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U.S. Supreme Court Decides Terrorist Victim Waived Right to Attach Arbitration Award

Roger Alford (General Editor) (Notre Dame Law School) · Thursday, April 23rd, 2009

On Tuesday, the United States Supreme Court decided [Iran v. Elahi](#), a case that appears to fall within a data set of one. As I [reported elsewhere](#), the case is extraordinarily complex, focusing on whether a terrorist victim judgment creditor can attach a confirmed arbitration award rendered in Iran's favor. Although it involves exotic issues relating to international terrorism, military contracts, and international arbitration, the actual dispositive issues in the case are simple matters of statutory interpretation.

Simplifying the case to its bare essentials, in 1977 Iran had a contract with a military contractor, Cubic Defense Systems, to deliver military goods. Iran paid for some of the goods, but then up and had a revolution, which prevented Cubic from delivering the goods—changed circumstances and all that. The hostage crisis was resolved in 1981 with Iran returning all American hostages and the United States returning all frozen Iranian assets. Outstanding disputes were to be resolved before an international tribunal, the now famous Iran-United States Claims Tribunal. Iran tried to resolve its contractual claim against Cubic before that tribunal, but the claim fell outside its jurisdiction. So it then relied on the arbitration clause in the contract and successfully received an ICC award obligating Cubic to pay Iran \$2.8 million. That award was confirmed by a federal district court in 1999. So, Iran became a judgment creditor against Cubic, but unfortunately it has the nasty habit of sponsoring terrorism and losing cases because of that sponsorship. One such case was brought by Elahi, who won a \$312 million terrorism judgment against Iran. Iranian assets in the United States are few and far between, so Elahi had the brilliant idea of attaching the Cubic Judgment. But the United States did not take too kindly to this idea, because it too had its eyes on that money. The final wrinkle in the case is that the United States showed extreme sympathy for the terrorism victims by essentially subrogating Iran's obligation to pay the compensatory damages in certain cases, including a payment of \$2.3 million to Elahi. That payment came with strings attached, in particular a commitment by Elahi to relinquish its right to attach property that is "at issue" before the Iran-United States Claims Tribunal. The United States was planning on using this payment as a set off against an eventual judgment against it in an ongoing case before the Iran-United States Claims Tribunal. So Cubic is out \$2.8 million, but the question is whether the money should go to Elahi, the United States, or Iran. And Elahi is not looking so great because it received millions from the generosity of the United States, and then promptly attempted to bite the hand that fed it. Are we all clear?

The ultimate question in the case is whether the Cubic Judgment award is an asset that can be attached by Elahi, given that it agreed to waive any claim to property at issue before the Iran-

United States Claims Tribunal. Here's how Justice Breyer analyzed the situation:

The ... question concerns Elahi's waiver of his right to attach the Cubic Judgment. In 2000, Congress enacted a statute that offers some compensation to certain individuals, including Elahi, who hold terrorism-related judgments against Iran. The Act requires those who receive that compensation to relinquish "all rights to execute against or attach property that is at issue in claims against the United States before an international tribunal.... The upshot is a dispute about the Cubic Judgment. The United States argues ... that the Tribunal should set off the \$2.8 million that the Cubic Judgment represents against any award that the Tribunal may make against the United States.... To put the matter in terms of the language of Elahi's waiver, one can say for certain that the Cubic Judgment is "property." And Case No. B61 is a "clai[m] against the United States before an international tribunal."... The question is whether ... a judgment can nevertheless be "at issue" before the Tribunal even when ... it is not claimed by Iran from the United States. Here a significant dispute about the Cubic Judgment still remains, namely a dispute about whether it can be used by the Tribunal as a setoff. And in our view, that dispute is sufficient to put the Judgment "at issue" in the case.... In the event that the Tribunal finds the United States liable ... the total sum awarded to Iran by the Tribunal will depend on whether the Judgment can be so used as a setoff.... In that sense, the Judgment is "under dispute." We recognize that the dispute is over the use of the Judgment, not the validity of the Judgment. But we do not see how that fact matters."

It's a rare case when the United States and Iran are aligned together against the victims of terrorism. But applying the law to the facts in this case, that is exactly the result in this case, and the right result at that.

Roger Alford

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