

## **Padre family to get \$3.4 million interest Landowner sues Ballis in Kleberg County**

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As legal maneuverings continue to cloud their court victory, a judge has awarded Balli family members about \$3.4 million in interest on the oil fortune they should have received.

Falling far short of the \$40 million requested by Balli lawyers, the descendants of the former owners of Padre Island say they will try to revise that figure upward when the case is appealed.

"That's subject to change," said Pearl Balli, one of about 300 family members who filed the 1993 lawsuit.

"We feel very confident that it will definitely go as we expect it to."

In August, the family members won a \$1.2 million judgment when a jury found property owner Gilbert Kerlin cheated them out of Padre Island mineral royalties over the course of decades. The family also received 7,500 acres of Padre Island mineral rights.

But now Kerlin, a lawyer, has turned around and sued the Ballis. A lawsuit filed Dec. 4 in a Kleberg County district court could serve to further complicate the Padre Island case, Balli lawyers say.

"This is just the ultimate," said Rebecca Gomez Sexton, a Balli who represented herself in the Padre Island case. "For Kerlin to attempt to not pay the crumbs that he owes us - because, really, they are crumbs compared to what the man is worth - this is laughable."

The Kleberg County lawsuit was filed against those Balli family members who showed up after the Padre Island case was litigated last August, asking for a piece of the jury award.

State District Judge Pat McDowell, who tried the Padre Island case, did not allow the latecomers to join the plaintiffs.

Because Balli lawyers announced these family members would sue Kerlin, he sued them instead, Kerlin lawyer Horacio Barrera of Brownsville said.

Kerlin is asking 105th District Judge Manuel Banales to declare valid a defense very similar to that used in the Padre Island case, namely that the Ballis didn't have claim to the island when they sold it to Kerlin and his uncle in 1937.

Balli lawyers fear such a decision would throw the Padre Island judgment into doubt.

"The defenses they're asking the Kleberg County judge to declare valid are the same ones that Judge McDowell denied in Cameron County," Balli lawyer Robert Johnson of Austin said.

"The only way they can get what they want in Kleberg County is if the judges start disagreeing and issuing contrary rulings and the law is supposed to prevent that sort of thing."

Balli lawyers have filed for an injunction against Kerlin to prevent the Kleberg County case from going forward. Judge McDowell may consider the issue today in a hearing set for 2:30 p.m.

Johnson said the Balli lawyers believe they have a good chance of freezing the Kleberg case.

"The case law is pretty strong in this area saying you can't go running around filing a number of lawsuits if you don't like the results of the first one," he said.

Barrera said the Kleberg lawsuit is a request for Banales to rule that the remaining Ballis have no interest in Padre Island.

"It's basically the same allegations, but rather than being a defendant, Mr. Kerlin is a plaintiff seeking to declare that they (the Ballis) have no interest," Barrera said.

Kerlin also hired Corpus Christi lawyer Darrell Barger to assist in the Kleberg County case.

Barger is the campaign treasurer for Banales as well as a periodic contributor to the judge's campaign, according to records from the Texas Ethics Commission.

Barrera, however, said that relationship is not an issue.

"It's not unusual for lawyers to be active in judges' campaigns, but rarely if ever does that disqualify either a lawyer or a judge from participating in cases," he said.

Barrera said lawyers have begun the process of appealing the Padre Island judgment.

"It didn't matter if it was \$3.2 million, or \$320,000, or \$20,000, Mr. Kerlin doesn't believe that he is liable for any amount given the fact that these people did not own (the island), didn't have title, never tried to prove title," Barrera said. "That's why he intends to appeal."

Johnson said that, especially in light of an appeal, the Kleberg County lawsuit should be stopped.

"Conceivably, this could go up on appeal in Corpus Christi at the same time that a different trial judge is coming up with completely different rulings," he said. "Since (Kerlin's lawyers) are trying to re-litigate the same issues that they lost on, it's going to interfere and confuse the appellate court's jurisdiction."

Johnson said another unusual tactic used in the Kleberg County lawsuit is that most of the 113 defendants were cited - or notified about the suit - by publication in the Kingsville newspaper, instead of being personally served.

Because most of them don't live in Kingsville, or Texas, the citation is a problem, he said.

Also, Balli lawyers, who have about 40 of the defendants as clients, had difficulty getting a copy of the lawsuit.

"That's going beyond just legal gamesmanship," Johnson said. "There was an effort to hide this ... These were some of the things that were done back in the 1930s and 1920s in the various lawsuits about Padre Island."

Barrera said Kerlin's lawyers did not hide the Kleberg lawsuit, and even notified Balli lawyers about it. Legal wheeling and dealing has been braided into the tortuous history of Padre Island for more than a century.

Padre Nicolas Balli and his nephew Juan Jose Balli originally received the island as a land grant from Spain and then Mexico in the early 19th century.

While the island eventually became known for Padre Balli, his nephew decided to sell the sandy strip to a man named Santiago Morales in 1830.

Soon after, Morales demanded and received his money back, but, according to court documents, no reconveyance of the island's title back to Juan Jose Balli ever was executed.

Morales later sold his "interest" in the island to a third party, originating a cloud that was to darken the island's title, court documents show.

Into this mesh of overlapping and conflicting titles stepped Kerlin in 1937, newly graduated from Harvard Law School. At the time, lawsuits over the title already enveloped the barrier island's fate.

At the behest of his uncle, Kerlin purchased the island anyway from more than 60 Ballis for a nominal sum and a promise of royalties from any minerals extracted, court documents and testimony revealed.

Though Kerlin eventually amassed a net worth of at least \$68 million, much of it from oil pumped from beneath Padre Island, he never paid a cent to the Ballis, the family testified.

Meantime, lawsuits over the island's title continued, which Balli family members claim they knew nothing about. Often, they were cited by publication.

"Obviously, Kerlin hasn't learned his lesson," Pearl Balli said. "He's going back to the old 1930s tactics he used."

"What he's doing is throwing a curve ball. If our attorney doesn't stop this, this is going to put a halt to future royalties to my children."

Special Correspondent Timothy Inklebarger contributed to this report.