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Iran's Bill Comes Due

With or without a grand bargain, victims of Iranian terror expect to get paid.



The shah of Iran had an eye for valuable real estate. And so, in their way, did the ayatollahs who toppled him. The shah built the Piaget Building, a glass and granite-stripped tower at 650 Fifth Avenue in New York that's worth at least \$800 million, and which courts say is still owned by Iranian fronts.

In late 2013 its storefront lease was bought out for a record \$51 million, from Juicy Couture.

According to federal courts, the ayatollahs helped to blow up the U.S. embassies in Beirut, Nairobi and Dar es Salaam, and U.S. military barracks in Lebanon and Saudi Arabia. The total damages assessed by U.S. courts against Iran for these and sundry other terror acts is about \$45 billion, according to a study of court filings by Stuart Newberger of Crowell & Moring, who won large judgments for victims of the Beirut embassy suicide bombings of the early 1980s. Newberger expects the grand total to exceed \$48 billion—with a quarter of it owed to his Beirut embassy clients after interest in their cases is fully toted up. Close to \$18 billion more is due victims of the Beirut barracks and East Africa embassy bombings, represented by Steven Perles of Perles Law Firm, with co-counsel.

"The numbers here are really big because Iran killed a lot of U.S. citizens," says Perles. "Settling accounts will not be a simple undertaking."

THE SEED OF TERROR LITIGATION WAS SOWN IN A CLASSIC dissent by Judge Patricia Wald in *Prinz v. Germany* (D.C. Cir. 1994). Hugo Prinz was a U.S. national who spent time in Auschwitz as a boy. Perles, Prinz's lawyer, persuaded Judge Wald that some sovereign misconduct is so noxious that it cannot go without remedy. When Iran-funded Palestine Islamic Jihad killed the American student Alisa Flatow in a Gaza Strip bus bombing the next year, her father, Stephen, called Perles and asked if Iran could be held accountable. Perles knew that it required a change in law, and asked Flatow to walk the halls of Congress. In coalition with the Lockerbie and Oklahoma City plaintiffs, they persuaded Congress to pass the Flatow Amendment of 1996—creating an exception to the Federal Sovereign Immunity Act for state sponsors of terror.

The Flatows, represented in court by Perles' longtime anti-terror partner Thomas Fay, won the first of more than 85 U.S. judgments against Iran for aiding terror attacks. They and other early claimants holding about \$4 billion in judgments were paid over \$400 million from frozen assets by act of Congress in 2001. Most Iranian terror judgments remain outstanding, including the biggest.

The president is obliged under the 1996 and 2008 amendments to the Federal Sovereign Immunities Act to push Iran for resolution of finally adjudicated terror judgments. Terror plaintiffs therefore expect the president to do so as a condition of lifting economic sanctions. This delicate process would begin only after the secretary of state completes his delicate talks on nuclear proliferation.

Rapprochement with Iran would be simpler than rapprochement with Cuba [The Global Lawyer, "Don't Light Up the Cigars Just Yet," February] in one respect. Economic claims have been largely resolved over the past 35 years by the U.S.-Iran Claims Tribunal, which is widely taken as a model of international dispute resolution. Terror claims are another matter.

The optimists argue that Iran must end U.S. sanctions, because it desperately needs U.S. dollars to participate in global finance, and U.S. technology to modernize its aging oil industry. It's no use for a rogue state to mend fences with the U.S. without also appeasing U.S. plaintiffs—or else plaintiffs will seize the nation's assets as soon as it starts trading. The 2008 Lautenberg Amendment lets plaintiffs grab assets traceable to state sponsors of terror even when they're held by a party with no connection to a terrorist act. That change helped drive Libya to the bargaining table with U.S. plaintiffs. It might do the same with Iran.

"Final judgment holders are entitled to be paid in entirety," says Perles, "but life never works out that way in the international claims world. Everything is a compromise. The question is how to compromise."

Crowell's Newberger can imagine a few scenarios for settling the \$40 billion-plus in outstanding Iran terror judgments. Cutting punitive damages would bring the damages total under \$20 billion. Also cutting the interest due would bring it closer to \$11 billion. Using a formula on the model of the 2008 settlement between the U.S. and Libya (\$1 million per hostage, \$3 million per injury, and \$10 million per death) would bring the total to just over \$5 billion. But Newberger says such a diplomatic formula would be inappropriate where most judgments have been finalized, as in the case of Iran.

Whether an overall deal materializes in any form, plaintiffs are standing on their rights. "A global settlement with Iran is still clearly a ways off," says Boies, Schiller & Flexner's Lee Wolosky, who aims to collect



Stuart Newberger, left; Steven Perles

a \$6 billion default judgment against Iran in favor of 9/11 victims. "That's why our focus is on enforcement. It's always good to get money for your clients when you can."

That Iran bears responsibility for 9/11

may come as news to readers not named Dick Cheney. Iranian defectors testified that Iran helped the hijackers slip into Afghanistan for training, and activated a plan code-named Satan in Flames, which bore a disturbing resemblance to the events of 9/11. Iran chose simply not to defend the case. The extent of Iran's involvement in 9/11 remains the subject of skepticism. One lesson to draw is that if you're sued for the crime of the century, it's wise to show up in court.

The 9/11 families are among those trying to seize 650 Fifth Ave., along with the Beirut barracks survivors and victims of the Khobar Towers attack who won nearly \$600 million with the help of DLA Piper. Meanwhile, in *Peterson v. Bank Markazi*, a team led by Beirut barracks victims froze a \$1.9 billion Citibank account traceable to the central bank of Iran.

In different ways, both enforcement actions are public-private partnerships. The U.S. Office of Foreign Asset Control tipped off the private bar about the Citibank account, because it lacked broad sanctions power in 2008 to seize the funds itself. *In re 650 Fifth Ave.* was initiated by Preet Bharara, U.S. attorney for the Southern District of New York, who called in terror victims and promised them the proceeds of a future building sale after his own modest costs.



The Piaget Building, 650 Fifth Ave., New York.

Juicy Couture is gone, but the plaintiffs would like to taste these juicy assets before an overall deal is struck. Who will win this race to the bank vault is unclear.

Bank Markazi's appeal awaits action by the U.S. Supreme Court. Its argument for cert—that Congress violated separation of powers by intervening in a case that had not reached a final resolution—

does not seem very serious, as such interventions are routine. Iran is likely playing for time, or trying to exhaust local remedies before suing in the World Court. However, the Supreme Court's recent request for an opinion from the solicitor general will push the cert decision into late June or September.

In re 650 Fifth Ave. awaits oral argument in the U.S. Court of Appeals for the Second Circuit on its own slender appeal issues. The questions are whether Iran controlled the building's landlords, or whether the U.S. evidence was obtained illegally. A decision might come at year's end.

Whether these assets can or should be thrown into the larger pot is among the trickiest issues facing U.S.-Iran negotiators. Never mind nuclear proliferation.

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THE LARGEST TERROR JUDGMENTS AGAINST IRAN

Case name	Total damages	Court	Date of judgment	Terrorist attack	Winning law firms
Opati v. Republic of Sudan and Islamic Republic of Iran Amduso v. Sudan and Iran Onsongo v. Sudan and Iran Wamai v. Sudan and Iran	\$8.68 billion*	D.C. Federal Court (DDC)	July 25, 2014	Attacks on U.S. embassies in Dar es Salaam and Nairobi, 1998	Perles Law Firm; Wheeler & Franks; Eaves Law Firm; MM-LAW; The Miller Firm
Estate of Doe v. Islamic Republic of Iran	\$8.41 billion	DDC	May 9, 2013	Attacks on U.S. embassy in Beirut, 1983 and 1984 (award to foreign service nationals)	Crowell & Moring
In Re Terrorist Attacks on Sept. 11, 2001	\$6.05 billion	SDNY	Dec. 22, 2011	Attacks of Sept. 11, 2001	Wiggins Childs Quinn & Pantazis; Foote, Mielke, Chavez & O'Neil; Mellon Webster & Shelly; Ramey & Hailey; Law Office of David C. Lee; Law Office of J.D. Lee; Stark & Stark; Boies, Schiller & Flexner (enforcement counsel)
Peterson v. Islamic Republic of Iran	\$2.66 billion	DDC	Sept. 7, 2007	Marine barracks bombing in Beirut, 1983	Perles Law Firm; Fay Kaplan Law; Stone Bonner & Rocco (enforcement counsel); Salon Marrow Dyckman Newman & Broudy (enforcement counsel)
Davis v. Islamic Republic of Iran	\$2.16 billion	DDC	Mar. 30, 2012	Marine barracks bombing in Beirut, 1983	Perles Law Firm; Fay Kaplan Law; Stone Bonner & Rocco (enforcement counsel); Salon Marrow Dyckman Newman & Broudy (enforcement counsel)

*Appeal pending
Source: The American Lawyer research