

Chiquita Settles With Families Before Terrorism Trial

By **Nathan Hale**

Law360 (February 5, 2018, 8:35 PM EST) -- Ahead of trial on claims that it supported a Colombian terrorist organization that kidnapped and killed six Americans in the 1990s, Chiquita Brands International Inc. informed a Florida federal judge at a hearing Monday that the company reached settlements with the victims' families.

The confidential settlement agreements come in three cases filed in Florida and Ohio that had been consolidated as part of multidistrict litigation based in the Southern District of Florida. The instant cases brought claims on behalf of U.S. citizens under the Anti-Terrorism Act, while another track is still pending that focuses on claims of foreign nationals, mostly Colombians, brought under the Alien Tort Statute.

“Today the Julin, Pescatore and Sparrow plaintiffs reached a preliminary agreement to resolve all of their claims against Chiquita Brands International, brought under the Anti-Terrorism Act. It has been a very lengthy journey for the families of the victims, and we hope this agreement can bring them some closure,” said Ramon A. Rasco of Podhurst Orseck PA, who represents all the plaintiffs.

One set of plaintiffs, known as the Julin plaintiffs, had sought damages from the banana producer over the alleged kidnapping and murder of five missionaries from Florida-based New Tribes Mission between 1993 and 1996 by the leftist guerilla organization Fuerzas Armadas Revolucionarias de Colombia. The Julin plaintiffs filed three ATA claims based on Chiquita's alleged monetary payments to the FARC.

The other two sets of plaintiffs, the Pescatore and Sparrow plaintiffs, were seeking damages for the FARC's alleged kidnapping and murder of American geologist Frank Pescatore and were bringing an ATA claim for international terrorism, according to court documents.

On Jan. 3, U.S. District Judge Kenneth A. Marra handed down an order denying Chiquita summary judgment while also granting partial summary judgment to the plaintiffs to strike down the company's primary defense that Chiquita made payments to the FARC under duress over the course of nine years.

To succeed with a duress defense, a defendant must show that it reasonably feared immediate death or severe bodily injury that could be avoided only by committing the criminal act charged, according to Judge Marra.

“Chiquita, by description of its own managers, was responding to a generalized fear of future retaliatory harm from the FARC, not imminent death or serious bodily injury to any employee or other person,” Judge Marra said in that order. “It was not responding to a kidnapping or employee held in captivity, and there is no evidence of a specific ultimatum or threat from a FARC commander at any time during the nine-year continuum in which it paid money to the FARC.”

In a statement, Chiquita stressed that the underlying events took place previous ownership. “Chiquita is pleased to have reached an amicable resolution with the plaintiffs. The agreement reflects the commitment of Chiquita, under new and private ownership since 2015, as well as its new management team, to focus fully on the future and move the organization forward,” the company said. “This litigation related to events that occurred over 20 years ago during the time of Colombia’s civil war, when many Colombians and others endured profound pain at the hands of Colombian terrorist organizations, both from the left and the right. With this matter concluded, Chiquita will continue its focus on being a good citizen and partner in the countries where we do business.”

The trial, which was going to take place in West Palm Beach, Florida, was expected to take about four weeks. Gary Osen of Osen LLC, another of the plaintiffs’ attorneys, said he hopes the settlement provides a sense of resolution after what for some of the plaintiffs has been nearly a decade of litigation.

“Unfortunately, no legal case, whatever the outcome, can meaningfully address the tragedy these families suffered,” Osen said, “but we hope that this result helps bring some solace to them.”

The MDL plaintiffs are represented by Boies Schiller Flexner LLP, Searcy Denney Scarola Barnhart & Shipley PA, Preti Flaherty Beliveau & Pachios Chtd. LLP, Kohn Swift & Graf PC, Podhurst Orseck PA, Osen LLC and Strauss Troy Co. LPA.

Chiquita is represented by Blank Rome LLP and Jones Foster Johnston & Stubbs PA.

The MDL is In re: Chiquita Brands International Inc., Alien Tort Statute and Shareholders Derivative Litigation, case number 0:08-md-01916, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Joyce Hanson. Editing by Edrienne Su.