

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

LUIS ANTONIO AGUILAR MARQUINEZ, *et al.*,

Plaintiffs,

v.

DOLE FOOD COMPANY, INC., *et al.*,

Defendants.

Civil Action No. 1:12-cv-00695-RGA

(Consolidated with 00696, 00697, 00698,  
00699, 00700, 00701, 00702)

**PLAINTIFFS' OPPOSITION TO MOTION BY DEFENDANTS SHELL  
OIL COMPANY, THE DOW CHEMICAL COMPANY, OCCIDENTAL  
CHEMICAL CORPORATION, AND AMVAC FOR SUMMARY JUDG-  
MENT AS TO ECUADORIAN PLAINTIFFS**

## Table of Contents

Table of Contents .....	ii
Table of Authorities.....	iii
Introduction.....	1
Nature and Stage of the Proceeding.....	1
Summary of the Argument.....	2
Argument .....	3
I. Ecuador Constitutional and Organic Law does not impose any time limitation on Plaintiffs' claims and supersede the Ecuador Civil Code. ....	4
II. Even under Defendants' approach, the Delaware limitations period applies.....	9
A. The Borrowing Statute is applied by comparing the time periods specified by the Delaware and foreign statutes. ....	9
B. Defendants authority does not support their position. ....	13
III. There are sufficient facts to determine Plaintiffs were diligent in pursuing their claims—especially because Defendants have not put forth any evidence that Plaintiffs knew of their claims let alone anything so conclusive to preclude a genuine issue of material fact. ....	16
Conclusion .....	17

..

## Table of Authorities

### Cases

<i>American Sur. Co. of New York v. Gainfort</i> , 219 F.2d 111 (2d Cir. 1955) .....	13
<i>Argentine Republic v. Amerada Hess Shipping Corp.</i> 488 U.S. 428 (1989).....	8
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	5
<i>Brown v. E.I. duPont de Nemours &amp; Co.</i> , 820 A.2d 362 (Del. 2003) .....	16, 17
<i>Burpulis v. Director of Revenue</i> , 5498 A.2d 1082 (1985).....	11
<i>Chavez v. Dole Food Co., Inc.</i> , 836 F.3d 205 (3d Cir. 2016).....	1
<i>De Adler v. Upper New York Inv. Co. LLC</i> , 2013 WL 5874645 (Del. Ch. Oct. 31, 2013).....	10, 14
<i>Department of Homeland Sec. v. MacLean</i> , 574 U.S. 383 (2015).....	10
<i>Dow Chem. Corp. v. Blanco</i> , 67 A.3d 392 (Del. 2013) .....	1, 7
<i>Dow Chemical Corp. v. Blanco</i> , 67 A.3d 392, 394 (Del. 2013) .....	8
<i>Frombach v. Gilbert Assocs.</i> , 236 A.2d 363 (Del. 1967) .....	13
<i>Furnari v. Wallpang, Inc.</i> , 2014 WL 1678419 (Del. Super. April 16, 2014) .....	11
<i>Gonzalez v. Sec’y of Dept. of Homeland Sec.</i> , 678 F.3d 254 (3d Cir. 2012).....	17
<i>Husband B. v. Wife B.</i> , 396 A.2d 169 (Del. Super. Ct. 1978).....	8
<i>In re Asbestos Litig.</i> , 673 A.2d 159 (Del. 1995) .....	16
<i>Jones v. USPS Postal Service</i> , 2018 WL 324730 (D. Del. Jan. 8, 2018) .....	5
<i>Jutrowski v. Township of Riverdale</i> , 904 F.3d 280 (3d Cir. 2018) .....	5
<i>Lujan v. Nat’l Wildlife Fed’n</i> , 497 U.S. 871 (1990).....	17
<i>Marquez v. Dow Chemical Co.</i> , 183 A.3d 704 (Del. 2018) .....	1, 7, 8
<i>May v. Remington Arms Co.</i> , 2005 WL 2155229 (Del. Super. Ct. Aug. 31, 2005).....	14, 15
<i>Nationwide Mut. Ins. Co. v. Krongold</i> , 318 A.2d 606 (1974) .....	11, 12
<i>Oneida Motor Freight, Inc. v. United Jersey Bank</i> , 848 F.2d 414 (3d Cir.1988).....	7
<i>Pack v. Beech Aircraft Corp.</i> , 132 A.2d 54 (1957) .....	9
<i>Pallano v. AES Corp.</i> , 2011 WL 2803365 (Del. Super. July 15, 2011) .....	4, 10
<i>Plumb v. Cottle</i> , 492 F. Supp. 1330 (D. Del. 1980) .....	9
<i>Strassman v. Essential Images</i> , 2018 WL 5718286 (M.D. Pa. Nov. 1, 2018) .....	5
<i>TL of Florida, Inc. v. Terex Corp.</i> , 54 F. Supp. 3d 320 (D. Del. 2014).....	10
<i>Vichi v. Koninklijke Philips Elecs. N.V.</i> , 2009 WL 4345724 (Del. Ch. Dec. 1, 2009) .....	10
<i>Youell v. Maddox</i> , 692 F. Supp. 343 (D. Del. 1988).....	12

...

**Statutes**

10 Del. Code § 8119 .....	1, 2, 4, 7
10 Del. Code § 8121 .....	1, 2
Article 2235 of the Ecuadorian Civil Code.....	3, 9

**Rules**

Fed. R. Civ. P. 8(c) .....	5
----------------------------	---

### Introduction

The Ecuadorian Plaintiffs (“Plaintiffs”) in these consolidated cases respectfully file this Opposition to Motion By Defendants Shell Oil Company, The Dow Chemical Company, Occidental Chemical Corporation, and AMVAC For Summary Judgment As To Ecuadorian Plaintiffs (D.I. 356). Defendants’ motion should be denied, for the same reasons that a companion Motion by Dole For Summary Judgment As To Ecuadorian Plaintiffs (D.I. 334) should be denied. Under the Delaware Borrowing Statute, 10 Del. C. § 8121, there is no basis for using the Ecuador limitations statute to bar Plaintiffs’ claims.

Defendants maintain that their Motion “fulfills Delaware’s ‘well recognized and legitimate public purpose’ to bar ‘ancient claims.’” D.I. 356 at 2 (citation omitted). But the Delaware Supreme Court has already rejected Defendants’ arguments to dismiss Plaintiffs’ claims under the Delaware limitations statute, Del. Code § 8119, in *Dow Chem. Corp. v. Blanco*, 67 A.3d 392 (Del. 2013), and *Marquinez v. Dow Chemical Co.*, 183 A.3d 704 (Del. 2018). Plaintiffs’ claims are timely under the Delaware limitations statute, and Delaware public policy favors entertaining those claims. Indeed, the *en banc* Third Circuit has instructed (in an appeal of a related case) that DBCP litigation should proceed expeditiously. *Chavez v. Dole Food Co., Inc.*, 836 F.3d 205, 234 (3d Cir. 2016) (*en banc*) (“We revive this litigation now, more than two decades after it began, while expressing our sincerest hope that it proceeds with more alacrity than it has to the present date.”). Plaintiffs are entitled to their long-delayed day in court.

### Nature and Stage of the Proceeding

Plaintiffs worked on banana plantations in Ecuador, where they were exposed to a toxic pesticide called dibromochloropropane (DBCP), which causes sterility, cancer, and sexual and reproductive abnormalities. DBCP was suspended for use in the United States in 1977 and banned for all purposes in 1985 because of the harms it causes. Still, Defendants continued to expose Plaintiffs to DBCP without adequate protective equipment or precautions, which caused grievous injuries to their health. Plaintiffs sued in this Court on June 1, 2012.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.