

Litigators of the Week: Eric Lasker and Rosemary Stewart of Hollingsworth LLP

By Jan Wolfe

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Eric Lasker



Rosemary Stewart

It's been two decades since a lawyer named Cristobal Bonifaz first filed an environmental suit over oil pollution in the Ecuadorian Amazon that would eventually become a global \$19 billion legal morass for Chevron Corporation. But Chevron wasn't the only U.S. corporation Bonifaz targeted on behalf of the region's indigenous people. In 2001 he also sued the military contractor DynCorp International, claiming its aerial herbicide spraying in conjunction with the State Department's "Plan Colombia" anti-narcotics effort had sickened thousands near Ecuador's northern border.

"It is a tragedy of major proportions that, in the same region where [Chevron predecessor] Texaco devastated the environment and caused untold suffering to the people of the rainforest, a new enemy now comes from the air, poisoning the people, killing their crops and destroying their land," Bonifaz told sympathetic journalists back in 2002.

Fast-forward to the present. Chevron is paying a battalion of lawyers to wage an incredibly costly battle with the Amazonian plaintiffs and their counsel in at least five countries. Bonifaz, for his part, has been thoroughly sidelined from both cases. And DynCorp? Its lawyers at Hollingsworth LLP, led by Eric Lasker and Rosemary Stewart, are savoring a complete defense victory.

In a Feb. 15 decision made public this week, U.S. District Judge Richard Roberts in Washington, D.C., finally threw out the Ecuadorians' case against DynCorp. The judge disqualified the plaintiffs' sole expert witness, who was set to testify that they developed health problems because DynCorp sprayed their property with excessive amounts of the herbicide glyphosate. Without the expert's testimony, Roberts ruled that the plaintiffs couldn't establish causation and granted summary judgment to DynCorp. The ruling knocks out the last remaining claims against DynCorp relating to its herbicide use near the Colombia-Ecuador border.

When the case kicked off in 2001, the standard defense playbook in mass foreign tort cases was to seek dismissal on *forum non conveniens* grounds. U.S. courts were relatively plaintiff-friendly on some key issues, like damages, and most corporations preferred their odds in foreign courts. The Chevron litigation, by way of example, got transferred from the U.S. to Ecuador precisely because Chevron vouched for the Ecuadorian court system that the oil giant now says is hopelessly corrupt.

Lasker and Stewart took a different approach and submitted to U.S. jurisdiction. "We didn't have faith in the Ecuadorian courts," Lasker explained.

Still, at first Lasker and Stewart had reason to doubt the wisdom of choosing a U.S. forum. Judge Roberts took more than four years to rule on a motion to dismiss. Then, in 2006, plaintiffs' lawyers filed copycat claims in U.S. district court in Florida. By 2007, DynCorp was facing claims by roughly 3,200 individual plaintiffs. Three Ecuadorian provinces also filed suit against DynCorp on behalf of their citizens, demanding \$555 million in damages.

After years of discovery, the tide started to turn in 2010. In January of that year, Roberts dismissed about a thousand plaintiffs on the grounds that they failed to properly fill out court-mandated questionnaires. Roberts didn't give the plaintiffs leave to amend, ruling that they were given repeated opportunities to provide specifics about their alleged exposure and damages and failed to do so. "We spent a great deal of time chipping away at those questionnaires," said Stewart.

The Hollingsworth duo's knock-out blow came with last month's summary judgment ruling. They convinced Roberts that the plaintiffs expert, while well-credentialed, had little basis for his opinion that DynCorp used excessive amounts of herbicide, causing both short and long-term health problems. "He had no idea what he was talking about, to be quite honest," Lasker told us. "If he had read the entire label [on the herbicide], he would have understood that the spraying was exactly in compliance."

Lasker and Stewart insist that that the plaintiffs' claims were bogus to begin with. "It would have been nice to get a judgment that, by golly, the spray didn't even drift into Ecuador," said Stewart. But she pointed out that DynCorp didn't win because of some procedural loophole. "This ruling is very substantive," she told us. "The plaintiffs did not support, and could not support, their claims."

"It's a vindication," added Lasker.

Veteran alien tort litigator Terry Collingsworth of Conrad & Scherer has been representing the plaintiffs since Bonifaz dropped out as his co-counsel in 2007. We reached out to Collingsworth Thursday to ask whether he planned to contest the ruling and fight on, but we didn't hear back. For now at least, DynCorp can leave the Ecuador litigation to Chevron.