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Does Cuba Have Intention Under Any Circumstances To Compensate Certified Claimants?
Court Arguments Suggest It Does Not, Will Not, No Matter What

Verbally, Cuba Reiterates Negotiation; Its Attorneys Write The Contrary
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Cuba Defendants In Libertad Act Lawsuit: *""measures of defence against external threats" are among the exceptions to the requirement of compensation for taking foreign nationals' property."*

Cuba Defendants In Libertad Act Lawsuit: "*Essosa's Refusal to Refine the Cuban State's Oil Posed a Grave External Threat Separately and in combination with the above, Plaintiff cannot show a violation of customary international law because of the grave external threat faced by Cuba. Settled customary international law allows taking, without compensation, the property of a foreign national when its control or use of the property threatens the state's peace, security, or public order*."

From an attorney involved with Libertad Act lawsuits: "*Cuba's lawyers today are the same lawyers they had in 1959- so when they call in question the requirement of compensation, they're not free-lancing, they are repeating their client's true position for six decades*."

EXXON MOBIL CORPORATION V. CORPORACION CIMEX, S.A. (Cuba), CORPRACION CIMEX, S.A. (Panama), AND UNION CUBA-PETROLEO [1:19-cv-01277; Washington DC]

Washington DC-based Steptoe & Johnson (plaintiff)
New York, New York-based Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C. (defendant)

LINK To Exxon Mobil Corporation Lawsuit Filing
LINK To Mobil Oil Corporation Claim (US$71,611,002.90)- In Lawsuit

U.S.-Cuba Trade and Economic Council, Inc.

LINK To Standard Oil Company Claim (US$173,157.12)- Not In Lawsuit
LINK To Defendants Memorandum Of Points And Authorities In Support Of Motion To Dismiss With Prejudice, And For Other Relief (16 June 2020)
LINK To Libertad Act Lawsuit Statistics

Irving, Texas-based **Exxon Mobil Corporation** (2019 revenues approximately US$257 billion) is the 9th largest of 5,913 certified claimants. Nine certified claimants have filed lawsuits since 2019 using Title III of the Cuban Liberty and Democratic Solidarity Act of 1996 (known as "*Libertad Act*"). There are twenty-five lawsuits filed using Title III of the Libertad Act.

Title III authorizes lawsuits in United States District Courts against companies and individuals who are using a certified claim or non-certified claim where the owner of the certified claim or non-certified claim has not received compensation from the Republic of Cuba or from a third-party who is using ("trafficking") the asset.

As an aside, prior to the June 2020 filing of 1,919 documents by the defendants in the Exxon Mobil Corporation lawsuit, the total number of filed court documents for the twenty-five Libertad Act lawsuits since May 2019 was 6,100+. Now at 8,000+ filed court documents, the 1,919 documents represent 23% of the total. The judge, the court clerks, the plaintiff, and the plaintiff attorneys all need to read every page- representing hundreds of hours of reading and hundreds of hours in billable hours.

There are 8,821 claims of which **5,913** awards valued at **US$1,902,202,284.95** were certified by the United States Foreign Claims Settlement Commission (USFCSC) and have not been resolved for nearing sixty years (some assets were officially confiscated in the 1960's, in the 1970's and in the 1990's). The USFCSC permitted simple interest (not compound interest) of 6% per annum (approximately US$114,132,137.10); with the approximate current value of the 5,913 certified claims **US$8.7 billion.**

Exxon Mobil Corporation, should it prevail in its lawsuit for the expropriation of assets valued at US$71,611,002.90, would have the greatest global reach by which to seek recovery of any judgment. Exxon Mobil is seeking permissible treble damages- US$214,833,008.70. The company will likely be pressured by activist shareholders, members of the United States Congress, and the Trump Administration (or Biden Administration) to use all means available to satisfy any judgement. One target could be Denver, Colorado-based **Western Union Company** (2019 revenues approximately US$6 billion) which electronically delivers transfers from the United States to the Republic of Cuba and pays a transaction fee to a subsidiary of Corporacion Cimex S.A. (Cuba). Ironically, Western Union Company has certified claims valued at US$939,367.20 and US$216,286.75.

Commentary

The Republic of Cuba may have in its most recent court documents needlessly, expansively and harmfully expanded beyond its arguments that **1)** plaintiff can't demonstrate under the Foreign Sovereign Immunities Act (FSIA) a direct effect in the United States and **2)** personal jurisdiction is not available to the court against the defendants. Arguably, those two grounds may have been sufficient for a dismissal of the case.

Unfortunately, the Republic of Cuba included hundreds of pages of statements and documentation supporting, confirming and re-confirming its position that the Republic of Cuba has no obligation

to compensate claimants (certified or non-certified) from any country is troubling for those with investments in the Republic of Cuba and for those considering investments in the Republic of Cuba, regardless from which country they are located. *Why go beyond the brief required for what some attorneys believe is likely victory based upon narrow technical issues?*

Consider now a company preparing a prospectus, particularly a publicly-held company, would likely be required to disclose the Republic of Cuba may expropriate property absent compensation- thus a reputation of any obligation to investors large and small. At minimum, the position of the Republic of Cuba is now enshrined in court documents, available on the Internet, for the world to read again and again and again.

The position of the Republic of Cuba likens to someone about to win a race and shooting themselves with the starter pistol before the finish line. The embrace of Law No. 851 which has been attributed to H.E. Dr. Fidel Castro Ruz (1926-2016), Prime Minister of the Republic of Cuba (1959-1976), President of the Council of Ministers of the Republic of Cuba (1976-2008), President of the Council of State of the Republic of Cuba (1976-2008), and First Secretary of the Central Committee of the Communist Party of the Republic of Cuba (1965-2011) is instructive.

Who really wrote the documents submitted to the court? The attorneys? The government of the Republic of Cuba? The Communist Party of the Republic of Cuba? From one observer, "*Fidel wrote the law; they must defend Fidel. They must defend the Revolution. They must defend Communism. They did not need to, but they did it*." The decision to include the statements may be a "feel-good" moment in Havana, but there will be long-term intended or long-term unintended consequences in Washington DC.

Inviting Congressional Intervention

By its actions in the court case, the Republic of Cuba has now created a likely legislative trajectory in the United States Congress- particularly inopportune approximately 100 days until the 3 November 2020 presidential election where the State of Florida has an outsized role in the national political discourse.

Whomever occupies the Oval Office on 20 January 2021 will be constrained by the legacy statements included in the Libertad Act lawsuit. Perhaps, that is what some officials in the Republic of Cuba prefer.

There will expectantly be efforts to amend the Foreign Sovereign Immunities Act (FSIA) of 1976. Language could be inserted that would define acts of a sovereign in a more expansive manner, particularly relating to commercial actions. Language could be inserted to recognize any country listed among State Sponsors of Terrorism would lose sovereign immunity protections and be subject to lawsuits for commercial actions. The doctrine of retroactivity would need be accommodated, but for Exxon Mobil Corporation, it has a second certified claim which could then be used as a basis for a new lawsuit using revised United States law.

Who may well be racing to introduce legislation- or preparing to add an amendment to "*must pass*" legislation?

The Honorable **Marco Rubio** (R- Florida), The Honorable **Ted Cruz** (R- Texas), The Honorable **Rick Scott** (R- Florida) and The Honorable **Robert Menendez** (D- New Jersey).

Few colleagues, if any, will oppose those efforts because the defense will not be their [inflamed] interpretation of statements by the Republic of Cuba, it will be cutting and pasting the documents provided in court filings by the attorneys representing the Republic of Cuba. No editing required. Their respective media releases may be titled "*The Art of The Steal*."

And, don't forget the lobbyists in Washington DC and in Florida vying to support the legislation along with, among others The Honorable **Robert Torricelli** (D- New Jersey) and The Honorable **Dan Burton** (R- Indiana), two former members of the United States Congress who have already sought to file an amicus brief in a Libertad Act lawsuit.

And, if some of the Libertad Act lawsuits are dismissed on grounds that the plaintiff was not the rightful owner of the claim, expect legislation to change the inheritance language in the Libertad Act.

Obama Administration, Trump Administration, Biden Administration

Almost all United States laws, regulations and policies impacting the Republic of Cuba have a foundation upon the now sixty-year-old process of expropriating assets without adequate and timely compensation. Reasoned thinking suggests settling the issue of the certified claims will make easier the removal of the statutory and administrative layers assembled during the last sixty years through twelve United States presidencies and three Republic of Cuba presidencies.

The United States has certified claims against the Republic of Cuba valued at US$1.9 billion for assets expropriated without compensation.

The Republic of Cuba maintains the United States owes US$121 billion to US$800 billion or more for damages United States laws, regulations and policies have directly and indirectly inflicted upon the country. The Obama Administration failed to decouple the issue of the certified claims from the Republic of Cuba damages; one has nothing to do with the other.

16 May 2016 Analysis: *"Without a settlement of the certified claims, every Obama Administration initiative becomes less secure and more tenuous in terms of post-Obama Administration survival. A settlement of the certified claims would create momentum in the United States Congress that could not be derailed… and that may cause concern for some in the government of the Republic of Cuba, where a slight derailment of energy might be welcomed to slow the process of re-engagement."*

From 2015 to 2017, more than 150 officials of the Obama Administration visited the Republic of Cuba. Absent were reported official *negotiations*, not discussions, specifically related to the certified claims.

The Obama Administration had both self-created opportunity and responsibility to negotiate a settlement for the certified claimants. By not linking other areas of engagement with settlement of the certified claims, the Obama Administration colluded with the [Raul] Castro Administration; acquiescing to an agenda designed in Havana rather than the agenda important to Washington.

The Trump Administration also had, and retains, an obligation on behalf of the certified claimants to officially request from the Diaz-Canel Administration a direct negotiation process.

If there is a Biden Administration, its first request to the Diaz-Canel Administration should be for a direct negotiation process.

Regardless of the outcome of the Exxon Mobil Corporation lawsuit using the Libertad Act, if the Republic of Cuba position is to not acknowledge the validity of the certified claims, what is either a Trump Administration during its remaining first term and possible second term and a Biden Administration in its first term to do?

Options include changing existing regulations, changing existing United States statutes to provide additional regulatory, legal and policy options for use on behalf of and by certified claimants. And, the implementation of additional punitive measures designed to inflict more direct financial consequences upon the Republic of Cuba.

One unknown: Will the United States be assisted by the Brussels, Belgium-based European Union (**EU**) and non-EU countries with whom the Republic of Cuba has settled claims. Will they find value for their bilateral interests with the [Miguel] Diaz-Canel Administration in Havana to assist with resolving the certified claims? Until resolved, there will not be a maximized value for commercial activities with the Republic of Cuba.

Excerpts From Defendant Court Filings (16 June 2020)

"Defendants maintain that, under well established customary international law, no violation can be shown here, both because the expropriation was for violation of Cuban law and because it was in defense against grave external threat. They further maintain that, even apart from the unique circumstances of this expropriation, Plaintiff cannot show a violation of international law."

"Even Apart from the Circumstances of the Essosa expropriation, Cuba was not under any obligation to provide compensation. The [United States] Supreme Court's assessment of the state of customary international law in 1960 precludes Plaintiff from meeting its burden to establish that such an obligation for nationalizations was imposed by a "general and consistent practice that states follow out of a sense of legal obligation to the international community," Helmerich, 743 F. App'x at 449–50."

"See also Banco Nacional de Cuba v. Sabbatino, 307 F.2d 845, 864 (2d Cir. 1962) ("Many countries have acted upon the principle that, in order to carry out desired economic and social reforms of vast magnitude, they must have the right to seize private property without providing compensation")."

"D. Assuming Arguendo an Obligation of Compensation, Plaintiff Cannot Show that Cuba Failed to Satisfy Its Obligations Essosa's property was subject to Law No. 851 of July 6, 1960. HA-A ¶¶ 30, 51. Its compensation provisions, if accepted by the United States, would have provided substantial compensation, and were well within the range of state practice. For each of these reasons, Plaintiff cannot show Cuba's violation of its obligations, even assuming there was an obligation of compensation, whether in the circumstances particular to the Essosa expropriation or apart from them. Plaintiff would need to demonstrate that customary international law required prompt and full compensation in all circumstances, but this was not the case, as shown above and as recognized in Chase, 658 F.2d at 892."

"Law No. 851 Would Have Provided Substantial Compensation and Its Provisions Were Well Within the Range of State Practice Law No. 851 provided that "payment for the expropriated

property shall be made, after the due appraisal thereof" in bonds with "at least" 2% annual interest, to be "amortized in a period of not less than thirty (30) years." A sinking fund would be established "for the amortization of said bonds, and by way of security therefor." The Second Circuit found it "unclear whether the bonds would be paid at maturity if the fund were insufficient to cover payment." Sabbatino, 307 F.2d at 862."

"On July 6, 1960, President Eisenhower exercised newly-granted statutory authority to reduce or eliminate Cuba's annual participation in global sugar imports by reducing Cuba's quota for 1960 to essentially what had already been imported. HA-A ¶ 29. Law No. 851 provided that the sinking fund would be funded from resumed, annual sugar sales to the United States above a certain volume and price. Interest would be paid only out of the sinking fund; if the fund was insufficient for any year, the interest obligation for that year would be extinguished."

"Even assuming that payment of the bonds on maturity depended on the sinking fund, Law No. 851 would have provided substantial compensation. Had the United States restored Cuban sugar sales, the fund would have reached approximately $1,533,000,000 by 1990 (less interest payments), assuming the same Cuban share of U.S. global sugar imports as in 1959 and investment in one-year U.S. Baa corporate bonds. See Declarations of Ofelia Perera Ibañez and Gary Phillips. In 1962, the Second Circuit found that the volume and price levels set by Law No. 851 for the sinking fund made its commitment to compensation "illusory," Sabbatino, 307 F.2d at 862, but the subsequent empirical evidence shows that it was wrong."

"The conservative estimate of $1.533 billion would have come close to the $1.851 billion value certified by the FCSC (https://www.justice.gov/fcsc); further, the FCSC's figure was grossly inflated. In Chase, at 893, the Second Circuit found that the FCSC's methodology had been fundamentally flawed, and its valuation substantially overstated, because the FCSC used 1955–59 values and performance, ignoring the profound post-1959 changes resulting in deteriorating values and prospects. The FCSC consistently based its decisions on appraisals that valued property according to pre-1960 performance and values. See Parajon Appraisal in Claim of Francisco Sugar Company, CU-2500 (1971) (Declaration of Michael Krinsky, Esq., ¶ 3); the FCSC cited Parajon in over 700 decisions. Bailey Dl. ¶ 2. Moreover, many of the certified claims had no basis in international law at all (e.g., losses resulting from foreign exchange controls). The FCSC awarded simple interest (at 6%), but, as shown infra, there was insufficient state practice to require the payment of interest as a norm of customary international law."

"E. The Expropriation Was a Permissible Countermeasure Even if the taking of Essosa property and 25 other U.S.-related holdings under Resolution No. 1, pursuant to Law No. 851, HA-A ¶¶ 30, 51, was otherwise to be considered a violation of international law, it would be a permissible countermeasure. The declassified State Department documents establish that the decision to bar Cuban sugar was part of the U.S. effort to overthrow the Cuban Government through a combination of armed force and "economic pressures." HA-A ¶ 8. For "economic pressure," barring Cuban sugar was "the only weapon we had against Cuba," "the one real weapon we have against Cuba," a "straight political weapon." Cuba's extreme dependence on sugar exports to the United States was well-understood. See HA-A ¶¶ 10, 14, 15, 23, 26, 29."

"B. Plaintiff Cannot Satisfy the Violation of International Law Requirement Because the expropriation Was for Essosa's Refusal to Refine the Cuban State's Oil in Violation of Cuban Law, and Because Essosa's Refusal Was at the United States' Request Pursuant to Its Plan to Overthrow the Cuban Government Plaintiff additionally cannot show a violation of international

law because of the circumstances of the Essosa expropriation. The Cuban measures to come before U.S. courts have not presented these or comparable circumstances."

"Plaintiff alleges that, "[o]n July 1, 1960, Essosa's property rights were expropriated . . . pursuant to" Cuban resolution, SAC ¶ 28, and that the expropriation violated international law because of Cuba's failure to pay compensation. SAC ¶ 33. The resolution expressly decreed the expropriation for Essosa's refusal to refine the State's crude oil in violation of the Law of Combustible Minerals of May 9, 1938, which provided that "Petroleum refineries already existing or to be established in the Republic must comply with the following provisions: III.---Its facilities shall be obliged to refine petroleum belonging to the State . . . at a price that does not exceed the cost of the operation, plus a reasonable industrial profit." Defendants' Historical Appendix A ¶ 1. Declassified State Department and CIA documents and Plaintiff's own testimony elsewhere, detailed and provided in Historical Appendix A ("HA-A"), show that less than four months before the expropriation, President Eisenhower approved, on March 17, 1960, the CIA plan to overthrow the Cuban Government by armed force that culminated in the Bay of Pigs invasion in April 1961 by over 1,500 armed forces. To further this plan, President Eisenhower asked Standard Oil and Texaco, and had the UK Prime Minister ask Shell, to have their 26 subsidiaries refuse to refine crude oil Cuba purchased from the Soviet Union. Cuba was dependent on the three refineries for virtually all of its oil supply. Id. ¶¶ 4–13, 16–21, 24, 27–28."

"Essosa had intended to refine the oil. However, even though it understood its refusal would lead to expropriation, Standard Oil, as "good citizens" of the United States, acquiesced in President Eisenhower's request. The other two companies also obliged. Id. at ¶¶ 5–6, 13, 27. When the three refineries refused to refine the oil, Cuba, as the United States knew, had less than four days' supply left. Standard Oil, Texaco and Shell, which dominated all oil supply in the Caribbean, had ended shipments, and Cuba's efforts to develop other Western sources had failed. Id. ¶¶ 4–6, 11, 16, 27, 31. As part of its effort, the Administration also covertly attempted, through key industry players and friendly governments, to have the world tanker industry withhold the tankers needed to transport Soviet oil to Cuba. The CIA planned and carried out sabotage against the refineries. Id. ¶¶ 22–24, 31–37."

"1. The Expropriation Was for Violation of Cuban Law: Plaintiff cannot show a violation of customary international law, as it permits forfeiture for violations of law, here, Cuba's Law of Combustible Minerals of 1938. JAMES CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 624 (8th ed. 2012) (no compensation required where taking is "exercise of police powers" or "penalty for crimes"); see also Jorge Viñuales, Customary Law in Investment Regulation, 23 ITALIAN Y.B. INT'L L. 23, 33–34 (2013) (police powers permit taking without compensation); B.A. WORTLEY, EXPROPRIATION IN PUBLIC INTERNATIONAL LAW 42 (1959) (police power permits seizure without compensation for violation of law); GILLIAN WHITE, NATIONALISATION OF FOREIGN PROPERTY 41–42 (1961) (same); Tecmed v. Mexico, ICSID Case No. AF/00/2, Award, ¶ 119 (29 May 2003) ("undisputable" that the state's exercise of its police power may cause economic damage to those subject to its powers without entitling them to any compensation). This settled principle is supported by and reflected in state practice, including forfeitures, as here, for violations of national security, foreign relations or economic emergency regulations. A prime example is the United States' Trading with the Enemy Act of 1917 ("TWEA"), which authorized the President, upon declaring a "national emergency" concerning the U.S.'s national security, foreign relations or economy, to impose sweeping prohibitions, including against the use of property by persons acting "for the benefit or on behalf of" a designated foreign government.11"

"TWEA provided that "any property that is the subject of a violation" of TWEA regulations "shall . . . be forfeited to the United States Government." Ch. 106, § 16(2), 40 Stat. 411 (1917), as amended, Pub. L. 73-1, 48 Stat. 1 (1933) (making TWEA applicable to peacetime emergencies). TWEA continues in effect with respect to Cuba and others. Pub. L. 95-223, § 101(b), 91 Stat. 1625 (1977). Numerous other States likewise have provided for forfeiture for violation of regulations to protect vital national interests.12"

"Essosa's Refusal to Refine the Cuban State's Oil Posed a Grave External Threat Separately and in combination with the above, Plaintiff cannot show a violation of customary international law because of the grave external threat faced by Cuba. Settled customary international law allows taking, without compensation, the property of a foreign national when its control or use of the property threatens the state's peace, security, or public order. As explained in CRAWFORD, BROWNLIE'S PRINCIPLES, at 624, "measures of defence against external threats" are among the exceptions to the requirement of compensation for taking foreign nationals' property.14 State practice, including forfeiture for violation of national security, foreign policy or economic emergency regulations discussed above, conclusively demonstrates this."

Libertad Act

The Trump Administration has made operational Title III and further implemented Title IV of the Cuban Liberty and Democratic Solidarity Act of 1996 (known as "*Libertad Act*").

Title III authorizes lawsuits in United States District Courts against companies and individuals who are using a certified claim or non-certified claim where the owner of the certified claim or non-certified claim has not received compensation from the Republic of Cuba or from a third-party who is using ("trafficking") the asset.

Title IV restricts entry into the United States by individuals who have connectivity to unresolved certified claims or non-certified claims. One Canada-based company and on Spain-based company are currently known to be subject to this provision based upon a certified claim.

Suspension History

Title III has been suspended every six months since the Libertad Act was enacted in 1996- by President William J. Clinton, President George W. Bush, President Barack H. Obama, and President Donald J. Trump.

On 16 January 2019, The Honorable Mike Pompeo, United States Secretary of State, reported a suspension for forty-five (45) days.

On 4 March 2019, Secretary Pompeo reported a suspension for thirty (30) days.

On 3 April 2019, Secretary Pompeo reported a further suspension for fourteen (14) days through 1 May 2019.

On 17 April 2019, the Trump Administration reported that it would no longer suspend Title III.

On 2 May 2019 certified claimants and non-certified claimants were permitted to file lawsuits in United States courts.

U.S.-Cuba Trade and Economic Council, Inc.

Certified Claims Background

There are 8,821 claims of which **5,913** awards valued at **US$1,902,202,284.95** were certified by the United States Foreign Claims Settlement Commission (USFCSC) and have not been resolved for nearing sixty years (some assets were officially confiscated in the 1960's, some in the 1970's and some in the 1990's. The USFCSC permitted simple interest (not compound interest) of 6% per annum (approximately US$114,132,137.10); with the approximate current value of the 5,913 certified claims **US$8.6 billion**.

The first asset to be expropriated by the Republic of Cuba was an oil refinery in 1960 owned by White Plains, New York-based **Texaco, Inc.**, now a subsidiary of San Ramon, California-based Chevron Corporation (USFCSC: CU-1331/CU-1332/CU-1333 valued at **US$56,196,422.73**).

The largest certified claim (*Cuban Electric Company*) valued at US$267,568,413.62 is controlled by Boca Raton, Florida-based **Office Depot, Inc.** The second-largest certified claim (*International Telephone and Telegraph Co, ITT as Trustee, Starwood Hotels & Resorts Worldwide, Inc.*) valued at US$181,808,794.14 is controlled by Bethesda, Maryland-based **Marriott International**; the certified claim also includes land adjacent to the Jose Marti International Airport in Havana, Republic of Cuba. The smallest certified claim is by *Sara W. Fishman* in the amount of US$1.00 with reference to the Cuban-Venezuelan Oil Voting Trust.

The two (**2**) largest certified claims total US$449,377,207.76, representing **24%** of the total value of the certified claims. Thirty (**30**) certified claimants hold **56%** of the total value of the certified claims. This concentration of value creates an efficient pathway towards a settlement.

Title III of the Cuban Liberty and Democratic Solidarity (**Libertad**) Act of 1996 requires that an asset had a value of US$50,000.00 when expropriated by the Republic of Cuba without compensation to the original owner. Of the 5,913 certified claims, 913, or **15%**, are valued at US$50,000.00 or more. Adjusted for inflation, US$50,000.00 (3.70% per annum) in 1960 has a 2019 value of approximately US$427,267.01. The USFCSC authorized 6% per annum, meaning the 2019 value of US$50,000.00 is approximately US$1,649,384.54.

The ITT Corporation Agreement

In July 1997, then-New York City, New York-based **ITT Corporation** and then-Amsterdam, the Netherlands-based STET International Netherlands N.V. signed an agreement whereby STET International Netherlands N.V. would pay approximately US$25 million to ITT Corporation for a ten-year right (after which the agreement could be renewed and was renewed) to use assets (telephone facilities and telephone equipment) within the Republic of Cuba upon which ITT Corporation has a certified claim valued at approximately US$130.8 million. *ETECSA*, which is now wholly-owned by the government of the Republic of Cuba, was a joint venture controlled by the Ministry of Information and Communications of the Republic of Cuba within which Amsterdam, the Netherlands-based Telecom Italia International N.V. (formerly Stet International Netherlands N.V.), a subsidiary of Rome, Italy-based Telecom Italia S.p.A. was a shareholder. Telecom Italia S.p.A., was at one time a subsidiary of Ivrea, Italy-based Olivetti S.p.A. The second-largest certified claim (*International Telephone and Telegraph Co, ITT as Trustee, Starwood Hotels & Resorts Worldwide, Inc.*) valued at US$181,808,794.14 is controlled by Bethesda, Maryland-based **Marriott International.**

What Is "*Trafficking*" According To Libertad Act?

(13) Traffics.--(A) As used in title III, and except as provided in subparagraph (B), a person "traffics" in confiscated property if that person knowingly and intentionally-- (i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property, (ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person, without the authorization of any United States national who holds a claim to the property.

(B) The term "traffics" does not include-- (i) the delivery of international telecommunication signals to Cuba; (ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national; (iii) 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; or (iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

"DETERMINATION OF OWNERSHIP OF CLAIMS REFERRED BY DISTRICT COURTS OF THE UNITED STATES

"Sec. 514. Notwithstanding any other provision of this Act and only for purposes of section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, a United State district court, for fact-finding purposes, may refer to the Commission, and the Commission may determine, questions of the amount and ownership of a claim by a United States national (as defined in section 4 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996), resulting from the confiscation of property by the Government of Cuba described in section 503(a), whether or not the United States national qualified as a national of the United States (as defined in section 502(1)) at the time of the action by the Government of Cuba."

TITLE III--SEC. 302. LIABILITY FOR TRAFFICKING IN CONFISCATED PROPERTY CLAIMED BY UNITED STATES NATIONALS.

(a) Civil Remedy.-- (1) Liability for trafficking.--(A) Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this title, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages in an amount equal to the sum of-- (i) the amount which is the greater of-- (I) the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, plus interest; (II) the amount determined under section 303(a)(2), plus interest; or (III) the fair market value of that property, calculated as being either the current value of the property, or the value of the property when confiscated plus interest, whichever is greater; and (ii) court costs and reasonable attorneys' fees. (B) Interest under subparagraph (A)(i) shall be at the rate set forth in section 1961 of title 28, United States Code, computed by the court from the date of confiscation of the property involved to the date on which the action is brought under this subsection.

(2) Presumption in favor of the certified claims.--There shall be a presumption that the amount for which a person is liable under clause (i) of paragraph (1)(A) is the amount that is certified as described in subclause (I) of that clause. The presumption shall be rebuttable by clear and convincing evidence that the amount described in subclause (II) or (III) of that clause is the appropriate amount of liability under that clause.

(3) Increased liability.-- (A) Any person that traffics in confiscated property for which liability is incurred under paragraph (1) shall, if a United States national owns a claim with respect to that property which was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949, be liable for damages computed in accordance with subparagraph (C).

(B) If the claimant in an action under this subsection (other than a United States national to whom subparagraph (A) applies) provides, after the end of the 3-month period described in paragraph (1) notice to-- (i) a person against whom the action is to be initiated, or (ii) a person who is to be joined as a defendant in the action, at least 30 days before initiating the action or joining such person as a defendant, as the case may be, and that person, after the end of the 30- day period beginning on the date the notice is provided, traffics in the confiscated property that is the subject of the action, then that person shall be liable to that claimant for damages computed in accordance with subparagraph (C).

(C) Damages for which a person is liable under subparagraph (A) or subparagraph (B) are money damages in an amount equal to the sum of-- (i) the amount determined under paragraph (1)(A)(ii), and (ii) 3 times the amount determined applicable under paragraph (1)(A)(i). (D) Notice to a person under subparagraph (B)-- (i) shall be in writing; (ii) shall be posted by certified mail or personally delivered to the person; and (iii) shall contain-- (I) a statement of intention to commence the action under this section or to join the person as a defendant (as the case may be), together with the reasons therefor; (II) a demand that the unlawful trafficking in the claimant's property cease immediately; and (III) a copy of the summary statement published under paragraph (8). (4) Applicability.--(A) Except as otherwise provided in this paragraph, actions may be brought under paragraph (1) with respect to property confiscated before, on, or after the date of the enactment of this Act.

(B) In the case of property confiscated before the date of the enactment of this Act, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before such date of enactment. (C) In the case of property confiscated on or after the date of the enactment of this Act, a United States national who, after the property is confiscated, acquires ownership of a claim to the property by assignment for value, may not bring an action on the claim under this section.

(5) Treatment of certain actions.--(A) In the case of a United States national who was eligible to file a claim with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but did not so file the claim, that United States national may not bring an action on that claim under this section. (B) In the case of any action brought under this section by a United States national whose underlying claim in the action was timely filed with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but was denied by the Commission, the court shall accept the findings of the Commission on the claim as conclusive in the action under this section.

(C) A United States national, other than a United States national bringing an action under this section on a claim certified under title V of the International Claims Settlement Act of 1949, may not bring an action on a claim under this section before the end of the 2-year period beginning on the date of the enactment of this Act.

(D) An interest in property for which a United States national has a claim certified under title V of the International Claims Settlement Act of 1949 may not be the subject of a claim in an action under this section by any other person. Any person bringing an action under this section whose claim has not been so certified shall have the burden of establishing for the court that the interest in property that is the subject of the claim is not the subject of a claim so certified. (6) Inapplicability of act of state doctrine. No court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under paragraph (1).

(7) Licenses not required. (A) Notwithstanding any other provision of law, an action under this section may be brought and may be settled, and a judgment rendered in such action may be enforced, without obtaining any license or other permission from any agency of the United States, except that this paragraph

shall not apply to the execution of a judgment against, or the settlement of actions involving, property blocked under the authorities of section 5(b) of the Trading with the Enemy Act that were being exercised on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act.