

# Bad smell in L.A. Nemagon Ruling

*An interview with writer Vicent Boix*

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## Introduction

More than 15 years have gone by since former banana workers affected by DBCP—Nemagon or Fumazone—began to take their first steps to get the transnational corporations that have produced, sold and applied this mortally toxic agrochemical to take responsibility for tens of thousands of resulting sicknesses and deaths.

It has been a long history of struggle and hope, one that was a symbol of resistance in the face of transnational power and its exploitative economic model. But it was also a history of divisions, fights, and insults among the groups of affected workers, lawyers, and politicians which, in the end, weakened the process of achieving worker demands.



*Many former banana workers, victims of the pesticide Nemagon, live in this camp in Managua to draw attention to their plight.*

In 2007, a jury of the Superior Court of Los Angeles, CA, found two U.S. transnational corporations, Dow Chemical Company and Dole Fruit Company, Inc., responsible for causing sterility of Nicaraguan workers because of direct exposure to Nemagon and awarded US\$3.3 million to six of 12 claimants.

Then, in a second historic decision, Dole was asked to pay an additional US\$2.5 million to five of the six in punitive damages. However, this second damage award was thrown out by Judge Victoria Gerrard Chaney. The workers' U.S. attorney Juan Jose Dominguez, and his collaborator in Nicaragua, Antonio Hernandez, have appealed that decision.

Because of these historic decisions, the lawyers decided to present other cases in Los Angeles, but

what happened was catastrophic.

To try to understand this very complicated and unexpected situation which could put an end to the hopes of thousands of affected workers, I talked with Vicent Boix, a writer and journalist who recently published the book El parque de las hamacas (The Park of the Hammocks), the story of the painful and combative history of the former banana workers of Nicaragua and Central America.

## Interview:

**Q. Last week [April 21, 2009] Judge Victoria G. Cheney decided to throw out two cases [Mejia vs. Dole Food and Rivera vs. Dole Food] related to banana workers affected by Nemagon, saying that there was fraud and attempted extortion, presentation of false evidence and the organization of a machinery to falsify reality and that the Nicaraguan judicial system was involved. How much consideration does this decision merit?**

The decision of Judge Chaney is important because it creates a precedent for DBCP cases. It foments skepticism among other judges who could have cases come before them related to this chemical and, in general, it can influence other cases not related to DBCP where the plaintiffs come from the Global South. For that reason, I believe that this ruling cannot be seen as an isolated case, but rather should be thought of as one that can impact future cases.

Since the 1980s, numerous claims related to DBCP have been initiated in the United States. All moved ahead normally and with respect for the ones supposedly affected and for their countries. In the 1990s, there were cases heard in the U.S. brought by more than 20,000 workers and never did a U.S. judge see the “ghosts” that Judge Chaney saw. This judge, in these two cases, which included only 80 plaintiffs, saw a grand conspiracy.

**Q. Do you see anything strange in this case? For example in the attack on Nicaraguan Special Law 364 [which established a legal procedure under which former banana workers could sue companies for damages to their health]?**

One of the things that most calls out for attention is that the judge not only threw out two cases from the Los Angeles court, but she also attacked open cases in Nicaragua and insulted some of the judges, calling them corrupt. I don't know what proofs she might have to go so far.

Her interpretations of the facts about Law 364 are erroneous and they make me think that she did not read the rulings handed down by Judge Socorro Toruño of the court in Chinandega. If she had read them, she would have realized that the companies could have defended themselves but they did not deposit the surety required by the law. She would have realized that evidence could have been presented over a period of months and the case actually dragged on for years.

**Q. She referred to 27 witnesses who testified behind closed doors for security reasons because they received threats. They all said that they were prepared and trained to give false testimony in court, that they never were banana workers, and that the lab analyses were falsified...**

This is another curious aspect of this case. We should first mention that this whole proceeding was in secret, due to the fact that the companies convinced the judge that the 27 witnesses had been threatened. This indicates that they remained anonymous and also that attorney Juan Jose Dominguez and his associates could not defend themselves in normal conditions. I am surprised that so much credit could be given to these anonymous witnesses. It is of fundamental importance to know who they are because the attempts by Dole to wheedle supposedly affected banana workers are public and notorious.

**Q. What are you referring to?**

One of the best known cases was the change in attitude of the leadership of ASOTRAEXDAN, the organization of affected workers that in the past was the most committed and combative. They went from organizing giant marches and sit-ins to sitting down at the same table with Dole.

But there is still another case that cries out to the heavens. On June 9, 2006, Joe Fisher II, a district court judge in Jefferson County, Texas, issued an order to stop the contacts that Dole was having with affected workers in Nicaragua who had signed on with the law firm Provost and Umphrey. Dole was trying to convince them to withdraw their suit and instead urge the repeal of Law 364. Judge Fisher recognized that Dole should not be negotiating with affected workers who had lawyers representing them. Are any of these 27 anonymous witnesses in that situation? What if they are part of ASOTRAEXDAN?

Judge Chaney definitely did not take into account these factors which demonstrate just how far Dole is willing to go to get its way. Several affected workers protested in Nicaragua that Dole kept contacting them. These omissions are incredible; the judge should not have ignored this evidence.

**Q. Do you believe, then, that Dole has a definite strategy for getting out of these cases that have been tormenting the company for decades?**

It's nothing more than a suspicion since I can't corroborate it. Evidently Dole finds itself with the water up to its neck. The legal battle over DBCP was practically lost [for the workers] in the 1990s, but in recent years the workers and their lawyers were achieving very important advances, in Nicaragua and in the United States. Besides, we have to take into account that there are suits by Costa Ricans, Hondurans, Panamanians, Africans, etc. That's why the ruling by Victoria Chaney has international implications. All of the facts, if you analyze them, have a logical sequence and just one objective: to sink the legal cases.



*Judge Victoria Chaney ruled in favor of Dole in April.*

**Q. Judge Cheney has begun to send reports to other judges who are working on other cases related to Nemagon in other cities, such as in Miami, where a case was put on hold. Could her ruling put an end to all the suits?**

I hope not. And actually, I see this as an unmistakable sign that Dole feels it is losing the DBCP battle. I presume that an appeal can be made because, as I said, this first ruling has some very strange aspects.

**Q. How much weight should be given to the fact that in recent**

**years the struggle of the banana workers has been in the hands of lawyers and not of those who were affected by the pesticide?**

I believe that success in the DBCP case has always been fought on two fronts. One was formed by the lawyers who kept up the fight in their offices and in the courts. The other front was the workers' struggle, the objective of which was to maintain cohesion, get news to the media, internationalize the struggle and, above all, stay alert at times when the struggle was at risk. In that setting, the workers in Nicaragua defended, for example, Law 364 from all attempts to repeal it.

Sadly, right now there is no group of organized affected workers and it is noticeable. If one existed, it could dialogue with and pressure the government to react to the surprising and denigrating declarations of Judge Chaney. Also, an organization could have garnered the support of Nicaraguan civil society.

**Q. The struggle of the Nicaraguan banana workers has gone around the world, but right now it seems that there is not much interest in the media, in society, or in the political sphere, in what just happened in the US.**

It is lamentable how the banana workers have been abandoned in their own country. Nicaragua is living through a period of collective catharsis, due to the serious confrontation between the Sandinista Front and the other political forces. This fratricidal dispute is damaging the image of the country and feeding declarations such as that made by Judge Chaney.

I am surprised by the silence of civil society which before gave support to the DBCP struggle. I fear that certain sectors of the opposition, especially some socio-political organizations, have kept silent about Cheney's statements because what the California judge said goes in the same direction as what they are saying. Nevertheless, the victims of this whole mess are the workers affected by Nemagon. The silence [of civil society] affects them [the workers].

**Q. What role should the Nicaraguan state play at this moment?**

The administration of Daniel Ortega should have reacted quickly to the decisions of a judge who not only closed off the options for justice for thousands of Nicaraguans who were exposed to a proven poison, but who also seriously insulted Nicaraguan institutions and laws.

**Q. The subtitle of your book is "The chemical that hits the poor." Is it the poor who are hit the hardest in this new chapter of the history of Nemagon?**

It is. Once again, the poor were the most affected in this long story. In the 1990s, U.S. Senator Patrick Leahy, who knows about the DBCP cases, said publically that the countries of the Global South were treated like garbage dumps and their people like guinea pigs. Starting today and thanks to Judge Chaney, along with being guinea pigs, the affected workers are considered corrupt fraudsters.

## **Nicaraguan banana workers win case, in Venezuela!**

The Supreme Court of Venezuela (Civil Panel) has ordered the Venezuelan subsidiaries of Shell Chemical Company, Dole Food Company, and Dow Chemical Company to pay compensation to 98 former banana workers who worked on 16 Nicaraguan banana plantations for damage to their health resulting from exposure to the pesticide DBCP, also known as Nemagon and Fumazone. The ruling was made based on a procedure under which the Venezuelan court can enforce a ruling made by a foreign court. In this case the court was the Second District Civil Court of Managua, presided over by Judge Vida Benavente whose decision dated from 2004. The Venezuelan court ruling was issued on May 4.

Former banana workers who hope to benefit from the decision expressed joy at the news. They have been represented by the law firm of Walter Gutierrez and his lawyers Angel Espinoza and Boanerges Ojeda. Benjamin Chavez, a leader of the group, said that it was a historic decision that means that justice has arrived for the victims. The Venezuelan court decision, written by Justice Luis Ortiz, accepted the argument of the Central Americans that, while the companies involved had no assets in Nicaragua, they could be required to pay plaintiffs with assets in Venezuela.