

BY DAVID HECHLER

The Kill Step

Dole had lost toxic torts trials in two countries. But its GC smelled fraud.

IT WAS THE FIRST TRIAL C. MICHAEL CARTER EVER ATTENDED, AND IT FELT LIKE A NIGHTMARE. As general counsel of The Dole Food Company, Inc., he had refused to settle claims with 54 Nicaraguan plantation workers who alleged that they were injured by a pesticide decades earlier. His trial counsel had knocked out all but a dozen claims. But the testimony dragged on for four-and-a-half months in a Los Angeles county court known for plaintiff-friendly verdicts. And the witnesses, he felt certain, were lying.

The plaintiffs in the *Tellez v. Dole* trial, which began in July 2007, claimed they'd been rendered sterile while working on Dole's banana plantations in Nicaragua 30 years earlier. The cause, they said, was a pesticide called dibromochloropropane, or DBCP, which *has* been linked to male sterility. Dole, based in Westlake Village, California, had settled thousands of claims over the years. But Carter didn't believe the men on the witness stand had ever even worked for Dole. Yet—and this was part of the nightmare—he couldn't be sure. The company's records in Nicaragua were destroyed sometime after 1979, when the Sandinistas took over the country and Dole eventually fled.

The *Tellez* (pronounced Tay-yez) jury believed some of the men. They came back with a liability finding for six of them and awarded \$5 million in damages (including punitives). But right after the trial was over, like a scene from an overwrought Hollywood drama, a mystery witness for the defense appeared. He told investigators in Nicaragua that the case against Dole was essentially a scam, prompted and shaped by rogue plaintiffs lawyers. Dole quickly flew the witness to Los Angeles. Following days of intense negotiation, however, he refused to tell his story to the judge.

In response to posttrial motions, the judge reduced the \$5 million verdict to \$1.6 million, found for the defense on one of the six plaintiffs, and granted a new trial to a second. Dole's lawyers from Jones Day claimed victory, but Carter wasn't celebrating. "I took it personally," he says, "There was no way we should have lost this case."

His ordeal wasn't over. The trial was merely the first of three test cases the judge had scheduled to establish settlement values for hundreds of plaintiffs waiting in the wings. Thousands of similar claims were pending in Costa Rica, Ecuador, Panama, Honduras, Guatemala, Ivory Coast, and Hawaii. But Nicaragua was the big one, and not only for the number of claims. Legislation there had tilted the scales in favor of plaintiffs and helped them win a dozen DBCP cases against Dole resulting in judgments totaling more than \$2 billion. Though at press time they still hadn't collected anything (and Dole has no assets in Nicaragua), plaintiffs have asked a federal judge in Miami to enforce a judgment of \$98.5 million. If they succeed, more are sure to follow.

PHOTOGRAPHY BY MAX S. GERBER



C. Michael Carter, Dole's GC, sat through a trial that went against his company, then decided to attack the allegations head-on.



Hired to manage Dole's pesticide litigation, Rudy Perrino soon realized the company was better off trying cases in the U.S. rather than Nicaragua.

The 2007 verdict was especially troubling because it was the first test of Carter's new strategy. Faced with what looked like a stacked deck in Nicaragua, he'd shifted course. Instead of litigating exclusively in the countries where plaintiffs live, as Dole and the other defendants had been doing, this time he tried a case in the United States—the first DBCP claims involving foreign workers to reach a verdict here—and lost.

It was at this low point that the breakthrough seemed to occur when the mystery witness appeared. Witness X (as he was dubbed) told a Dole investigator in Nicaragua that two plaintiffs who testified had never worked on a banana

plantation. Then he refused to testify.

For Carter this final blow was devastating—but also galvanizing. It confirmed his suspicions, and convinced him to confront the allegations head-on. It was time to go for “the kill step,” as Carter calls it. So Carter and his litigation chief brought in new outside counsel, reexamined all their old assumptions, and developed a new approach. The result was a complete turnaround. Dole's new team secured blockbuster evidence proving that claims in the pending L.A. cases were manufactured by lawyers. The turning point was a deposition in which one of the plaintiffs actually admitted that he'd memorized his testimony in his lawyer's office.

At the end of a dramatic three-day hearing in April, Los Angeles superior court judge Victoria Chaney, who had

presided over the Tellez trial, left no doubt what she thought of the plaintiffs' case. “Each and every one of the plaintiffs have presented fraudulent documents and actively participated in a conspiracy to defraud this court,” she declared, dismissing the two cases with prejudice. Dole's lawyers used the evidence, and Chaney's ruling, to try to overturn the 2007 jury verdict, and to block plaintiffs from collecting the Nicaraguan judgment in Florida. (Decisions were still pending at press time.)

The story of Dole's stumble and recovery is quite a tale. Not only does it sound like surefire movie material, the Tellez trial has already made it there—though not in the way the company would have chosen. A Swedish filmmaker's documentary about the case was screened at the Los Angeles Film Festival in June—two months *after* the judge's finding of fraud undercut the verdict. Yet the film essentially ignored this development, prompting Dole to sue for defamation [See “Movie About a Lawsuit Turns into a Lawsuit,” page 85].

Beyond the drama, however, the story raises important issues in international jurisprudence. As multinationals litigate far from headquarters, the doctrine of *forum non conveniens* allows litigants to move cases to convenient (or advantageous) locations. But sometimes parties engage in international forum-shopping, and some countries have enacted retaliatory legislation.

Dole's pesticide cases are also forcing courts to confront a question with political implications. If plaintiffs win judgments in countries in which the defendants have no assets, when should courts in other countries enforce those judgments, and when should they refuse? “These are very important topics—and were long before these cases appeared,” says Alejandro Garro, an adjunct professor at Columbia Law School who specializes in international and comparative law. “And the reason they're getting a lot of attention these days,” he adds, “is because the administration of law is becoming more and more globalized.”

IN THE BEGINNING, long before Nicaragua and bananas, Dole was all about Hawaii and pineapples. James Dole was 24 and fresh out of Harvard (with a degree in agriculture) when he founded the Hawaiian Pineapple Company in 1901. He began with 60 acres north of Oahu. Two years later, he packed almost 2,000 cases of canned pineapples, and he was on his way to transforming what had been an exotic fruit into a household brand.

Dole is now the world's largest producer of fruits and vegetables. Over the years it merged with Castle & Cooke, Inc. (now a separate land and real estate company), and in 2003 was taken private by longtime CEO and chairman David Murdock, who owns both companies. (In August, Dole announced that it was going public again.) Its net income last year was \$122.8 million on net revenue of \$7.6 billion. Banana plantations in Latin America, which Dole acquired when it bought the Standard Fruit Company in the 1960s, continue to be a major revenue stream. When production was threatened by a microscopic worm that attacks the roots of banana trees, Dole began spraying the trees with DBCP.

At the time it was perfectly legal, but complaints began to surface. A 1977 study of men who worked for DBCP manufacturers found that regular exposure left some of them sterile. The Environmental Protection Agency suspended its use in 1977, and banned it in the United States in 1979. Four years later, six men who worked at a Lathrop, California, plant of Occidental Chemical Company, which processed DBCP, won a \$4.9 million judgment against The Dow Chemical Company, which supplied the product. It was the first DBCP trial in the United States, and the result spawned more lawsuits against manufacturers. Soon enough, plaintiffs lawyers, looking for additional deep pockets, widened their focus to include users of the pesticide.

Dole insists that it adhered to EPA guidelines, and did not use DBCP in the

U.S. after it was banned. Yet it did use the chemical longer than other companies—and didn't stop entirely in Nicaragua until 1980 (two years before it pulled its banana production from the country). After the pesticide was suspended, Dow discontinued shipments. But in a move that later proved problematic, Dole demanded that the manufacturer continue to ship its remaining stock to Nicaragua and elsewhere—even agreeing to indemnify Dow against future claims. Rudy Perrino, the

in-house litigation counsel Carter hired in 2004 to help him manage the DBCP cases, calls the agreement “a plaintiff lawyer's dream.” Ever since Dole signed it, he says, it's been crucial to win before trial “so that the jury doesn't get carried away” by the agreement.

Dole does not acknowledge that any of its workers have been injured by DBCP. But Dole *has* settled claims; Perrino calls it “a business decision.” In 1992 Dole settled for \$21 million with 1,000 Costa

Movie About a Lawsuit Turns into a Lawsuit

THE MOVIE *BANANAS!** (NOT THE EARLY Woody Allen flick with a similar name) arrived with that asterisk attached. An asterisk usually signifies controversy ahead, or, see additional information. In this case, it's both.

The film, which had its world premiere at the Los Angeles Film Festival in June, is a documentary about the 2007 Tellez trial. Much of it focuses on attorney Juan Dominguez and the background of the plaintiffs' claims. Swedish filmmaker Fredrik Gertten follows the personal injury lawyer as he flies to Nicaragua to meet the men who will become his clients. Dominguez talks to old hands who explain how DBCP (“the poison,” they call it) was applied, and together they view old movie footage that purports to illustrate the process.

Back in Los Angeles, Gertten also shadows Duane Miller as the trial lawyer prepares to take on Dole's attorneys from Jones Day. The David-versus-Goliath contest reaches its climax when the jury finds for six plaintiffs, and then awards millions of dollars in punitive damages. Afterward, Dominguez and his staff dance in his office.

Only that wasn't quite the end of the story. By the time the film was ready for release, Judge Victoria Chaney had held the April hearing and stated: “The fraud that I have seen here has also contaminated each and every one of the plaintiffs in the Tellez matter.”

Yet the movie's Web site appeared unaffected by this development. Dole's lawyers began writing letters threatening the director and the film festival with lawsuits, based not on the film (which they hadn't been able to see) but on the trailer and promotional material on the Web site.

By the time the film was shown, Gertten had added text at the end that acknowledged Chaney's ruling and the allegations against Dominguez. The festival had removed *Bananas!** from the documentary competition and, following the screening, held a discussion about “the rights and responsibilities of activist filmmaking.” Dole still sued for defamation in July. Some of its sharpest criticism involves statements that stray far from the Tellez trial (which the film presents in a generally even-handed manner). For instance, the film opens with the funeral of a former banana worker whose death is attributed to DBCP. The main accuser is the man's youthful son—which is surprising since the lawsuit was about sterility.

Gertten defends his film as “balanced.” In a phone interview from Sweden, he said that the lawsuit was not only “crazy” and “unfair,” it was bad publicity for Dole: “It shows them as an old, bullying corporation.” He was surprised and puzzled by the company's reaction, adding: “I don't understand how they think.”

—D.H.



Dominguez addresses plaintiffs in Nicaragua.



Gibson, Dunn's Theodore Boutrous, Jr. (left), Scott Edelman, and Andrea Neuman were hired to handle what proved to be a conspiracy Edelman calls "unlike anything you expect in real life."

Rican plaintiffs who had brought suit in Texas. "Companies thought then that they could make these cases go away," explains Carter. Two years after that settlement, Dole was hit with 26,000 new claims filed in more than a dozen jurisdictions. Of the 26,000, Dole settled with 11,500 plaintiffs in 2006 on undisclosed terms that "the company couldn't turn down," says Perrino.

WHEN CARTER TOOK over as Dole's GC in October 2000, he had a lot on his plate—and was soon to have more. Three months after he arrived, Nicaragua enacted Special Law 364, which specifically targeted Dole's DBCP cases. A flood of lawsuits, and huge judgments, followed.

Carter knew he needed help. He wasn't a litigator; he considered himself an M&A lawyer. He'd begun his career working for the Wall Street firm Winthrop, Stimson, Putnam & Roberts (as it was then called), then spent 17 years as general counsel of Concurrent Computer Corporation and Pinkerton's, Inc.

As the caseload ballooned, Carter began looking for a specialist. Perrino had been a trial lawyer in the San Diego office of Gordon & Rees with experience in environmental and toxic tort litigation. (He'd once been cocounsel on a case with Duane Miller, the Sacramento lawyer who had won the first DBCP trial against Dow and would be the plaintiffs' lead trial lawyer against Dole in *Tellez*.) He's detail-oriented and "tough on himself," says Carter. And the two of them—Perrino, 42, and Carter, a youthful 66, both trim and fit—work well together.

Over the following two years Per-

rino attended a pair of trials in Nicaragua to see for himself how the new law worked. He quickly found out. The first was a 2005 trial that resulted in the \$98.5 million verdict that the plaintiffs are now trying to enforce in Miami. The following year plaintiffs recovered \$805 million. (Carter flew to Managua twice in 2007 to personally complain about the new law to President Daniel Ortega.)

In a sense, the money was the least of it—especially since Dole has vowed not to pay. What troubled its lawyers most was the process. The law required defendants to deposit in advance \$100,000 in U.S. currency per case, along with the equivalent of about \$15 million in Nicaraguan currency. That was the ante for the privilege of mounting a defense (though Dole has refused to pay these as well). On top of that, plaintiffs didn't have to prove causation. Men who claimed they'd worked on a Dole plantation and were sterile were presumed to have been injured by DBCP. The law set compensation at \$25,000–\$100,000 per plaintiff, depending on the level of impairment.

What really shocked Perrino, though, were the trials themselves. There was no pretrial discovery. Everything had to be completed during the trial, which was limited to 14 days. The defense had the first three to answer the complaint. Together the two sides had eight to present evidence. Since the parties didn't have to reveal much until then, and they could save a pile of evidence for their final day, the lawyers were forced to research on the fly. Then the judge had the final three days to issue a decision.

Only the judge could question witnesses. The lawyers submitted queries, which had to be framed as requests to admit the truth of statements. The judge was free to pick and choose, and witnesses didn't even have to explain their answers.

Perrino remembers the first time Carter sent him off to Nicaragua. "I'm an optimist," he told his boss, "but I think

we're going to lose this one." Carter had already decided that they were better off trying the cases back home; Perrino's experiences left no doubt.

That's what made *Tellez* so crushing. Carter was counting on U.S. courts and Jones Day, which had been working on Dole's DBCP cases for 15 years, to set things right. Though Dow was a code-fendant, Dole, with the reputation of its consumer brand at stake, took the lead. And Frederick "Rick" McKnight, managing partner of Jones Day's L.A. office, was the main lawyer.

McKnight still calls *Tellez* a victory. He managed to knock 54 plaintiffs down to a dozen (the others were dismissed as a result of shaky depositions or inadequate medical evidence). The jury awarded damages to half. And the final award—\$1.6 million—was far less than the plaintiffs lawyers' expenses, he says. It demonstrated "that these cases are not money makers" and set the stage for exposing the fraud. "Clearly there's a frustration that any of the plaintiffs would have gotten anything at all," McKnight adds. Still, "the results have to be viewed as very, very favorable."

To Carter, not so much. During the trial he had lots of time to think, and his instincts told him to prepare for a possible appeal. So partway through the trial, he hired Theodore Boutrous, Jr., of Gibson, Dunn & Crutcher as a special counsel and expert on punitives, and told him to work with the litigation team.

The move proved astute. Observing the trial made it easier for Boutrous to prepare the posttrial motion that convinced Chaney to throw out the punitive damages. Even before then, however, Carter found that he and his new lawyer saw the same things and spoke the same language. One plaintiff admitted that he'd had a child, and then he recanted. "How do you recant that you have a kid?" Boutrous wondered. The plaintiffs lawyers seemed to know a lot about DBCP, but they didn't seem to know their clients. "I just felt this was a fraud and a scam," Boutrous recalls. His instinct was to attack at its roots.

WITNESS X POINTED the way. He knew that two of the plaintiffs in *Tellez* had not worked on plantations, and he knew about the fraud, because Witness X himself was part of it. He'd worked for Juan Dominguez, the L.A. lawyer who, Chaney found, recruited many of the plaintiffs in Nicaragua. Witness X told Perrino that his work for Dominguez included recruiting and training plaintiffs.

Until recently, Dominguez was best known as a personal injury lawyer whose giant billboards, often seen on the backs of L.A. buses, link his smiling visage with four Spanish words: *ACCIDENTES* and, in smaller letters, *el mejor abogado* (the best lawyer). He has denied the allegations, and accused Dole's lawyers and investigators of bribing witnesses to lie about him and his Nicaraguan clients. Chaney has referred him to state and federal authorities, who are investigating his actions. Through

his lawyer, Michael McCarthy of Nemeczek & Cole, Dominguez declined a request for an interview.

It isn't clear why Witness X ultimately declined to testify. As he met with Dole's lawyers in L.A. and vacillated, he claimed he feared retaliation from Dominguez, who knew his identity, and he asked for money from Dole (for relocation and protection, he said). Plaintiffs lawyers accused Dole of attempting to bribe him. Dole's lawyers say they refused his requests, and Chaney found no evidence to support the charge.

What is clear, however, is that Witness X got the attention not only of the lawyers but of the judge. Chaney, who was recently elevated to the appeals court, acknowledged that the suggestions of fraud disturbed her, and she expressed a determination to explore the issue—and the bribery allegations—during discovery before the next trial.

Chiquita Redux?

LESS THAN A WEEK AFTER JUDGE VICTORIA CHANEY DISMISSED THE TOXIC TORT CASES against Dole, the company was sued in the same court by survivors of paramilitary attacks in Colombia. The plaintiffs were 73 heirs of individuals who were allegedly murdered by members of the United Self-Defense Forces of Colombia (AUC). Most of the victims were employed by Dole or its suppliers.

According to the complaint, Dole paid AUC (which the U.S. Department of State has designated a terrorist organization) for more than a decade. The "security services" the group provided allegedly included driving small farmers and leftist guerrillas out of the land on which Dole planted bananas; protecting the property from vandals; and preventing union organizing by intimidating, and sometimes murdering, labor leaders.

The complaint cites the March 2008 testimony of Salvatore Mancuso, the former AUC commander, who confessed as part of the "Justice and Peace" process Colombia established to disarm paramilitary groups. Mancuso has reportedly been extradited to the United States to face drug charges.

If the allegations have a familiar ring, they should. They are similar to those to which Chiquita Brands International, Inc., pled guilty two years ago ["Chiquita's Narrow Escape," December 2007]. There are also several important differences. Chiquita turned itself in to the U.S. Department of Justice, pled guilty, and paid a \$25 million fine. By contrast, Dole's Michael Carter denies the accusations on the company's Web site: "These terrorists have every reason to lie by making false allegations against international companies like Dole in order to minimize their own culpability and reduce their jail time."

The Justice Department declined to say whether it is investigating Dole. But it is interesting to note that the lawyer who aggressively defended Chiquita's actions, and managed to prevent any company officers from being charged, is now the United States attorney general: Eric Holder, Jr.

—D.H.

She also entered a protective order to ensure the man's safety.

As Dole's lawyers prepared for the pending cases, *Mejia v. Dole* and *Rivera v. Dole*, they seized on these developments and built a game plan: Find witnesses in Nicaragua; convince them to talk about the fraud the lawyers believed was rampant; use depositions and declarations to convince Chaney to issue orders of protection; and bring their testimony back to L.A. to kill the pending cases.

The plan also called for a change in firms. Carter liked Boutroux's approach, and he decided to meet with his Gibson, Dunn partners. Carter and Perrino considered their needs. High on their list: a lawyer to counter Duane Miller. In a quiet and almost unassuming way, Miller had controlled the courtroom, Carter says. Dole also needed a second lawyer who could convince witnesses to open up. And with a deadline approaching, they needed the lawyers fast. They found their lawyers in Gibson partners Scott Edelman and Andrea Neuman. Edelman connects with judges and juries, says Carter; Neuman gets people to relax and talk.

When Neuman arrived in Nicaragua in August 2008, she was accompanied by Perrino, a paralegal, and a partner. But time was running out. Chaney had set a discovery deadline in September. The lawyers were hoping to obtain evidence that would convince her to authorize a protective order.

Dole's investigators had been interviewing witnesses for many months—years, in fact—but none had been willing to attach their signatures for fear of retaliation. Neuman wanted to change that, but during her introductory coffee with company investigators in Chinandega, she could see that they were deeply skeptical. Yet that wasn't all she had in mind. She had ten days, and she also wanted to depose the plaintiffs' wives, hoping that their statements would raise questions about the credibility of their husbands.

It was almost too ambitious. But Neuman had come prepared. She'd studied the memos the investigators had written following their previous interviews, and

had drafted declarations incorporating the information on her laptop. Her plan was to have her team check these with the witnesses, correct any mistakes, and convince them to sign. If a witness hesitated out of fear, she advised her colleagues to offer them confidentiality until a protective order was in place. Convincing even one person, Neuman felt, might make the difference.

They got eight. Neuman also deposed five wives. "They were incredibly inconsistent with their husbands," she says. Together these might well have convinced the judge to grant the protective order; but as it turned out, the most important interview of all awaited her in L.A. a few days later.

His name was Francisco Donald Quiñonez, and he was a *Mejia* plaintiff. A handsome man dressed in a royal blue shirt, Quiñonez sat at a rectangular table in a crammed conference room in the law offices of Juan Dominguez. A videographer and a court reporter captured his testimony.

Toward the end of a long day of questioning, Neuman reviewed the man's employment history. Curiously, even after she asked him if he'd left anything out, the 45-year-old never mentioned working on a banana plantation.

Then Dominguez began questioning his client, and suddenly Quiñonez seemed to remember why he was there. He'd worked on the plantation for 12 years, he testified, performing irrigation work. But he couldn't recall the names of his team captain or coworkers.

Neuman didn't believe his story. But Quiñonez was a tricky witness. He'd described epileptic seizures and brain lesions that affected his mental acuity. He sometimes had difficulty answering the simplest questions, and even his own lawyer had grown irritated with him.

Neuman recognized the opportunity. Often in mass tort cases, she says, plaintiffs are barely acquainted with their attorneys because they've spent only a few minutes together. After a defense lawyer has deposed a plaintiff for several hours, "they know you better than they

know anyone else in the room." The key now was getting him to open up. She figured attacking would have the opposite effect. As Dominguez finished up, Neuman weighed her options.

When it was her turn, she decided to use praise. She complimented the detail he'd provided about his work. She asked if he'd had to study to remember. "Yes, I had to study," he said. She asked for details, and slowly, patiently, she drew it out.

He'd studied from a sheet of paper that had his dates of employment, the name of the irrigation captain, and details about the plantation "because I didn't know anything about that," he said. The sheet was provided by a "friend" whose name he claimed to have forgotten. Later he described writing down and memorizing information dictated by a "coworker" in Dominguez's law office in Chinandega. "She was reading it," he testified, "and I was writing it down—like a parrot, they say. Like a parrot."

FOR DOLE'S LAWYERS, it was the beginning of the Great Unraveling. "I thought it was definitely a turning point," says Neuman. "It's not very often that you get a witness to say he learned his entire testimony in his lawyer's office."

About three weeks later, Chaney authorized the protective order. Next, she extended discovery. And then, as she began reading the confidential depositions immediately after they were transcribed, she took the extraordinary step of ruling that the names and statements of what came to be called the "John Doe" witnesses would not be shared with Dominguez—in order to ensure the witnesses' safety.

As Dole's lawyers and investigators dug deeper, they uncovered a conspiracy that boggled their minds. (Perrino calls this the "holy shit factor.") Scott Edelman, who became Dole's lead trial lawyer, says: "We basically uncovered a whole industry that's unlike anything you'd expect to encounter in real life."

How did they convince the witnesses

to talk? Some were plaintiffs who felt abused by years of promises, says Edelman. One spoke of the “restless conscience” that wouldn’t let him sleep. Still others felt phony claims were a disservice to workers who really were injured. But none of that might have mattered, Edelman adds, without the protective order.

The eight declarations mushroomed. In the end 27 witnesses came forward, and most gave depositions. Chaney’s plans for a second and third trial morphed into a plan for a trial on the fraud issue, and then into an order to show cause why the two cases should not be dismissed.

That result was the hearing last April. Though the second of the three days of testimony was closed to the public and the press (in order to shield the identities of the 17 John Doe witnesses), *Corporate Counsel* obtained a redacted transcript.

The hearing laid out the conspiracy in exhaustive detail. Dominguez and his partner in Nicaragua, a lawyer named Antonio Hernandez Ordeñana, had hired captains to recruit plaintiffs with a promise that they would one day share the judgments. In order to “train” men like Quiñonez, who knew nothing about banana plantations, the lawyers and their team had prepared lectures, booklets, and videos to help their clients pass for actual workers. They even hired buses to take the men on “field trips” to plantations. And they charged their clients a small fee for these services—even though most were desperately poor and, after years of promises, still haven’t seen a dime.

Evidence backing up plaintiffs claims was faked, Chaney found. Documents purporting to be plantation captains’ sworn statements confirming that plaintiffs worked under them were mass produced in the Dominguez/Ordeñana law office. Laboratories reported the sperm counts of “sterile” men who had fathered numerous children since those tests. Men signed sworn statements denying the paternity of their own children. And, incredibly, they even had to pay for the documents.

Some witnesses testified that a Nicaraguan judge was not only aware of the conspiracy, she was a participant. Chaney found that the judge, who presided over the *Osorio v. Dole* trial (now the subject of the enforcement dispute in Florida), convened a meeting that included plaintiffs lawyers and advised them to vary the men’s sperm counts to make the evidence look more credible.

As Dole’s lawyers made headway in Nicaragua, Dominguez and company circled the wagons. They held rallies and broadcast radio spots exhorting the plaintiffs to stay strong, and to keep an eye out for Dole’s investigators. The face of one was plastered on a poster that urged citizens to report sightings. Another investigator was charged with criminal slander for “insulting” Ordeñana (a violation of Nicaraguan law) by accusing him of improprieties.

The lawyers continued to accuse Dole of bribing witnesses. Edelman and Neuman showed Chaney their passports to prove they weren’t in Nicaragua on the days they were accused of making payoffs. More recently, a John Doe witness named Irving Jacinto Castro Aguero told a *Los Angeles Times* reporter that Dole paid him \$200 in exchange for his testimony, though he added that it hadn’t influenced what he’d said. (Edelman says that, with the court’s approval, Dole bought the man lunch for \$22.37. And that was it.)

Dominguez and Ordeñana clearly got the worst of it. By the time of the April hearing, Chaney had ruled that the crime-fraud exception rendered the two lawyers fair game for discovery. The attorneys refused to sit for depositions, however, or make their staffs available. Six weeks before the hearing, Duane Miller’s firm sought to withdraw from the case, and two days later the court received a letter purportedly from the plaintiffs explaining why they’d fired Dominguez. (In a separate filing, Dominguez has accused the judge of harboring prejudice against him and preventing him from defending himself.) Dole opposed the withdrawal of Miller’s firm, which has not been

accused of wrongdoing, and Chaney granted the request only after the hearing. (Miller did not respond to messages seeking comment.)

FOR DOLE, the dismissals were an important victory. But Perrino knows that they have a long way to go. “These cases are far from gone,” he says. (And they aren’t the only lawsuits in the region that the company has to worry about [See “Chiquita Redux?,” page 87].) Even Chaney, in her ruling, noted that her findings said nothing about cases in other countries.

In the long run, a settlement that Carter pushed through in Honduras may be just as important as the win in L.A. It’s a model that Carter would love to replicate elsewhere, including Nicaragua. Ten years in the making, it was a 2006 agreement with banana workers and the Honduran government. Men who present evidence that they worked on a Dole plantation, and that a company-approved doctor confirmed their sterility, receive payments that range from \$1,500 to \$6,000 (depending on the level of impairment). Settling, of course, precludes suing, and plaintiffs lawyers like Scott Hendler, who represents workers who want to litigate these claims in U.S. courts, deride the agreement as a “cynical effort to prevent those cases from going to lawyers who would pursue significantly greater value.”

Carter was a businessman before he went to law school, and he remains one today. “Dole is a fruit and vegetable company. We’re not in the litigation business,” he says. Latin America is Dole’s “factory.” And Dole “needs to demonstrate responsible behavior in the host countries.” Settling disputes is clearly his preference.

Still, Carter says he’s glad he sat through the Tellez trial. “It informed me immensely,” he acknowledges. And he’d advise other GCs facing massive litigation to consider a similar approach. But he’s very clear on his business plan. And it isn’t to wipe out plaintiffs in court. It’s to wipe out the need to be there in the first place. ■

