

US Court Refuses to Enforce Nicaraguan Judgment

On October 20, 2009, the United States District Court for the Southern District of Florida issued an order in the case of *Osorio v. Dole Food Company* denying recognition of a \$97 million Nicaraguan judgment under the Florida Uniform Out-of-country Foreign Money-Judgments Recognition Act (Florida Recognition Act). Fla. Stat. §§ 55.601-55.607 (2009). The Nicaraguan judgment involved 150 Nicaraguan citizens alleged to have worked on banana plantations in Nicaragua between 1970 and 1982, during which time they were exposed to the chemical compound dibromochloropropane (DBCP). DBCP is an agricultural pesticide that was banned in the United States after it was linked to sterility in factory workers in 1977. Nicaragua banned DBCP in 1993.

Plaintiffs sued Dole Food Company and The Dow Chemical Company, both Delaware corporations, on account of personal injuries allegedly resulting from the use of DBCP. The judgment in this case was rendered by a trial court in Chinandega, Nicaragua. The court awarded plaintiffs \$97 million under “Special Law 364,” enacted by the Nicaraguan legislature in 2000 specifically to handle DBCP claims. The average award was approximately \$647,000 per plaintiff.

According to the Nicaraguan trial court, these sums were awarded to compensate plaintiffs for DBCP-induced infertility and its accompanying adverse psychological effects.

Plaintiffs sought enforcement of the judgment in Florida state court, and defendants removed the case to federal court. Defendants then raised several objections to domesticating the judgment. They contended that under the Florida Recognition Act the federal court could not enforce the judgment because (1) the Nicaraguan trial court lacked personal and/or subject matter jurisdiction under Special Law 364, (2) the judgment was rendered under a system which does not provide procedures compatible with due process of law, (3) enforcing the judgment would violate Florida public policy, and (4) the judgment was rendered under a judicial system that lacks impartial tribunals.

In a lengthy opinion, Judge Paul C. Huck concluded that “the evidence before the Court is that the judgment in this case did not arise out of proceedings that

comported with the international concept of due process. It arose out of proceedings that the Nicaraguan trial court did not have jurisdiction to conduct.

During those proceedings, the court applied a law that unfairly discriminates against a handful of foreign defendants with extraordinary procedures and presumptions found nowhere else in Nicaraguan law. Both the substantive law under which this case was tried, Special Law 364, and the Judgment itself, purport to establish facts that do not, and cannot, exist in reality. As a result, the law under which this case was tried stripped Defendants of their basic right in any adversarial proceeding to produce evidence in their favor and rebut the plaintiffs' claims. Finally, the judgment was rendered under a system in which political strongmen exert their control over a weak and corrupt judiciary, such that Nicaragua does not possess a 'system of jurisprudence likely to secure an impartial administration of justice.'" (citation omitted)

In light of these findings, the Court held that "Defendants have established multiple, independent grounds under the Florida Recognition Act that compel non-recognition of the \$97 million Nicaraguan judgment. Because the judgment was 'rendered under a system which does not provide impartial tribunal or procedures compatible with the requirements of due process of law,' and the rendering court did not have jurisdiction over Defendants, the judgment is not considered conclusive, and cannot be enforced under the Florida Recognition Act.

Fla. Stat. § 55.605(1)(a)-(c). Additionally, the judgment will not be enforced because 'the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state.' Fla. Stat. § 55.605(2)(c). The Court, therefore, orders that Plaintiffs' judgment shall be neither recognized nor enforced."

This case is interesting on multiple levels. *First*, the district court applied an "international concept of due process." Slip. op. at 23. This standard was seen to be in concert with, but different than, US notions of due process. *Id.* at 35-36. *Second*, the court found that Nicaragua does not have impartial tribunals. *Id.* at 54-58. In so doing, the court relied not only on US State Department pronouncements but also on expert testimony regarding what law is like on the ground in Nicaragua "on paper and in practice." *Id.* at 57. *Finally*, this case is perhaps most interesting because the general understanding is that it is hard to resist enforcement. This case shows that US courts, if presented with appropriate evidence, are willing to ascertain the validity of foreign judgments, especially in

countries facing political and social turmoil that may negatively impact the administration of justice in those countries.