EXHIBIT "2"

Havana Docks Corporation's Presentation on Court's Topics 2 & 3

22 U.S.C. § 6023(13)(B)

The term traffics does not include -

(iii) transactions and uses of property incident to **lawful travel to Cuba**, to the extent such transactions and uses of property are necessary to the conduct of such travel

Codification of Embargo

22 U.S.C. § 6032(h) Codification of Economic Embargo

The economic embargo of Cuba, as in effect on March 1, 1996, including all restrictions under part 515 of title 31, Code of Federal Regulations [the Cuba Assets Control Regulations ("CACR")], shall be in effect on March 12, 1996, and shall remain in effect, subject to section 6064 of this title.

22 U.S.C. § 6023(7) Economic Embargo of Cuba

The term "economic embargo of Cuba" refers to-

(A) the economic embargo (including all restrictions on trade or transactions with, and travel to or from, Cuba, and all restrictions on transactions in property in which Cuba or nationals of Cuba have an interest) that was imposed against Cuba pursuant to section 2370(a) of this title, section 4305(b) of title 50, the Cuban Democracy Act of 1992 (22 U.S.C. 6001 and following), or any other provision of law; and

(B) the restrictions imposed by section 902(c) of the Food Security Act of 1985.

Regan v. Wald, 104 S.Ct. 3026

Regan v. Wald, 468 U.S. 222 (1984)
104 S.Ct. 3026, 82 L.Ed.2d 171

KeyCite Yellow Flag - Negative Treatment
Distinguished by KindHearts for Charitable Humanitarian Development, Inc. v. Geithner, N.D.Ohio, August 18, 2009.

104 S.Ct. 3026
Supreme Court of the United States

Donald **REGAN**, Secretary of the Treasury, et al., Petitioners
v.
Ruth **WALD** et al.

No. 83-436.
|
Argued April 24, **1984**.
|
Decided June 28, **1984**.
|
Rehearing Denied Oct. 9, **1984**.

Synopsis
See 469 U.S. 912, 105 S.Ct. 285.

A Treasury Department regulation, first promulgated in 1963 as part of the Cuban Assets Control Regulations implemented under the Trading with the Enemy Act, prohibits any transaction involving property in which Cuba, or any national thereof, has "any interest of any nature whatsoever, direct or indirect." In 1977, a new regulation was added which embodied a general license permitting, for the most part, travel-related economic transactions with Cuba. However, in 1982, said regulation was amended to curtail such general license by permitting only certain types of travel and excluding general tourist and business travel. American citizens desirous of traveling to Cuba, but inhibited from doing so by the general prohibitory regulation, brought suit challenging the 1982 amendment curtailing the general license. The United States District Court for the District of Massachusetts, Joseph L. Tauro, J., refused to issue an injunction, and plaintiffs appealed. The Court of Appeals for the First Circuit, 708 F.2d 794, vacated and remanded, and certiorari was granted. The Supreme Court, Justice Rehnquist, held that: (1) grandfathered authorities of section 5(b) of the Trading with the Enemy Act, which gave the president broad authority to impose comprehensive embargoes on foreign countries as one means of dealing with both peacetime emergencies and times of war, provided an adequate statutory basis for the 1982 amendment restricting the scope of permissible travel-related transactions with Cuba and Cuban nationals, and (2) restrictions on travel-related transactions with Cuba imposed by the 1982 amendment d the freedom to travel protected by the due pro the Fifth Amendment.

Reversed.

Justice Blackmun, with whom Justice Brennan, Powell joined, filed a dissenting opinion.

Procedural Posture(s): On Appeal.

West Headnotes (9)

[1] **War and National Emergency**
Ban on travel
Read in conjunction with section the Trading with the Enemy Ac gave the president broad authority t comprehensive embargoes on foreign as one means of dealing with both emergencies and times of war, the of the grandfather clause of the Int Emergency Economic Powers Ac preserved those "authorities * * exercised" pursuant to section 5(b) of TWEA on July 1, 1977, established that, in the relevant sense, the "authority" to regulate all transactions with Cuba, including trav transactions, was being exercised o 1977, and was therefore preserve grandfather clause. Trading with the E § 5(b), as amended, 50 U.S.C.A.App International Emergency Economic Po § 202 et seq., 50 U.S.C.A. § 1701 d

23 Cases that cite this headnote

[2] **War and National Emergency**
Ban on travel
Since the authority to regulate travel transactions was among those "a conferred upon the President" by secti the Trading with the Enemy Act "w being exercised" with respect to Cub 1, 1977, it followed from a natural t the International Emergency Economic Powers

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The language of the grandfather clause, read in conjunction with § 5(b) of TWEA, supports the Government's contention that, in the relevant sense, the "authority" to regulate all property **3033 transactions with Cuba, including travel-related transactions, was being "exercised" on July 1, 1977 and was, therefore, preserved.

*236 exercised." If Congress had wished to freeze existing restrictions, it could easily have done so explicitly. The fact that it did not do so, but instead used the generic term "authorities," indicates that Congress intended the President to retain some flexibility to adjust existing embargoes.

Codification of Cuban Embargo Restrictions

[15] *See* Stmt. of Rep. L. Diaz-Balart, 142 Cong. Rec. H1724-04, 1996 WL 96304, at *H1725 (Mar. 6, 1996) ("The conference report codifies, it puts into law, the existing embargo against Cuba, much of which exists only in regulations and miscellaneous executive orders. It will now take an act of Congress to modify the embargo, and no President will be able to weaken the embargo unless a democratic transition is underway in Cuba. . . . The importance of codifying—putting into law—the embargo, cannot be over-emphasized."); Stmt. of Sen. B. Dole, 142 Cong. Rec. S1510-02, 1996 WL 92888, *S1510 (Mar. 5, 1996) ("[T]he Helms-Dole-Burton Libertad bill codifies all regulations implementing the embargo on Cuba. This will ensure no more mixed signals will be sent from the United States—the Cuban embargo stays in place until a transition to government is in place."); Committee Rpt., 1996 WL 97265, at *561 ("It is not the intent of [§ 6032(h)] to prohibit executive branch agencies from amending existing regulations to tighten economic sanctions on Cuba or to implement the provisions of this Act.").

Cuban Democracy Act ("CDA") – 1992

22 U.S.C. § 6005(b)(2)

(b) Prohibitions on vessels.

(2) Vessels carrying goods or passengers to or from Cuba. **Except as specifically authorized** by the Secretary of the Treasury, a vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has any interest may not enter a United States port.

(iv) If any U.S.-origin spares are to be reexported to Cuba in connection with a licensed transaction, such reexport has been authorized by the Department of Commerce;

(v) No U.S. dollar accounts are involved; and

(vi) Any financing or other extension of credit by a U.S.-owned or controlled firm is granted on normal short-term conditions which are appropriate for the commodity to be exported.

(2) [Reserved]

(3) Importation of goods of Cuban origin into countries in the authorized trade territory.

(c) The term *strategic goods* means any item, regardless of origin, of a type included in the Commodity Control List of the U.S. Department of Commerce (15 CFR part 399) and identified by the code letter "A" following the Export Control Commodity Numbers, or of a type the unauthorized exportation of which from the United States is prohibited by regulations issued under the Arms Export Control Act of 1976, 22 U.S.C. 2778, or under the Atomic Energy Act of 1954, 42 U.S.C. 2011, *et seq.*, or successor acts restricting the export of strategic goods.

(d) Specific licenses issued pursuant to the policies set forth in this section do not authorize any person within the United States to engage in, participate in, or be involved in a licensed transactions with Cuba or Cuban nationals. Such involvement includes, but is not limited to, assistance or participation by a U.S. parent firm, or any officer or employee thereof, in the negotiation or performance of a transaction which is the subject of a license application. Such participation is a ground for denial of a license application, or for revocation of a license. To be eligible for a license under this section, the affiliate must be generally independent, in the conduct of transactions of the type for which the license is being sought, in such matters as decision-making, risk-taking, negotiation, financing or arranging of financing, and performance.

[40 FR 47108, Oct. 8, 1975, as amended at 42 FR 1472, Jan. 7, 1977; 42 FR 16621, Mar. 29, 1977; 50 FR 27438, July 3, 1985; 53 FR 47527, Nov. 23, 1988; 58 FR 34710, June 29, 1993]

§515.560 Certain transactions incident to travel to and within Cuba.

(a)(1) *General license.* The transactions in paragraph (c) of this section are authorized in connection with travel to Cuba by:

(i) Persons who are officials of the United States Government or of any foreign government, or of any intergovernmental organization of which the United States is a member, and who are traveling on official business;

(ii) Journalists regularly employed in that capacity by a news reporting organization; or

(iii) Persons, and persons traveling with them who share a common dwelling as a family with them, who are traveling to visit close relatives in Cuba in circumstances that demonstrate extreme humanitarian need, provided that the authorization contained in this paragraph may be used only once in any 12 month period. Any additional transactions must be specifically licensed pursuant to paragraph (b) of this section.

(2) Nothing in this section authorizes transactions in connection with tourist travel to Cuba, nor does it authorize transactions in relation to any business travel not otherwise authorized by specific license issued pursuant to this part.

(b) *Specific licenses.* Specific licenses authorizing the transactions in paragraph (c) of this section may be issued in cases involving extreme humanitarian need to persons or persons living in the same household, who seek to travel to visit close relatives in Cuba of such persons more than once in a calendar year. Specific licenses may also be issued to persons to travel to Cuba for humanitarian reasons based on a demonstrated compelling need to travel, for professional research and similar activities consistent with §515.416, for free lance journalism consistent with §515.417, for clearly defined educational activities consistent with §515.419, for religious activities, for activities of recognized human rights organizations investigating human rights violations, or for purposes related to the exportation, importation, or transmission of information or informational materials as defined in §515.332.

(1) For purposes of this section, the term *close relative* means spouse, child, grandchild, parent, grandparent, great grandparent, uncle, aunt, brother, sister, nephew, niece, first cousin, mother-in-law, father-in-law, daughter-in-law, son-in-law, sister-in-law, brother-in-law, or spouse, widow, or widower of any of the foregoing.

(2) Nothing in this section authorizes transactions in connection with tourist travel to Cuba. Travel to Cuba that is characterized as falling within the criteria specified in paragraph (b) is prohibited unless specifically licensed.

(c) The following transactions by persons licensed under paragraphs (a) and (b) of this section are authorized in connection with travel to, from, and within Cuba:

(1) All transportation-related transactions ordinarily incident to travel to and from Cuba provided no more than $500 may be remitted to Cuba directly or indirectly in any twelve-month period for fees imposed by the Government of Cuba in conjunction with such travel.

(2) All transactions ordinarily incident to travel within Cuba, including payment of living expenses and the acquisition in Cuba of goods for personal consumption there, provided the total for such expenses does not exceed $100 per day unless otherwise specifically licensed pursuant to the procedures contained in §515.801.

(3) The purchase in Cuba, and importation as accompanied baggage, of merchandise with a foreign market value not to exceed $100 per person for personal use only. Such merchandise may not be resold. This authorization may be used only once in every six consecutive months. As provided in §515.206, informational materials are exempt from this restriction.

(4) All transactions incident to the processing and payment of checks, drafts, traveler's checks, and similar instruments negotiated in Cuba by any person under the authority of this section.

(d)(1) Unless otherwise specifically provided, neither this section nor any general or specific license contained in or issued pursuant to this section authorizes persons subject to U.S. jurisdiction to utilize charge cards, including but not limited to debit or credit cards, for expenditures in Cuba. Such transactions are prohibited by §515.201.

(2) This section does not authorize the processing and payment by persons subject to U.S. jurisdiction, such as charge card issuers or intermediary banks, of charge card instruments (e.g., vouchers, drafts, or sales receipts) for expenditures in Cuba, and does not authorize a charge card issuer, or a foreign charge card firm owned or controlled by U.S. persons, to deal with a Cuban enterprise, a Cuban national, or a third-country party, such as a franchisee, in connection with the extension of charge card services to any person in Cuba.

(e) Persons who travel in Cuba pursuant to provisions of this section shall not become nationals of Cuba solely because of such travel. This paragraph does not authorize any transaction prohibited by any other section of this part.

(f) This section does not authorize any person subject to the jurisdiction of the United States to make any investment in Cuba, establish any branch or agency in Cuba, or transfer any property to Cuba, except transfers by or on behalf of individual or group travelers authorized pursuant to paragraph (c) of this section.

(g)(1) For purposes of this section, all necessary transactions involving fully sponsored or hosted travel to, from, and within Cuba are authorized, provided that:

(i) No person subject to the jurisdiction of the United States shall make any payment or transfer any property or provide any service to Cuba or a Cuban national in connection with such travel; and

(ii) The travel is not aboard a direct flight between the United States and Cuba authorized pursuant to §515.566 of this part.

(2) Travel shall be considered fully sponsored or hosted for purposes of this section notwithstanding a payment by the person subject to the jurisdiction of the United States for transportation to and from Cuba, provided that the carrier furnishing the transportation is not a Cuban national.

[57 FR 53998, Nov. 16, 1992, as amended at 60 FR 54196, Oct. 20, 1995]

(1) A detailed itinerary and a detailed description of the proposed research; and

(2) A resume or similar document showing a record of publications.

(b) To qualify for specific licensing pursuant to §515.560(b), the itinerary for the proposed research in Cuba for a free-lance article must demonstrate that the research constitutes a full work schedule that could not be accomplished in a shorter period of time.

[60 FR 54195, Oct. 20, 1995]

§515.418 Transactions related to telecommunications.

(a) Section 515.542(c) provides that specific licenses may be issued for transactions incident to the receipt or transmission of communications between the United States and Cuba. Pursuant to §515.542(c), licenses may be issued for payment to Cuba for full or partial payment of amounts due Cuba as a result of the provision of telecommunications services provided such services and payments are approved by the Federal Communications Commission and are consistent with policy guidelines governing telecommunications between the United States and Cuba established to implement the Cuban Democracy Act of 1992.

(b) Section 515.560(b) provides, in part, that licenses will be issued in appropriate cases for transactions for travel related to the transmission of information. Pursuant to §515.560(b), licenses may be issued on a case-by-case basis for travel transactions related to travel for negotiation or performance of telecommunications agreements for service between the United States and Cuba.

[58 FR 45060, Aug. 26, 1993]

§515.419 Travel related to educational activities.

(a) Section 515.560(b) provides, in part, that specific licenses will be issued to persons for travel to Cuba for clearly defined educational activities. Transactions related to travel and maintenance in Cuba for the following activities will be licensed upon submission of an adequate written application:

(1) Attendance at a meeting or conference held in Cuba by a person with an established interest in the subject of the meeting or conference, provided that:

(i) The meeting or conference is organized by an international institution or association that regularly sponsors meetings or conferences in other countries; and

(ii) The purpose of the meeting or conference is not the promotion of tourism in Cuba or other commercial activities involving Cuba that are inconsistent with this part; and

(2) Activities related to study for an undergraduate or graduate degree sponsored by a college or university located in the United States.

(b) Transactions related to travel that is primarily tourist travel, including self-directed educational activities that are intended for personal enrichment, will not be licensed pursuant to §515.560(b).

[60 FR 54196, Oct. 20, 1995]

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§515.502 Effect of subsequent license or authorization.

(a) No license or other authorization contained in this part or otherwise issued by or under the direction of the Secretary of the Treasury pursuant to section 3(a) or 5(b) of the Trading With the Enemy Act, as amended, or section 620(a), Pub. L. 87-195, or Proclamation 3447, shall be deemed to authorize or validate any transaction effected prior to the issuance thereof, unless such license or other authorization specifically so provides.

(b) No regulation, ruling, instruction, or license authorizes a transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Treasury Department and specifically refers to this part. No regulation, ruling, instruction or license referring to this part shall be deemed to authorize any transaction prohibited by part 500 of this chapter unless the regulation, ruling, instruction or license specifically refers to part 500.

(4) Paying fees related to the operation of the office in Cuba.

(b) Specific licenses may be issued authorizing transactions necessary for the establishment and operation of news bureaus in the United States by Cuban organizations whose primary purpose is the gathering and dissemination of news to the general public.

(c) Specific licenses may be issued authorizing transactions related to hiring Cuban nationals to provide reporting services or other services related to the gathering and dissemination of news.

(d) NOTE: The number assigned to a specific license issued pursuant to this section should be referenced in all import documents, and in all funds transfers and other banking transactions through banks organized or located in the United States, in connection with the licensed transaction to avoid the blocking of goods imported from Cuba and the interruption of the financial transactions with Cuba.

[60 FR 54197, Oct. 20, 1995]

§515.573 Transactions related to educational exchanges.

Specific licenses may be issued on a case-by-case basis authorizing the following:

(a) Transactions related to teaching at a Cuban academic institution by an individual regularly employed in a teaching capacity at a college or university located in the United States, provided the activities are related to a college or university academic program;

(b) Transactions related to the sponsorship of a Cuban scholar to teach or engage in other scholarly activity at a college or university located in the United States;

(c) Transactions related to participation in a formal course of study at a Cuban academic institution by a graduate or undergraduate student; and

(d) Transactions related to the organization of activities described in paragraph (a), (b), or (c) of this section.

[60 FR 54197, Oct. 20, 1995]

§515.574 Support for the Cuban people.

(a) Specific licenses may be issued on a case-by-case basis for transactions intended to provide support for the Cuban people including, but not limited to, the following:

(1) Activities of recognized human rights organizations; and

(2) Activities of individuals and nongovernmental organizations which promote independent activity intended to strengthen civil society in Cuba.

(b) Licenses will only be issued pursuant to this section upon a clearly articulated showing that the proposed transactions are consistent with the purposes of this part and that no significant accumulation of funds or financial benefit will accrue to the Government of Cuba.

[60 FR 54197, Oct. 20, 1995]

Subpart F—Reports

§515.601 Records.

Every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each such transaction engaged in by him, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least two years after the date of such transaction.

§515.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required by the Secretary of the Treasury or any person acting under his direction or authorization complete information relative to any transaction subject to the provisions of this part or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect. The Secretary of the Treasury or any person acting under his direction may require that such reports include the production of any books of account, contracts, letters or other papers, connected with any such

by the State Department or other approved U.S. immigration documentation. Any amount remitted to Cuba directly or indirectly in conjunction with the processing of a letter of invitation or similar document must be deducted from the $500 limit. Specific licenses may be issued to permit remittances by persons subject to U.S. jurisdiction to Cuba or a Cuban national, directly or indirectly, for transactions to facilitate non-immigrant travel by a Cuban national to the United States under circumstances where extreme humanitarian need is demonstrated, including terminal illness or severe medical emergency.

[43 FR 19852, May 9, 1978, as amended at 56 FR 49847, Oct. 2, 1991; 57 FR 53999, Nov. 16, 1992; 59 FR 44886, Aug. 30, 1994]

§515.565 Transactions in connection with public exhibitions or performances.

(a) Specific licenses will be issued in appropriate cases for certain transactions, not otherwise authorized by §515.564, incident to participation in a public exhibition or performance in the United States by a Cuban national who enters the United States, for the purpose of such participation, on a visa issued by the Department of State.

(b) Any payment to a Cuban national in connection with transactions licensed under the authority of paragraph (a) of this section shall be limited to expenses incurred in connection therewith. Specific licenses will not be issued authorizing any:

(1) Payment to Cuba or any national thereof for television rights, appearance fees, royalties, pre-performance expenses, or other such payments in connection with or resulting from any public exhibition or performance in the United States or in Cuba; or

(2) Debit to a blocked account.

(c) Specific licenses may be issued in appropriate cases for transactions incident to participation by a person subject to the jurisdiction of the United States in a public exhibition or performance in Cuba.

[43 FR 19852, May 9, 1978, as amended at 59 FR 44886, Aug. 30, 1994; 60 FR 54197, Oct. 20, 1995]

§515.566 Authorization of transactions incident to the provision of travel service, carrier service, and family remittance forwarding service.

(a)(1) *Authorization of travel service provider.* The following persons wishing to provide services in connection with travel to Cuba are "travel service providers" for purposes of this part: Travel agents, ticket agents, commercial and noncommercial organizations that arrange travel to Cuba; tour operators; persons arranging through transportation to Cuba; persons chartering an aircraft or vessel on behalf of others in Cuba; and persons arranging hotel accommodations, ground transportation, local tours, and similar travel activities on behalf of others in Cuba. Travel service providers must obtain authorization from the Office of Foreign Assets Control before providing services with respect to travel to Cuba. The list stated above should not be considered exhaustive, as other persons may be "travel service providers" within the meaning of this part. Opinions may be obtained from the Office of Foreign Assets Control concerning the applicability of this licensing requirement in individual cases.

(2) *Authorization of carrier service provider.* Persons subject to U.S. jurisdiction wishing to provide carrier services by aircraft or vessels incidental to their non-scheduled flights or voyages to, from, or within Cuba are "carrier service providers" for purposes of this part. Carrier service providers must obtain authorization from the Office of Foreign Assets Control before providing services with respect to non-scheduled flights or voyages to, from, or within Cuba. Carriage to or from Cuba of any merchandise, cargo or gifts, other than those permitted to individual travelers as accompanied baggage, must also be authorized by specific license issued pursuant to this part.

(3) *Authorization of family remittance forwarders.* Persons subject to U.S. jurisdiction, including persons who provide payment forwarding services and noncommercial organizations acting on behalf of donors, who wish to provide services in connection with the collection or forwarding of remittances authorized pursuant to this part must obtain authorization from the Office of

Foreign Assets Control. Depository institutions, as defined in §515.333, are exempt from this requirement.

(b) *Terms and conditions of authorization to engage in service transactions.* Authorization to engage in service transactions will be issued only upon the applicant's written affirmation and subsequent demonstration that it does not participate in discriminatory practices of the Cuban government against certain residents and citizens of the United States. Examples of such practices include, but are not limited to, charging discriminatory rates for air travel or requiring payment for services, such as hotel accommodations and meals, not desired, planned to be utilized, or actually utilized, based on such characteristics as race, color, religion, sex, citizenship, place of birth, or national origin. Authorization, whether a grant of provisional authorization or a license issued pursuant to this part, does not permit a travel or carrier service provider to provide services in connection with any individual's transactions incident to travel which are prohibited by this part.

(c) *Initial applications for licenses.* The initial application for a license shall contain:

(1) The applicant organization's name, address, telephone number, and the name of an official of the applicant organization responsible for its licensed services;

(2) The state of applicant's organization, if a juridical entity, the address of its principal place of business and all branch offices, the identity and ownership percentages of all shareholders or partners, and the identity and position of all principal officers and directors;

(3) Copies of any bylaws, articles of incorporation, partnership agreements, management agreements, or other documents pertaining to the organization, ownership, control, or management of the applicant; and

(4)(i) In the case of applications for authorization to serve as travel or carrier service providers, a report on the forms and other procedures used to ensure that each customer is in full compliance with U.S. law implementing the Cuban embargo and does in fact qualify for one of the general licenses of §515.560, or has received a specific license from the Office of Foreign Assets Control authorizing the customer's travel-related transactions. In the case of a customer traveling pursuant to general license, the applicant must demonstrate that it requires each customer to attest, in a signed statement, to his qualifications for the particular general license claimed. The statement must provide facts supporting the customer's belief that he qualifies for the general license. In the case of a customer traveling under a specific license, the applicant must demonstrate that it requires the customer to furnish it with a copy of the license. The copy of the signed statement or the specific license must be maintained on file with the applicant, and/or

(ii) In the case of applications for authorization as family remittance forwarders, a report on the forms, account books, and other recordkeeping procedures used to determine whether each customer has violated the terms of any authorization for remittances contained in or issued pursuant to this part, or sent remittances to persons other than close relatives as defined in §515.563(b); and the method by which remittances are sent to Cuba and the procedures used by the applicant to ensure that the remittances are received by the persons intended.

(d) *Required reports and recordkeeping.* (1) Each specific license or grant of provisional authority shall require that the service provider furnish quarterly reports to the Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, during the term of the license. The required content of such reports and their due dates shall be provided to the service provider in a letter authorizing the provider to commence services. Each such report will cover only the three-month period immediately preceding the date of the report.

(2) While the names and addresses of individual travelers or remitters, the number and amount of each remittance, and the name and address of each recipient, as applicable, need not be submitted with quarterly reports, this information must be retained on file with all other information required by §515.601. These records must be furnished to the Office of Foreign Assets

Control on demand pursuant to §515.602.

(3) *Presentation of passenger lists.* Tour operators, persons operating an aircraft or vessel, or persons chartering an aircraft or vessel on behalf of others, for travel to, from, and within Cuba must furnish the U.S. Customs Service on demand a list of passengers on each flight or voyage to, from, and within Cuba.

(e) *Procedures governing the grant of provisional authority, denial, suspension, or revocation of authority to engage in service transactions*—(1) *Grant of provisional authority.* Following submission of a complete application as described in paragraph (c) of this section, the submission of any additional relevant information, and a preliminary evaluation by the Office of Foreign Assets Control, the applicant will be notified in writing that provisional authority has been granted to provide the services contemplated in the application. This provisional authority to provide services will remain in effect pending a final decision to grant or deny the license.

(2) *Denial of license*—(i) *Notice of denial.* If the Director, Office of Foreign Assets Control, determines that the application for a license to engage in service transactions related to travel to Cuba, carrier service transactions related to travel to Cuba, or transactions related to family remittance forwarding should be denied for any reason, notice of denial shall be given to the applicant. The notice of denial shall state the reasons for the denial.

(ii) *Grounds for denial.* The causes sufficient to justify denial of an application for a license may include, but need not be limited to:

(A) Any cause which would justify suspension or revocation of the authority of a service provider pursuant to §515.566(e)(3);

(B) Failure to file a full and complete application;

(C) Any willful misstatement of pertinent facts in the application;

(D) Evidence indicating that the applicant participates in discriminatory practices of the Cuban Government against certain residents and citizens of the United States as described in §515.566(b); or

(E) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of such conduct.

(3) *Suspension or revocation of a license or provisional authorization.* A license or provisional authorization issued pursuant to this section may be suspended for a specific period of time, or revoked, for the following reasons:

(i) The service provider has willfully made or caused to be made in any application for any license, request for a ruling or opinion, or report be filed with the Office of Foreign Assets Control, any statement that was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any application, request for ruling or opinion, or report any material fact that was required;

(ii) The service provider has failed to file timely reports or comply with the recordkeeping requirements of his license or provisional authorization.

(iii) The service provider has been convicted, at any time after filing an application for a license under §515.566, of any felony or misdemeanor that:

(A) Involved the importation, exportation, or transfer of property in violation of any law or regulation administered by the Office of Foreign Assets Control;

(B) Arose directly out of the conduct of the business covered by the license; or

(C) Involved larceny, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, misappropriation of funds, or a violation of the Customs laws, export or import control laws, or banking laws.

(iv) The service provider has violated any provision of law enforced by the Office of Foreign Assets Control or the rules or regulations issued under any such provision;

(v) The service provider has counseled, commanded, induced, procured, or knowingly aided or abetted the violation by any other person of any provision of any law or regulation referred to above;

(vi) The service provider has, in the course of the business covered by the

license, with felonious intent, in any manner willfully and knowingly deceived, defrauded, misled, threatened, or coerced any client or prospective client; or

(vii) The service provider has committed any other act or omission that demonstrates unfitness to conduct the business covered by the license.

[57 FR 53999, Nov. 16, 1992, as amended at 59 FR 31142, June 17, 1994; 59 FR 44886, Aug. 30, 1994]

§515.567 U.S. assets of certain Cuban corporations.

(a) Specific licenses may be issued unblocking the net pro rata shares of individuals who are permanent residents of the United States or the authorized trade territory, and who are not specially designated nationals, in U.S.-located assets of corporations formed under the laws of Cuba, after deducting the total debt due creditors for claims that accrued prior to the effective date, in cases where all of the following conditions are met:

(1) The assets were owned by, or accrued to, the corporation before the effective date of the regulations;

(2) The corporation did not carry on substantial business in Cuba under the management or control of the applicant(s) after the effective date;

(3) In cases where the blocked assets purportedly have been nationalized by Cuba, compensation has not been paid to the applicant(s).

(b) Applications for specific licenses under this section must include all of the following information:

(1) A detailed description of the corporation, its by-laws, activities, distribution of shares, and its current status;

(2) Proof of the permanent residence of the applicant(s) in the United States or the authorized trade territory;

(3) A list of all officers, directors and shareholders of the corporation, giving the citizenship and the residence of each person as of the date of the application;

(4) A detailed description of all of the assets of the corporation, wherever located, including a statement of all known encumbrances or claims against them; and

(5) Detailed information regarding the status of all debts and other obligations of the corporation, specifying the citizenship and residence of each creditor on the effective date and on the date of the application.

[50 FR 33720, Aug. 21, 1985]

§515.568 U.S. assets of certain Cuban decedents.

(a) Specific licenses may be issued unblocking the net pro rata shares of certain heirs of designated nationals in U.S.-located estate assets, after deducting the total debt due creditors for claims that accrued prior to the effective date, in cases where all of the following conditions are met:

(1) The applicant is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and

(2) No interest on the part of a designated national not licensed as an unblocked national pursuant to §515.505 exists in that portion of the assets to which the applicant is entitled.

(b) Applications for specific licenses under this section must include all of the following information:

(1) Proof of permanent residence in the United States or the authorized trade territory, to be established by the submission of documentation issued by relevant government authorities that must include at least two of the following documents: (i) passport; (ii) voter reigstration card; (iii) permanent resident alien card; or (iv) national identity card. Other documents tending to show residency, such as income tax returns, may also be submitted in support of government documentation, but will not suffice in and of themselves;

(2) Proof of death of the designated national to be established by a death certificate;

(3) Proof of heirship, to be established by a copy of the decedent's duly executed will certified by a probate court, a court decree determining the heirs, or, failing the availability of such documents, copies of certificates establishing the relationship of the heir to the deceased, *e.g.*, birth or marriage certificates;

(4) A description of the assets involved, including interest due on

blocked funds since April 1, 1979, the name and address of the institution in which the assets are held, the account or safe deposit box number, the name in which the assets are held and a statement of all known encumbrances or claims against them; and

(c) Any document provided pursuant to this section that is not written in the English language must be accompanied by a translation into English, as well as a certification by the translator that he is not an interested party to the proceeding, is qualified to make the translation, and has made an accurate translation of the document in question.

[54 FR 5235, Feb. 2, 1989]

§515.569 Currency carried by travelers to Cuba.

(a) Persons authorized to engage in transactions related to Cuban travel pursuant to §515.560 (a) or (b) may carry currency for living expenses in Cuba and the purchase in Cuba of goods for personal consumption there in an amount not to exceed $100 per day. In addition, each such person may carry an additional $100 for the purchase of merchandise in Cuba intended for importation as accompanied baggage pursuant to §515.560(c)(3).

(b) Persons authorized to engage in transactions related to fully sponsored or hosted travel to Cuba pursuant to §515.560(g) may not carry currency to pay for living expenses or the purchase of goods in Cuba except as specifically licensed pursuant to, or exempted from the application of, this part.

(c) Persons authorized to engage in transactions related to Cuban travel pursuant to §515.560 (a), (b), or (g) may also carry family remittances for the support and/or emigration of close relatives of the traveler who reside in Cuba, at the times and in the amounts authorized by or pursuant to §515.563. No such remittances may be carried by a traveler on behalf of remitters who are not members of the traveler's household, as defined in §515.563(c).

(d) Except for the amount of U.S. currency or currency from a third country brought into the United States by the traveler and registered with the U.S. Customs Service upon entry, Cuban nationals returning directly to Cuba from the United States may carry no non-Cuban currency.

(e) Persons traveling to Cuba may carry currency for transactions in Cuba subject to this part in amounts greater than those authorized by this section only pursuant to a specific license issued pursuant to §515.801.

(f) For purposes of this section, the term "currency" used means money, cash, drafts, notes, travelers checks, negotiable instruments, or scrip, having a specified or readily determinable face value or worth, but does not include gold or other precious metals in any form.

[54 FR 35326, Aug. 25, 1989, as amended at 56 FR 49847, Oct. 2, 1991; 58 FR 45060, Aug. 26, 1993; 59 FR 44886, Aug. 30, 1994]

§515.571 Certain vessel transactions authorized.

Unless a vessel has otherwise engaged in transactions that would prohibit entry pursuant to §515.207, §515.207 shall not apply to a vessel that is:

(a) Engaging in trade with Cuba authorized by licenses issued pursuant to §515.559, or

(b) Carrying donations of food to nongovernmental organizations or individuals, or

(c) Carrying medicine or medical equipment or telecommunications supplies, the exportation of which has been authorized by the Department of Commerce.

[58 FR 34711, June 29, 1993]

§515.572 Transactions by news organizations.

(a) Specific licenses may be issued authorizing all transactions necessary for the establishment and operation of news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public. Transactions that may be authorized include, but are not limited to, those incident to the following:

(1) Leasing office space and securing related goods and services;

(2) Hiring Cuban nationals to serve as support staff;

(3) Purchasing Cuban-origin goods for use in the operation of the office; and

No Cruise Travel from U.S. to Cuba in 1996

Royal Vice-Chair and COO
Adam Goldstein, Dep. 04/21/21 (Page 20:4-6; 20:9-12)

Q. In 1996, were there any cruises from the United States to Cuba?
A. Not to my knowledge.

Q. Before 1996, when do you recall the last time that there was a cruise from the United States to Cuba?
A. My recollection is around 1959 or 1960.

Carnival General Counsel
Arnaldo Perez, Dep. 12/22/20 (Pages 20:6 to 21:7)

Q. In 1992 through 1996, did any companies, -- cruise companies in the United States cruise from the US to Cuba?
A. Not that I'm aware of.

Carnival Sr. VP
Giora Israel, De. 12/03/20 (Page 12:13 to 12:17)

Q. Based upon the knowledge that you have obtained in your role with Carnival, to your knowledge, were there any authorized cruises from the US to Cuba in 1996?
A. No.

FDR Video

24:40 to 25:20 time stamp

MR. DEL RIO: Until the – my perspective is -- and for my three brands -- until Congress officially repeals Helms-Burton, even if OFAC were to -- even if you can go backdoor through OFAC, it wouldn't be the proper thing to do, and I don't think you can do it on a sustained basis. Maybe you can do 50 folks at a time, but to run a business, you have to bring thousands of people at a time on an ongoing basis. I don't think that backdoor or that loophole, if you will, would work on a sustained basis.

515.572 Provision of travel, carrier, other transportation-related, and remittance forwarding services.
515.573 Physical presence and business presence in Cuba authorized; Cuban news bureaus.
515.574 Support for the Cuban people.
515.575 Humanitarian projects.
515.576 Activities of private foundations or research or educational institutes.
515.577 Authorized transactions necessary and ordinarily incident to publishing.
515.578 Exportation, reexportation, and importation of certain internet-based services; importation of software.
515.579 Funds transfers for third-country official missions and certain intergovernmental organizations.
515.580 Global insurance policies covering individuals traveling to Cuba.
515.581 Transactions related to conferences in third countries.
515.582 Importation of certain goods and services produced by independent Cuban entrepreneurs.
515.583 Provision of certain goods and services to Cuban nationals sequestered aboard vessels in U.S. ports.
515.584 Certain financial transactions involving Cuba.
515.585 Certain transactions in third countries.
515.586 Cuban official missions in the United States.
515.587 Remittances from Cuban nationals to persons subject to U.S. jurisdiction.
515.588 Certain Cuban legal services authorized.
515.589 Authorization of emergency medical services.
515.590 Certain grants, scholarships, and awards.
515.591 Services related to infrastructure.

Subpart F—Reports

515.601 Records and reports.

Subpart G—Penalties

515.701 Penalties.

Subpart H—Procedures

515.801 Procedures.
515.802 Delegation by the Secretary of the Treasury.

Subpart I—Miscellaneous Provisions

515.901 Paperwork Reduction Act notice.

AUTHORITY: 22 U.S.C. 2370(a), 6001–6010, 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 4301- 4341; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–114, 110 Stat. 785 (22 U.S.C. 6021–6091); Pub. L. 105–277, 112 Stat. 2681; Pub. L. 111–8, 123 Stat. 524; Pub. L. 111–117, 123 Stat. 3034; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

SOURCE: 28 FR 6974, July 9, 1963, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§515.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. No license or authorization contained in or issued pursuant to one of those parts, or any other provision of law, authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part shall be deemed to authorize any transaction prohibited by any law other than the Trading With the Enemy Act, 50 U.S.C. App. 5(b), as amended, the Foreign Assistance Act of 1961, 22 U.S.C. 2370, or any proclamation, order, regulation or license issued pursuant thereto.

[50 FR 27437, July 3, 1985, as amended at 62 FR 45106, Aug. 25, 1997]

Subpart B—Prohibitions

§515.201 Transactions involving designated foreign countries or their nationals; effective date.

(a) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if either such transactions are by, or on behalf of, or pursuant to the direction of a foreign country designated under this part, or any national thereof, or such transactions involve property in which a foreign country designated under this part, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

Specific License Does Not Authorize Violation of Title 3

Statement of Material Fact ¶ 70:
OFAC informed Carnival by letter dated July 2, 2015 that "compliance with the requirements of the CACR does not excuse a U.S. person from the need to comply with other provisions of 31 C.F.R. chapter V, and with other applicable provisions of law." (ECF No. 322-2, at14 (RFA No. 33).)

Carnival Response: Undisputed.

Plaintiff's Omnibus Statement of Material Facts

79. On January 22, 2019, the Cruise Lines International Association ("CLIA"), of which named Defendants are members, met with lobbyists and lawyers "to discuss strategy to influence the Trump Administration's position on Title III exemptions going forward." (Ex. 41, Declaration of Bradley Rose dated August 12, 2021, and attached exhibits, at NCLH235901-577903.)

80. Following that meeting, CLIA's stated goal was to "[e]nsure that legal claims under Title III cannot be made against cruise lines and/or maintain the overall suspension of lawsuits under Title III" and identified that the "Overall Strategic Position" of the industry was to "work behind the scenes with key leaders on Capitol Hill" to "clarify whether the lawful travel exemption [under Title III] applies to ports and/or that trafficking does not apply to port users." (Ex. 41, Declaration Bradley Rose dated August 12, 2021, and attached exhibits, at NCLH235901-577903.) CLIA also recommended that they "secure clarifying language in the regulation which would specifically exempt cruise lines engaging in lawful travel to Cuba from lawsuits filed under Title III." (Id. at 3.)

Message

From: Michael McGarry [mmcgarry@cruising.org]
Sent: 2/21/2019 11:52:55 PM
To: Michael McGarry [mmcgarry@cruising.org]
CC: Lawrence W. Kaye, Esq. [lkaye@kayerose.com]; Brad Rose [BRose@kayerose.com]
Subject: RE: Confidential and Privileged - Title III Analysis
Attachments: 22246490_2 CLIA Helms Burton Act and Private Right of Action UPDATED.PDF

Confidential & Privileged

Dear All,

Attached Venable's updated memorandum, which adds a new paragraph at Section II. H regarding potential review by OFAC of the current provisions for the General Licenses.

Best regards,
Mike

From: Michael McGarry
Sent: Thursday, February 21, 2019 9:43 AM
To: Michael McGarry (mmcgarry@cruising.org) <mmcgarry@cruising.org>
Subject: Confidential and Privileged - Title III Analysis

Confidential & Privileged

All,

I am sharing the message below and the attached for your awareness.

Best regards,
Mike

From: Kelly Craighead <kcraighead@cruising.org>
Sent: Thursday, February 21, 2019 9:39 AM
To: CLIA GEC <CLIAGEC@cruising.org>
Cc: CLIA GEC Assistants <CLIAGECAssistants@cruising.org>
Subject: Title III Analysis

Dear Global Executive Committee Members,

Attached is a memo from Lindsay Meyer, a partner with Venable who specializes in international trade law and Cuba trade specifically, that provides information on the Administration's review of the Helms Burton Title III suspension issue with essential considerations for the cruise industry. The memo will provide a foundation for discussion among GEC members and expert counsel at Venable. We apologize for sending this memo so close to the GEC call. While the memo was requested last week for distribution well in advance of the GEC call, we received the memo late last night.

Ms. Meyer will join the GEC call for the Cuba agenda item and will provide a verbal summation of key points in the memo. Importantly, she will also address the central question of what we know or do not know at this time about the status of General Permits allowing travel from the U.S. to Cuba if the Administration discontinues suspension of legal claims made under Title III of the Helms Burton Act.

We will also provide a verbal briefing on the actions that we have taken to date and are currently engaged in with our lobbyists at Alcalde & Fay and other outside resources.

I look forward to speaking with all of you at 12:00 noon U.S. EST.

Best regards,
Kelly

Kelly Craighead
President & CEO
Cruise Lines International Association
1201 F Street NW Suite 250 | Washington, DC 20004

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TO	CLIA	DATE	February 20, 2019 *Updated Feb. 21, 2019*
FROM	Lindsay B. Meyer, Esq. Jeffrey G. Weiss, Esq.	EMAIL	LBMeyer@Venable.com
CC	Lawrence W. Kaye Michael McGarry	PHONE	202-344-4829
RE	**Analysis of Title III of Helms-Burton Act and Private Right of Action**		

You have requested that we analyze Title III of the Helms Burton Act in the context of assessing the potential private right of action that may arise if the current waiver is lifted and its potential impact on the Cruise Lines International Association ("CLIA"). Below please find our preliminary analysis.

I. Background on Title III of the Helms-Burton Act

On March 12, 1996, President Clinton signed the Cuban Liberty and Democratic Solidarity ("LIBERTAD") Act of 1996, also known as the Helms-Burton Act (the "Act").[1] Title III of the Act established a private right of action allowing U.S. nationals, from whom the Cuban government confiscated property, to file lawsuits for money damages against persons that "traffic" in such property. Any "trafficking" that occurred three months after the effective date of Title III is actionable, subject to the Act's two-year statute of limitations and other exceptions.

The Act made August 1, 1996 the default effective date of Title III. However, the Act also allowed the President to suspend the effective date of the Act for a period of up to six months, and to renew such suspension for successive periods of up to six months. Once Title III has taken effect, the Act also authorizes the President to suspend the private right of action. Suspensions of the private right of action may be made, and successively renewed, for periods of up to 6 months.

On July 16, 1996, President Clinton announced that he would not suspend Title III's effective date of August 1, 1996. At the same time, however, President Clinton suspended Title III's private right of action provision. In the intervening 23 years, each President has kept the private right of action continuously suspended in successive 6 month periods. In 2013, President Obama delegated the suspension authority to the Secretary of State.[2]

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1 Pub. L. No. 104-114 (1996).

2 *See* 78 Fed. Reg. 9,574 (Feb. 8, 2013), available at https://www.federalregister.gov/documents/2013/02/08/2013-03110/delegation-of-authority-to-suspend-the-provisions-of-title-iii-of-the-cuban-liberty-and-democratic .

(ECF No. 318-41 in CCO)

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On January 16, 2019, Secretary of State Pompeo announced that the Administration intended to only renew the suspension for another 45 days, rather than up to six months, as permitted under the Act. On February 1, 2019, the Secretary officially renewed the suspension period for 45 days (*i.e.*, through March 17, 2019). Provided that another waiver is not issued before the end of the 45-day period, U.S. nationals will be permitted to initiate claims under Title III beginning on March 18, 2019.

II. Understanding Claims under Title III of the Act

A. "Trafficking in Confiscated Property" and the Potential Impact

A private right of action for civil damages is authorized by Title III by means of lawsuits brought by U.S. nationals against persons who "traffic" in property that was confiscated from U.S. nationals[3] by the Government of Cuba on or after January 1, 1959.[4] Under the Act, a person "traffics" in confiscated property when the person "knowingly[5] and intentionally" engages in certain activity, *without* the authorization of the United States national who holds a claim to the property. Specifically, such "trafficking" occurs when a person or entity:

- Sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possess, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property;
- Engages in a commercial activity using or otherwise benefiting from confiscated property; or
- Causes, directs, participates in, or profits from, trafficking by another person, or otherwise engages in trafficking through another person.[6]

Under the terms of Title III, liability is created when any of the above-referenced activities occur. Notably, the activities may only have tangential connection with the property that was actually confiscated. For instance, a court may interpret that the use of port docks, which are associated with confiscated property, constitutes violative "trafficking" under the Act. As such,

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3 Title III defines "U.S. national" to mean any U.S. citizen or entity organized within the U.S. *See* Act, Section 4 (15).

4 Act, Section 302(a).

5 Under the Act, "knowingly" is defined to mean "having reason to know."

6 Act, Section 4(13)(A).

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the scope of Title III has potentially very broad implications. More importantly, a person can be liable for a transaction involving confiscated property even in the absence of any *actual* knowledge of the involvement of such property.

It is also important to understand that, under Title III, certain limited activities have been expressly *excluded* from the definition of "trafficking." As previously discussed, a potentially important provision under the Act addresses exempted activities regarding "transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel." This "Travel Exception" is found within the noted "Definitions" section of the Act at Section 4(13)(B)(iii).

B. Understanding the Ambiguities Associated with the Travel Exception

Title III excludes from the definition of "trafficking" "transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel." However, it is unclear whether a court would find that carriers and travel service providers, including the cruise lines, are covered by this exception.

As part of its analysis, we would expect that a court would examine how the Office of Foreign Assets Control ("OFAC") administers similarly worded provisions found within the Cuban Assets Control Regulations ("CACR"), including the CACR's general and specific licenses for certain travel and travel-related services. A court might also note of the fact that the Act codified the existing CACR into statute - which to that point had only been implemented through Executive Orders and regulations - making the CACR and its general license provisions permanent until amended or repealed by Congress. Thus, a court could view the CACR's concurrent codification as evidence that Congress intended to exempt transportation-related transactions from claims under Title III.

Since the Act took effect, OFAC's authorizations for travel and carrier services to and from Cuba have expanded. However, we anticipate that a court could interpret the Travel Exception narrowly, such that only persons engaged in activity that was otherwise authorized under U.S. sanctions at the time the Act was signed in 1996 are exempted from private rights of action.

C. Who Can Bring Claims under Title III?

Any U.S. national who owns a claim to property confiscated by the Government of Cuba after January 1, 1959 may sue those who "traffic" under Title III, subject to certain restrictions.

If the claim was certified by the Foreign Claims Settlement Commission of the United States ("FCSC") pursuant to Title V of the International Claims Settlement Act of 1949, as amended ("ISCA"), courts must accept FCSC certification as conclusive proof of an ownership interest in the property in question. The amount certified by the FCSC is presumed to be correct,

but can be overcome with clear and convincing evidence. In addition, such claimants are entitled to treble damages. Between October 16, 1964 and July 6, 1972, the FCSC reportedly adjudicated 8,816 claims, and certified losses on 5,911 of those claims, with a total principal value of more than $1.8 billion. ISCA required that the property subject to a claim had to be owned by a U.S. national *at the time of confiscation*.

If the claim was not certified by the FCSC, a person can still file claims under Title III, but there are certain limitations. For example, if a certified claim exists, no other person can file a Title III claim with regard to the same property. *See also* Sections II.E and II.G.3 below. Furthermore, a claimant that does not have a certified claim from the FCSC is not automatically entitled to treble damages, unless they meet certain notice requirement, as discussed further below. However, a person raising a non-certified claim does not need to have been a U.S. national at the time the property in question was confiscated.

With regard to the certified claims, there is also potential risk to those seeking to transfer a claim. Specifically, in a July 29, 2008 Notice regarding the transfer of claims against Cuba certified by the FCSC, OFAC stated that it "regards an FCSC-certified claim against Cuba as property in which Cuba has an interest, as defined in 31 C.F.R. § 515.311." As such, OFAC warned that "the transfer of a certified Cuban claim is generally prohibited absent authorization by OFAC" and advised those considering a possible claim transfer to get legal guidance before proceeding, or they themselves may be subject to potential civil or criminal penalties and fines or even imprisonment.

D. Who Cannot Bring Claims Under Title III?

U.S. nationals who were eligible to file a claim with the FCSC, but did not, may not bring a lawsuit under Title III.[7]

E. Amount of Damages

Unless the activity in question is excluded from the definition of "trafficking," a person that traffics in confiscated property is liable in an amount equal to the *greater* of:

- The amount certified to the claimant by the FCSC under ICSA, plus interest;
- An amount determined by a special master appointed by the court; or

[7] Act, Section 302(a)(5)(A).

- The fair market value of the property, calculated as being either the current value of the property, or the value of the property when confiscated plus interest, whichever is greater.[8]

For certified claims, a person that "traffics" is liable for treble damages based on the amounts above. Conversely, a non-certified claim is entitled to treble damages *only if* the claimant provides the person allegedly engaged in "trafficking" at least 30 days' notice before initiating a claim *and* such person does not cease "trafficking" in confiscated property within 30 days of receiving notice.

F. When Can Title III Claims be Filed?

As stated above, the Helms-Burton Act was enacted on March 12, 1996, and became effective on August 1, 1996. The Act included what the then-Attorney General referred to in guidance as a "grace period" of three months. Under the Act, a person who "traffics" is only liable for activity occurring three months after the effective date of Title III (meaning any Trafficking occurring *after* November 1, 1996).

Title III also authorized the President to delay Title III's effective date for up to six months, and suspend the right to initiate claims against persons who "traffic" for up to six months. Moreover, each of these actions could be renewed. President Clinton decided to allow Title III to take effect on August 1, 1996, but he immediately suspended the private right of action. Every subsequent President has also suspended the right to file claims under Title III every six months, until now.

Because President Clinton suspended the right to initiate claims under Title III without suspending Title III's effective date, a person or entity would be liable for any trafficking activities it conducted that occurred on or after November 1, 1996, subject to the two-year statute of limitations, as discussed below. Further, claims could be filed immediately upon the expiration of the current suspension of the private right of action (*i.e.*, on March 18, 2019).

G. Procedural Requirements

As with any claim in federal court, there are a number of procedural requirements that must be satisfied to bring an action under Title III.

1. Personal Jurisdiction

Congress clearly intended for the Act to have an extraterritorial effect, but a federal court cannot entertain a Title III action without personal jurisdiction. While many companies will have

[8] A person who "traffics" is also liable for court costs and attorneys' fees.

sufficient contacts with the United States to be subject to general *in personam* jurisdiction, or will have assets located in the United States, some claimants could find it difficult to obtain jurisdiction over a person who "traffics" with limited contacts and assets in the United States.

2. Amount in Controversy

Title III has an amount in controversy requirement of $50,000.[9] The amount in controversy is calculated without regard to treble damages, and is exclusive of interest, costs, and attorneys' fees. The Act does not explicitly prohibit joining two or more claims of less than $50,000 for the purposes of meeting the amount in controversy requirement, although a court would likely apply the requirement on a property-by-property (*i.e.*, claim-by-claim) basis.

3. Notice Requirement for Non-Certified Claims

The Act requires that claimants give notice of an intent to file a Title III action to a person who allegedly "traffics" when the action is based on non-certified claims. Specifically, the notice must be in writing, served in person or by certified mail, and contain (i) a statement of intent to bring an action against the person, (ii) a demand that trafficking cease immediately, and (iii) a copy of the Attorney General's statement summarizing the provisions of the Act, published at 61 Fed. Reg. 24955 (May 17, 1996). Failure to satisfy any of these conditions could presumably be a basis to challenge the required notice under the Act.

If the claimant gives the potential defendant the required notice and the potential defendant continues to traffic in confiscated property at the end of the 30 days after notice is provided, then the claimant is eligible for treble damages.[10]

4. The Applicable Statute of Limitations

Section 305 of the Act provides that Title III suits "may not be brought more than 2 years after the trafficking giving rise to the action has ceased to occur." Assuming a reinstatement of the private right of action on March 18, 2019, the statute of limitations would bar claims regarding trafficking *that ceased before* March 18, 2017.

It is also possible, but unlikely, that a court could interpret the phrase "trafficking giving rise to the action" to allow tacking of claims against property that has not been the subject of trafficking within the limitations period, but which was connected to broader trafficking activities that have occurred within the limitations period. For example, assume a foreign company began trafficking activities in 2013. From 2013-2016, the company trafficked with respect to Blackacre, a confiscated property owned by U.S. nationals. From 2017 to the present, the company has

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9 Act, Section 302(b).

10 Act, Section 303(a)(3).

trafficked in Greenacre, another confiscated property owned by different U.S. nationals. The owners of Greenacre have a viable claim under Title III. Whether the owners of Blackacre have a viable claim depends upon whether "the trafficking giving rise to the action" ceases to occur with respect to Blackacre's owners when the foreign company redirected its trafficking activities to Greenacre. If "trafficking" refers to a continuous course of action, then Blackacre's owners would have a Title III claim that would not be barred by the statute of limitations. On the other hand, if "trafficking" is applied on a property-by-property basis, the Title III claims related to Blackacre would be barred by the statute of limitations.

However, the definition of "traffics" under the Act makes this interpretation appear unlikely. The Title III right of action establishes the liability of "any person that … traffics in property" to any U.S. national who "owns the claim to such property." The Act defines "traffics" by reference to "confiscated property" and specific actions taken in relation to confiscated property without authorization of the U.S. national owner of "the property." The final definite article supports an interpretation of the Act that would not allow "tacking" a Title III claim to more recent trafficking activities when part of a continuous course of conduct.

H. Considerations for Current OFAC General Licenses

In the event that changes occur with regard to the suspension of Title III as discussed above, we anticipate that OFAC may take the opportunity to also review the current state of general licenses that have allowed for authorized travel under the particular stated terms. Notably, the liberalization that occurred under the Obama Administration permitted travel under twelve specific categories, which were authorized by means of the general license for travel to Cuba. (*See* Final Rule, 80 Fed. Reg. 56915 (Sept. 21, 2015) amending the CACR). The Federal Register[11] expressly recognized that "among other things, these amendments further facilitate travel to Cuba for authorized purposes (including authorizing by general license the provision of carrier services by vessel) …"

However, we note that the language found in Title III's Travel Exception does not precisely match the language used in the travel-related authorizations found in the CACR at 31 C.F.R. § 515.560. Namely, the Title III Travel Exception excludes from liability "transactions and uses of property incident to lawful travel…to the extent that such transactions and uses of property are *necessary* to the conduct of such travel" [emphasis added]. Meanwhile, both at the time of Title III's enactment and at the present, the CACR's travel-related authorization allows for "transportation-related transactions ordinarily incident to travel to and from Cuba" and

[11] That is, the CACR provides that "Effective October 28, 2000, no specific licenses will be issued authorizing the travel-related transactions in paragraph (c) of this section in connection with activities other than those [twelve categories of activities] referenced in paragraph (a) of this section." CACR at § 515.560(b). Additionally, Section 515.560(f) of the CACR states "Nothing in this section authorizes transactions in connection with tourist travel to Cuba." And Note 1 to § 515.560 raises the recordkeeping obligations imposed that "each person relying on the general authorization in this section must retain specific records related to the authorized transactions."

"transactions ordinarily incident to travel within Cuba," without a requirement that the transactions be "necessary." We further note that the CACR separates the authorizations for "travel-related" transactions, arguably authorizing the travelers (provided at 31 C.F.R. § 515.560) from "travel, carrier, and other transportation-related [services]," which are provided at 31 C.F.R. § 515.572. While there has been no indication that any alignment will occur by OFAC, if changes to the existing suspension occurs under Title III, OFAC may take the opportunity to review the current authorizations under such general licenses and may consider adjustments thereto to align them in a more consistent manner with the status of Title III.

III. Considerations for CLIA

A. Risk Assessment (Property-By-Property Due Diligence)

As previously discussed, assuming a reinstatement of the private right of action on March 18, 2019, the statute of limitations would bar claims regarding trafficking that ceased before March 18, 2017. If a company has been "trafficking" within the meaning of the Act since March 18, 2017, there is no way to eliminate its potential liability until the two-year statute of limitations has run.

The risk of Title III liability can be assessed through a due diligence analysis of the properties that a company uses or benefits from in Cuba. First, the business should identify each property located in Cuba that the business touches or has touched within the past two years. Then, the business should seek to determine whether any of those properties were the subject of certified claims in the FCSC. This step would be performed by searching the FCSC records. Given the age and poor digitization of the FCSC records, we expect this process could require substantial resources. If a business uses or benefits from a property that is the subject of a certified claim, then the owner of the certified claim is the only person who may sue under Title III. Further due diligence into the owner of the claim could help determine the risk of litigation (*e.g.*, in the case of an entity with a certified claim, whether the entity or a successor entity still exists).

With regard to due diligence of non-certified claims, please recall that the Act does not allow suits by claimants who were eligible to, but did not, have their claim certified by the FCSC. The FCSC was limited to U.S. person claimants. Therefore, the only non-certified claims that would be available for the Title III action would appear to be those held by persons who became U.S. nationals at some point *after* the FCSC ceased its certification of claims. In reality, this may be a very narrow universe of claims. In any case, this due diligence would only be required when the owner of the property in question was not a U.S. national in the period when the FCSC was operational.

If we assume that cruise lines are not covered by the Travel Exemption, the risks to a particular cruise line will depend on that cruise line's relationship with "confiscated property," such as ports. U.S. nationals who owned property or ports that were confiscated by the

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Government of Cuba on or after January 1, 1959, could potentially bring claims under Title III. Two claims, in particular, appear to be relevant to the cruise line industry; namely, the certified FCSC claims on the Havana Harbor and on La Maritama Parreno ("Santiago Harbor"). The Havana Docks Corporation, incorporated in Delaware, holds a claim valued at $9.2 million by the FCSC in 1971 (absent interest) in connection with a concession it then held at the Havana Harbor. Meanwhile, the FCSC certified claim on the Santiago Harbor was valued by the FCSC at $380,699 in 1970. As with other claims, the accumulation of interest on these claims and the potential appreciation in the properties' value has significantly increased the value of these claims. Of course, there may be additional claims with potential impact, so each company would need to examine their particular business activities and perform due diligence as to potential claims, in order to understand any associated impact as to their unique circumstances.

B. Statutory Amendment

Amending the Act's Travel Exception so that it clearly covers cruise lines or travel service providers could help ensure that the activities of CLIA's members would be exempt from Title III liability. Yet, the difficulty of passing such legislation, which would be in conflict with an Administration initiative, and which the President could veto, makes this option unlikely to succeed.

If a statutory amendment were sought, however, we would recommend proposing to revise the definition of "traffics" in Section 4(13) of the Act to include a specific reference to cruise lines or ocean transportation. As discussed previously, a proposed amendment could add language to the statutory exceptions to the definition of "traffics" found at Section 4(13)(B)(iii) of the Act (such as suggested statutory language set forth in bold typeface):

> (B) The term "traffics" does not include –
>
> * * *
>
> (iii) transactions and uses of property incident to lawful travel to Cuba, **including the provision of travel services by any passenger common carrier,** to the extent that such transactions and uses of property are necessary to the conduct of such travel; or ....

Given the apparent difficulty of obtaining support for a legislative solution, we would recommend focusing efforts on another mitigation strategy.

C. Partial Suspension of Private Right of Action

Alternatively, the President could decide to allow a subset of claims -- that would otherwise be covered by the private right of action -- to remain in suspension. Under this possible option, the President would allow the current suspension of the private right of action to expire. Then,

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instead of renewing the suspension in its entirety, as every president has done since 1996, the President could issue a limited suspension of the private right of action but only with respect to a limited number of activities, such as the provision of travel services, while allowing some claims under Title III to proceed. This would assure that the activities subject to the suspension would remain immune from Title III for the duration of the continued suspension. The downside risk to this potential option is that it could support an argument by potential claimants that the activities identified in the limited suspension are not covered by the terms of the Travel Exception. Moreover, this could become problematic in the event that the limited suspension is allowed to expire in the future.

D. Clarified or Additional Exemptions from Liability

Under another alternative, the Administration could also issue interpretive guidance that would apply after the expiration of the present suspension of the private right of action. For example, the Administration could release guidance stating that cruise line services fall within the Travel Exception in the Act. This would provide a statement of the President's intent with respect to reinstating the private right of action; however, it would constitute non-binding guidance only. Furthermore, please recall that Title III claims will be adjudicated by federal courts, which would be free to interpret the Act differently than an interpretation by the Administration.

* * *

Given the fluid nature of the issues and lack of clear precedent associated with the Title III issues, we recommend that CLIA continue to monitor for any developments that may impact the cruise line industry, either in a beneficial or detrimental manner. In the interim, please let us know if you have any questions.

Doc.22246490

February 22, 2019

The Honorable Michael R. Pompeo
United States Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Re: Title III of the Helms-Burton Act

Dear Mr. Secretary:

Recently, the Trump Administration indicated it would be reviewing whether the U.S. government would continue to suspend Title III of the Helms-Burton Act ("the Act") as has been done since 1996. Over the past two decades, every President and Secretary of State has suspended this section of the law over concerns that the provision, while envisaged to increase pressure on the Cuban government, would potentially be injurious to the American business community, the U.S. legal system, American foreign alliances, and it would not advance efforts to support the Cuban people. CLIA is concerned that any break in the Administration's precedent with respect to Title III of the Act would be disruptive and create uncertainty in CLIA Member's business operations in Cuba.

While it is uncertain how enabling Title III of the Act would be interpreted by U.S. courts, U.S. businesses, that were not active in Cuba in 1996 but are today, would now face exposure to a new legal risk in U.S. courts. Title III prohibitions include engaging in a commercial activity using or otherwise benefiting from confiscated property by the Cuban government. The Act creates a claim on behalf of U.S. nationals, including U.S. citizens who were Cuban nationals at the time of expropriation, to sue those companies in U.S. courts whose business operations include "using or otherwise benefiting from confiscated property." It is foreseeable that U.S. nationals will test the bounds of the Act against U.S. companies in U.S. federal courts if their business activities arguably meet this test. For example, U.S. airlines authorized by the U.S. government to operate flights into Cuba could potentially be subject to Title III litigation for using airport facilities built on land subject to a claim. The same risk could apply to U.S. based cruise ships docking at affected seaports. Such an outcome would undermine the National Security Presidential Memorandum on Cuba (NSPM-5) and the U.S. government's stated efforts to hold harmless U.S. companies doing business in Cuba in full compliance with U.S. regulations, under a general or specific license. In this regard, CLIA notes the definitions of the Act, exclude the Act's application to transactions and uses of confiscated property "incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel." Assuming further action is taken to activate Title III of the Act, CLIA would request that any such enabling order policy or rule on the subject clarify the lawful travel exclusion applies to cruise ships calling at Cuban ports.

Given the time, resources, and effort that CLIA Members have invested in Cuba in support of U.S. policy, it would be manifestly unjust to make them targets for lawsuits for activities approved by the U.S. government. Consistent with U.S. policy, CLIA Members are, in fact, presently supporting the entrepreneurial efforts of the Cuban people directly. The subsequent uncertainty created by activating Title III would have a financial impact on companies currently legally operating in Cuba. Both U.S. and international banks, as well as, other financial institutions, would be wary of continuing to work with companies operating in Cuba as it dramatically increases the risk faced by financial institutions and other

(ECF No. 318-41 in CCO)

Honorable Michael R. Pompeo
United States Secretary of State
February 22, 2019
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businesses alike. Further, activating Title III would be viewed by U.S. trade partners, including the European Union, United Kingdom, Canada and Mexico, as reneging on the 1998 Memorandum of Understanding between the U.S. and EU, that resolved the EU's objection filed with the World Trade Organization contesting the extraterritorial application of US law penalizing third countries doing business in Cuba. And lastly, if not most importantly, NSPM-5 specifically states the purpose of the new policy is to "promote a stable, prosperous, and free country for the Cuban people." In addition, the policy aims to "foster free markets and free enterprise." As the U.S. government undertakes the implementation of NSPM-5, it is important to note that Title III of the Act would undermine this effort by creating massive uncertainties that would have consequences counter to the Memorandum's stated objectives.

We thank you for your time and consideration to this important matter. We would welcome the opportunity to meet with you or a member of your team to discuss CLIA's concerns outlined in this letter.

Sincerely,

Adam M. Goldstein

Adam Goldstein
Global Chairman, Cruise Lines International Association
Vice Chairman, Royal Caribbean Cruises Ltd.

Kelly Craighead

Kelly Craighead
President & CEO
Cruise Lines International Association

Arnold Donald
CEO
Carnival Corporation & plc.

Frank Del Rio
CEO
Norwegian Cruise Line Holdings

Charles A. Robertson
Chairman & CEO
American Cruise Line and Pearl Seas Cruises

Pierfrancesco Vago
Executive Chairman
MSC Cruises

(ECF No. 318-41 in CCO)

CONFIDENTIAL

From: Bondi, Tandy (CarnCorp)
Sent: Wednesday, April 17, 2019 7:43 AM
To: Perez, Arnaldo (CarnCorp); Frizzell, Roger (CarnCorp)
Subject: FW: Cuba

FYI

-----Original Message-----
From: Arison, Micky (CarnCorp)
Sent: Wednesday, April 17, 2019 7:19 AM
To: Madeleine.E.Westerhout@who.eop.gov
Cc: Bondi, Tandy (CarnCorp)
Subject: Cuba

Madeleine,

Thank you for working to schedule a call with the President. I know the President is very busy and understand if may be difficult for us to speak today. Could you please share my note below with the President? It concerns the issue he and I discussed and I understand a decision will be made today.

President Trump,

I wanted to follow up on our discussion regarding Cuba. The news is reporting that Title III of Helms Burton, the Cuba lawsuit ban, will be fully lifted today. If there are no exceptions or clarifications, we would be subject to significant legal liability for our use of the Ports. We do not own the ports or even manage them, but because we use them, we could be deemed as "trafficking" in confiscated property and the potential penalty to my company alone would be over $600 million.

Fortunately, there is an exemption from legal claims involving business that is incidental to lawful travel to Cuba. While it might appear that such an exemption would protect cruise lines from legal claims, lawful travel is not defined. We have requested language to clarify that lawful travel includes current cruise operations in any guidance or regulations that should accompany the policy change. Pam Bondi and Brian Ballard have been working with your staff but it is unclear if any clarification will be included tomorrow. If there is any opportunity to clarify the travel exemption applies to the cruise industry, I would be grateful.

We planned our sailings based on your 2017 Executive Order which specifically allowed cruises to Cuba. If we are now exposed to legal liability for following those rules, it would have a significant impact on my company and our over 300,000 American guests who are booked to sail to Cuba. I appreciate your consideration.

Best Rgds
Micky

Sent from my iPhone

PLF EXHIBIT
Arison 136
5/4/21 LWS

CONFIDENTIAL

2000 – Trade Sanctions Reform and Export Enhancement Act ("TSRA")

22 U.S.C. § 7209. Requirements relating to certain travel-related transactions with Cuba

(a) Authorization of travel relating to commercial sales of agricultural and medical goods

The Secretary of the Treasury shall promulgate regulations under which the travel-related transactions listed in paragraph (c) of section 515.560 of title 31, Code of Federal Regulations, are authorized by general license for travel to, from, or within Cuba for the marketing and sale of agricultural and medical goods pursuant to the provisions of this chapter.

(b) Prohibition on travel relating to tourist activities

(1) In general

Notwithstanding any other provision of law or regulation, the Secretary of the Treasury, or any other Federal official, may not authorize the travel-related transactions listed in subsection (c) of section 515.560 of title 31, Code of Federal Regulations, either by a general license or on a case-by-case basis by a specific license for travel to, from, or within Cuba for tourist activities.

(2) Definition

In this subsection, the term "tourist activities" means any activity with respect to travel to, from, or within Cuba that is not expressly authorized in subsection (a) of this section, in any of paragraphs (1) through (12) of section 515.560 of title 31, Code of Federal Regulations, or in any section referred to in any of such paragraphs (1) through (12) (as such sections were in effect on June 1, 2000).