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Full 3rd Circ. Revives Banana Workers' Pesticide Claims

By **Kat Sieniuc**

Law360, New York (September 2, 2016, 5:16 PM ET) -- Central and South American banana farmers who accused [Dole Food Co. Inc.](#), [Chiquita Brands International Inc.](#) and others of exposing them to harmful pesticides saw the Third Circuit revive the farmers' consolidated lawsuits Friday, nearly two decades after the cases first began.

In a precedential ruling on litigation that dates back to 1993, an 11-judge panel held that a Delaware federal court wrongly dismissed claims by workers in Panama, Ecuador and Costa Rica on the grounds that a judge in Louisiana had already rejected the same claims.

"For over two decades, the plaintiffs have been knocking on courthouse doors all over the country and, indeed, the world, only for those doors to remain closed. The Delaware district court concluded that, pursuant to the first-filed rule, its doors must remain shut as well," the panel said Friday. "That conclusion was in error. Neither the first-filed rule nor Louisiana's doctrine of res judicata is fatal to the plaintiffs' Delaware claims.

The banana workers had [asked the full panel](#) in February to revive the Delaware litigation and reverse a ruling that they engaged in blatant forum-shopping. They argued the lower court erred in dismissing the case on the grounds they filed an earlier suit in Louisiana federal court.

The en banc panel agreed Friday, saying that the Delaware court abused its discretion under the first-filed rule and that a timeliness dismissal in one jurisdiction does not mean the same claim cannot be litigated in another forum with a longer limitations period.

"The assertion that the plaintiffs engaged in impermissible forum-shopping depends on the proposition that the plaintiffs acted improperly by trying to preserve their right to litigate in two different jurisdictions," the panel said. "While reasonable minds may differ about what constitutes forum shopping in any particular case, the term generally denotes some attempt to gain an unfair or unmerited advantage in the litigation process. But here, the plaintiffs were indifferent as to which court would hear their claims; they simply wanted a court to hear their claims."

Jonathan Massey, one of the farmers' attorneys, told Law360 on Friday he is "pleased with the decision and look[s] forward to bringing long-delayed justice to these victims."

The workers claim that Dole, Chiquita, [Del Monte Produce NA Inc.](#), [Shell Oil Co.](#), [Dow Chemical Co.](#) and others exposed them to DBCP in banana plantations without warning

them of the health risks or providing any protective clothing.

Dibromochloropropane, or DBCP, damaged the workers' kidneys, increased their risk of cancer and left them suffering from varying degrees of sterility, causing deformed or inactive sperm in men and miscarriages in women, according to court filings.

After initially suing 20 years ago in Texas state court, the workers' claims have pinballed between different jurisdictions.

The farmers eventually sued in Delaware, when their suit in Louisiana was on the verge of being thrown out based on that state's statute of limitations. A Louisiana federal judge granted summary judgment to the defendants in 2012, which was later upheld in the Fifth Circuit.

U.S. District Judge Richard G. Andrews then dismissed the Delaware claims in 2013, a ruling that a three-judge Third Circuit panel upheld in August 2015.

Attorneys representing the defendants did not immediately return requests for comment Friday.

The plaintiffs are represented by Jonathan S. Massey of [Massey & Gail LLP](#), Michael L. Sensor of Perry & Sensor, and Scott M. Hendler of Hendler Lyons Flores.

The defendants are represented by [Gibson Dunn](#), [Schirrmeister Diaz-Arrastia Brem LLP](#), [Morris Nichols Arshat & Tunnell LLP](#), [Young Conaway Stargatt & Taylor LLP](#), [Vinson & Elkins LLP](#), [Phillips Goldman McLaughlin & Hall PA](#), [Richards Layton & Finger PA](#), [Blank Rome LLP](#), [Pillsbury Winthrop Shaw & Pittman LLP](#), [Cleary Gottlieb Steen & Hamilton LLP](#) and [Morris James LLP](#).

The case is Chavez et al. v. Dole Food Co. Inc. et al., case number [13-4144](#), in the U.S. Court of Appeals for the Third Circuit.

--Additional reporting by Dan Packel. Editing by Edrienne Su.