

*In 2007 Chiquita admitted to paying a terrorist organization to protect its Colombian farms, but thousands of people claiming damages from the company are still awaiting trials. The company has accused one lawyer, whose firm has provided security to witnesses under threat in the past in other cases, of allegedly paying off witnesses. Whether this is a delay tactic or a case-changing argument is yet to be seen.*

"I've never seen anything like this as long as I've been in the business. It's bizarre," says Terry Collingsworth of law firm Conrad & Scherer, who has recently come under attack from Chiquita's legal team who allege he proposed paying former Colombian paramilitaries to give false testimony.



It is not so much Chiquita's action that he finds so strange however, but the source of their claim - Paul Wolf, who in theory ought to be on Collingsworth's side as they both represent Colombian plaintiffs in litigations against the multinational.

Wolf, who in July told a court in Alabama that most of his knowledge of the allegation was "hearsay" and that he'd never seen any payments or their receipts, made the claim against the attorney on his Facebook page.

Chiquita's law firm Covington & Burling has used that post and an email from Collingsworth about the ethics of paying witnesses' legal fees to make its argument, in an attempt to postpone the expedited depositions of three imprisoned former United Self-Defense Forces of Colombia (AUC) members.

"The memo was attached to an email authored by Terry Collingsworth, counsel for some of

the ATS [Alien Tort Statute] plaintiffs, in which he acknowledged that such payments have an "impact on credibility," but asserted that such payments were necessary to "get truthful evidence on AUC-Chiquita discussion.", " the firm said in a submission to the South Florida District Court.

"For these depositions to go forward before Chiquita has had the opportunity to take any discovery that would equip it to conduct a fair cross-examination - including discovery concerning the extent of ATS plaintiffs' counsel's prior dealings with, and payments to, these "witnesses" - would fundamentally prejudice Chiquita's right to a fair trial."

Collingsworth slammed the allegations and the revelations in the memo, which were raised by Wolf in a defamation case brought by U.S. coal miner Drummond Company, another group with operations in Colombia that like Chiquita has also been accused of alleged paramilitary payments in the South American country.

"He [Wolf] has engaged in a self-destructive campaign to misrepresent and reveal to the public, and therefore to opposing counsel, privileged discussions we have had," says Collingsworth.

"He has filed ethics charges against many of the lawyers representing plaintiffs in the Chiquita litigation, including the Boies Schiller firm, Searcy Denney & Scarola and me. All of these charges were dismissed as baseless.

"He claims to have heard us discussing it was ethical to help a witness with his attorneys' fees. We deposed him and he admits he has no personal knowledge of anything."

Collingsworth says those affected are contemplating their options to hold Wolf accountable for his "destructive action".

"Chiquita is an MDL [multi-district litigation] so we are grouped with Wolf for now, but we all remain perplexed at his conduct.

"It certainly raises serious ethical issues when a lawyer reveals privileged materials to the detriment of his clients and clients of the other lawyers in an MDL when there is clearly a common interest privilege as well as co-counsel privilege."

### **Witness ethics and the course ahead for Chiquita litigations**

In the Drummond case, Steven H. Hobbs of the Alabama University School of Law provided an expert opinion on the ethics of the law firm providing security to former AUC witnesses.

Hobbs concluded that as these witnesses were already on record with their testimonies at the time security was provided, this "largely eliminates any concerns that the security assistance influenced the testimony", and that security measures were ethical.

"I note that in the Drummond litigation we have openly and transparently disclosed that, due to serious threats of death against family members of witnesses about to testify against Drummond, we relocated those family members as a security measure to save their lives," Collingsworth claims.

"There are no overlapping witnesses in Chiquita and we have not yet faced those security issues because no one has yet been about to testify. Hopefully we won't face those same issues."

The big difference between Drummond and the produce company is that former Chiquita CEO Fernando Aguirre, along with former Chiquita counsel and current U.S. Attorney General Eric Holder, signed a factual proffer in 2007 acknowledging the produce multinational made payments to the AUC, including more than US\$825,000 after the AUC was declared a terrorist organization by the U.S. Government.

Collingsworth emphasizes this document ought to be the core focus of the case, in which his clients have sought damages from Chiquita alleging wrongful death.

"This should be the focus of any discussion of this case, not our careful and ethical efforts to deal with the unique problem of getting testimony from former members of a terrorist organization that Chiquita admitted it provided substantial support to and that we allege resulted in the murder of thousands of innocent civilians, including our clients," he says.

"Chiquita is attempting to block our efforts to depose members of a terrorist organization it admits supporting for years on the grounds that there is a baseless allegation that we discussed whether we could provide legal assistance to any of these witnesses.

"This is a frivolous effort to delaying the gathering of evidence. Chiquita clearly does not want its former collaborators in the AUC to testify about the nature of their relationship."

While the U.S. Appeals Court [threw out a Chiquita terrorist payment claim case on \(ATS\) grounds](#) in July last year, Collingsworth highlights his case John Doe 1 v. Chiquita involves three claims, which in addition to an ATS claim before the Supreme Court include the Torture Victims Protection Act (TVPA) and Colombian Wrongful Death Law before a trial judge.

"There's an issue of the choice of law. For now it appears the court is going to apply the Wrongful Death Law of Colombia. Another would be the law where Chiquita is incorporated, which is Ohio, and the other law of Florida where the case is, but right now the judge appears to be applying the law of Colombia," he says.

"Right now we have wrongful death claims, and it really doesn't matter what law you apply - most legal systems have wrongful death and the standard is about the same anywhere."

He says his case was the first one filed, followed by about five other groups of lawyers who have been tied together to form the MDL.

### **The missionary case**

Another case pending against Chiquita involves the [families of five missionaries](#) who were murdered by guerila group the Revolutionary Armed Forces of Colombia (FARC), in 1995. Under the case name *Julin et al v. Chiquita*, the families are seeking damages from the multinational.

It has been established that Chiquita made payments to the FARC from 1989 to at least 1997.

Recently, a U.S. district judge dismissed one count in the case which alleged Chiquita was liable for damages for allegedly aiding and abetting the "homicide and serious bodily injury of American Nationals located outside the United States".

However, there are still 23 more counts in the complaint alleging causes of action against Chiquita for wrongful death, false imprisonment, intentional infliction of emotional distress and assault.

The attorney representing the families, Gary M. Osen of Osen LLC, tells [www.freshfruitportal.com](http://www.freshfruitportal.com) the case is not particularly difficult from a legal standpoint, but the passing of time has been a challenge both procedurally and emotionally for those involved.

"That this case has dragged on for seven years is a victory for the defendant, certainly up until now - hopefully the tide has now turned from a scheduling standpoint and we could go to trial in the next two years," he says.

"It's been tremendously hard on the families obviously, and so have the last 20 years to be quite blunt about it. First they waited to find out what happened and what the fate of their

fathers and husbands were, and they've waited years longer for an accounting of it.

"Inherent in the 20-year time gap is that not everyone who has firsthand knowledge of the events is still around; not all the employees of Chiquita and Banadex [subsidiary] are still employees, and so on and so forth. A lot changes in the world over 20 years and I think that's a burden that we'll have to overcome, but I think we'll do that."

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