

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

JORGE LUIS AGUILAR MORA; CARLOS AGUIRRE (FLORES) ALVAREZ; JUAN JOSE ARGUELLO JIMENEZ; JORGE BUSTOS OSES; RAFAEL BUSTOS BUSTOS; GERMAN FALLAS HERRERA; ELIZONDO GUARIN EDUARDO; FEDERICO CLEVER MONTERO SALAS;

JULIAN ALVAREZ JOVINO; NERTOR EVELINO CACAY CORDOVA; JOSE DARIO CHICA ROMERO; MARIANO CRUZ JIMENEZ GUANOQUIZA; ALCIDES HUMBERTO LUPU REYES; MANUEL BENIGNO ORTIS; MIGUEL ANGEL QUITO AREVALO; GREGORIO JUAN TORRES TENESACA; FRANCISCO OSWALDO VILLACRES MENDOZA; EULOGIO APOLONIO ZAMBRANO OTERO;

ALCIDES BAULES RODRIGUEZ; LAUDINO CABALLERO RIOS; AGRIPINO CAMARENA CEDEÑO; DOMINGO CASTILLO MORALES; DANIEL CENSION CAMANO; DANIEL ESPINOSA MITRE; OSCAR ALEXIS GANTES ARAUZ; CESAR AUGUSTO GONZALEZ CABALLERO; EDUARDO GONZALEZ CABALLERO; ENEDICTO JIMENEZ MIRANDA; RAFAEL MARTINEZ GONZALEZ; AURELIO MIRANDA DIAZ; MARCOS MORALES GUTIERREZ; ABRAHAM MORENO CONCEPCION; JUAN ADOLFO OLIVERO MAGUE; LEOPOLDO PEÑA SANJUR; PAULINO PITY SANCHEZ; LUIS ENRIQUE QUINTERO NAVARRO; CATALINO ROSALES PINEDA; NICOLAS SANTOS MONTENEGRO; CATALINO SERRUD; SANTOS TORRES PINZON; AQUILINO

CIVIL ACTION NO.

SECTION

JUDGE

VIGIL SANCHEZ

Plaintiffs,

vs.

DOLE FOOD COMPANY, INC.;
DOLE FRESH FRUIT COMPANY;
STANDARD FRUIT COMPANY;
STANDARD FRUIT AND STEAMSHIP
COMPANY; THE DOW CHEMICAL
COMPANY; OCCIDENTAL CHEMICAL
CORPORATION (individually and as
successor to Occidental Chemical Company
and Occidental Chemical Agricultural
Products, Inc., Hooker Chemical and Plastics,
Occidental Chemical Company of Texas and
Best Fertilizer Company); AMVAC
CHEMICAL CORPORATION; SHELL OIL
COMPANY; CHIQUITA BRANDS
INTERNATIONAL, INC; CHIQUITA
BRANDS, INC.; MARITROP TRADING
CORPORATION; DEL MONTE FRESH
PRODUCE, N.A., INC

Defendants.

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs named above and in the body of this Complaint, file this Original Complaint against Defendants named above and below and allege as follows:

I. PRELIMINARY STATEMENT

1. Plaintiffs are citizens of Ecuador, Panama and Costa Rica. The Plaintiffs have had their health, welfare, and lives damaged from exposure to an extremely hazardous chemical pesticide, dibromochloropropane ("DBCP"), manufactured, distributed or used by the Defendants on the farms where the Plaintiffs worked in commercial banana cultivation.

2. This lawsuit is brought by Plaintiffs to recover compensation for damages to their health, welfare, and lives that resulted from the injuries caused by the Defendants and for the costs of medical monitoring for DBCP related conditions including sterility or abnormally low sperm counts, cornea damage, cancer, chronic skin disorders, compromised renal systems and damage to their pulmonary and respiratory function.

II. JURISDICTION

3. This Court has jurisdiction to hear the claims in this Complaint based on diversity of citizenship.

III. PARTIES

4. The Plaintiffs are foreign nationals. The defendants are United States corporations.

5. Plaintiffs, Jorge Luis **Aguilar** Mora; Carlos **Aguirre** (Flores) Alvarez; Juan Jose **Arguello** Jimenez; Jorge **Bustos** Oses; Rafael **Bustos** Bustos; German **Fallas** Herrera; Elizondo **Guarin** Eduardo and Federico Clever **Montero** Salas are citizens of Costa Rica.

6. Plaintiffs, Julian **Alvarez** Jovino; Nertor Evelino **Cacay** Cordova; Jose Dario **Chica** Romero; Mariano Cruz **Jimenez** Guanoquiza; Alcides Humberto **Lupu** Reyes; Manuel **Benigno** Ortis; Miguel Angel **Quito** Arevalo; Gregorio Juan **Torres** Tenesaca; Francisco Oswaldo **Villacres** Mendoza and Eulogio Apolonio **Zambrano** Otero are citizens of Ecuador.

7. Plaintiffs, Alcides **Baules** Rodriguez; Laudino **Caballero** Rios; Agripino **Camarena** Cedeño; Domingo **Castillo** Morales; Daniel **Cension** Camano; Daniel **Espinosa** Mitre; Oscar Alexis **Gantes** Arauz; Cesar Augusto **Gonzalez** Caballero; Eduardo **Gonzalez** Caballero; Enecto **Jimenez** Miranda; Rafael **Martinez** Gonzalez; Aurelio **Miranda** Diaz; Marcos **Morales** Gutierrez; Abraham **Moreno** Concepcion; Juan Adolfo **Olivero** Mague; Leopoldo **Peña** Sanjur; Paulino **Pitty** Sanchez; Luis

Enrique **Quintero** Navarro; Catalino **Rosales** Pineda; Nicolas **Santos** Montenegro; Catalino **Serrud**; Santos **Torres** Pinzon and Aquilino **Vigil** Sanchez are citizens of Panama.

8. Defendant, Dole Food Company, Inc., is a Delaware corporation with its principal place of business in California, which at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court. Dole Food Company, Inc. is the successor in interest to Standard Fruit Company and Standard Fruit & Steamship Company whose principal place of business was New Orleans during times pertinent to those facts that gave rise to this litigation.

9. Defendant, Dole Fresh Fruit Company, is a Nevada corporation with its principal place of business in California. Dole Fresh Fruit Company is an alter ego/agent of Standard Fruit Company, Standard Fruit and Steamship Company, and Dole Food Company, Inc. These subsidiaries are so integrated and controlled by Dole Fresh Fruit Company that they are the alter ego/agent of Dole Fresh Fruit Company and at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court.

10. Defendant, Standard Fruit Company, is a Delaware corporation, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court. This corporation is the alter ego/agent of Dole Food Company, Inc., Standard Fruit and Steamship Company, and/or Dole Fresh Fruit Company and has appeared and answered previously.

11. Defendant, Standard Fruit and Steamship Company, is a Delaware corporation with its principal place of business in California, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court. This corporation is the alter ego/agent of Dole Food Company, Inc., Standard Fruit Company, and/or Dole Fresh

Fruit Company. Dole Food Company, Inc., Standard Fruit Company, Standard Fruit and Steamship Company, and Dole Fresh Fruit Company are referred to collectively as the “Dole Defendants.”

12. Defendant The Dow Chemical Company is a Delaware corporation with its principal place of business in Michigan, and which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court.

13. Defendant Occidental Chemical Corporation is a New York corporation with its principal place of business in Texas, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court.

14. Defendant AMVAC Chemical Corporation is a California corporation with its principal place of business in California, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court.

15. Defendant Shell Oil Company is a Delaware corporation with its principal place of business in Texas, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court.

16. Defendant Chiquita Brands International, Inc. is a New Jersey corporation with its principal place of business in Ohio, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court. Chiquita Brands International, Inc. is the ultimate parent of Chiquita Brands, Inc. and Maritrop Trading Corp. Chiquita Brands International, Inc. is the successor in interest to United Fruit Company and United Brands Company, Inc. who was authorized to do and was doing business within the jurisdiction of this Honorable Court during times pertinent to this litigation. United Fruit

Company maintained its corporate headquarters in New Orleans at times pertinent to the events giving rise to this litigation.

17. Defendant Chiquita Brands, Inc. is a Delaware corporation with its principal place of business in Ohio, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court. Chiquita Brands, Inc. is the alter ego/agent of Chiquita Brands International, Inc. and successor in interest to United Fruit Company and United Brands Company, Inc. who was authorized to do and was doing business within the jurisdiction of this Honorable Court during times pertinent to this litigation. United Fruit Company maintained its corporate headquarters in New Orleans at times pertinent to the events giving rise to this litigation.

18. Defendant Maritrop Trading Corporation is a Delaware corporation with its principal place of business in Mississippi, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court. Maritrop Trading Corporation is the subsidiary and alter ego/agent of Chiquita Brands, Inc. and Chiquita Brands International, Inc.

19. Defendant Del Monte Fresh Produce, N.A. is a Florida corporation with its principal place of business in Florida, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court.

20. Del Monte Fresh Produce N.A. (“Del Monte”) is a part of the international fruit empire that had its roots in selling pineapples grown on plantations in Hawaii. Del Monte, along with the Dole Defendants formed the Pineapple Growers Association of Hawaii (PGAH), the trade association whose research arm, the Pineapple Research Institute (PRI), developed and tested DBCP in Hawaii, first for use on pineapple and then on banana and other fruit. Del Monte

and the Dole defendants were, at the time in question, in such control of the PGAH that they possess the institutional knowledge of the PGAH.

21. Defendants The Dow Chemical Company, Occidental Chemical Corporation, AMVAC Chemical Corporation, Shell Oil Company, Standard Fruit Company, Standard Fruit and Steamship Company, Dole Food Company, Inc, Dole Fresh Fruit Company, Chiquita Brands, Inc., Chiquita Brands International, Inc., Maritrop Trading Company and Del Monte Fresh Produce, N.A., manufactured, sold, distributed, and/or used nematocides containing the chemical dibromochloropropane, commonly known as DBCP, and sold under the trade names Fumazone, Nemagon, Oxy 12 and simply DBCP in places where the Plaintiffs lived and worked resulting in Plaintiffs' exposure to DBCP.

22. Plaintiffs, on information and belief, allege that AMVAC Chemical Corporation, Shell Oil Company, The Dow Chemical Company, and Occidental Chemical Corporation ("the Manufacturer Defendants") performed many of the tortious acts described below through their predecessors and/or alter ego/agent corporations in New Orleans that had a direct and deleterious impact on the Plaintiffs' health and well being in and around the banana plantations where they lived and worked.

23. Defendants Standard Fruit Company, Standard Fruit and Steamship Company, Dole Food Company, Inc, Dole Fresh Fruit Company, Chiquita Brands, Chiquita Brands, International, Maritrop Trading Company and Del Monte, N.A. distributed and/or used nematocides containing the chemical dibromochloropropane, commonly known as DBCP, and sold under the trade names Fumazone, Nemagon, Oxy 12, and DBCP, among others.

24. The Plaintiffs allege that they were exposed to Defendants' products and as a result suffered serious and permanent injuries to their health and well being including, but not limited

to, severe injury to their reproductive capacities. Some have experienced damage to their cornea affecting their vision, developed chronic skin conditions and been subjected to an increased risk of cancer that has resulted in an increased fear of developing cancer.

25. The Plaintiffs claim individual damages (including compensatory damages, punitive damages and other damages, if any) that exceed Seventy-Five Thousand (\$75,000.00) Dollars, exclusive of interest and costs.

BACKGROUND

26. Defendants used DBCP from approximately 1960 until 1985, and possibly into the 1990s.

27. Workers in the banana growing regions of Costa Rica, Ecuador and Panama, among other countries, injected DBCP into the soil to protect against microscopic worms called nematodes that dwell in cultivated soils. The laborers wore no gloves, protective covering, or respiratory equipment to prevent skin absorption or inhalation of DBCP because no Defendant ever informed them that they were in danger and because no Defendant provided protective clothing to the Plaintiffs.

28. The fumes and vapors from DBCP released during the application of the chemical exposed everyone in the vicinity. Unknown to the workers, however, each breath they took during their daily hours of mixing and injecting DBCP became a health hazard. The fumes and vapors released by the chemical remained trapped within the banana canopy created by the oversized impermeable banana leaves, which cut off almost all ventilation. Workers were also exposed through their skin when DBCP splashed on them in the course of refilling their

canisters, or when their injectors hit rocks or other objects. Many workers absorbed so much DBCP each day that their urine would give off the smell of the chemical at night.

A. Effects - Sterility

29. The affected workers suffer from various degrees of sterility. Their bodies produce little or no sperm and the sperm that is produced is often deformed and/or inactive. Men whose testes produce no sperm are termed azoospermic; men who produce fewer sperm than normal are oligospermic. Even a man with a normal sperm count level may have slow moving, deformed, or stunted sperm as a result of DBCP exposure that negatively impacted their reproductive capacities.

B. Cancer

30. The United States Environmental Protection Agency lists DBCP as a probable human carcinogen. The National Cancer Institute ("NCI") lists DBCP as one of the most potent known carcinogens. NCI tests demonstrate that DBCP induces cancer in a wide range of organs and sites, generally at the lowest doses tested and is regarded as a multi site carcinogen.

C. Other Health Risks

31. DBCP has been linked to a variety of birth defects and is a suspected cause of miscarriages in women. Women working on plantations or who attempted to conceive with a man who have been exposed to DBCP have reported several consecutive miscarriages. DBCP is also believed to cause damage to the cornea in exposed persons and can compromise a person's renal system, respiration system and cause chronic skin disorders.

D. Environmental Harm

32. Environmentally, DBCP is regarded as a highly persistent and mobile pesticide. DBCP decomposes slowly in soil, and studies show that DBCP remains in soils for years and is able to migrate through certain soils. DBCP is chemically stable in water, even in very small amounts, and persists in water for years and DBCP has also been reported as a low-level air contaminant. DBCP has been widely found as a contaminant in ground and surface water in California, Hawaii, and elsewhere in the United States and abroad. In California and Hawaii, municipalities have recovered significant sums from The Dow Chemical Company, Shell Oil Company, Occidental Chemical Corporation and AMVAC for costs related to the clean-up of DBCP-contaminated water supplies.

E. Testing For Hazards

33. The use of DBCP as a nematocide was first suggested by researchers at the Pineapple Research Institute, the research arm of the Pineapple Growers Association of Hawaii. The Pineapple Research Institute (PRI) and the Pineapple Growers Association (PGAH) were a joint venture principally of Dole and Del Monte, along with a small number of other Hawaiian pineapple growers, and both Dole and Del Monte were in control of and had access to the Institute's research on DBCP from the outset of the product's development. This research led to the first patented use of DBCP as a nematocide. The Institute later assigned the patent to both Dow and Shell for further development but retained a royalty interest in the patent.

34. What little pre-market toxicology research that was done on DBCP was conducted in or around 1958 by Dow's company doctor, Dr. Ted Torkelson, and by Shell's consultant, Dr. Charles Hine of the University of California Medical School in San Francisco. In testing DBCP on rats, both labs found that DBCP caused retarded growth, organ damage, shrunken testes, and sterility.

35. In an April 1958 "confidential report," Dr. Hine at Shell wrote that *"among the rats that died, the gross lesions were especially prominent in lungs, kidneys, and testes. Testes were usually extremely atrophied."* Dow's first in-house report came three months later, in July 1958, and concluded that DBCP was *"readily absorbed through the skin and high in toxicity in inhalation."* Dow's data also showed that *"liver, lung and kidney effects might be expected"* and that *"testicular atrophy may result from prolonged, repeated exposure."* This information, of course, should have stopped the marketing of DBCP before it was ever sold. Decades later, when American factory workers producing DBCP were found to be sterile and doctors in Costa Rica began to diagnose sterility in hundreds of banana plantation workers, health officials would question why Dow and Shell continued to sell a product knowing that *"testicular atrophy may result from prolonged, repeated exposure."*

36. In 1961, a joint Dow-Shell report on the hazardous effects of DBCP was published in Toxicology and Applied Pharmacology. Although this data was published in an academic journal, the information contained in the report never appeared in technical data sheets (the forerunners to today's material safety data sheets, or MSDSs). Moreover, the PGAH distributed this information to its members, including Dole and Del Monte, in 1961.

F. USDA Registration: 1961

37. In May 1961, Dr. Hine, who was now working jointly for Dow and Shell, drafted a report in support of USDA registration of DBCP. Dr. Hine's draft report called for work place concentrations of DBCP to be kept under one part per million ("ppm") and recommended the use of impermeable protective clothing if skin contact with DBCP was likely. Louis Lykken, who was in charge of government registration of chemicals for Shell, dismissed the suggestion as "impractical." Hine concluded the animal studies and then made the observation that repeated exposure could affect human reproduction, which was contained in the draft report to the USDA. Lykken made Shell's interests clear: ***"Leave out speculation about possible harmful conditions to man. This is not a treatise on safe use."***

G. Product Labeling

38. In 1961, responding to Shell's proposed labels for DBCP, a USDA official wrote: "in view of the testicular atrophy demonstrated to occur in experimental animals, we would like to have information regarding health records of those individuals who have been employed for an extended period in the manufacture or formulation of products containing DBCP." A flurry of memos ensued. The following are excerpts from Shell's internal memoranda:

August 21, 1961: "We have discussed with Dr. Zavon USDA's precautionary labeling and the hazards associated with this pesticide chemical. He shares our opinion that USDA is being over cautious in their views on labeling products containing this pesticide chemical. It is the consensus that Dr. Zavon and a representative of Dow's toxicology group should meet with the USDA toxicology section representatives to settle this issue."

August 29, 1961: "We have just received and reviewed the subject technical bulletin [and information brochure on Nemagon (Shell's flagship product)] and ***have some reservations with regard to the adequacy of the statements under safety precautions.*** In light of the fact that the threshold of odor detection has been reported at one point at seven parts per million and the lowest level studied [five parts per million] has demonstrated damage after repeated exposures, ***it appears the statement "there is a good margin of safety in***

handling" would be difficult to justify and might be prosecuted as negligent."

November 9, 1961: "The pesticides regulations branch of the U. S. Department of Agriculture has expressed concern over the hazards associated with the use of Nemagon soil fumigant and proposed stringent labeling for the various formulations now being marketed. It is the consensus in the division office that the USDA is being overly cautious and the precautionary statements proposed could have an adverse affect on the sale of this product. This matter has been discussed with the USDA representatives and they are willing to relax their labeling requirements if we can provide them with a history of safe use experience in the field and in the manufacturing plant."

Emphasis added.

39. Dow was similarly cavalier when it considered the effects that warning about DBCP's dangers would have on sales of DBCP. DBCP was actually entered in the toxicology card file in Dow's medical library. The toxicology card for Dow's flagship product, Fumazone, noted eye and skin effects, and stated that testicular damage "may result from chronic exposure to active material." Liver and kidney damage were also discussed, but *the toxicology cards were soon altered to delete information on testicular damage.* Dr. Torkelson would later opine that "the cards addressed singular exposures, and you don't see testicular changes on single exposures. It was put on some of the cards because whoever wrote it knew about it and thought it was important enough to put it on there along with liver and kidney affects. When it was retested, the testes didn't show an affect from a single exposure, and a new card was made out."

H. Central American Trial And Full Scale Use

40. Despite early indications of adverse health effects, DBCP trials began on the Standard Fruit Company's Central American plantations a short time later. William Liebhard, now a professor of agriculture at the University of California-Davis and then a young scientist with Standard Fruit in Honduras, recalled:

In the DBCP trials, toxicological analyses were not undertaken on the potential effects of those chemicals on user's health or in the environment. . . . We did not consider such factors at all at that time frame.

41. The relationship between Dow and the Dole Defendants around DBCP began in discussions that occurred in New Orleans related to supply Standard Fruit with DBCP where Standard Fruit Company [now Dole] was headquartered.

42. Dow marketed its DBCP product to Standard Fruit [now Dole] in New Orleans, Louisiana for use on its fruit plantations in the Plaintiffs' countries, and Dow and Dole entered into an agreement for Dow to supply DBCP to Dole for its banana operations in the Plaintiffs' countries, all resulting from discussions that occurred in New Orleans, Louisiana. Moreover, the Port of Orleans was a principal point of export for DBCP to Dole's operations abroad.

43. All throughout the Grower Defendants' fruit plantations around the world, warehouse mixers, field applicators, and irrigation tower workers and field hands had regular, heavy exposure to DBCP through vapor inhalation and skin absorption. In addition, workers in the vicinity of the application process as well as children visiting their parents in the fields to deliver coffee or meals experienced substantial toxic exposure to DBCP. Standard Fruit's production manual contained no warnings of the testicular affects of DBCP, and did not advise the use of safety gear and precautions. An official of the Instituto Nacional de Seguros in Costa Rica has stated that none of the workers, captains or field managers interviewed knew about the hazards of DBCP and the necessary precautions for handling DBCP. The labels on Fumazone certainly did not tell them, and workers invariably state that no warnings of the product's dangers were ever given.

44. In fact, in a March 3, 1978 memorandum regarding DBCP safe handling procedures, Dr. Jack Dement, the director of Castle & Cooke, Inc.'s [Dole's] worldwide pest control efforts, actually revised Dow's proposed guidelines for DBCP use. Dow had finally recommended that DBCP should not be applied unless the treated area was a safe distance away from worker housing and work areas or unless all people had been evacuated from those surrounding areas. Dr. Dement's response: "***This is not operationally feasible and does not need to be implemented.***" Dr. Dement's memorandum went on to indicate that ***only personnel working at the DBCP pump, rather than applicators, should be provided respiratory devices for the protection against DBCP vapors.***

I. Banning and Exportation

45. By 1976, DBCP had been identified as a suspected carcinogen by the EPA, even though Dow, Shell, Del Monte and Dole learned of the chemical's health risks at least 15 years earlier. In July 1977, thirty-five of one hundred fourteen workers who manufactured DBCP at Occidental's Lathrop, California plant were found to be sterile. One month later, the EPA suspended DBCP from all but a few highly controlled uses in Hawaii. Even in Hawaii, use was permitted only under heavily restricted conditions with extensive protective equipment. Finally, in 1979, the EPA canceled the registration for DBCP for all uses in the United States. Unfortunately, the large-scale use of DBCP on agricultural operations in the United States had already led to extensive groundwater contamination in Hawaii, California, and elsewhere and large stocks on hand.

46. The U.S. ban on manufacturing of DBCP, however, did not prevent the Defendants from exporting existing stocks of DBCP for use on plantations overseas. When Dow informed Standard that it planned to halt sales and wait for EPA test results, Standard

responded by threatening to sue Dow: "Your halt of shipping our outstanding orders is viewed as a breach of contract." Dow quickly relented after Standard agreed to indemnify Dow against claims for injuries resulting from DBCP use, compelling evidence that Dow expected such injuries to occur.

47. The controversy over DBCP use even became the focus of hearings in the United States Senate:

[I]ndustry studies. . . were kept secret from domestic chemical company employees and from agricultural workers using DBCP in the field. Now, tragically, twenty years later, the sterilization that had been predicted by laboratory tests became a reality - increasing numbers of workers in the manufacturing plants and banana fields found they could not have children. EPA finally banned DBCP from nearly all domestic farm uses, but the companies then dumped their unused stocks overseas where it continued to be used. As a result, more banana workers in Costa Rica were sterilized. The tale of DBCP is an appalling one.

Senator J. Leahy, Circle of Poison: Impact of U. S. Pesticides on Third World Workers, Hearings before the Committee on Agriculture, Nutrition, and Forestry, 102 Cong., First Sess. 1 (June 5, 1991). When available stocks of DBCP began to be exhausted, Dole (then known as Castle and Cooke, Inc.), entered into negotiations with Dow to arrange for Dow to set up a DBCP plant to be run by Castle & Cooke, Inc., outside the United States. Thus, despite all the known hazards of DBCP and despite the extensive damage already done to those exposed to DBCP, Castle & Cooke, Inc. [now Dole] continued to look for a way to circumvent the ban on production of DBCP in the United States.

V. FOR A FIRST CAUSE OF ACTION - NEGLIGENCE

48. All relevant allegations and facts set forth in the preceding paragraphs are re-alleged and incorporated by reference herein where applicable.

49. The Plaintiffs were diagnosed with sterility related to DBCP exposure. Defendants fraudulently concealed Plaintiffs' injuries, the causes of Plaintiffs' injuries, and the Plaintiffs' legal right to compensation.

50. The doctrine of *contra non valentum* applies to all of the claims asserted in this action.

51. Defendants had a duty to exercise reasonable care in the manufacture, sale, distribution, use, and/or placement of DBCP into the stream of commerce, including a duty to assure that the product did not cause exposed persons to suffer from unreasonable, dangerous and adverse health effects. Defendants failed to exercise ordinary care in the manufacture, sale, testing, quality assurance, quality control, use, and/or distribution of DBCP into the stream of commerce in that Defendants knew or should have known that the product DBCP created a high risk of unreasonable, dangerous adverse health effects, some of which are life-threatening.

52. The illnesses and disabilities of the Plaintiffs and the need for medical monitoring for the development of various DBCP related health conditions, including but not limited to cancer, are a direct and proximate result of the negligence of the above-named Defendants, in that these Defendants produced, sold, or otherwise placed DBCP-containing materials into the stream of commerce, causing the Plaintiffs' exposure to the DBCP which the Defendants knew, or in the exercise of ordinary care ought to have known, would be deleterious and harmful to the Plaintiffs' health and well-being. The named Defendants were negligent and/or grossly negligent in one, some or all of the following respects, among others, which were the proximate cause of the Plaintiffs' illnesses, disabilities and damages:

- a. in marketing, supplying and using DBCP or DBCP-containing products

in Plaintiffs' countries of residence from ports in the United States including ports in Louisiana, when Defendants knew or reasonably should have known that the Plaintiffs would use the shipments of DBCP and that such use was substantially certain to cause the injuries of which Plaintiffs now complain;

b. in failing to adequately warn the Plaintiffs and the public of the dangerous characteristics of DBCP and the hazards of exposure to it, including its carcinogenic, mutagenic, and teratogenic potential or other adverse health effects;

c. in failing to provide the Plaintiffs with information as to what would be reasonably safe protective clothing and proper protective equipment and apparatuses, if in truth there were any, to protect the Plaintiffs from harm and disability from exposure to DBCP;

d. in failing to place adequate warnings in the Plaintiffs' native language on the containers of DBCP-containing materials to warn of the health hazards of coming into contact with DBCP;

e. in failing to take reasonable precautions or exercise reasonable care to publish, adopt and enforce a safety plan for a safe method of handling and applying DBCP;

f. in failing to adequately supervise and instruct the Plaintiffs in the safe and proper application of DBCP-containing products;

g. in failing to utilize a substitute material for DBCP in the nematocide;

h. in failing to test DBCP prior to releasing these products for sale to determine safe methods of handling;

i. in failing to reveal the results of tests conducted on DBCP to the Plaintiffs, public health and safety officials or the public and in concealing from the Plaintiffs

information concerning the observed effects of the products on the Plaintiffs and their coworkers;

j. in failing to adequately monitor the health of the Plaintiffs and their coworkers exposed to the products;

k. in failing to use due care in designing and manufacturing DBCP so as to avoid the aforementioned risks to individuals when DBCP was being used;

l. in failing to provide adequate training to fruit company medical care providers so that health care providers were aware of the health dangers posed to the workers exposed to DBCP; and,

m. were otherwise careless, reckless or negligent.

53. Defendants negligently misrepresented the efficacy of DBCP and the risk to human health, breaching a duty to Plaintiffs as end users and bystanders to end use who Defendants reasonably knew or should have known would be present during use and therefore exposed to the dangerous chemical.

54. The Plaintiffs further allege that Defendants are liable to the Plaintiffs individually and on the alternative liability theory, "alter ego," and/or successor liability theories. The Plaintiffs allege that the agents, employees, managers, officers, superintendents, and/or servants of these Defendants carried out the acts and omissions described herein in the course of their employment for these and other named Defendants in the furtherance of a common corporate course or purpose.

VI. FOR A SECOND CAUSE OF ACTION - CONSPIRACY

55. Plaintiffs allege all relevant allegations in the preceding paragraphs and incorporate them by reference herein where applicable.

56. Plaintiffs further allege that the named Defendants and/or their predecessors in interest knowingly agreed, contrived, combined, confederated and conspired among themselves and with others to cause the Plaintiffs' injuries, illnesses, and diseases by exposing the Plaintiffs to harmful and dangerous DBCP-containing products and to deprive the Plaintiffs of the opportunity of informed free choice as to whether to use the DBCP-containing products and to expose themselves to the dangers. Defendants committed the above-described wrongs by willfully misrepresenting and suppressing the truth as to the risks and dangers associated with the use of and exposure to Defendants' DBCP-containing products. Each of the Defendants aided and abetted one or more of the other Defendants in committing the tortious acts that caused the Plaintiffs' injuries.

57. In furtherance of these conspiracies, Defendants performed the following overt acts, among others:

a. For many years, Defendants, individually, jointly and in conspiracy with each other, possessed medical and scientific data, and test reports which clearly indicated that DBCP-containing products were unreasonably dangerous, hazardous and deleterious to human health and well being, and carcinogenic, mutagenic, teratogenic, and potentially deadly;

b. despite medical and scientific data, literature and test reports possessed by or available to Defendants, Defendants individually, jointly and in conspiracy with each other, fraudulently, willfully and maliciously:

(1) withheld, concealed and suppressed the medical and scientific data, literature and test reports regarding the risks of DBCP-containing products from the workers who were exposed to them and using them, the public, and the agricultural

community;

(2) caused to be released, published, and disseminated medical and scientific data, literature, and test reports containing information and statements regarding the risks of DBCP-containing products which Defendants knew were incorrect, incomplete, outdated, and misleading;

(3) distorted the results of medical examinations conducted upon the Plaintiffs, or workers such as the Plaintiffs, who were using DBCP-containing products and being exposed to the products by falsely stating and/or concealing the nature and extent of the harm, which the Plaintiffs, or workers such as the Plaintiffs, had suffered.

c. by the false and fraudulent representations, omissions, and concealments set forth above, the named Defendants individually, jointly, and in conspiracy with each other, intended to induce the Plaintiffs to rely upon the false and fraudulent representations, omissions, and concealments and to continue to expose themselves to the dangers inherent in the use of and exposure to Defendants' DBCP-containing products;

58. The Plaintiffs and others, reasonably and in good faith, relied upon the false and fraudulent representations, omissions, and concealments made by the Defendants regarding the nature of the DBCP-containing products.

59. As a direct and proximate result of the Plaintiffs' reliance on the Defendants' false and fraudulent representations, omissions, and concealments, the Plaintiffs have sustained damages and injuries as described herein.

VII. FOR A THIRD CAUSE OF ACTION - STRICT LIABILITY

60. Plaintiffs re-allege all relevant allegations in the preceding paragraphs and incorporate them by reference herein where applicable.

61. Defendants are manufacturers and/or suppliers of DBCP. The DBCP manufactured and/or supplied by Defendants was defective in design or formulation in that, when it left the hands of the manufacturer and/or suppliers, the foreseeable risks to human health exceeded the benefits associated with the design or formulation.

62. Alternatively, the DBCP manufactured and/or supplied by Defendants was defective in design or formulation, in that, when it left the hands of the manufacturer and/or suppliers, it was unreasonably dangerous because it was more dangerous than an ordinary user would expect, unreasonably dangerous and more dangerous than other alternatives.

63. The DBCP-containing products that were used in proximity to and applied by the Plaintiffs were designed, manufactured, formulated, and/or distributed by named Defendants and subsequently sold, directly and indirectly to the Plaintiffs or to Plaintiffs' employers. The products left the possession and control of Defendants in a defective and unreasonably dangerous condition in the following respects:

a. DBCP-containing products did not contain an adequate and timely warning in the Plaintiffs' language or otherwise regarding the serious health hazards associated with DBCP;

b. DBCP-containing products did not contain an adequate and timely warning concerning safety precautions and the need for protective equipment when working with DBCP;

c. DBCP-containing products were defectively designed in that they contained DBCP, although a substitute for this chemical was available at all times material to this litigation;

d. DBCP-containing products were unreasonably dangerous per se;

e. the substance of the warning on the approved labels was inadequate because the approval of the labels was based on false, fraudulent and misleading information supplied to the regulatory agencies responsible for approving the labels; and

f. DBCP manufactured and/or supplied by Defendants was defective due to inadequate post-marketing warning or instruction because after the manufacturer knew or should have known of the risk of injury from DBCP, it failed to provide adequate warnings to users or consumers of the product and, in fact, continued to promote the product for use.

64. Plaintiffs sustained physical and emotional injuries, an increased risk of developing various medical conditions, including but not limited to cancer, and a fear of an increased risk of cancer proximately caused by a characteristic of DBCP that renders the product unreasonably dangerous because Plaintiffs' damages arose from a reasonably anticipated use of the product by the Plaintiff or another person or entity. As the proximate cause and legal result of the defective condition of DBCP as manufactured and/or supplied by Defendants, and as a direct and legal result of the negligence, gross negligence, recklessness, carelessness, other wrongdoing and/or action(s) of Defendants described herein:

a. caused Plaintiffs' injuries in health, strength and activity and caused them to suffer injuries to body and mind. All of these injuries have caused Plaintiffs past, present and future injuries and damages. The Plaintiffs have suffered compromised reproductive capacities, shrunken testicles, eye damage, physical impairment, anxiety, distress, fear, pain, suffering, mental anguish, and distress secondary to the injury and damages; Plaintiffs have suffered other injuries, the exact nature and extent of which are not fully known at this time;

b. Plaintiffs require reasonable and necessary health care, attention and

services and have incurred medical, health, incidental and related expenses. Plaintiffs are informed and believe and, therefore, allege they will in the future be required to obtain medical and/or hospital care, attention, and services in amounts that are as yet undetermined.

65. The named Defendants are and were engaged in the business of manufacturing and/or distributing such DBCP-containing products, and these products, without substantial change in their condition after they were sold, proximately caused Plaintiffs' damages by a characteristic of DBCP that rendered the product unreasonably dangerous because Plaintiffs' damages arose from a reasonably anticipated use of the product by the Plaintiff or another person or entity.

66. The Plaintiffs were unaware of the dangerous properties of DBCP, which rendered DBCP-containing products unreasonably unsafe for their intended use. Moreover, Plaintiffs used the DBCP-containing products in a manner that was reasonably anticipated by the Defendants. Further, during the periods that the Plaintiffs were exposed to the products of the named Defendants, the products were being utilized in the manner intended by the Defendants.

67. The injuries and damages of the Plaintiffs are also due to the intentional malfeasance of Defendants and/or their subsidiaries and/or affiliates and are the direct and proximate result of these Defendants' volitional acts. Each of these Defendants knew of the dangers caused by the DBCP-containing products, yet knowingly, consciously and with substantial certainty of the consequences of their actions proximately caused the Plaintiffs' injuries in the following respects:

a. Defendants knowingly concealed information concerning the observed health effects of DBCP or DBCP-containing products from the Plaintiffs, the United States

and foreign governments, and the medical, scientific and agricultural communities;

b. Defendants knew of the hazards posed by DBCP-containing products, yet they intentionally exposed Plaintiffs to DBCP products in operations involving the Plaintiffs and/or sold and distributed those DBCP products for use involving the Plaintiffs in which they reasonably knew the Plaintiffs would be exposed;

c. Defendants knew of the hazards to the Plaintiffs posed by DBCP-containing products and by the methods of application utilized, yet Defendants continued to use these methods and/or allow others to continue to use these methods;

d. Defendants knew of the hazards to the Plaintiffs posed by DBCP-containing products, yet Defendants failed to provide adequate protective clothing and equipment to the Plaintiffs and/or to take steps to ensure the Plaintiffs were provided adequate protection;

e. Defendants knew of the hazards to the Plaintiffs posed by DBCP-containing products, yet Defendants did not instruct consumers of the product, including the Plaintiffs, in proper application techniques that would prevent exposure;

f. Defendants continued to sell, purchase and use DBCP-containing products after their use was suspended or banned by the United States government and, therefore, after Defendants were indisputably on notice of DBCP's dangerous properties; and

g. Defendants negligently misrepresented the efficacy of DBCP and the risks to human health, breaching a duty to Plaintiffs as end users and bystanders who Defendants reasonably knew or should have known would be present during use and therefore exposed to the dangerous chemical.

68. The Plaintiffs further allege that Defendants are liable to the Plaintiffs for

continuing harm resulting from the following volitional acts of these Defendants:

- a. knowingly concealing from the Plaintiffs knowledge of the existence, nature and severity of their injuries; and
- b. knowingly failing to take steps to enable, alert or cause the Plaintiffs to seek medical treatment for their injuries.

VIII. FOR A FOURTH CAUSE OF ACTION – MEDICAL MONITORING

69. Plaintiffs re-allege all relevant allegations in the preceding paragraphs and incorporate them by reference herein where applicable.

70. The Plaintiffs seek the costs of medical monitoring on behalf of themselves for the risk of health related injuries and illnesses from exposure to DBCP.

IX. FOR A FIFTH CAUSE OF ACTION - BREACH OF IMPLIED WARRANTY

71. Plaintiffs re-allege all relevant allegations in the preceding paragraphs and incorporate them by reference herein where applicable.

72. The Defendants impliedly warranted that their DBCP-containing products were of good and merchantable quality and fit for their intended use. The Plaintiffs would show that they worked in and/or came into close proximity to the DBCP-containing products of the Defendants and the Defendants knew or ought to have reasonably anticipated this would occur. The Defendants breached their implied warranty that their DBCP products were of good and merchantable quality and were fit for their particular intended use by causing the Plaintiffs' exposure to DBCP which was a proximate and producing cause of Plaintiffs' injuries.

X. COMPENSATORY DAMAGES

73. As a direct and proximate result of Defendants' tortious conduct, the Plaintiffs

have been rendered sterile and/or infertile, and have developed sexual and reproductive abnormalities, and/or are subject to an increased risk of cancer and other related conditions, and have been damaged in some or all of the following particulars for which they have brought suit:

a. The Plaintiffs have suffered great physical pain and suffering, mental anguish and emotional distress and will continue to suffer great pain of body and mind throughout their lives;

b. The Plaintiffs have suffered an extraordinarily increased risk of developing serious illness, including leukemia, or cancer of the testes, kidneys, liver and gastrointestinal tract, and other types of cancer. To detect the early onset of such diseases, the Plaintiffs will incur substantial expenses for medical testing, evaluation, examination, and other related expenses. These medical monitoring expenses are solely necessary because the Plaintiffs have been wrongfully exposed to DBCP-containing products. The Plaintiffs' need for liquidated damages for the costs of future medical expenses is reasonable in light of the following:

(1) the Plaintiffs have suffered significant exposure to Defendants' DBCP-containing products;

(2) DBCP-containing products are so toxic and hazardous to human health that the U.S. government and most other developed and developing countries have banned their use;

(3) diseases caused by DBCP-containing products are serious and can be fatal;

(4) Plaintiffs have a significantly increased risk for developing such

diseases; and

(5) early detection and diagnosis of diseases caused by DBCP-containing products will improve the prospects for cure, treatment, and minimization of pain and disability;

c. the Plaintiffs have suffered an extraordinarily increased risk of genetic damage as a result of their exposure to Defendants' DBCP-containing products;

d. the Plaintiffs have lost capacity to enjoy life and will continue to suffer such loss in the future due to their exposure to Defendants' products.

74. The Plaintiffs have a substantially increased fear of developing cancer due to their exposure to DBCP containing products.

75. The Plaintiffs claim damages (including compensatory damages, punitive damages and other damages, if any) that exceed the minimal jurisdictional amount required by this Court.

XI. PUNITIVE DAMAGES

76. Plaintiffs re-allege all relevant allegations contained in the previous paragraphs and incorporate them by reference herein where applicable.

77. Defendants demonstrated and are liable for a wanton and reckless disregard for public safety in the handling, storage and/or transportation of DBCP by continuing to sell, distribute and use DBCP after 1984. Such wanton and reckless conduct contributed to Plaintiffs' exposure to DBCP through continued contamination of air the Plaintiffs breathed, water the Plaintiffs consumed and bathed in and soil in which the Plaintiffs worked.

78. As a direct and proximate result of all the Defendants' breach of duties to the Plaintiffs or the Plaintiffs' decedents as delineated above, the Plaintiffs have sustained the

DBCP-related injuries, diseases, illnesses and/or conditions set forth above, along with pain and suffering, the undergoing of medical treatment and continued need for medical treatment, medical expenses, past, present, and future disability and diminution of quality and enjoyment of life, including the mental anguish, fear, and emotional distress associated with the knowing there is no cure for these diseases or illnesses. The Plaintiffs have also suffered substantial damages in the form of mental anguish, emotional distress, humiliation and social ostracism because they are unable to have a family, which violates the cultural norms of their society.

79. The Plaintiffs will show that the damages incurred were directly and proximately caused by the reckless and grossly negligent acts and omissions, conscious indifference and other disregard for the health and welfare of the Plaintiffs on the part of the named Defendants, their agents, servants, employees, managers, superintendents, supervisors and officers. Defendants ignored and concealed evidence available to them that demonstrated that DBCP and DBCP-containing materials were harmful and deadly to persons coming in contact with such materials. Defendants committed the acts and omissions described above maliciously, intentionally, and with flagrant disregard for the rights of the Plaintiffs and others, and with the actual awareness that the acts and omissions would, with reasonable probability, result in great physical and emotional harm to the Plaintiffs. Consequently, users of DBCP-containing products, such as the Plaintiffs, were deprived of the opportunity of free choice as to whether or not to expose themselves to DBCP-containing products manufactured, formulated and used by the named Defendants. The Plaintiffs will show that as a result of the aforesaid conduct, they should be awarded an amount that would punish the Defendants and act as a deterrent to Defendants for the commission of similar wrongs.

80. The Plaintiffs claim damages (including compensatory damages, punitive damages and other damages, if any) that exceed the minimal jurisdictional amount required by this Court.

PRAYER

WHEREFORE, Plaintiffs demand judgment against the Defendants, and each of them, jointly and severally, for general and special damages and for exemplary damages, for their costs expended, for interest on the judgment from the date rendered until paid, at the legal rate, for prejudgment interest, and for other such other and further relief both at law and at equity, to which the Plaintiffs may show themselves justly entitled.

The Plaintiffs pray for relief as follows:

1. For general damages in a sum in excess of the jurisdictional minimum of this Court;
2. Medical, incidental, hospital, and service expenses according to proof;
3. Emotional distress/mental anguish damages;
4. Liquidated damages to compensate for the costs of future medical monitoring expenses according to proof;
5. Prejudgment and post-judgment interest as provided by law;
6. Compensatory damages in excess of the jurisdictional minimum of the Court, according to proof;
7. Consequential damages in excess of the jurisdictional minimum of the Court, according to proof;
8. Punitive and exemplary damages;
9. Attorneys' fees, expenses, and costs of this action;
10. Plaintiffs pray for medical monitoring damages; and
11. Such further relief as this Court deems necessary, just, and proper.

DATED THIS 1st DAY OF JUNE 2011.

By



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