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Will Turkish Company Be Next To Be Sued?

How Will President Erdogan Respond?

Suing A Cruise Line(s) And Then The Port Manager

Like The Cruise Line(s), Turkish Company Has Assets In Many Countries

Like The Cruise Line(s), Turkish Company Is Publicly-Held; Listed In London

Istanbul, Turkey-based **Global Ports Holding** (2018 revenues exceeded US\$124 million), which also has a registered office in London, United Kingdom, and is listed on the London Stock Exchange (LSE) may be a defendant in a lawsuit relating to Title III of the Libertad Act of 1996.

Global Ports Holding has “*a management agreement in Cuba to advise and consult on cruise port management best practice. The cruise terminal is in the Sierra Maestra complex, in San Francisco pier, with a current capacity for two ships.*”

Absent, as of 5 June 2019 resulting from a decision by the Trump Administration to suspend passenger cruise ship activity from the United States to the Republic of Cuba, the substantial port fees paid by cruise lines operating from the United States since 2016, questionable whether the Republic of Cuba will have the revenue stream required to make payments for and obtain financing for upgrades and expansion at the Port of Havana and other passenger port facilities in the Republic of Cuba.

Two lawsuits were filed on 2 May 2019 in United States District Court (Southern District of Florida- Miami Division) against Miami, Florida-based **Carnival Corporation & plc** (2018 revenues approximately US\$18.9 billion) by individuals who have certified claims against the Republic of Cuba.

The lawsuits claim that Carnival Corporation & plc is using (“*trafficking*”) assets upon which there is a certified claim (the passenger port located in the city of Havana and the passenger port located in the city of Santiago de Cuba) and the certified claimant has not received compensation from the Republic of Cuba.

The two plaintiffs are expected to also file lawsuits against Miami, Florida-based **Royal Caribbean Cruise Lines** (2018 revenues approximately US\$9.5 billion) and Miami, Florida-based **Norwegian Cruise Line** (2018 revenues approximately US\$5.4 billion).

On 4 June 2019, the Trump Administration announced that from 5 June 2019, passenger cruise ships would no longer be permitted to transport individuals subject to United States jurisdiction from the United States to the Republic of Cuba.

Travel Data

The Ministry of Tourism of the Republic of Cuba (MINTUR) reported total international visitor arrivals of 4.75 million [also reported as 4,732,280] in 2018 compared to 4.5 million in 2017.

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For the period January 2019 through April 2019, MINTUR reported approximately 257,500 visitors (not including individuals of Cuban descent) from the United States representing an increase of approximately 93% compared to the same period in 2018. MINTUR reported 638,365 visitors in 2018 from the United States who were not of Cuban-descent, representing an increase of approximately 3% compared to 2017.

MINTUR reported 142,721 of the 257,500, approximately 55%, arrived by cruise ship during the period January 2019 through April 2019. The 142,721 represented an increase of approximately 300% compared to the same period in 2018.

Prior to the 4 June 2019 announcement by the Trump Administration, MINTUR expected visitor arrivals in 2019 to increase by approximately 7% to 5.1 million compared to 2018. MINTUR reported that gross tourism-related revenues were approximately US\$2.5 billion in 2018 and were expected to be approximately US\$3.1 billion in 2019, representing an increase of approximately 17% compared to 2018.

MINTUR reported that in 2018 seventeen (17; also reported at 16) cruise lines delivered approximately 800,000 [also reported as 851,810] passengers to the Republic of Cuba compared to 619,000 in 2017 and 541,000 in 2016. Media reporting has 6,770 passengers in 2012, 37,513(9) passengers in 2015, 397,520 passengers in 2017 and 315,000/500,000 passengers in 2018. MINTUR reported that the seventeen cruise lines operate twenty-five (25) cruise ships that visit the Republic of Cuba.

The Washington, DC-based *Cruise Line Industry Association* (CLIA) reported that approximately 200,000 passengers visited the Republic of Cuba from January 2019 through May 2019. Miramar, Florida-based *Florida-Caribbean Cruise Association* reported approximately 143,000 passengers arrived from Florida to the Republic of Cuba from January 2019 through April 2019, representing an increase of more than 300% compared to the same period in 2018. The CLIA reported that for the calendar year 2019, 5.6% of United States cruise passengers were booked on an itinerary that included the Republic of Cuba.

For the period 2017 through 2020, United States-based cruise lines expected to deliver more than 800,000 passengers (progressively increasing annually) on more than 620 sailings.

A cruise line will pay US\$69,131.00 (US\$32.91 per person) for docking a 2,100-passenger, 70,000 gross ton, 260-meter vessel: Dockage (US\$6.00 per meter), Passenger Fee (US\$20.00 per person), Port Assistance (US\$25,571.00- mandatory tug boats, pilots).

The gross revenues to the Republic of Cuba in 2018 from 500,000 cruise ship passengers would have been approximately US\$63 million and the gross revenues to the Republic of Cuba from 851,810 cruise ship passengers would have been approximately US\$107 million.

The gross revenues to the Republic of Cuba from port charges in 2018 were approximately US\$20 million.

The gross revenues to the cruise ship companies in 2018 were approximately US\$400 million (500,000 passengers) to US\$700 million (851,810 passengers).

Sailings to the Republic of Cuba represented approximately 1% of global sailings for Carnival Corporation & plc; approximately 3% of global sailings for Royal Caribbean Cruise Lines; and

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approximately 4% of global sailings for Norwegian Cruise Line. Carnival Corporation & plc had a market share of approximately 15% of sailings to the Republic of Cuba amongst competitors.

MINTUR reported 585,600 individuals of Cuban descent visited in 2018, with most arriving from the United States. The majority of these visitors reside with relatives rather than occupying hotels.

The first regularly-scheduled commercial flight occurred on 31 August 2016. Since that flight, more than 2,203,490 passengers have traveled to the Republic of Cuba aboard more than 13,479 flights.

2016: 2,036 flights carrying 177,365 passengers.

2017: 1,422 flights carrying 989,280 passengers.

2018: 8,505 flights carrying 893,011 passengers.

2019: (January and February) 1,516 flights carrying 143,834 passengers.

United States airlines currently operating regularly-scheduled services are: Atlanta, Georgia-based **Delta Air Lines** (2018 revenues approximately US\$41 billion); Fort Worth, Texas-based **American Airlines** (2018 revenues approximately US\$42 billion); Chicago, Illinois-based **United Airlines** (2018 revenues approximately US\$38 billion); Long Island City, New York-based **JetBlue Airways** (2018 revenues approximately US\$7 billion) and Dallas, Texas-based **Southwest Airlines** (2018 revenues approximately US\$22 billion). United States airlines with ticket offices in the city of Havana, Republic of Cuba: Delta Air Lines, American Airlines, United Airlines and JetBlue Airways.

Erdogan Vs. Trump: The Politics

If a lawsuit is filed against Global Ports Holding, expect a robust response towards the United States by the government of Turkey.

The Honorable Donald J. Trump, President of the United States, and H.E. Recep Tayyip Erdogan, President of the Republic of Turkey, are scheduled to meet at the **G20** gathering in Osaka, Japan on 27/28 June 2019 and again in Turkey in July 2019.

The expectation is for a lawsuit to be filed against Global Ports Holding by Lexington, Kentucky-based Havana Docks Corporation, one of the plaintiffs who is suing Carnival Corporation & plc for use of “*certain commercial waterfront real property in the Port of Havana, Cuba identified specifically by the Republic of Cuba (“Cuba”) as the Havana Cruise Port Terminal (the Subject Property)*”).

According to Global Ports Holding: “In May 2018 Global Ports Holding signed a management agreement in Cuba to advise and consult on cruise port management best practice. The cruise terminal is in the Sierra Maestra complex, in San Francisco pier, with a current capacity for two ships. The building itself is a designed architectural landmark of the city. Located at the historic heart of the city, in the waterfront promenade, in front of San Francisco square and near to other important attractions such as the “Plaza Vieja”, the “Plaza de las Armas” and the Cathedral, it enjoys the unique atmosphere of both the Havana Bay and the old town.”

“Cuba is located in the main cruise destination, the Caribbean, and its capital Havana very near to the Floridian ports. Thanks to its strategic location in the region, Havana can be included in all kind of itineraries: the longest ones deployed in the West and East Caribbean but also the 3- 4 days

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itineraries sailing out from Florida. Besides, the cultural richness of the island and its capital is unparalleled anywhere in the Caribbean.” Link: <http://www.globalportsholding.com/ports/17/la-habana-cruise-port>

“Global Ports Holding Plc (GPH) is the world’s largest [independent] cruise port operator with an established presence in the Caribbean, Mediterranean, Asia-Pacific regions, including extensive commercial port operations in Turkey and Montenegro.”

The company, founded by Mr. Gregory Michael Kiez, born in Canada before residing in Turkey, was “established in 2004 as an international port operator with a diversified portfolio of cruise and commercial ports. As an independent cruise port operator, the group holds a unique position in the cruise port landscape, positioning itself as the world’s leading cruise port brand, with an integrated platform of cruise ports serving cruise liners, ferries, yachts and mega-yachts. GPH operates 17 ports in 9 countries and continues to grow steadily. GPH provides services for 8,5 million passengers reaching a market share of 24% in the Mediterranean annually. The group also offers commercial port operations which specialize in container, bulk and general cargo handling.

A portfolio of award-winning ports and terminals allows GPH to transfer best practices to its subsidiaries. With a strong focus on operational excellence, enhanced security practices and customer-oriented services, GPH aims to contribute to the development of the cruise industry.

Global Ports Holding Plc is 59.30% owned by Global Ports Holding B.V., which is a wholly owned subsidiary of Global Investment Holdings (GIH) - listed on Borsa Istanbul (BIST) under the ticker "GLYHO". The remaining 40.70% of the total issued share capital represents free float on the London Stock Exchange (LSE).”

According to the company, the “duration of the management contract is thirty-three (33) years with “no future Capex Obligation” and “Tariff Discretion.” The company reported that the management contract was not a result of a “Competitive Process” and the Process Description was defined as an “Uncompetitive tender” with comments “GPH submitted and unsolicited tender.”

However, the *2018 Annual Report* for the company references that the management contract is for fifteen (15) years:

“Our new port investment strategy has been selective, choosing ports in marquee destinations (such as Barcelona, Havana, Venice, Lisbon, Kuşadası, and Valletta) which we believe are less susceptible to being replaced by others.”

Page 32: At GPH we continue to target ports where we can add value, by adding them to our global portfolio. During the year we were therefore delighted to announce we had signed a 15-year management agreement for the operation of the cruise port in Havana, Cuba. The move also aligned with our stated intention to extend our interests into the Americas. GPH will bring its global expertise to manage all aspects of the cruise port operations over the life of the agreement. We will be paid a management fee that is based on a number of factors including passenger numbers, with growth-based incentives. In addition, we will continue to work with our Cuban partners on the design and technical specification of the cruise port investment programme, including proposed new terminals. Once these have been completed, GPH will take responsibility for their marketing and commercialisation. The agreement is part of a significant investment by Cuba into the port area and tourism infrastructure in Havana. We enter the port’s story at an

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exciting time: its two berths welcomed around 328,000 cruise passengers in 2017, some 156% higher than in 2016.

Our role is to ensure this growth path continues, and with the facility expanding to six berths by 2024, the Havana port, and the allure of Cuba as a destination, offers exceptional potential. The port itself is situated in the heart of Havana and only a 30-minute drive from Jose Marti International Airport, making it an ideal homeporting destination. Indeed, in 2018 cruising contributed to Cuba's best-ever year for tourism. This represents our first agreement in the Caribbean and an important step in the history of Global Ports Holding. The GPH team looks forward to working with our local partners and staff to drive continued growth, delivering both a world class cruise port and a great experience for passengers. As for the wider network, we hope to add three new ports during 2019.

Developments in 2018: GPH took over the operation of the cruise port in Havana in June 2018, and the remainder of the year was spent appraising the potential of the terminal and implementing our financial reporting procedures. Our new General Manager is in post, together with the support team.

Plans for 2019: We will work with our Cuban partners throughout the year on the design and technical specification of the cruise port investment programme, including proposed new terminals. In the meantime we will roll out our global best in class operating procedures and processes.

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 is currently subject to this provision based upon a certified claim.

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 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\$8,521,866,236.75**.

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**).

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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.

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

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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.

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(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.