

Workers Left Sterile by Pesticide Seek Justice

By Stephen Leahy*

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No chemical or banana company has been found guilty in U.S. courts for the continued use of a toxic pesticide in Central American banana plantations. But Costa Rican workers have filed a new lawsuit.

BROOKLIN, Canada - A new lawsuit filed by thousands of Costa Rican banana workers against U.S. companies is the latest in a so-far unsuccessful series of claims against the use of Nemagon, a pesticide widely associated with sterility and cancer.

The suit was filed against Shell Chemical Co. and Dow Chemical, and the banana giants Dole Food Co., Chiquita Brands International Inc. and Fresh Del Monte Produce Co. last month.

Shell Chemical is a subsidiary of Royal Dutch/Shell Group, and Fresh Del Monte is owned by the Palestinian family Abu Ghazaleh. The other companies are U.S. owned.

The claim accuses the companies of continuing to use dibromochloropropane (DBCP), sold under the brand names Nemagon or Fumazone, on banana plantations in Central America after it was banned in the United States in 1979.

DBCP is believed to cause sterility, testicular atrophy, miscarriages, birth defects, liver damage and cancer when inhaled or absorbed by the skin, according to the lawsuit filed by Los Angeles attorneys Walter Lack and Tom Girardi.

The U.S. Occupational Safety and Health Administration reports that data collected on workers involved in the manufacture of DBCP showed the chemical can cause sterility, and that this finding is backed by studies in animals.

Acting on behalf of Costa Rican banana plantation workers, the lawyers are asking for damages for what they describe as "wanton and reckless acts... and outrageous and malicious conduct."

If the plaintiffs are successful, it will be the first time that companies which persisted in using DBCP are punished.

Although U.S. Environmental Protection Agency discovered DBCP could lead to cancer and sterility and severely restricted its use in 1977, it was widely used throughout Latin America, the Caribbean, Western Africa, and the Philippines until the early to mid-1980s.

Despite the overwhelming evidence, and lawsuits totaling billions of dollars, no U.S. court has ever ordered one of these companies to pay compensation to the workers, says Erica Rosenthal of Earthjustice, a U.S.-based non-profit public interest law firm.

"There is no debate about the hazards of DBCP, especially the fact that it can make males sterile," she told Tierramérica.

"The chemical manufacturers knew in the 1960s it would have this effect and speculated that DBCP could be a male contraceptive," said Rosenthal, who has advocated for banana workers on this issue for 14 years.

When contacted, plaintiff lawyer Lack refused to comment on the case and would not allow Tierramérica to talk to his clients.

A spokesperson from Dow said the firm could not comment on the specific allegations but said Dow did not sell DBCP after it was banned in 1979. A Dole representative did not respond to the written questions submitted by Tierramérica.

This is just the most recent of many DBCP-related lawsuits banana workers filed against these companies during the late 1970s and early 1980s. But in the end, none has been successful.

In 2001, Nicaraguan courts ordered Shell, Dole, and Dow to pay 489 million dollars to 500 male banana workers made sterile by DBCP. But the companies refused to pay and, led by Dole, they counter-sued the claimants for fraud and asked for 17 billion dollars in damages.

When workers pursued enforcement of the 2001 Nicaraguan court judgment this year, the U.S. Federal Court refused to take the case, says Kathy Hoyt, co-coordinator of the Nicaragua Network, a U.S.-based non-governmental organization.

"That was their last hope for compensation," said the activist.

For the most part, U.S. judges have argued that their courts are not the appropriate arena for trying these cases, and only four percent of the rejected cases are re-filed in other countries.

Under the civil codes of most Latin American countries, plaintiffs' rights are weaker, there are fewer jury trials and they lack strong discovery rules, Hoyt says. Lawyers are expensive, and not limited to collecting their fees only if they win the case, as is common in U.S. litigation.

"A worker making 80 dollars a month can't afford to pay a lawyer to file a lawsuit. Access to justice for most workers is nearly non-existent."

Some of the cases rejected in the United States were heard in other countries, but there the accused corporations wield strong influence or no longer hold seizable assets, she said.

But that hasn't stopped the workers from trying. In March, a Nicaraguan court ordered Shell Chemical, Dole Food and Standard Fruit companies to pay a group of 81 women 82.9 million dollars. The women had been made chronically ill by their exposure to DBCP.

Nicaragua's Attorney General Víctor Talavera has been reported as saying his government will follow up on cases now in U.S. courts, but believes negotiated settlement with the companies is the only way workers will see substantial compensation.

A fight in U.S. courts would take years and be very expensive, he said.

Despite the long odds of winning, yet another group of Nicaraguan workers filed a lawsuit in Los Angeles earlier this year.

Banana companies such as Dole and Chiquita have made significant advances in improving their environmental and labor conditions in recent years, says Steve Coates of U.S./Labor Education in the Americas Project, an NGO supporting economic justice and basic rights for workers.

However, there are other companies where this is not the case and there are concerns about other pesticides, he said.

"We talk to workers all the time who say they have to duck under the banana plants while planes fly overhead spraying the crop," Coates said in a Tierramérica interview.

*** Stephen Leahy is a Tierramérica contributor.**