

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

LUIS ANTONIO AGUILAR MARQUINEZ
DANIEL SERRANO CHITO
FEDERICO SALINAS JIMENEZ
JACINTO MARTINEZ IBARRA
GUZMAN CASTRO EPIFANO
LUIS ALBERTO PESANTEZ REDROVAN
HERIS GEOVANNY MALLA LOPEZ

Plaintiffs,

vs.

DOLE FOOD COMPANY, INC.;
DOLE FRESH FRUIT COMPANY;
STANDARD FRUIT COMPANY;
STANDARD FRUIT AND STEAMSHIP
COMPANY;
THE DOW CHEMICAL COMPANY;
OCCIDENTAL CHEMICAL
CORPORATION (individually and as
successor to Occidental Chemical Company
and Occidental Chemical Agricultural
Products, Inc., Hooker Chemical and Plastics,
Occidental Chemical Company of Texas and
Best Fertilizer Company);
AMVAC CHEMICAL CORPORATION;
SHELL OIL COMPANY;
CHIQUITA BRANDS INTERNATIONAL,
INC; CHIQUITA BRANDS, L.L.C. as
successor in interest to Maritrop Trading
Corporation; CHIQUITA FRESH NORTH
AMERICA, L.L.C. (individually and as
successor in interest to United Fruit Sales
Corporation and Chiquita Brands, Inc.); DEL
MONTE FRESH PRODUCE, N.A., INC.,

Defendants.

CIVIL ACTION NO.:

JURY TRIAL DEMANDED

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs named above and in the body of this Complaint file this Original Complaint and allege as follows:

I. PRELIMINARY STATEMENT

1. Plaintiffs file this Original Complaint for personal injuries sustained as a result of exposure to 1, 2, dibromo 3, chloropropane, commonly known as DBCP and referred to hereafter as “DBCP”.

II. JURISDICTION and VENUE

2. This Court has jurisdiction to hear the claims in this Complaint based on diversity of citizenship between Plaintiffs and Defendants and because each Plaintiff’s damages exceed \$75,000.00 exclusive of interest and costs.

3. The Plaintiffs are foreign nationals from Costa Rica, Panama, or Ecuador. The Defendants are United States corporations.

4. Certain of the Defendants maintain facilities in the District of Delaware and conduct business in the District. Defendants Shell Oil Company, Dow Chemical Company, Dole Foods Company, Inc., Standard Fruit Company and Standard Fruit and Steamship Company are incorporated in Delaware and were when the acts and/or omissions and/or other operative facts occurred that gave rise to the Plaintiffs’ causes of action set forth below.

III. BACKGROUND

5. Workers on banana-growing plantations in Costa Rica, Ecuador, and Panama, among other countries, injected 1, 2, dibromo 3, chloropropane “DBCP” into the soil or sprayed DBCP over the fields to protect against microscopic worms called nematodes that dwell in cultivated soils. The laborers wore no gloves, protective covering, or respiratory equipment to prevent skin absorption or inhalation of DBCP because no Defendant ever informed them that

they were in danger and because no Defendant provided protective clothing or equipment to these workers, some of whom are Plaintiffs in this case.

6. Moreover, the fumes and vapors from DBCP released during the application of the chemical exposed everyone in the vicinity. Unknown to the workers as well as bystanders in the vicinity of the fumes and vapors, each breath they took after workers mixed DBCP or injected it into the ground or sprayed it over the banana fields became a health hazard. The fumes and vapors released by the chemical remained trapped under the canopy created by the large impermeable banana leaves which cut off almost all ventilation and drifted throughout the banana plantation exposing anyone working in the vicinity. The banana leaves formed a virtually impermeable ceiling in the fields that trapped humidity, moisture, and the fumes and vapors from DBCP in the breathing zones of all those present under the banana leaf canopy (think of fish steamed in a banana leaf – the banana leaf’s impermeable character traps the steam and moisture that cooks the fish).

7. In addition to inhaling the fumes and vapors released from the handling and application of DBCP, workers who handled DBCP sustained exposure through their skin when DBCP splashed on them in the course of filling their canisters, or when their injectors hit rocks or other objects causing the injection of DBCP to spray into the air and onto their person. Many workers absorbed so much DBCP each day that their urine would give off the smell of the chemical at night.

A. Effects - Sterility

8. Among other adverse health effects, the affected Plaintiffs suffer from various degrees of sterility. Their bodies produce little or no sperm and the sperm that is produced is often deformed and/or inactive. Men whose testes produce no sperm are termed azoospermic;

men who produce fewer sperm than normal are oligospermic. Even a man with a normal sperm count level may have slow moving, deformed, or stunted sperm as a result of DBCP exposure that compromises his reproductive capacity and renders him effectively infertile.

B. Effects – Cancer

9. The United States Environmental Protection Agency (“EPA”) lists DBCP as a probable human carcinogen and has done so since at least 1976. The National Cancer Institute (“NCI”) lists DBCP as one of the most potent known carcinogens. NCI tests have demonstrated that DBCP induces cancer in a wide range of organs and sites, generally at the lowest dose tested and as a result is regarded as a multi-site carcinogen which means it is capable of causing cancer in multiple locations and organs in the human body.

C. Effects - Other Health Hazards

10. DBCP has been linked to a variety of birth defects and is a suspected cause of miscarriages in women who have sustained repeated exposures. Women working on plantations who sustained exposure to DBCP or who attempted to conceive with a man who had been exposed to DBCP have reported several consecutive miscarriages. Medical and scientific research has revealed that in addition to causing sterility, DBCP can cause damage to the cornea in exposed persons and can compromise a person’s renal system, respiration system, can cause chronic skin disorders, as well as testicular atrophy, impotence, headaches, and chronic stomach ailments.

D. Effects – Environmental Harm

11. Environmentally, DBCP is regarded as a highly persistent and mobile pesticide. DBCP decomposes slowly in soil. Studies show that DBCP remains in soils for years and is able to migrate through certain soils to groundwater. DBCP is chemically stable in water, even in

very small amounts, and persists in water for years. DBCP has also been reported as a low-level air contaminant. DBCP has been widely found as a contaminant in ground and surface water in California, Hawaii, and elsewhere in the United States and abroad. In California and Hawaii, municipalities have recovered hundreds of millions of dollars from The Dow Chemical Company, Shell Oil Company, Occidental Chemical Corporation, and AMVAC Chemical Corporation, the principal manufacturers of DBCP, for the costs related to remediation of DBCP-contaminated water supplies.

E. Testing for Hazards – Dow and Shell’s Early Discoveries

12. What little pre-market toxicology research that was done on DBCP was conducted in or around 1958 by Dow's company doctor, Dr. Ted Torkelson, and by Shell's consultant, Dr. Charles Hine of the University of California Medical School in San Francisco. In testing DBCP on rats, both labs found that DBCP caused retarded growth, organ damage, shrunken testes, and sterility. In an April 1958 "confidential report," Dr. Hine, working for Defendant Shell, wrote that *"among the rats that died, the gross lesions were especially prominent in lungs, kidneys, and testes. Testes were usually extremely atrophied."* Emphasis added. Dow's first in-house report came three months later, in July 1958, and concluded that DBCP was *"readily absorbed through the skin and high in toxicity in inhalation."* Dow's data also showed that *"liver, lung and kidney effects might be expected"* and that *"testicular atrophy may result from prolonged, repeated exposure."* Emphasis added.

13. When scientists working for Dow informed corporate decision makers of evidence that DBCP caused a series of health problems, Dow intentionally played down the health risks and resisted warning about DBCP's dangers because of the negative effect Dow believed it would have on sales of DBCP. DBCP was actually entered in the toxicology card

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