduled to rule, **Dole Foods dropped its lawsuit against Swedish filmmaker Fredrik Gertten over his documentary film "Bananas!"** Speaking to the Swedish press, Gertten said, "This is nothing more nor less than a transnational trying to shut down free expression." Human rights activists, Swedish and US students joined independent film-makers to upload the film to the Internet; at the same time calling for a worldwide boycott of Dole Food products.

RECENT SET-BACKS FOR THE BANANA WORKERS

April 23, 2009

Los Angeles Judge Victoria Chaney threw out two consolidated lawsuits against Dole Food Co by Nicaraguan banana workers. The ruling was due to a pattern of "deliberate and egregious misconduct" by lawyers in Nicaragua who recruited the plaintiffs. The two dismissed lawsuits were the second and third ones Chaney intended to try as bellwether cases that would provide guidance for settlements in other cases. **More**

than 40 related dibromochloropropane (DBCP) pesticide cases with thousands of plaintiffs from Costa Rica, Guatemala, Panama, Honduras and the Ivory Coast are pending in Los Angeles.

[After Chaney threw out the lawsuits, the Nicaragua Network interviewed Vicente Boix, writer and journalist who published The Park of the Hammocks, about the ongoing struggle of the banana workers in Nicaragua. Read the interview at <http://www.nicanet.org/?p=705>]

July 8, 2009

Dole Food Company Inc filed a defamation lawsuit against film makers it accuses of knowingly including "patent falsehoods" in a documentary about Nicaraguan banana workers who sued Dole for allegedly exposing them to pesticides on its plantations. Dole said it repeatedly "implored" "Bananas!" director and producer to revise the film to show that in April lawsuits were thrown out due to forging of medical evidence and proof of employment. **Despite threat of litigation** and "blatant intimidation," as described by the film's director Fredrik Gertten, **the film was screened at the Los Angeles Film Festival** and later at the Cleveland International Film Festival in March 2010. (Dole dropped its lawsuit in October 2009.)

August 5, 2009

A judge says Juan Dominguez, a Los Angeles attorney, conspired with Nicaraguan workers, allegedly left sterile by exposure to DBCP on banana plantations, to file claims against Dole Food and Dow Chemical. Cases that Dominguez expected would go to trial this year have been thrown out and he now faces investigations by the State Bar of California and scrutiny by the U.S. Department of Justice. **Dole has used the ruling to cast doubt on dozens of other DBCP claims in U.S. courts.**

October 21, 2009

A federal judge ruled that Dole Food Inc. cannot be forced in the U.S. to pay a \$97 million verdict issued by a Nicaraguan court four years ago. The Miami case stems from a lawsuit brought in 2002 under Nicaraguan Special Law 364 against Dole, Dow Chemical Co., Occidental Petroleum Corp. and Royal Dutch Shell Plc. Lawyers for the Nicaraguans brought the case to Florida in 2007 to enforce the verdict under a state law that recognizes foreign judgments. U.S. District Judge Paul Huck in Miami ruled in January 2009 that Occidental and Shell couldn't be held liable because there was no evidence their DBCP (Nemagon) products were used in Nicaragua.

MOVING FORWARD

February 2010

Attorney Steve Condie, based in Oakland, CA, has taken up the legal case on behalf of the banana workers. **Condie and other lawyers for the workers continue to denounce Judge Chaney's June 2009 ruling of fraud** in the medical documents and testimonies of the workers. Because of Chaney's ruling, Dole is now seeking to have vacated the \$5.8 million jury verdict of the Los Angeles Superior Court in November 2007. Condie notes that Judge Chaney, who has since ascended to California's 2d District Court of Appeal, had entered a protective order shielding Dole's witnesses. **The plaintiffs could cross-examine Dole's witnesses but had no opportunity to independently investigate their stories.** So far, no fraud allegations have surfaced in the remaining DBCP cases filed in the United States by workers in Costa Rica, Honduras, Panama and Guatemala. [For updates on the case, contact Steve Condie at rsondie@yahoo.com .] [excerpted from The National Law Journal, <http://www.law.com/jsp/law/international/LawArticleIntl.jsp?id=1202441775977>]

Information on the chemical DBCP (aka Nemagon):

Source: [http://www.goodplanet.info/goodplanet/index.php/eng/Contenu/Points-de-vues/Nicaragua-The-march-of-no-return-for-the-victims-of-Nemagon/\(theme\)/1385](http://www.goodplanet.info/goodplanet/index.php/eng/Contenu/Points-de-vues/Nicaragua-The-march-of-no-return-for-the-victims-of-Nemagon/(theme)/1385)

Also, read: <http://www.bananasthemovie.com/nemagon>

Dow Chemical was the pioneer in producing Nemagon, whose active ingredient, the dibromochloropropane (DBCP), was found highly efficient in eliminating nematodes. But, **as far back as 1958, this very same company detected the development of testicular atrophies, infertility and severe harm to the lungs and kidneys** after laboratory animals were exposed to the product. A confidential note received by the company's managers at the time proves it. Even so, and despite the fact that the United States Department of Agriculture indicated their disagreement with the minimum preventive measures put forward by the Dow Company and others, DBCP's sale was approved, as was its commercial distribution and use worldwide.

Insect-like men.

In 1975, almost 20 years later, prompted by countless contamination complaints from rural laborers and their own workers in the United-States, **Dow Chemical warned one of its biggest clients, the Standard Fruit Company that the pesticide was affecting banana workers, and announced that it could no longer sell Nemagon.** The Standard Fruit Company reacted immediately threatening to take the Dow to court in the United States for breach of contract. Dow accepted to carry on selling the chemical product on condition that the Standard agreed to handle all forthcoming legal claims. The advantage of Nemagon was its economic cost. Standard believed this was a good deal for them and for Dow. They signed a mutual protection engagement, and for four years several thousands of human beings in the banana plantations around the world have slowly grown sick, and treated like flies since the production and application of DBCP continued. **The workers were never warned of the risks they were exposed to and were not provided with the proper protective equipment. [...]**

In 1975, the United-States Environment Protection Agency (EPA) ruled that the DBCP was a potential carcinogenic agent. In 1977, from the 114 employees producing the chemical product in one of Occidental Chemical's factory, 35 were sterile. **In 1979, Nemagon was prohibited in the United-States** for almost all use, and its distribution temporarily suspended.

The same year, the Standard was still applying DBCP in its plantations all around the world. When the product was prohibited in Costa Rica, the Standard moved its stock to Honduras. There is apparently evidence that sold it to Africa in 1981 to Shell and that Standard was still using it in its Philippines plantations in 1986. **According to the testimony of Italo Antinori, the Defender of the people from Panama, it was still being used there in 2000.**

This is not a mistake, therefore, an accident or unpredictable event, but a true crime, a planned genocide, a crime against mankind whose consequences are not limited to the worker and are passed down to their descendants until who knows when. This is not the mention the fact that DBCP is extremely long-lasting and will remain in the environment for a long time.