

# **Families Of Fliers Win Key Ruling**

## **They Can Seek \$187 Million**

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In a landmark decision, a federal judge on Thursday ruled that relatives of three Miami-Dade County fliers shot down by Cuba in 1996 could collect a \$187 million judgment by garnishing money owed to the island.

The sweeping, 49-page order by U.S. District Judge James Lawrence King opens the door for the grieving families of the Brothers to the Rescue fliers to go after \$132 million in frozen Cuban assets held in the United States.

That includes recent payments made to the island by long distance telephone companies and even Cuban bank accounts seized as long ago as 1961, soon after President Fidel Castro took power.

Attorneys for the families said the ruling enables them to file claims for payments owed to Cuba by any U.S. company. They suggested they might even pursue the Baltimore Orioles for proceeds from an upcoming game between the Orioles and Cuba's baseball club.

"This is a momentous ruling," said Aaron Podhurst, one of the attorneys representing the families. "This means we are entitled to garnish any monies meant for the Cuban government. This gives us the right to proceed."

King's order is the culmination of months of legal wrangling that pitted the families against the U.S. Department of Justice, which argued that allowing victims to claim assets of foreign governments could open a floodgate of lawsuits that would threaten delicate international relations.

This case has already strained shaky relations between the U.S. and Cuba. When King froze millions in U.S. phone company payments to Cuba after an initial ruling last fall, Castro retaliated by cutting direct phone service between the island and the U.S. The move had little impact, as carriers rerouted the calls through third countries.

The phone money is the first the families can go after. King ruled that they are immediately entitled to \$13 million in phone company payments held in escrow, and another \$6.2 million that the phone companies paid to Cuba after the judge ordered them to withhold payments from the island.

The phone companies and the Justice Department are considering whether to appeal. And every time the families want to go after some assets, they will have to file a new claim in court.

But the families said they were overjoyed by the ruling, which is the first under a three-year-old statute that allows families to sue foreign governments for the terrorist murders of U.S. citizens. The families said they will use the money to create a non-profit human rights foundation.

"This doesn't mean my son will be at the dinner table tonight, but it tells the Cuban government they have to pay for the cold-blooded murder of U.S. citizens," said Miriam de la Pena, whose son Mario was the youngest victim.

Killed were Mario de la Pena, 24; Armando Alejandro, 45; Carlos Costa, 29; and Pablo Morales, 29. Morales was not part of the lawsuit, because he was not a U.S. citizen.

The four were in two small Cessnas shot down by Cuban MiGs on Feb. 24, 1996, as they flew above international waters near Cuba. The men were volunteers with Brothers to the Rescue, a group that searches for rafters fleeing the communist island.

In 1997, the families won the \$187 million judgment against the Republic of Cuba and the Cuban Air Force, but were unable to collect because of objections from the Clinton Administration.

King ruled that President Clinton did not have the authority to veto a portion of the anti-terrorism law that allowed families to claim assets of foreign governments.

King wrote: "A President cannot simply express his intentions to execute a law a certain way if that action is not allowed by" Congress.

Attorneys for the Justice Department said the Clinton Administration feared such lawsuits would scare away foreign governments who would think their property in the U.S., including embassies, could be easily claimed.

State Department attorneys declined to comment, but told the court they reserved the right to appeal. The telephone companies are considering whether to appeal. Cuba has no standing in the case and cannot appeal.

The phone companies are now on the hook for \$6.2 million they have already paid to Cuba. Hardest hit is AT & T, which must come up with \$4.1 million. MCI International Inc. has been ordered to pay the families \$1.05 million, money it too has already given to Cuba.

"We are waiting for a decision from our legal department to determine if we will appeal," said Gustavo Alfonso, spokesman for AT & T.

MCI spokeswoman Jamie Depeau said the company is reviewing the order and considering its options.

Maggie Khuly, who lost her brother, Armando Alejandro, said the families will outlast any legal maneuvering.

"We hope this does not take forever, but if it does take forever we have our children and our grandchildren and they will take it on," she said.

PHOTO

AP photo/ALAN DIAZ

From left, attorney Aaron Podhurst at U.S. District Court in Miami with victims' relatives: Miriam de la Pena, Maggie Khuly; and Mirta Mendez.

BOX: MONEY SOURCES

THE FAMILIES OF FOUR BROTHERS TO THE RESCUE PILOTS SHOT DOWN BY CUBAN FIGHTERS CAN COLLECT THEIR \$187 MILLION JUDGMENT BY GARNISHING U.S. MONEY OWED TO THE COMMUNIST GOVERNMENT. HERE ARE SOME POTENTIAL SOURCES:

\$113 million in frozen Cuban assets held by the U.S. government since the early 1960s, soon after Fidel Castro took power. U.S. officials have fought the families' past efforts to tap this fund.

\$13 million in U.S. telephone company payments being held in escrow. The judge ordered that these payments be paid into a court account when the families moved to garnish the payments.

\$6.2 million that the phone companies mistakenly paid to Cuba after the judge ordered that the money be placed in escrow. The judge has ruled that the phone companies are still liable to the families for this amount.

Unknown amounts paid to Cuba by various companies that are allowed to do business there despite the U.S. embargo against trade with Cuba. These include the phone companies, some airlines and other business considered to have humanitarian value.

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