

Banks Deny Fault For Unpaid \$3B Cuba Judgment In 2nd Circ.

Share us on: By **Max Stendahl**

Law360, New York (March 31, 2016, 3:05 PM ET) -- BNP Paribas, [HSBC](#) and ING urged the Second Circuit on Thursday not to revive a suit claiming that their violations of U.S. sanctions against Cuba helped the nation avoid paying a nearly \$3 billion judgment to two brothers who were allegedly tortured and harassed by Fidel Castro's security forces.

During a hearing in Manhattan court, Carmine Boccuzzi, a lawyer for the banks, asked a three-judge panel to uphold a decision tossing the claims by Alfredo Villoldo and Gustavo Villoldo. A Florida state court awarded the men the massive default judgment in 2011, but the Cuban government has not paid.

U.S. prosecutors have hit BNP, HSBC and [ING Bank](#) with large fines in recent years for flouting sanctions against Cuba and other foreign entities. The Villoldos have claimed that the banks collectively failed to freeze billions of dollars worth of transactions involving Cuba, resulting in funds being unavailable to satisfy the judgment.

On Thursday, Boccuzzi argued that a New York federal judge had correctly ruled that the Cuban government's refusal to pay the judgment, and not any sanctions violations, had harmed the Villoldos.

Boccuzzi also urged the appeals court to uphold a finding that the transactions had not injured the Villoldos' "business or property," as required under the Racketeer Influenced and Corrupt Organizations Act, because their expectation of collecting a judgment was merely speculative.

Boccuzzi disputed a claim that BNP's sanctions violations had continued until 2012, after the judgment was issued, and argued that the Villoldos had failed to raise that issue soon enough.

"The complaint doesn't support this allegation under an otherwise waived argument," Boccuzzi told the panel.

But Andrew Hall, a lawyer for the Villoldos, argued that the banks had in fact caused the brothers' injuries by improperly transferring Cuban assets through and out of New York, thereby denying them an opportunity to collect on the judgment.

Hall also claimed that the banks had benefited from the transfers by obtaining lucrative fees and

commissions.

“Their motive was, of course, to receive these extraordinary fees,” Hall said.

Circuit Judges Robert Sack, Reena Raggi and Christopher Droney sat on the panel, which reserved a decision.

According to the suit, the Villoldos’ father, Gustavo Villoldo Argilagos, opened one of the first [General Motors](#) dealerships in Cuba and became a successful businessman in the country. After Castro assumed power in 1959, the family was allegedly harassed by the strongman’s security forces, led by Ernesto “Che” Guevara, due to their wealth and ties to the U.S. Gustavo Villoldo Argilagos died of an apparent suicide after being threatened and accosted by Guevara, the suit claimed.

The Villoldos are represented by Andrew Hall of [Hall Lamb](#) and Hall PA.

The banks are represented by Carmine Boccuzzi, Jonathan Blackman and Diego Zambrano of [Cleary Gottlieb Steen & Hamilton LLP](#), and by Abena Mainoo, Karen Patton Seymour, Richard Pepperman, Bruce Clark and Matthew Porpora of [Sullivan & Cromwell LLP](#).

The case is Villoldo et al. v. [BNP Paribas SA](#) et al., case number [15-2375](#), in the U.S. Court of Appeals for the Second Circuit.