

Victims of State-Sponsored Terrorism To Begin Receiving Payouts in Early 2017



Administrators of a new federal fund for victims of government-sponsored terrorism will distribute more than \$2 billion dollars early next year to claimants who are now receiving letters informing them whether and how much they are authorized to receive from the fund. Many of the victims hold court judgments against such states as Cuba and Iran.

Many of those judgments total millions of dollars. Administrators have a Dec. 17 deadline to authorize claims.

When a victim holding a court judgment against a country gets paid by the fund, the foreign government's debt to the victim doesn't disappear. Rather, the rights to that portion of the victim's judgment are transferred to the U.S. government. The president then has the right to use that as part of any negotiations with the country named in the suit.

PERIODS OF DESIGNATION AS STATE SPONSORS OF TERRORISM



* The above chart reflects the foreign states designated by the U.S. Secretary of State as state sponsors of terrorism and the relevant designation time periods, according to the U.S. Victims of State Sponsored Terrorism Fund website.

The U.S. has been in negotiations over a host of issues with both Cuba and Iran over the last two years. U.S. and Cuban officials met in Havana on Wednesday to discuss claims, economic issues, human rights and other matters, including civil aviation, health, law enforcement, environmental protection, agriculture, migration, educational and cultural exchanges and human trafficking.

While the fund won't pay off all the judgment debts, and in some cases, will pay only a fraction of a compensatory judgment, the fund may go a notable distance toward easing one of the biggest obstacles to doing business with Cuba—the fact that Cuban assets that touch U.S. soil can be seized by those holding judgments against Cuba.

The U.S. Victims of State Sponsored Terrorism Act, passed quietly last December as part of the appropriations bill, will award millions of dollars to U.S. victims of the 1979 Iranian hostage crisis and to terrorism victims who hold court judgments against the governments of Cuba, Iran, Iraq, Libya, North Korea, Sudan, South Yemen, and Syria. Although

ordinarily nations can't be sued in civil court under sovereign immunity laws, a 1996 law made it possible to sue countries designated as state sponsors of terrorism.

More than 2,800 claims have been filed with the Victims of State Sponsored Terrorism Fund, although it is still not known how many of these will ultimately be deemed eligible by the Dec. 17 authorization deadline. With billions outstanding against the countries, attorneys said the more than \$2 billion expected to be in the fund this year won't be enough to pay the eligible claims in full—at least not in the fund's first distribution. U.S. litigants are believed to have more than \$10 billion in judgments against Iran alone, according to Jose M. Ferrer, a partner at Bilzin Sumberg Baena Price & Axelrod in Miami.

The claimants will be notified of the amount of their initial payments in early 2017, according to the Department of Justice.

Whatever pro-rated amount the fund pays to a judgment holder, the rights to that amount of the judgment claim are transferred to the U.S. government. The president can then pursue the claims, or waive the debt as a bargaining chip in any negotiations related to normalizing relations or lifting sanctions against the foreign state designated a terrorism sponsor, according to the federal law.

In the case of Cuba, the law is likely to be seen as helpful to proponents of normalization who argue that engaging with Cuba makes it easier to lobby for human rights there, Ferrer said.

Cuba was removed from the U.S. list of state sponsors of terrorism in May of 2015. But during the 33 years it was on the list, terrorism victims obtained an estimated \$4 billion in court judgments that allow their attorneys to seize Cuban government assets that reach U.S. soil. The judgments are therefore considered among the biggest impediments to re-opening trade with Cuba.

[Cuba was placed on the state sponsors of terrorism list](#) in 1982 because of its involvement in the arming, funding and training of leftist guerrillas in Latin America and Spain, and its harboring of fugitives.

The judgments are separate from the now approximately \$8 billion in property claims stemming from expropriations of American-owned properties following the Cuban Revolution, which is largely what prompted the Cuban embargo in the first place.

Some attorneys representing judgment holders have already received Department of Justice letters informing them that claims they represent have been authorized, and specifying the amount they are eventually eligible to receive. But the letters do not say how much will be distributed in 2017, said Andrew C. Hall, founding partner of Hall, Lamb and Hall in Miami.

Hall represents a number of the pending cases, including victims of the USS Cole bombing and the family of Gustavo Villoldo, the holders of the largest of the terrorist judgments against Cuba. Villoldo committed suicide after his business was seized by Fidel Castro's government. The Villoldo family was awarded a \$2.8 billion default judgment in 2011—about \$1.4 billion of it in compensatory damages. The total compensatory damages for the victims of the USS Cole bombing—a terrorist attack that took place in October 2000 against a United States Navy destroyer while it was being refueled in Yemen—was \$98 million, Hall said. Seventeen American sailors were killed and 39 were injured in the attack.

Those who hold a judgment against a nation designated as a state sponsor of terrorism are eligible to receive from the fund any compensatory damages up to a limit of \$20 million per individual, or up to \$35 million per family. Punitive damages and interest are not included. Victims of the Iranian hostage crisis, who were not allowed to sue Iran as part of the Algiers Accord that negotiated their release, may receive up to \$10,000 for each of the 444 days they were held, or \$4.44 million. A spouse or child of a hostage can receive a lump sum of \$600,000.

Hall said attorneys representing judgment holders are hopeful that in the first round of disbursements, their clients will see up to 30 percent of the amounts they are eligible to receive.

The fund is comprised of money collected by the U.S. from forfeited property sales and from fines arising from doing business with state sponsors of terrorism, as well as an initial \$1.025 billion congressional appropriation from the U.S. Treasury.

About \$1 billion is expected to come from penalties paid by French bank BNP Paribas in its record-setting \$8.9 billion settlement for violating sanctions against Iran, Sudan and Cuba, Ferrer and Hall said.

Whenever the sanctions penalty money collected in the fund has reached \$100 million, a new round of disbursements can be paid on still eligible claims through 2026, when the fund sunsets.

Over the next decade, another \$1.5 billion is projected to go into the fund from criminal and civil fines resulting from pending cases related to violations of sanctions against Iran, according to Ferrer's research on the topic.

Although the law caps attorneys' fees at 25 percent, Ferrer said critics see the fund as a windfall for plaintiffs attorneys and argue against using money from the U.S. Treasury to satisfy civil judgments against sponsors of terrorism.

"These are judgments against other countries and we are using taxpayer funds," Ferrer said.