

Litigator of the Week: Andrea Neuman of Gibson, Dunn & Crutcher

By Jan Wolfe

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Andrea Neuman of Gibson, Dunn & Crutcher made a name for herself exposing large-scale misconduct on the part of plaintiffs lawyers suing Dole Food Company Inc. over its pesticide use in Latin America. This week, she finished off nearly all the remaining cases in a more old-fashioned way, winning a ruling that Dole's opponents waited too long to sue.

In an eight-page decision issued on Tuesday, U.S. District Judge Richard Andrews in Delaware threw out a pair of cases brought on behalf of about 2,700 banana plantation workers from Panama, Ecuador, Guatemala, and Costa Rica. The plaintiffs claimed that Dole's use of the pesticide dibromochloropropane (DBCP) left them suffering from a host of medical problems, ranging from infertility to loss of vision and renal failure. But Andrews held that the cases are time-barred, rejecting an argument by plaintiffs counsel that parallel litigation brought 20 years ago had tolled the statute of limitations.

Andrews is the latest judge to reject the plaintiffs tolling theory since Gibson Dunn took the DBCP assignment for Dole and began chipping away at the company's exposure. In 2009 Dole faced claims on behalf of about 10,000 plaintiffs. At this point, Neuman said, barring an appellate reversal, all that remains is one single-plaintiff case in Delaware state court.

In the 1960s and 1970s, Dow Chemical Co. marketed DBCP as a way to kill off worms that were decimating banana crops around the world. Dole and other food companies used the chemical widely to protect their harvests, but U.S. regulators banned the pesticide in 1979, after it was linked to sterility, cancer and other health problems.

Dole has proven a particularly attractive target for tort claims related to DBCP because it continued to use the product abroad after its dangers were exposed. While the company maintains that DBCP didn't cause health problems in farming communities, it has settled with some groups of plaintiffs.

The low point for Dole came in 2007, when a California jury returned a \$2.3 million verdict for six workers who said Dole exposed them to injuries from DBCP. The company's original lawyers at Jones Day called it a good result, pointing out that the plaintiffs had sought many millions more. But Dole's in-house lawyers opted for a more aggressive approach and brought on a Gibson Dunn team including Neuman, Theodore Boutrous Jr. and Scott Edelman.

Gibson Dunn turned the case around, exposing evidence that plaintiffs lawyers coached witnesses, that some plaintiffs hadn't even worked for Dole and that others bore children despite their alleged infertility. Neuman

got one of the plaintiffs to admit during a deposition that he'd been given a script to follow, as Corporate Counsel recounted in a 2009 feature.

The trial judge tossed the verdict in 2010, ruling that lead plaintiffs counsel Juan Dominguez "designed, executed and funded a fraud upon the court." (As we've reported, the win helped Gibson Dunn land the lead role representing Chevron Corporation in its ongoing effort to discredit Ecuadorean plaintiffs in multibillion-dollar environmental litigation.) An appeals court affirmed Dole's victory in March, following arguments by Gibson Dunn's Boutrous.

Scott Hendler, one of the leading plaintiffs lawyers in the DBCP litigation arena, brought a final batch of cases in 2011 and 2012 in state and federal court in Louisiana and Delaware. Hendler, who wasn't involved in the tainted California case, argued that his clients' claims weren't time-barred because the workers didn't discover their injuries until the 1990s, and at that point the statute of limitations was tolled by the filing of class action in Texas in 1993. Under the U.S. Supreme Court's 1974 decision in *American Pipe & Construction Co. v. Utah*, the filing of a class action generally tolls the statute of limitations for similar suits brought by potential class members.

By filing in multiple jurisdictions, Hendler was trying to maximize the odds that a judge would buy his tolling theory, Neuman said. "I call them 'tester cases,'" she said. "He was basically throwing things up against the wall and seeing what sticks." (Hendler, for his part, told us the forum-shopping accusation is "nonsense." He said he filed in Louisiana because it was the "nucleus" of the alleged conduct and because Dole contested jurisdiction in Texas. And he said he brought cases in state and federal court in Delaware, Dole's place of incorporation, because Delaware judges had invited the suits.)

In 2012 Neuman won a ruling from a federal judge in New Orleans that Hendler's Louisiana cases were time-barred. The U.S. Court of Appeals for the Fifth Circuit affirmed in September 2013. Judge Andrews has now followed in the Fifth Circuit's footsteps.

Neuman acknowledges that Dole's latest victories haven't been as dramatic as those in the California litigation, with its explosive revelations of fraud. But she's certainly not complaining.

"Once these cases are over, that'll be a very significant victory for Dole," Neuman told us. "They went in and fought these cases very hard."



Andrea Neuman