

**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**

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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 *Marquez 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.

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