

[PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 19-13926

ANTONIO GONZALEZ CARRIZOSA, et al.,

Plaintiffs,

DOE 378,
LUDY RIVAS BORJA, as daughter and successor
to DOE 840 (deceased),
ANA OFELIA TORRES TORRES,
PASTORA DURANGO,
GLORIA EUGENIA MUNOZ,
JOSE LOPEZ 339,
JUANA DOE 11 and MINOR DOE 11A,
JUANA PEREZ 43A,
JANE DOE 7,
JOHN DOE 7, individually and as representative
of his deceased son JOHN DOE 8,

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JUVENAL ENRIGUE FONTALVO CAMARGO,
NANCY MORA LUMUS,
SARA MATILDE MANJARRES,

Plaintiffs-Appellants
Cross-Appellees,

versus

CHIQUITA BRANDS INTERNATIONAL, INC.,

Defendant-Appellee
Cross-Appellant,

CHIQUITA FRESH NORTH AMERICA LLC.,
a Delaware Corporation, et al.,

Defendants,

KEITH E. LINDNER,
CHARLES KEISER,
CARLA A. HILLS, as representative of the Estate
of RODERICK M. HILLS, SR.,
CYRUS FRIEDMAN,
ROBERT F. KISTINGER,
ROBERT W. OLSON,

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WILLIAM A. TSACALIS,

Defendants-Appellees
Cross-Appellants.

DOES 1 THROUGH 976, et al.,

Plaintiffs,

DOE 378,

LUDY RIVAS BORJA as daughter and successor
to DOE 840 (deceased),

Plaintiffs-Appellants,
Cross-Appellees.

Appeals from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:08-md-01916-KAM

Before JORDAN, NEWSOM, and ED CARNES, Circuit Judges.

JORDAN, Circuit Judge:

This appeal arises from a massive and complex multi-district litigation proceeding based on claims—brought in part under the Torture Victim Protection Act, 28 U.S.C. § 1350 note, and Colombian law—that Chiquita Brands International and some of its executives provided financial support to the Autodefensas Unidas de Colombia, which murdered thousands of persons in Colombia. In a dozen bellwether cases, the district court issued a comprehensive order granting summary judgment in favor of the defendants. After excluding some of the plaintiffs’ evidence, the court ultimately concluded that the plaintiffs “fail[ed] to identify any admissible evidence” in support of their allegations that the AUC had killed their respective decedents. *See* D.E. 2551 at 71.

On appeal, the plaintiffs argue that the district court abused its discretion in excluding much of their evidence and that genuine issues of material fact precluded summary judgment on their claims. The individual defendants cross-appeal (1) the order denying their motion to dismiss the plaintiffs’ TVPA claims, and (2) the ruling that one individual defendant, Carla Hills (as personal representative of the Estate of Roderick Hills), waived her personal jurisdiction argument. As to the TVPA claims, the individual defendants argue that the allegations in the complaint were insufficient under Rule 12(b)(6). Ms. Hills, for her part, contends that she timely raised her personal jurisdiction objection.

Following oral argument and a review of the extensive record, we affirm in part, vacate in part, reverse in part, and dismiss in part. With respect to the evidentiary rulings, we conclude that the

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district court got some right and some wrong. As to the merits, we hold that most of the bellwether plaintiffs presented sufficient evidence to withstand summary judgment with respect to whether the AUC was responsible for the deaths of their decedents. On the cross-appeals, we do not reach the arguments presented by the individual defendants and Ms. Hills.¹

I²

Between 1997 and 2004, Chiquita Brands International paid over \$1.7 million to the AUC, a paramilitary group designated as a foreign terrorist organization by the United States Secretary of State. During this time, Colombia was in the midst of a civil war between paramilitary groups, like the AUC, and guerillas. “[T]he AUC was closely aligned—and even intertwined—with the Colombian [government] through its ideologies and practices that revolved around their shared goals of eliminating the ‘subversive’ threat posed by guerrilla groups.” D.E. 2346-5 at 1. *See also* D.E. 2346-1 at 2. The AUC “controll[ed] territory by terror,” App. 8531, and was well known for perpetrating violence not just against

¹ We thank the district court for its extensive work and thorough opinion in this complex MDL proceeding.

² In citing to the voluminous record, we refer to docket entries wherever possible, but occasionally cite to the appendices filed by the plaintiffs. Although the plaintiffs filed certain documents under seal, they have referred to and quoted from several of those sealed documents in their publicly-filed briefs. So we, too, use those portions of the sealed filings to the extent we find it necessary.

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