

A Florida judge has denied a motion from the fruit company for summary judgment, meaning that in the absence of a settlement or successful legal challenges Chiquita Brands could be the first U.S. corporation to go to trial under the Anti-Terrorism Act (ATA). A court date has been set for Feb. 5.

It was almost 30 years ago that a farm manager at Chiquita's Colombian subsidiary Banadex in Urabá was approached by a guerilla from the Revolutionary Armed Forces of Colombia (FARC) demanding a US\$10,000 extortion payment.

That threat moved up the chain of command, the payment was granted out of a fear non-compliance would have led to Chiquita employee deaths, and in the nine years that ensued until 1999 there were a total of 57 payments made with average annual amounts in the area of US\$32,000.

In an ongoing multi-district litigation, family members of six people kidnapped and murdered by the FARC - five missionaries and one geologist - seek to draw a link between those payments and complicity in the crimes committed by the guerilla group.

In a case before a U.S. District Court in Florida last week, Chiquita sought to ward off a jury trial on the basis of secondary liability, the statute of limitations and a lack of evidence.

That attempt was thwarted by an order against summary judgment from Judge Kenneth Marra of the Miami District Court.

Chiquita has argued US\$32,000 is only a small fraction of the US\$100 million the FARC was earning at its peak, and therefore its extortion payments could not be a "substantial factor" in the chain of causation that led to the plaintiffs' family members' deaths.

However, the plaintiffs argue that level of funding could have been used to arm 540 guerillas or put 50 guerillas in the field, full time, for a year.

"A reasonable jury could find, on this record, that Chiquita's continuous nine-year stream of payments to the FARC created a foreseeable likelihood of enhancing its terror capabilities," Marra said.

"Stated differently, the Court does not, as a matter of law, view the attacks on Plaintiffs' decedents as highly extraordinary occurrences which are properly cut from the chain of proximate causation," he said.

"While other factors undoubtedly contributed to the strife, none of these causes can be said

to be unforeseeable as a matter of law, as they could reasonably be expected to operate in conjunction with the alleged financing of terror. At any rate, the question of proximate causation, on this record, is one for the jury, not the Court."

The Court also rejected Chiquita's defense that it made payments to FARC under duress, holding that it failed to meet the legal standard to raise that defense at trial.

"For the families who filed this case 10 years ago, it is gratifying to finally have their day in court," said Gary M. Osen, managing partner of Osen LLC, the law firm that argued the motion on behalf of the plaintiffs before the district court.

"We're confident that the evidence will show that Chiquita made a calculated business decision to pay people they knew were terrorists," Osen said.

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