

## **BANANAS!\* background**

During the 1970s, the pesticide DBCP was used extensively on banana plantations all over the world. In 1977, the EPA suspended most uses of DBCP when employees at the Occidental Chemical plant in California were found to be sterile.

### **Tellez versus Dole**

In July 2007, LA based attorney Juan Dominguez brought up a case in the LA Superior Court where twelve Nicaraguan banana workers claimed to be sterile and accused Dole Food and Dow Chemical of negligence and fraudulent concealment in using DBCP. This case was unique since no previous DBCP case had ever been presented to an American jury. During the trial, the CEO of Dole admitted on the stand that Dole continued using DBCP after being informed of its harm.

In November 2007, the jury awarded \$3.2 million to six of the twelve workers in compensatory damages. The jurors found that DBCP was defective and they also found that Dole acted with malice. Dole called the verdicts unjust and appealed. Two weeks later, the jury added an additional \$2.5 million in punitive damages against Dole as punishment for actively concealing the dangers.

### **“The fraud case”**

In November 2008, Dominguez brought two other DBCP cases on behalf of former Nicaraguan banana workers to the LA Superior Court. Dole claimed that all but one of eleven plaintiffs in the two cases had never worked on banana plantations and that the men were paid and coached by their attorneys. Several witnesses testified on videotape, some of them anonymous since they claimed they feared for their lives for exposing the fraud. In April 2009, Judge Victoria Chaney ultimately dismissed the cases, and also said that the fraud may have connections with the Tellez case.

### **BANANAS!\* versus Dole**

In April 2009, the documentary BANANAS!\* by director Fredrik Gertten and WG Film was selected to compete in the Los Angeles Film Festival (LAFF) to be held in June. The film features scenes from the Tellez versus Dole trial. When Dole’s law firm, *Gibson, Dunn & Crutcher*, saw the online trailer, they sent a letter to WG Film, ITVS and all the sponsors of LAFF, claiming that the film made defamatory statements against Dole, and if the film were to be shown in LA, they would take legal action. The festival took the decision to move BANANAS!\* out of competition. Instead, a “special case study screening” was arranged, with a post-screening discussion with Gertten.

On July 7<sup>th</sup>, Dole filed a civil lawsuit in LA Superior Court against WG Film, director Gertten and producer Margarete Jangård. The lawsuit claimed that the film defames Dole. Two months later, on September 11<sup>th</sup>, WG Film responded the Dole lawsuit by filing an Anti-SLAPP Motion and a Cross-Complaint, seeking to recover damages for Dole’s improper tactics in interfering with the film’s premiere. The story about Dole’s lawsuit was widely covered in Swedish news media and launched a debate about documentary ethics and free speech. The support against Dole from filmmakers, politicians and public opinion grow strong. On October 15, Dole withdrew their lawsuit.

### **“The fraud case” – part 2**

On January 25<sup>th</sup> 2010, a new plaintiffs’ lawyer in the Tellez case filed a motion which seriously contested Dole’s allegations of fraud. The lawyer, Steve Condie, wrote that Judge Chaney’s dismissal of all upcoming DBCP cases was unfair because of the anonymous nature of the witness statements, and that the allegations are a distraction from the genuine claim involving Dole’s use of DBCP. Condie also writes that at least four of the anonymous “John Doe” witnesses were paid by Dole and that four more had their own personal motives to slander American lawyers involved in DBCP litigation in Nicaragua.

Further hearings in the case are scheduled for March 19, 2010.