

8th International Litigation & Arbitration Conference

Hot Topics In International Litigation



Gary E. Davidson

8th International Litigation and Arbitration Conference

Osorio v. Dole Food Co.

_____ F.Supp.2d _____, 2009 WL 3398931
S.D.Fla., 2009 (Oct. 20, 2009)

Action by Nicaraguan plaintiffs allegedly injured during work on banana plantations by the chemical compound DBCP. Plaintiffs were on average awarded \$647,000 each, for a total award to all plaintiffs of approximately \$97,000,000, pursuant to Nicaraguan “Special Law 364.”

The Nicaraguan plaintiffs sought to enforce the Nicaraguan trial court judgment against Dole Foods and Dow Chemical Corporation pursuant to Florida's Uniform Out-of-Country Foreign Money Judgments Recognition Act (Fla.Stat. §55.601-607).

The court found that non-recognition of the Nicaraguan judgment was required, as each of three of the independent non-recognition factors were present:

- The Nicaraguan court did not have personal jurisdiction over the defendants;
- The Nicaraguan court did not have subject matter jurisdiction; and
- The Nicaraguan judgment was entered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process.

As well, the court found that at least one of the eight statutory (but) discretionary factors was present, suggesting non-recognition was appropriate because the cause of action or claim for relief on which the judgment was based is repugnant to the public policy of Florida.

I. Lack of Personal Jurisdiction & Subject Matter Jurisdiction

The court found that in electing not to make deposits (effectively a form of collateral in the event of an adverse judgment) as required by Special Law 364, the Defendants invoked their opt-out rights under Nicaraguan law and divested the Nicaraguan trial court of SMJ and PJ to enter judgment.

I. Lack of Personal Jurisdiction & Subject Matter Jurisdiction

-- Special Law 364 “appears to be somewhat unique among blocking statutes in that it operates by establishing onerous conditions under which defendants would litigate and then providing defendants with the right to opt-out of Nicaragua’s jurisdiction....[i]t is beyond dispute that Special Law 364 provides ample incentives for the defendants to exercise their opt-out rights by . . . effectively depriving them of due process in their effort to mount a defense.”

-- Here, “Defendants expressly opted out of Special Law 364 by refusing to make the required deposits and by waiving their forum non conveniens arguments in United States courts.”

II. Special Law 364 Is Incompatible With The International Concepts Of Due Process

a) “[This] court cannot enforce the judgment because it was rendered under a legal system that did not provide procedures compatible with the requirements of due process.”

- -- numerous provisions of Special Law 364 failed to provide “basis fairness” to the Defendants.
- -- for example, Article 9 of Special Law 364 imposed an irrefutable presumption of causation of Plaintiffs’ alleged sterility and their asserted exposure to DBCP. This was done in such a way as to violate the international concept of due process. The court pointed out that statutes creating permanent irrefutable presumptions have long been disfavored.

II. Special Law 364 Is Incompatible With The International Concept Of Due Process

- b) Special Law 364 Was Not Designed to Be a Law of General Applicability but is instead Targeted against a group of Foreign Defendants and Subjects Them to Discriminatory Provisions Inapplicable to Domestic Defendants

Example:

- There is a minimum damage requirement entitling successful plaintiffs, who first sued in the United States and were dismissed out on FNC grounds, to a minimum award of \$125,000.

Example:

- The court found that Special Law 364 “unfairly discriminates against the Defendants by requiring them, as a condition to defending DBCP claims, to deposit \$100,000 within 90 days of the complaint being filed.”

II. Special Law 364 Is Incompatible With The International Concept Of Due Process

c) Nicaragua Lacked Sufficiently Impartial Tribunals

“While on paper and in theory Nicaragua has all the trappings of an independent judiciary, in practice the judiciary does not act impartially”, explained the court, citing to, among other things, U.S. State Department reports that “both lower courts and the Supreme Court [have] rendered controversial judgments dismissing evidence and convictions against international drug traffickers.”

III. No Enforcement of a Judgment Will be Allowed Where that Judgment Violates Florida's Public Policy

- The defendants were deprived of their basic ability to defend themselves because of the irrefutable presumption of causation under Special Law 364.

- In fact, the court found that “the presumption of causation in Special Law 364 contradicts known scientific fact and affords no opportunity for rebuttal.”

- Finding that Special Law 364's presumption of causation would be unconstitutional in Florida, the court exercised its discretion in refusing to enforce the judgment on this ground.