

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 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           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             
4 the statutory ability to that. I still don't believe  
5 that I have the statutory ability to do that.

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

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

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

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

          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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