

Fliers' Kin Win A Way To Collect Shoot-Down Ruling Targets Money Owed Cuba By Firms

Miami Herald, The (FL)-March 19, 1999

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In a landmark ruling marked by a stern rebuke of the Clinton administration, a federal judge declared Thursday that families of three Brothers to the Rescue members who were killed by Cuban fighter jets in 1996 may receive more than \$6.2 million owed to Cuba by U.S. phone companies.

From courthouse steps in downtown Miami, lawyers for the families insisted the ruling paves the way for them to seek money flowing to Cuba from any U.S. company licensed to do business with the Communist-controlled island, long under a trade embargo imposed by Washington.

``We're going to go get the money," said Miami lawyer Aaron Podhurst. ``This is a federal judgment. Nobody has the right, not the President or anybody else, to not follow a federal judgment."

The ruling is the most significant to date in the families' two-year quest to collect on a \$187 million judgment that Senior U.S. District Judge James Lawrence King assessed against Cuba in the wake of the notorious shoot-down of four Miami-based fliers on Feb. 24, 1996.

An earlier decision in the case by King led to a freeze on payments from most U.S. phone companies to Cuba, and Cuba's retaliatory shut-down of direct phone service between the two countries. Since Feb. 25, calls have been routed through third countries.

The judgment, handed down after an uncontested lawsuit that named the Republic of Cuba and the Cuban Air Force as defendants, triggered an international debate over the Clinton Administration's foreign policy and the ability of victims to collect damages from governments accused of supporting terrorist acts.

Three years after the tragedy, family members are still seeking a measure of justice that supersedes the \$1.2 million in payments authorized by the White House from frozen Cuban funds.

``We ask President Clinton and Secretary [of State] Madeleine Albright to remember their indignation at the murders," said Miriam de la Pena, mother of Mario de la Pena Jr., one of the victims. ``We ask them to recall what it means to have American citizens murdered in cold blood over international waters."

The judge ruled that President Clinton lacked the authority to waive a provision of a new anti-terrorism law that allowed the families to stake a claim to blocked Cuban assets to fulfill the \$187 million judgment against Cuba and its air force. And King had strong words for the administration, which initially deplored the destruction of two Brothers to the Rescue aircraft in international airspace.

``The court notes with great concern that the very President who in 1996 decried this terrorist action by the Government of Cuba now sends the Department of Justice

to argue before this court that Cuba's blocked assets ought not be used to compensate the families of the U.S. nationals murdered by Cuba," King wrote in a 49-page order.

``The executive branch's approach to this situation has been inconsistent at best," the judge went on. ``It now apparently believes that shielding a terrorist foreign state's assets are more important than compensating for the loss of American lives."

On Feb. 24, 1996, four members of the Miami-based Brothers to the Rescue perished while searching for Cuban refugees seeking to reach the U.S. aboard flimsy rafts. Although Brothers planes had entered Cuban airspace before, investigators determined that MiG pilots destroyed their planes and ended their lives over international waters.

As he has before, King characterized the shoot-down as an act of murder.

At a press conference in front of a federal justice building that bears King's name, attorneys flanked by family members said the ruling covered not only \$6.2 million in frozen telephone payments, but any fees that were being incurred as they spoke. Moreover, lawyers indicated that they now have an important weapon to pursue airlines that pay fees for overflying the island on international flights and for landings rights at Cuban airports.

The lawyers might even pursue money generated by a scheduled baseball game between the Baltimore Orioles and a teams of Cuban nationals.

``It's a great idea, we'll look at it," said Miami lawyer Francisco Angones. ``It is definitely a consideration. It is something we will explore."

Other lawyers for the families, Roberto Martinez of Miami, a former U.S. attorney, and Ronald Kleinman, a former State Department official who practices in Washington, said in interviews that millions more in payments and frozen money have yet to be identified.

``We'll have to go step by step," Kleinman said.

John Kavulich, director of the U.S.-Cuba Trade and Economic Council in New York, said the U.S. airline payments for overflights of Cuba probably amount to \$6 million annually.

``If this sets a precedent, then any commercial transaction, even those specifically authorized by Congress, could be in jeopardy," he said.

Kavulich agreed that telecommunications companies, airlines and travel agencies could all be vulnerable. Travel agents, he said, ``are transferring money to Cuba all the time for things that are legal."

A spokesman for the State Department, which opposes the release of any money for national security and foreign policy reasons, said the U.S. Government would have no comment until the administration reviews the ruling.

Chris Watney, a spokeswoman at the Justice Department, also said the government must review the order before making any decisions.

But one U.S. official said: "Undoubtedly it will be appealed. The companies can appeal. We can appeal. No money will actually be released to either Cuba or the families."

Cuba's telephone company - Empresa de Telecomunicaciones de Cuba S.A. - suspended most service in late February because U.S. phone companies withheld payments pending King's decision. But callers were able to get through anyway after the companies rerouted calls through third countries.

According to King's order, the bulk of the \$6.2 million in phone money - some \$4.1 million - consists of payments from AT&T. MCI International is next with more than \$1 million.

A spokesman for AT&T, one of several companies affected by the ruling, said the company is reviewing its options.

The spokesman, Gustavo Alfonso, said AT&T would continue routing calls to Cuba "using alternate channels."

He said the companies continue to disagree with the plaintiffs, and now with King, who ruled that Empresa is not an independent entity unaffected by the families' litigation.

"AT&T considers ETECSA to be an independent legal entity that is not liable for the debts of the Cuban government," Alfonso said.

But King wrote that the Cuban government retains "strong enough control" over the company that it cannot be treated as a "separate judicial entity."

Throughout the case, which was filed in October 1996, the families targeted frozen Cuban assets estimated at \$178 million, as well as payments destined for Cuba from U.S. companies that have permission to do business there. Families of Armando Alejandro, 45; and pilots Carlos Costa, 29, and de la Pena, 24, all sued under an amendment to the 1996 Antiterrorism and Effective Death Penalty Act, which allowed federal courts to exercise jurisdiction over claims against a foreign state.

The family of a fourth victim, Pablo Morales, could not sue because he was not a U.S. citizen.

In an early gesture of support for the families, the Clinton Administration did authorize the release of \$1.2 million to be distributed in \$300,000 increments among the four families. But the money fell far short of the mark, the lawyers and their clients. Cuba never dispatched any lawyers to King's court to contest the lawsuit. But the rhetoric in other forums was humming.

Ricardo Alarcon, president of the Cuban National Assembly, complained in a January speech that the judge was seeking to deprive Cuba of its resources.

"There is a gentleman, one Judge King - 'king' in English means 'monarch' - and he seems to act as if he were a king," Alarcon said. "Presently we are menaced by the danger that this judge may enforce an order he has issued, whereby - if it is complied with - Cuba would be stripped of the money which belongs to us, of

payments which are essential for the telephone service to continue."

color photo: Mirta Costa Mendez with Maggie Khuly and Marlene

Alejandre (a); photo: James Lawrence KING

LANDMARK RULING: Judge James Lawrence King.

TIM CHAPMAN / Herald Staff RELATIVES OF DOWNED MEN: From left, Mirta Costa Mendez, Maggie Khuly and Marlene Alejandre.

Edition: Final
Section: Front
Page: 1A

Index Terms: CUBA US COURT DECISION ASSET LAWSUIT SHOOTING CUBAN
REFUGEE

;

AIRPLANE RELATION

Record Number: 9903200128

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