

Dole Claims Bananas! Film Documents Fraud

A "groundbreaking" legal fight by supposedly injured Nicaraguan banana workers blows up into fraud allegations—just as the story hits the big screen

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By [Michael Orey](#)

Nicaragua is one of [Latin America](#)'s poorest countries, but one industry there has been booming. Its product is legal claims on behalf of legions of workers who say they were made sterile after exposure to pesticide on banana farms operated by [Dole Food](#) in the 1970s. In recent years, in lawsuits against Dole and American chemical companies, Nicaraguan courts have awarded the workers \$2.2 billion. Now efforts are afoot to collect on those judgments in the U.S., and thousands of other cases are being pursued in American courts.

All this may be about to hit the big screen. On June 20 the documentary Bananas! is scheduled to premiere at the [Los Angeles Film Festival](#). Directed by Swedish filmmaker Fredrik Gertten, the movie, according to its Web site, chronicles Los Angeles attorney Juan "Accidentes" Dominguez's "groundbreaking legal battle" against Dole. "Accidentes" is the large-type catchphrase on splashy billboards and bus ads Dominguez uses around Los Angeles to promote his personal-injury practice. "As the legal representative of over 10,000 Nicaraguan banana workers, he is the first attorney ever to force American corporations to take responsibility for actions they have done outside U.S. borders," the film's Web site proclaims.

NEW COURT FINDINGS RELEASED

But there's a big problem. Many, perhaps substantially all, of the claims are fabricated, according to [findings](#) by Los Angeles Superior Court Judge Victoria G. Chaney, which were released as part of a case against Dole on June 17. The 60-page document—which relies heavily on work done by Dole's own investigators—chronicles an elaborate scheme by attorneys, judges, and others, including Dominguez, to mass-produce fake cases. Recruiters rounded up people from around Nicaragua who had never worked on a banana farm, then provided them with training manuals, videos, and even "field trips" to the farms so they could appear to be credible plaintiffs. Medical labs in the country faked sterility test results and workers who had kids—all men—were told to deny paternity of their children.

At least one Nicaraguan judge agreed to "fix" lawsuits in favor of plaintiffs and award hundreds of millions in damages, Judge Chaney found. "An entire industry has developed around DBCP litigation in Nicaragua for the purpose of bringing fraudulent claims," she wrote.

DOLE WARNS FILM PRODUCERS

The Bananas! documentary, with its reputedly heroic portrayal of Dominguez, was completed before Judge Chaney made her findings, and Dole is now [trying to halt the film's screening](#). Dole representatives have not been permitted to see the film, but the company's law firm, [Gibson Dunn & Crutcher](#), has fired off stern letters to the producers warning of potential legal action.

"If the film is what we think it is, we will likely file a defamation suit," says Scott A. Edelman, a Gibson Dunn partner in Los Angeles, in an interview. In a statement on the film's Web site, director Gertten says that in light of the new developments, a change was made to title cards at the end of the movie to update the audience on Judge Chaney's ruling. "The film is still valid and is still the truth about what happens," he says.

While most of those involved in what Judge Chaney called the "litigation fraud" were Nicaraguans, she also identified American lawyers who she says played prominent roles. One was Dominguez; another was Mark Sparks, with Beaumont (Tex.) firm [Provost & Umphrey](#), long one of the leading plaintiffs' firms in U.S. asbestos litigation. The judge has referred Dominguez to federal prosecutors to investigate possible fraud, perjury, and obstruction of justice.

Dominguez's assistant, Ivonne Rodriguez, said he was not available to comment, but that "he denies any and all wrongdoing."

In a statement, Provost & Umphrey said the firm and Sparks "categorically deny each and every allegation made against them in [Judge Chaney's] order and we are deeply troubled by the many factual inconsistencies and errors in the court's findings." The firm, which did not have any of its own cases pending before Judge Chaney, also said it was not given the opportunity to contest the accusations against it.

The DBCP litigation has unfolded against the backdrop of a long and contentious history that U.S. fruit companies have had in Latin America. During much of the last century, they were seen by many, particularly on the political left, as exploitative overlords who mistreated workers and propped up repressive regimes. In recent years, crowds of protesters sometimes appeared in connection with DBCP proceedings in Nicaragua. It is an actual political movement down there, says Edelman.

PERVASIVE FRAUD DERAILS SUITS

Judge Chaney's findings, which she announced orally in April but then detailed in written "findings of fact" made public in court on June 17, come as welcome news for Dole. The company has not operated in Nicaragua since 1982, when the Sandinista government expropriated banana farms, but it has been battling lawsuits for decades by workers in Central America and Africa who say they were harmed by their exposure to dibromochloropropane (DBCP). Dole, based in Westlake Village, Calif., stopped using the chemical worldwide in 1979, says spokesman Marty Ordman. Dole attorney Edelman says the company does not believe farm workers were exposed to DBCP long enough or at sufficient concentrations for it to have presented a safety concern.

Judge Chaney's ruling did not address that question; instead, she dismissed two cases in consolidated proceedings involving thousands of claimants based on her finding of pervasive fraud. And she suggested that a \$1.5 million judgment she entered against Dole after a jury found the company liable in 2007 is also suspect. (Dole appealed that case, known as Tellez.) Her ruling also creates a big obstacle for plaintiffs who are seeking to enforce Nicaraguan judgments against Dole in U.S. courts. For example, Miami federal district judge Paul C. Huck put a request by Provost & Umphrey to collect on a \$98 million award on hold pending Judge Chaney's findings.

Suspicion of fraud cropped up in a variety of ways, says Edelman. For starters, he says, "there were more plaintiffs than there ever were people who worked on the banana farms" in Nicaragua, roughly triple the number. The scheme to fabricate cases developed after lawyers were "disappointed by the number of potential plaintiffs who had actually worked on Dole-affiliated farms," Judge Chaney wrote. What's more, of those who had actually worked on a banana farm, very few were sterile. Some details of this emerged after the Tellez trial in 2007 when someone who is identified in court papers as "Witness X," to protect his identity, approached Dole and offered an initial glimpse at the fraud.

WITNESSES FACED THREATS

Throughout 2008 and early 2009, Dole attorneys and investigators fanned out to Nicaragua and elsewhere to gather facts. Their efforts, authorized by Judge Chaney, were met with regular interference and physical threats, particularly against witnesses from whom they sought testimony. In response, Judge Chaney issued protective orders allowing witnesses to be identified only as "John Does" and sealed portions of the court record. The locations of some depositions were moved, out of concern for witness safety. And, as allegations emerged that plaintiffs' attorney Dominguez was involved in the fraud, the judge cut off his access to deposition transcripts.

On Apr. 21, Dole's lawyers walked into Judge Chaney's courtroom with seven volumes of evidence. During three days of hearings, both the company and lawyers for the plaintiffs presented witnesses and had an opportunity to challenge each other's claims. At the end, Judge Chaney found that Dole had presented "clear and convincing evidence" that fraud "permeates all DBCP litigation arising from Nicaragua." All of the evidence cited in her June 17 findings, the judge wrote, "has been corroborated by at least two, and usually more, sources." Unable to sort potentially meritorious cases from fraudulent ones, she said, she had no choice but to reject them all.

The drama now moves a few miles west, to the L.A. Film Festival. Among those watching most intently in the audience on Saturday night when Gertten's film begins rolling will be Edelman, the attorney representing Dole.

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