

CASE NUMBER: BC340049
CASE NAME: MEJIA vs. DOLE, et al.
LOS ANGELES, CA THURSDAY, APRIL 23, 2009
DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE
TIME: 4:50 P.M.
REPORTER: TIMOTHY J. McCOY, CSR NO. 4745
APPEARANCES: (AS HERETOFORE NOTED)

* * *

(The proceedings continued in open court, as follows:)

THE COURT: At this time I'm going to give a relatively brief oral ruling. There will be a much longer written ruling at a later time that will include all of the citations to all of the evidence that is appropriate.

If I were to start in trying to review all of it now, I have eight volumes, each of them are four-inch binders back there, and everything that we've heard here the last three days, we'd be here until next week, and I'm not going to do that to all of you. I know many of you want to get home and -- well, I know many of you want to get out and start sitting in the traffic jam on the way home.

All right. I want to, first, thank my staff, who has been wonderful to me and very supportive. This has been a very difficult case for the attorneys and myself, and it's been a very difficult case for the staff. They

1 have had to process mountains of materials that have come
2 through here every single day.

3 Mr. McCoy, the court reporter, has been here
4 late into the evening and early mornings working with me
5 while I've had impromptu conference calls with counsel to
6 try and deal with emergencies that have arisen in Central
7 America. That was very frustrating for all of us because
8 I had no real control; all I could do was try to ride herd
9 on the problems and make suggestions.

10 I want to thank Mr. Sabalburo, affectionately
11 known by me as "The Boss," the clerk who sits over here, for
12 dealing with the mounds of evidence that have come through,
13 bringing me Diet Cokes when things got rough, and just
14 dealing with the problems.

15 And Ms. Piedra, the official meeter and greeter
16 that I know you've all met when you've come through here,
17 for shepherding all the people in and out, taking care of
18 all of the phone calls, and making sure that everything
19 was on time.

20 And last, Mr. Adam Phipps, who's hiding in
21 the corner over there, for being the eminence grise in
22 the courtroom.

23 Finally, thank you to all the attorneys for
24 helping us get to this point. This is a very sad day
25 for me to be presiding over such a horrific situation.
26 The counsel have all been wonderful.

27 I especially want to thank Mr. Axline of
28 the law firm of Miller, Axline & Sawyer for stepping up

1 to the plate and helping all of us deal with this very
2 unique and dreadful situation with which we're confronted.

3 So Mr. Axline, my hat's off to you if I had
4 one, but my hat's off to you, and thank you very much for
5 doing the right thing and walking the tightrope between
6 representing plaintiffs and your obligations and duties
7 to this court, me in particular, and our legal system
8 in the United States. So thank you very much.

9 In science, there are small ecosystems,
10 such as the Sargasso Sea in the middle of the Atlantic
11 where there is very few winds that ever blow and there's
12 very little waves. The sailors in the 17- and 1800s when
13 they went through that said they were having the doldrums
14 because no ships moved easily through there.

15 This little unique ecosystem supports its
16 own wildlife and own grass and own flora and fauna. In
17 deep seas there are volcanic vents emitting scalding water,
18 supporting multitudinous sulfur-based bacteria that could
19 not live anywhere else. The Antarctic supports large
20 ungainly and flightless birds, cute little critters called
21 penguins, that couldn't live anywhere else except for maybe
22 the zoos.

23 In Nicaragua we seem to have a social
24 ecosystem that's evolved. There have been several factors,
25 and I want to go through what factors have come together,
26 to make this particular odd social ecosystem which we've
27 had the opportunity to view for the last few days.

28 The Sandinista Revolution changed the system

1 of government there. I'm not quite sure what it's been
2 replaced with. I know there is a government there. I
3 have no idea how well it's really functioning. More on
4 that later.

5 We have the infamous Law 364 which presumes,
6 basically, that if somebody says they've been exposed
7 to DBCP because they were once a farmworker, and claims
8 that they are sterile, well, then, they're entitled to
9 compensation.

10 The companion law that works with it, the
11 civil procedure that goes with it, that requires, I believe,
12 that the defendants answer within I think three days, pay
13 a \$15 million approximate bond in order just to walk into
14 the courtroom. I'm lucky that we work here. Our courts
15 are free.

16 And eight days to deliver all the evidence?
17 It took us four and a half months of day-in-and-day-out
18 trials in the Tellez case for 12 people, to allow all
19 parties to thoroughly review and allow the jury to consider
20 the evidence. It couldn't have been done in eight days,
21 and, yet, this law allows in Nicaragua five hundred to a
22 thousand plaintiffs to be processed at one time in eight
23 days. And finally, the judge rules within three days
24 after that.

25 What other factors came together to allow this
26 unique social ecosystem? A judiciary without scruples,
27 apparently; extreme poverty; the lack of compulsory process
28 for discovery; the inability of an order that I make to

1 be carried out in another country down there.

2 In the United States, there's comity between
3 the various states here that allows me to make an order
4 and have a judge in North Dakota follow through. The Hague
5 Convention allows discovery between courts within the United
6 States and England and France, Germany, Japan, all sorts of
7 places. The Pan-American Convention allows for discovery
8 with many of the nations in this hemisphere. But not so
9 for Nicaragua.

10 There is a lack of a respect for law,
11 apparently, down there that I've seen that has been
12 part of the confluence of factors that have come
13 together to allow this unique social ecosystem to evolve.

14 I've been scratching my head for the last few
15 days and wondering what new life form, what creature has
16 been spawned from these factors.

17 Changing gears for just a minute, in Greek
18 mythology there was a chimera, who was a mythical creature
19 with the head of a lion -- actually it was a fire-breathing
20 she monster, which some in this case might describe me as
21 being that person or that critter, but that's for another
22 day.

23 Anyway, a chimera was a fire-breathing she
24 monster with a head of a lion, a body of a goat, and a
25 tail of a snake. A truly fearsome creature. True, there
26 were lesser amalgamations of body parts, we have the
27 flute-playing pan who had the head and torso of a man and
28 the body of a goat, and Medusa, sprouting a head of snakes

1 where her hair should be.

2 Here, we also have a chimera that is really
3 truly heinous and repulsive. It's been created from
4 separate organisms cemented together by human greed and
5 avarice.

6 Well, you might be asking what kind of
7 organisms have been cemented together to form this strange
8 chimera? These organisms are really groups of people
9 or classifications of people. It's made up of groups
10 of attorneys who actually designed this creature, which
11 is the neural system, the brain of this creature. These
12 attorneys have been both in Nicaragua and some in the
13 United States.

14 There have been groups of men, called captains,
15 or recruiting captains, who have been the arms and the eyes
16 for this monster, who reached out and grabbed the groups of
17 men to make spurious claims that they are sterile arising
18 from a chemical called DBCP, manufactured by U.S. companies
19 such as Dow and Amvac, and used by U.S. companies such as
20 Dole.

21 These men have alleged hours of make-believe
22 toil in stinky, smelly wet fields where pipes of DBCP
23 irrigation burst all over them, causing them to wade,
24 perhaps almost even swim, through the contaminated waters.
25 They claim that they toiled away as farm laborers and
26 irrigators while being rained upon by DBCP or swimming
27 in it.

28 There have been groups of medical personnel

1 providing sham laboratory reports indicating sterility
2 where none really exists; groups of fathers denying
3 paternity of their own children, posing as lonely men
4 coming into the court, saying that they had no solace in
5 their old age because they have no children. They have
6 denied to their children their paternity and claim they
7 have no comfort from their offspring, from their own
8 loins in their old age.

9 There are groups of corrupt Nicaraguan judges
10 devouring bribes and to award judgments based on trumped-up
11 allegations and facts.

12 This chimera even has a cancer within it.
13 Some members, I think mainly the captains, feed on the
14 weaker members, the plaintiffs, the impoverished, demanding
15 that these workers pay to go to meetings, pay to go on field
16 trips to banana plantations, pay for training manuals, pay
17 to watch videos, pay for everything they do. Lots has been
18 promised, but very little has actually been delivered.

19 This chimera has an enforcement arm, The Group
20 of 8. We heard a little bit about The Group of 8, I heard
21 some about it yesterday, Mr. Edelman talked about it today,
22 but it appears to be a group of individuals from the various
23 law firms in Nicaragua who were there to ride herd on these
24 cases, to bring them from their creation in somebody's mind
25 in the law offices in Chinandega, the offices of the banana
26 workers, on through training and on into courts like this
27 one or courts in Nicaragua, and perhaps with the hope of
28 courts elsewhere in this country.

1 There is a pervasive atmosphere of fear and
2 extreme danger. We listened to investigators here today,
3 I listened yesterday to several John Doe witnesses, and
4 on Monday (sic) morning there was a montage of various
5 John Doe witnesses who talked about their concerns.

6 I absolutely believe their fear, and I feel
7 for them. Their fear is the reason we're here today in
8 this extraordinary proceeding.

9 The fear that has been generated by
10 The Group of 8 and by the Law Offices of Juan Dominguez
11 and Mr. Ordenana, perhaps by other law offices down there,
12 perhaps by other law offices in this country -- and I'm not
13 including the Miller Axline firm. Just so we're all clear,
14 whenever I talk about law offices in this country, I am
15 not intending to in any way impugn Mr. Axline, Mr. Miller,
16 or Mr. Boone. Or Mr. Sawyer for that matter, who I don't
17 really know at all.

18 This atmosphere that is existing in Nicaragua,
19 the atmosphere of threat and intimidation, has hindered the
20 progress of this case and any other case. Probably hindered
21 the progress -- and I'm sure it did, hindered the progress
22 of Tellez -- the ability to gain information. It has
23 interfered significantly with this court's ability to do
24 what I took an oath to do, which is to allow all parties
25 to come before myself, to have a fair trial, to have a fair
26 proceeding.

27 I promised all the litigants in all of my
28 cases to provide them with due process, and I have failed

1 here because I can't provide that because of the conditions
2 in Nicaragua. I can only provide due process as to things
3 within my control. I cannot control the events in
4 Nicaragua.

5 I strongly believe in the right to a jury
6 trial, and yet I've been forced to take it away from
7 plaintiffs here. Today is one of the sadder days of
8 my life in having to do that. And on March -- help me
9 out, 6th? Was that the date?

10 MS. NEUMAN: March 6th, yes, your Honor.

11 THE COURT: On March 6th, when I made the
12 determination on my own to conduct an OSC, Order to Show
13 Cause, to terminate this case, and later when I did the
14 written ruling on March 11th, it was very painful, because
15 I truly believe in the jury system, I truly believe in our
16 system of justice that allows twelve people to come together
17 to listen and make a determination of whether is it true
18 or not.

19 The purpose of today's proceeding and of the
20 last few days is not for me to sit as the jury. I am not
21 here to be a trier of fact, I am here to safeguard our
22 system of justice and to recognize that I failed the parties
23 in my ability to give them a fair trial. All parties, the
24 plaintiffs and the defendants. And for that I'm sorry. I
25 would have liked to have gone on.

26 The actions of the attorneys in Nicaragua and
27 of some of the attorneys in the United States, specifically
28 the Law Offices of Juan Dominguez, have perverted this

1 court's ability to deliver justice to those parties that
2 come before it.

3 The purpose of this proceeding is to decide
4 whether or not a fraud has been perpetrated on this court
5 and on the parties. What has occurred here is not just
6 a fraud on this court, but it is blatant extortion of
7 the defendants.

8 "A fraud on the court occurs where it
9 can be demonstrated, clearly and convincingly,
10 that a party has sentiently set in motion some
11 unconscionable scheme calculated to interfere
12 with the judicial system's ability impartially
13 to adjudicate a matter by improperly influencing
14 the trier or unfairly hampering the presentation
15 of the opposing party's claim or defense."

16 That's Aoude_vs._Mobil_Oil_Corporation, a
17 1989 case found at 892 F.2d 1115 at 1118. This standard
18 has been indisputably met here.

19 "When the plaintiff has engaged in
20 misconduct during the course of the litigation
21 that is deliberate, that is egregious, and that
22 renders any remedy short of dismissal inadequate
23 to protect the fairness of this trial, such
24 an exercise of inherent authority is essential
25 for every California court to remain a place
26 where justice is judicially administered."

27 That's from Schlesinger_vs._Walt_Disney,
28 155 Cal.App.4th, specifically from Pages 764 to 765,

1 and that was quoting from the case of Von_Schmidt_vs. Widber
2 , a 1983 case found at 99 Cal. 511 at 512. _____

3 "Terminating sanctions dismissing claims
4 of the offending party are warranted in such
5 circumstances."

6 And if you took all the bad cases that I've
7 read and put them together, they don't even come close to
8 what's happened here. They do not approach what we've seen.

9 "The misconduct necessary to invoke the
10 inherent power to dismiss has been described as,
11 among other things, conduct due to willfulness,
12 fault, or bad faith, and having a relationship
13 to the matters in controversy such that the
14 transgression threatens to interfere with
15 the rightful decision of the case, or egregious
16 misconduct such as willful or contemptuous
17 behavior, a deliberate attempt to hinder or
18 prevent effective presentation of defenses
19 or counterclaims, or stalling in revealing
20 one's own weak claims or defense."

21 That's a citation again from Schlesinger
22 at Page 765 Footnote 20. _____

23 I've told you that I'm using the standard
24 of proof of clear and convincing evidence, and it might
25 have been Mr. Brem or it might have been Mr. Edelman,
26 I don't know which one, that said I could have used a
27 higher standard. That's true, I could have used beyond
28 a reasonable doubt because, actually, everything, all the

1 findings that I made, I truly believe beyond a reasonable
2 doubt. But clear and convincing will do. It's more than
3 just a feather sitting extra on a scale.

4 Plaintiffs' and plaintiffs' attorneys'
5 misconduct in this record is so outrageous and pervasive
6 and profound that it far exceeds anything described, as
7 I said, in any of the reported cases. Here, there is
8 massive amounts of evidence demonstrating the recruiting
9 and training of fraudulent plaintiffs to bring cases
10 in both the Nicaraguan and U.S. courts. Mr. Dominguez,
11 I understand from my readings, has about 92 Nicaraguan
12 lawsuits with 4,081 plaintiffs, and claim damages of,
13 and this is almost hard to read, \$21,537,000,000, and
14 those are pending.

15 There is uncontroverted proof of the
16 systematic fabrication of work certificates, which
17 were signed in blank and filled in later, to apply
18 to any plaintiff whom counsel or their employees on
19 whim and their agents might choose.

20 There is a plethora of evidence of spurious
21 lab reports, using a preordained ratio of sterility from
22 between azoospermia, no sperm, oligospermia, some small
23 amount of sperm, to uncertain, whatever that is, but the
24 goal of which is that the people are not able to have
25 children that is somehow related to DBCP. This ratio was
26 developed and used by the laboratories in forming their
27 false reports.

28 Fertile men seeking to be plaintiffs have

1 hidden or disavowed their own children. How despicable.

2 Yet this conduct that I've been discussing
3 is only the beginning, is only the tip of the iceberg as
4 to what we've seen here.

5 This conduct that has infested this case
6 with fraud, a reprehensible conduct, has been put together
7 by several in Nicaragua, including Dominguez and Ordenana,
8 together with other DBCP plaintiff law firms, which has
9 created a pervasive atmosphere of fear and intimidation to
10 discourage witnesses from testifying, to routinely directing
11 witnesses in person or on the radio not to communicate with
12 Dole investigators.

13 Also in conjunction with their strategy of
14 fear and intimidation, Dominguez and Ordenana have targeted
15 Dole's investigators. You've heard about that today
16 with Mr. Valadez, who is the recipient or has the honor
17 of answering in a criminal court in Nicaragua to a charge
18 brought by Mr. Ordenana.

19 There has been evidence that Dominguez and
20 Ordenana have approached individuals personally and told
21 them, in no uncertain terms: Do not cooperate with Dole
22 investigators or defense investigators, or else, something
23 might happen to you, unspecified, but frightening
24 nonetheless.

25 It appears, and I find by a clear and
26 convincing standard of evidence, that both Dominguez
27 and Ordenana directed people to hurt the investigators
28 on sight and to hurt anybody who came forward with

1 testimony about the illegal schemes brewing in Nicaragua.

2 There have been demonstrations staged, there's
3 been leafleting passed out in the parks to cause fear in
4 the minds and hearts of the investigators so that they will
5 not go forward.

6 Unfortunately, it's worked. Mr. Valadez
7 is under criminal complaint and is very concerned about
8 going to and from that country.

9 Mr. Madrigal is very concerned for his safety,
10 and has had to move around and not investigate thoroughly.
11 He has to watch his back.

12 And Mr. Valadez couldn't just walk into a
13 court to respond to a criminal charge, he had to sneak in
14 a few days earlier and scope the location out, looking for
15 routes for a fast egress. How sad.

16 There's been subornation of perjury,
17 both in this country and in Nicaragua. We've talked
18 about the intimidation of witnesses and interference with
19 another party's investigation. Those alone are grounds
20 for dismissal, and have been used previously in the matters
21 of Black_vs._Suzuki_Motor_Corporation, found at 2008 WestLaw
22 at 2278663, and in the matter of Johnese_vs._Jani-King,
23 found at 2008 WestLaw 631237.

24 For the last few days, as I promised Mr. Axline
25 that I would do, I have thought long and hard about what
26 remedies are available. I especially looked at the unique
27 situation with Mr. Mejia, who there is testimony he had
28 actually worked on a banana farm, although he did not work

1 as an irrigator.

2 What do I do with this? As I had told you
3 earlier, I'm not here to sit as the judge of the facts.
4 Counsel has been urging me to make factual determinations
5 regarding whether somebody did or didn't work as an
6 irrigator or on a farm. To do so I would in essence
7 be sitting as the jury, which I do not want to do.

8 However, I find, by clear and convincing
9 evidence, and, actually, if you want to say that, beyond a
10 reasonable doubt, that each and every one of the plaintiffs
11 in the Mejia and the Rivera cases have presented fraudulent
12 documents and actively participated in a conspiracy to
13 defraud this court, to extort money from the defendants,
14 and to defraud the defendants.

15 That alone, without worrying about what exact
16 statements are true and what statements are not true, is
17 more than sufficient to dismiss these individuals' claims
18 with prejudice, preventing their ability to ever come back,
19 at least in this court, and hopefully in any other court,
20 and raise these claims again.

21 For Mr. Mejia, I thought about not giving
22 terminating sanctions pursuant to this OSC process because
23 I do believe he worked in some capacity on a farm or
24 plantation, I considered rethinking the denial that I gave
25 a week or so ago to his request to dismiss voluntarily
26 without prejudice to bringing it back again, and I thought
27 about going forward on a trial as to Mr. Mejia alone.

28 But in good conscience I cannot do that

1 because I truly believe that he actively participated
2 in a heinous conspiracy to defraud this court, and all
3 other courts should he bring his case forward, and he
4 has assisted others to do that in this court, as well.

5 The evidence that's been presented to this
6 court reveals a scheme which has been intended to prevent
7 Dole and this court, and Dow and Amvac, from uncovering the
8 plaintiffs' fraud and obtaining truthful information about
9 the merits of their case, and there is no way at this time
10 for the defendants, this court, or the Miller Axline firm,
11 to know the extent of the fraud.

12 As I stated in the Order to Show Cause that
13 I put out in writing on October 11th but did orally on the
14 6th, this court questions the authenticity and reliability
15 of any documentary evidence presented by plaintiffs that
16 comes out of Nicaragua. That's true. There has been
17 nothing presented to me from Nicaragua regarding work
18 certificates, birth certificates -- I mean, witnesses
19 have said, in essence: Oh, yes, it says that on the
20 birth certificate, it says I'm the father, but it isn't
21 true, I lied -- I can't believe in government documents,
22 I can't believe in these work certificates, I can't believe
23 the laboratory reports, I can't believe medical reports.

24 What is there for me to believe? Nothing.

25 I have serious, serious doubts about the
26 bone fides of any plaintiff claiming to have been injured
27 as a result of exposure to DBCP while working on banana
28 plantations. Because of all this, lesser sanctions are

1 wholly inadequate.

2 The plaintiffs suggested that I allow the
3 plaintiffs to go forward just with the Miller Axline firm,
4 to let them go forward and try their case. The problem
5 is, I don't think the Miller Axline firm can figure out
6 the truth either.

7 What are they going to do? Go back? Who
8 are they going to talk to? They're going to talk to the
9 same people that put up and claim that Joe worked with
10 John on the banana plantation. But Miller Axline doesn't
11 have the ability, any more than Dole or Dow or Amvac, to
12 check the authenticity of that. Miller Axline doesn't have
13 the ability to go back and check the authenticity of the
14 work records or the laboratory reports. And I will not
15 have another jury sitting in this courtroom for four months
16 for a case that I cannot say is even possibly real, and I
17 can't say that.

18 Because plaintiffs' fraud permeates every
19 aspect of this case, it is not possible for this court
20 to ensure a fair, untainted trial. Plaintiffs' fraud has
21 been unstoppable and has included repeated intimidation
22 and threats against various witnesses to prevent the
23 defendants and this court from ever learning the truth.

24 As stated in Schlesinger:

25 "Plaintiffs and their counsel" -- not
26 Miller Axline -- "have a reliably predictive
27 history of misconduct. The court therefore
28 is entitled to assume, based on this history,

1 that plaintiffs would not obey remedial orders
2 if disobedience might be to their tactical
3 advantage. The court is not required to
4 gamble its ability to provide a fair trial
5 on plaintiffs turning over a new leaf."

6 And I look at Miller Axline trying to
7 take over and not have any contact with Mr. Dominguez
8 or Mr. Ordenana as an attempt to turn over a new leaf.

9 But it's doomed, Mr. Axline. I want to thank
10 you for making the suggestion, but it isn't going to make
11 it.

12 MR. AXLINE: I understand, your Honor.

13 THE COURT: I'm not buying it. Okay?

14 Because plaintiffs' counsel in Nicaragua
15 and here through Mr. Dominguez have so thoroughly coached
16 plaintiffs to lie, there's no way for this court to purge
17 the plaintiffs' wrongfully-obtained knowledge from their
18 mind, and therefore no power short of termination can fully
19 guard against the conscious or subconscious application of
20 the plaintiffs' fraudulent knowledge from shaping the future
21 course of this litigation and its outcome. Terminating
22 sanctions are therefore the only possible way to handle
23 this situation.

24 Now, a brief comment about Law 364. In 2000 or
25 2001 the Nicaraguan government passed Special Law 364, which
26 was the law that targets certain U.S. companies, including
27 Dole and Dow and Amvac, probably also Shell and any other
28 ones that either manufactured DBCP or were growers in

1 Nicaragua, if there were other growers in addition to Dole.
2 I don't know. This law presumes liability, causation, and
3 a minimum amount of damages in favor of any person who
4 claims that they were rendered sterile as a result of DBCP
5 exposure.

6 The procedural requirements of Law 364 take
7 a heavy toll on these companies as defendants if they wish
8 to actively participate in the Nicaraguan trial. And I've
9 talked a little bit about that, about the \$15 million bond
10 and the 3-8-3 requirements.

11 This court believes that the advent of Law 364
12 was a significant impetus in planting and nourishing a
13 fraudulent industry whose roots may have its origins in
14 Nicaraguan courts but whose fraudulent shoots have reached
15 into the soil of the court systems in the United States,
16 and specifically in California.

17 Like many little critters in plants that
18 live in those unique ecosystems, however, those animals
19 and plants cannot survive outside of their ecosystem.

20 Here, fortunately, although there has been
21 a strong attempt to bring the seeds of the Nicaraguan
22 corruption here to this country, it has not succeeded, and
23 if I have anything to say about it, it will not succeed.

24 Other conditions that caused this fraudulent
25 chimera, as I said before, are the Sandinista Revolution
26 from '79 to '81 that destroyed all of the employment
27 records, and I've talked before about the country's
28 poverty, the lack of the ability to enforce discovery,

1 the nonfunctioning or barely functioning judicial
2 system, and the avarice that has fueled this chimera.

3 My concerns about the legal system and the
4 judiciary in Nicaragua are not just what I've heard here
5 today or observed, it's based on the United States
6 State Department Country_Reports between 2000 and 2008,
7 in which the State Department has concluded that Nicaragua
8 lacks an effective civil law system. The most recent
9 report bluntly states:

10 "Although the law provides for an
11 independent judiciary, the judicial system
12 remains susceptible to corruption and
13 politicization, and did not function
14 independently. The Judicial Career Law
15 requires that new judicial appointments
16 be vetted by the Supreme Court of Justice.
17 However, judicial appointments were often
18 based on nepotism, influence, or political
19 affiliation. Once appointed, many judges
20 were subject to political and economic
21 pressures that affected their judicial
22 independence."

23 We certainly heard about that today
24 through the professor -- help me out. Soto Cuadra?

25 MR. EDELMAN: Soto, right.

26 THE COURT: And a little bit from Mr. Valadez.

27 The Country_Report for 2002, while this
28 chimera was in its infancy, found that the judiciary was

1 susceptible to corruption and political influence, and
2 that the judiciary was hampered by judges and lawyers
3 who often lacked sufficient training or education, and that
4 corruption and judges' political sympathies, acceptance
5 of bribes, or influence from political leaders reportedly
6 often influenced judicial actions and findings.

7 And that is from the U.S. Department of
8 State Country_Reports_on_Human_Rights_Practices_2002,
9 published March 31st, 2003.

10 I have also relied on U.S. Trade Department,
11 2004, National_Trade_Estimate_Report_On_Foreign_Trade
12 Barriers, which says in part:

13 "The Nicaraguan legal system is weak
14 and cumbersome. Many members of the judiciary,
15 including those at high levels, are widely
16 believed to be corrupt or subject to outside
17 political pressures. Rulings in favor of
18 those who are politically connected are a
19 visible manifestation of political corruption."

20 During the time that I've been either reading
21 or listening to evidence I have learned all about that.

22 This court was presented with detailed
23 un rebutted testimony, which it finds highly credible, that
24 Mr. Dominguez and the Mejia plaintiffs' Nicaraguan counsel
25 and the Rivera plaintiffs' Nicaraguan counsel, Mr. Ordenana
26 and Mr. Zavala, conspired and colluded with, one, other
27 DBCP plaintiff lawyers and representatives, including
28 Walter Gutierrez and some U.S. lawyers from the Law Offices

1 of Provost Umphrey, and with Nicaraguan laboratories, with
2 three corrupt Nicaraguan judges in a position to influence
3 the outcome of DBCP cases. The purpose of this conspiracy
4 was to manufacture evidence and improperly influence the
5 outcome of DBCP cases pending in Nicaraguan courts in
6 favor of plaintiffs.

7 The DBCP plaintiffs' lawyers in Nicaragua
8 also provided improper benefits to Nicaraguan judges
9 in exchange for influencing the outcome of DBCP cases in
10 favor of plaintiffs, and to obtain judgments that could
11 be enforced in the United States or other jurisdictions.
12 The conspiracy was funded at least in part by Mr. Dominguez.

13 For example, Mr. Dominguez, Mr. Ordenana, and
14 Mr. Zavala attended at least one meeting in which Nicaraguan
15 judges, Nicaraguan and United States attorneys, captains who
16 worked for those attorneys in recruiting pretend plaintiffs
17 for DBCP cases, and representatives of laboratories that
18 performed sterility tests on DBCP plaintiffs, conspired to
19 manufacture evidence and thereby fix cases in Nicaraguan
20 courts. One such meeting took place in an exclusive
21 neighborhood in Chinandega.

22 Multiple John Doe witnesses credibly testified
23 to having attended this meeting. These witnesses generally
24 corroborate each other with respect to the identities of
25 the primary participants in the meeting and its purpose and
26 substance. The meeting was presided over by the Nicaraguan
27 judge Socorro Toruno. I find this to meet the burden,
28 clearly, of clear and convincing evidence, and probably

1 much higher.

2 And as an aside, Judge Toruno is the judge
3 who presided over the enforcement actions now pending before
4 Judge Paul Huck, a U.S. District Court judge sitting in
5 Miami, Florida.

6 I find by clear and convincing evidence that
7 the Nicaraguan judge, Socorro Toruno, presided over at least
8 two DBCP trials in Nicaragua resulting in judgments totaling
9 in the hundreds of millions of dollars against some of the
10 same defendants who are currently before this court in Mejia
11 and Rivera. _____

12 _____ During this meeting, Judge Toruno, lawyers from
13 nearly all of the Nicaraguan law firms, and Mr. Dominguez,
14 representing plaintiffs in DBCP litigation, conspired to
15 manufacture evidence of sterility and otherwise fix those
16 lawsuits in favor of plaintiffs.

17 Because of all of the evidence that's been
18 presented to me, because of my profound concern for the
19 safety of those witnesses who have come forward, the
20 safety of the investigators of the defendants, and the
21 safety of all American counsel involved in these cases, be
22 they plaintiff or defense counsel going down to Nicaragua,
23 I cannot in good conscience allow this case to continue.

24 I find that there is and was a conspiracy
25 to defraud both Nicaraguan and American courts, to defraud
26 the defendants, to extort money from these defendants,
27 not just these three defendants in the court here but all
28 manufacturers of DBCP, and all growers or owners of --

1 or I'm sorry, operators of plantations I guess is the
2 best way to say that, in Nicaragua between 1970 and 1980.

3 All right. There will be some additional
4 findings in the written ruling, I just need a chance to
5 formulate them. I've not had a chance. It's very hard
6 to do a written ruling.

7 As to the Rivera and Mejia plaintiffs, I
8 think I stated before that this is stage one of the OSC
9 proceeding, stage two will occur at a later time. I've set
10 the dates and I just don't remember them now, but counsel
11 is aware of them.

12 But as to stage one, I am ruling that each of
13 the plaintiffs in the Mejia and Rivera cases, their case
14 will be dismissed, and is dismissed, with prejudice. Again,
15 though, this is part one of the ruling, and in part two
16 there are some other additional things which will come up
17 later.

18 Now, a couple of other points that I have not
19 talked about. I presided over the Tellez trial and watched
20 the witnesses. I knew something was wrong with many of
21 the witnesses, I just didn't understand what it was, because
22 the evidence of fraud had never been raised. It couldn't
23 have been raised since the discovery of this fraud has
24 really come to a head only in the last six months or so.

25 I was asked by counsel for the defense to
26 make a statement of -- a Statement of Intent? Is that
27 the right word, Mr. Brem?

28 MR. BREM: Indication, your Honor.

1 THE COURT: A Statement of Indication regarding
2 Tellez. I declined because I do not believe that I have
3 the statutory ability to that. I still don't believe
4 that I have the statutory ability to do that.

5 But I must say that based on what I have seen
6 here, had I known anything about that then, I would have
7 taken different actions. And, that the fraud that I have
8 seen here has also contaminated each and every one of the
9 plaintiffs in the Tellez matter.

10 What a tragedy, because 16 jurors sat through
11 four and a half months of trial. Mr. Miller from the Miller
12 Axline office spent hours and hours trying the case, as did
13 Mr. Brem, and counsel, different counsel than Mr. Edelman,
14 but counsel for Dole. Millions of dollars were expended
15 in that case, and hundreds of hours of court time and
16 attorney time were spent in prosecuting a case that was
17 built on somebody's imagination, a case that was put
18 together by smoke and mirrors.

19 I apologize to all the jurors that had to
20 sit through that case and make a decision based on nothing
21 but the imagination of somebody, dreamed up in a back
22 room of some law office down in Chinandega. How sad.

23 Last but not least, there's been a tragedy
24 with these events on many levels. It's a sad commentary
25 about the government and legal system in Nicaragua and
26 the inability of the Nicaraguan system to bring justice
27 and safety to its citizens.

28 What a sad commentary that somebody thought

1 that they were free to attempt to bring this fraud into
2 United States' courts.

3 What a sad commentary about the time spent
4 by counsel and myself in the Mejia, Rivera and Tellez
5 cases, and the time has been spent for naught. _____

6 What a sad commentary about the amount of
7 money, millions and millions and millions of dollars, when
8 you add Tellez to it, that has been spent by the parties
9 to deal with this sham situation.

10 What a sad commentary that the law firm of
11 Miller, Axline & Sawyer has been a victim of the fraud's
12 collateral damage.

13 And mostly, what a sad commentary for
14 individuals who are now going to be unable to come to
15 this court, or any court, for redress, for wrongs that
16 they believe have been committed against them.

17 My goal here is not to find somebody liable
18 or not liable, I'm not here to make a commentary, and I
19 don't have any opinion as to whether or not there was any
20 wrongdoing by any of the defendants. We'll never know.

21 I strongly believe in our American system
22 of justice that allows a person who believes they were
23 injured to bring a claim into court that they believe is
24 valid and to allow a jury and a judge to hear the evidence
25 and make whatever finding is appropriate. But I also
26 strongly believe that nobody should be able to bring a false
27 claim into a courtroom in this country, present fraudulent
28 evidence, and extort money wrongfully from somebody.

1 We'll never know if anybody in Nicaragua
2 was actually injured or harmed by the alleged wrongful
3 conduct of the defendants, and people will never have
4 the opportunity to learn, since this fraud is so pervasive
5 and extensive that it has forever contaminated even our
6 own ability to ever know the truth.

7 I want to thank you all for putting up with
8 me for the last hour for my ability to rant. There will
9 be a written decision. The purpose of the oral decision
10 today was to let you know what I was thinking.

11 In addition to making orders to dismiss the
12 case and considering part two, I will be making referrals
13 that I believe are appropriate to either the state bar
14 of this state, perhaps state bars of other states, and
15 to prosecutorial agencies. I believe that I am required
16 to do that under the canons of ethics if I believe it is
17 appropriate. So I will also be taking those actions at
18 a later time. The written decision will have all of the
19 supporting evidence that I've only briefly alluded to today.

20 Again, thank you all for your patience.

21 Dole needs to give notice. And when are you
22 due back again, folks?

23 MR. EDELMAN: May 8th, your Honor.

24 THE COURT: I'll see you folks on May 8th.

25 Thank you all.

26 RESPONSE: Thank you, your Honor.

27

28 (At 5:45 p.m., the proceedings were adjourned)

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