

DynCorp Prevails In Ecuadorean Farmers' Herbicide Suit

By **Emily Field**

Law360, New York (April 21, 2017, 5:03 PM EDT) -- A Washington, D.C., federal jury on Thursday largely sided with DynCorp in a suit brought by six farmers representing a class of Ecuadoreans who claim the defense contractor poisoned them with herbicide while trying to destroy drug crops in Colombia.

The jury decided that DynCorp didn't intentionally inflict emotional distress or battery on the farmers, who represent a 2,000-person class of Ecuadoreans allegedly harmed by the chemicals, according to the verdict.

The jury did find that DynCorp was a joint employer of contractor EAST Inc. spray pilots, but not of Colombian national police pilots, and that the police pilots stopped flying on spray missions in April 2003, the verdict form says.

"The unanimous jury verdict in DynCorps' favor follows a series of earlier rulings in which the court rejected plaintiffs' claims that the spraying operations had resulted in physical injuries and property damages," a DynCorp spokeswoman told Law360 on Thursday.

The case stems from Plan Colombia, a broad joint effort by the U.S. and Colombia, which started in 1999 to combat drug trafficking and organized crime and included efforts to poison swaths of drug-producing farms through aerially delivered herbicides.

DynCorp, contractor EAST Inc. and the Colombian National Police sprayed Monsanto Corp.'s herbicide RoundUp onto tens of thousands of hectares of farmland each year, some of it bordering or in Ecuadorean territory.

In 2001, the first of multiple lawsuits was filed against DynCorp for allegedly poisoning people and water in Ecuador, and after a series of consolidations and the partial dismissal of some claims, the trial started April 3.

"We're pleased by today's verdict, which marks an important step in holding DynCorp accountable for the immeasurable pain and losses suffered by Ecuadoreans and their families," Theodore Leopold of Cohen Milstein Sellers & Toll, attorney for the farmers, said in a statement. "We look forward to continuing to pursue a full measure of justice for those harmed and to send a strong message that no firm should be allowed to absolve itself of responsibility after committing such actions."

The next trials will focus on the times of spraying, who was sprayed, and whether those acts were substantially certain to cause harm, Leopold told Law360 in an email on Thursday.

The farmers **argued earlier this week** that the jury should award punitive damages against the defense contractor based on a two-prong requirement, which they claimed to have met.

The first was that DynCorp purportedly acted with "an evil motive, actual malice or willful disregard" for the plaintiffs, and the second that its management allegedly participated in or authorized the wrongful conduct.

Regarding the first prong, the farmers pointed to testimony from DynCorp. managers, including one who admitted he did not know if the fumigant was harmful to animals or humans.

"DynCorp did not know the precise chemical used in the herbicide it sprayed, never tested it on humans, but insisted that it was safe for humans when they sprayed it with substantial certainty or reckless disregard that it would hit the plaintiffs and their farms, showing malice or willful disregard for plaintiffs' rights," they said in a April 18 filing.

Earlier in April, DynCorp had argued that it couldn't be held liable for the actions of pilots employed by subcontractors and the National Police of Colombia, which provided pilots for the plans.

Since neither contractor EAST Inc. nor the Colombian national police fell under a legal "master-servant" relationship, any tortious actions by those entities could not be held against DynCorp, the company argued in an April 9 motion.

For the farmers' part, they argued in a motion the same day that the company had dictated how pilots would be trained, set parameters for the spray missions and provided data and coordinates for specific missions.

The plaintiffs are represented by Terry P. Collingsworth of International Rights Advocates and Theodore J. Leopold, Leslie M. Kroeger and Poorad Razavi of Cohen Milstein Sellers & Toll PLLC.

DynCorp is represented by Joe G. Hollingsworth, Eric G. Lasker, Buffy J. Mims and Gregory S. Chernack of Hollingsworth LLP.

The cases are Arias et al. v. DynCorp et al., case number 1:01-cv-01908, and Quinteros et al. v. DynCorp et al., case number 1:07-cv-01042, in the U.S. District Court for the District of Columbia.

— Additional reporting by Natalie Olivio. Editing by Ben Guilfooy.