EXHIBIT "1"

Havana Docks Corporation's Presentation on Court's Topic 1

A Title III action is an action "brought on a claim to the confiscated property"

- Title III requires a plaintiff to show ownership of a claim to confiscated property:
  - Actions under Title III are "actions brought 'on a claim to the confiscated property' against traffickers in the property."
    Glen v. Club Med, 450 F.3d 1251, 1255 (11th Cir. 2006)
  - "The Helms Burton Act refers to the property interest that former owners of confiscated property now have as ownership of 'a claim to such property.'" *Id.*
  - [O]btaining a claim certified by the FCSC allows the victim of such a confiscation to memorialize the value of the property interest lost and to put other actors on notice of the victim's outstanding right to compensation based on the now-extinguished property interest taken.
    Havana Docks Corp. v. MSC Cruises SA Co., 455 F. Supp. 3d 1355, 1368 (S.D. Fla. 2020)

FCSC's Findings on Havana Docks' Property Ownership Interests

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

HAVANA DOCKS CORPORATION

Under the International Claims Settlem
Act of 1949, as amended

Counsel for claimant:

PROPOSED

This claim against the Govern
national Claims Settlement Act of
DOCKS CORPORATION for $9,915,879.0
loss of its assets nationalized by

Under Title V of the Internat
[78 Stat. 1110 (1964), 22 U.S.C. §
988 (1965)], the Commission is giv
of the United States against the G
Act provides that the Commission s
with applicable substantive law, i
and validity of claims by national
ment of Cuba arising since January

losses resulting from th
intervention or other ta
rected against, property
therein owned wholly or p
at the time by nationals

Section 502(3) of the Act prov

The term 'property' means
est including any leasehc
the Government of Cuba or

Based upon the record, the Commission finds that on September 7, 1934, claimant HAVANA DOCKS CORPORATION obtained from the Government of Cuba the renewal of a concession for the construction and operation of wharves and warehouses in the harbor of Havana, formerly granted to its predecessor concessionaire, the Port of Havana Docks Company; that claimant acquired at the same time the real property with all improvements and appurtenances located on the Avenida del Puerto between Calle Amargura and Calle Santa Clara in Havana, facing the Bay of Havana; that in June, 1946, the property was encumbered with a mortgage in favor of certain bondholders for the amount of $1,600,000.00 in accordance with Public Instrument of June 1, 1946, recorded in Havana on July 25, 1946; and that claimant corporation also owned the mechanical installations, loading and unloading equipment, vehicles and machinery, as well as furniture and fixtures located in the offices of the corporation.

FCSC's Itemization of HDC's Property Ownership Interests

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

HAVANA DOCKS CORPORATION

Claim No. CU-2492

Decision No. CU - 6165

Under the International Claims Settlement Act of 1949, as amended

Counsel for claimant:

PROPOSED DECIS

This claim against the Government o
national Claims Settlement Act of 1949,
DOCKS CORPORATION for $9,915,879.00, base
loss of its assets nationalized by the Go

Under Title V of the International C
[78 Stat. 1110 (1964), 22 U.S.C. §§1643-1
988 (1965)], the Commission is given juri
of the United States against the Governme
Act provides that the Commission shall re
with applicable substantive law, includin
and validity of claims by nationals of th
ment of Cuba arising since January 1, 195

losses resulting from the natio
intervention or other taking of
rected against, property includ
therein owned wholly or partial
at the time by nationals of the

Section 502(3) of the Act provides:

The term 'property' means any p
est including any leasehold int
the Government of Cuba or by ent

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the Balance Sheet for the year ended 1959, supported by the Trial Balance for December 31, 1958. These financial statements reflect the following book values adopted by claimant corporation:

Land and Concession	$ 2,000,000.00
San Francisco and Machina Piers	4,758,829.00
Santa Clara Pier	2,110,845.00
Equipment	419,056.00
Office Furniture and Fixtures	90,616.00
Railroad Tracks	22,883.00
Total	$ 9,402,229.00

(CCO ECF No. 73-8 / MSC ECF No. 41-8 / NCL ECF No. 43-8 / RCL ECF No 31-8)

FCSC's Final Certification of Loss

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

HAVANA DOCKS CORPORATION

Claim No CU -2492

Decision No. CU -6165

Under the International Claims Settlement Act of 1949, as amended

Counsel for claimant:

Appeal and objections from a Proposed D
Oral hearing requested.

Oral argument September 15, 1971 by Dou

FINAL DECISION

The Commission issued its Proposed
April 21, 1971, certifying that claiman
within the scope of Title V of the Inte
of 1949, as amended, resulting from act

Claimant, through counsel, objecte
and requested an oral hearing which was
In support of the objections claimant s
Hover, a member of counsel's firm.

In the objections, claimant stated
facilities had a higher value than the
mission, and that an item of $10,280.00
improperly denied.

Full consideration having been giv
the supporting affidavit, counsel's arg
entire record, the Commission now finds

		Date of Loss
Concession and tangible assets	$8,684,360.18	October 24, 1960
Securities	184,005.70	August 6, 1960
Accounts receivable	301,055.00	October 24, 1960
Debt of Cuban Government	10,280.00	October 24, 1960
Total loss	$9,179,700.88	

The interest at the rate of 6% per annum will be included in the instant case as follows:

FROM	ON
August 6, 1960	$ 184,005.70
October 24, 1960	8,995,695.18

Accordingly, the Certification of Loss in the Proposed Decision is set aside; the following Certification of Loss will be entered; and the remainder of the Proposed Decision, as amended herein, is affirmed.

(CCO ECF No. 73-8 / MSC ECF No. 41-8 / NCL ECF No. 43-8 / RCL ECF No 31-8)

Does section 6083(a)(1) preclude the Court from looking beyond the Certified Claim to determine Havana Docks' ownership interests?

Yes:

(a) Evidence of ownership

(1) Conclusiveness of certified claims

In any action brought under this subchapter, the court shall accept as conclusive proof of ownership of an interest in property a certification of a claim to ownership of that interest that has been made by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following).

(2) Claims not certified

If in an action under this subchapter a claim has not been so certified by the Foreign Claims Settlement Commission, the court may appoint a special master, including the Foreign Claims Settlement Commission, to make determinations regarding the amount and ownership of the claim. Such determinations are only for evidentiary purposes in civil actions brought under this subchapter and do not constitute certifications under title V of the International Claims Settlement Act of 1949.

United States v. Hernandez, 864 F.3d 1292 (11th Cir. 2017)

"The very concept of a conclusive proof entails not only that no detail or corroboration is needed, but also that any contrary evidence is futile."

Hernandez, 864 F.3d at 1300.

- Statute at issue in *Hernandez*: "The response of a foreign nation to a claim of registry . . . is proved conclusively by certification of the Secretary of State or the Secretary's designee." 46 U.S.C. § 70502(d)(2) (MDLEA)
  - "The statute plainly states that certification conclusively proves the foreign country's response. . . . MDLEA statelessness does not turn on actual statelessness, but rather on the response of the foreign government. Arguing actual registry against the certification therefore misses the mark." *Hernandez*, 864 F.3d at 1299.

Title III's conclusive-proof provision accords with the International Claims Settlement Act

- Through ICSA, Congress created the Cuba claims program.

  22 U.S.C. § 1643, et seq.

- Congress established the FCSC as an agency within DOJ.

  22 U.S.C. § 1622a

- ICSA precludes judicial review of the FCSC's findings:

§ 1622g. Independence of Foreign Claims Settlement Commission of the United States; finality of Commission decisions

Currentness

Nothing in this Act shall be construed to diminish the independence of the Commission in making its determinations on claims in programs that it is authorized to administer pursuant to the powers and responsibilities conferred upon the Commission by the War Claims Act of 1948, as amended, the International Claims Settlement Act of 1949, as amended, and Reorganization Plan Numbered 1 of 1954. The decisions of the Commission with respect to claims shall be final and conclusive on all questions of law and fact, and shall not be subject to review by the Attorney General or any other official of the United States or by any court by mandamus or otherwise.

International Claims Settlement Act bars judicial review of the FCSC's findings

- "In our opinion the district court was correct in concluding that this unambiguous statutory language left it without jurisdiction to review the Commission's decision."

  Zutich v. Gillilland, 254 F.2d 464, 465 (6th Cir. 1958).

- "The Act prohibits judicial review of adjudications of claims made by the Commission. . . . Accordingly, the court lacks subject matter jurisdiction to review the Commission's adjudications of claims pursuant to 22 U.S.C. § 1641b(4)."

  Avramova v. United States, 354 F. Supp. 420, 422 (S.D.N.Y. 1973)

- "Errors in the result reached, or errors in the admission of evidence or in the making of a legal ruling— assuming such errors to have been made— are not grounds for judicial intervention in the face of the congressional fiat that the Commission's determinations shall be free of judicial review. Plaintiff is barred by the statutory prohibition."

  De Vegvar v. Gillilland, 228 F.2d 640, 642 (D.C. Cir. 1955).

Title III does not violate Defendants' due process rights

- Defendants' affirmative defense alleges:
  - "Plaintiff's claim is barred in whole or in part by the Fifth Amendment's Due Process Clause . . . to the extent Plaintiff seeks to use findings from the Foreign Claims Settlement Commission against [Defendant] because [Defendant] had no opportunity to be heard before the Commission."

    (CCO D.E. 160, at 18; MSC D.E. 115, at 16 & D.E. 133, at 15; NCL D.E. 107, at 18; RCL D.E. 59, at 6)

- Defendants' due process rights did not attach when the Commission made its findings in 1971.

- Commission did not adjudicate Defendants' property interests or Defendants' liability.

Title III does not violate Defendants' due process rights

- Defendants had notice of the duly enacted law (Title III) and the Certified Claim before Defendants began using the Havana Port Terminal:
  - Despite the absence of any lawsuits being filed pursuant to Title III since its enactment, MSC was on notice of Title III's existence from the time it became law in 1996, and it had an obligation to familiarize itself with the mandates of Title III, especially once it began operating in Cuba.

    Havana Docks Corp. v. MSC Cruises SA Co., 484 F. Supp. 3d 1177, 1201 (S.D. Fla. 2020)

  - "[A] legislature generally provides constitutionally adequate process simply by enacting the statute, publishing it, and, to the extent the statute regulates private conduct, affording those within the statute's reach a reasonable opportunity both to familiarize themselves with the general requirements imposed and to comply with those requirements."

    United States v. Locke, 471 U.S. 84, 108 (1985)

- Title III requires proof of ownership of the certified claim

Defendants Do Not Dispute the Cuban Government Confiscated All Assets of HDC after Jan. 1, 1959

OFFICIAL G

OF THE REPUBLIC

EXTRA EDITION

YEAR LVIII - Byweekly Volume XX

EXECUTIVE

Resolution

Whereas: The imperialistic intere
States of North America in their a
effective to prevent the consolida
carry out ever increasingly unscru
economy of the nation.

Whereas: Among the many measures
of North America the outstanding o
the general embargo of exports fro
strangle our economy.

Whereas: Said measures besides violating the most elemental norms of international coexistence, constitute an act of political coercion trying un
the strenght of the Cuban Revolution by creating difficulties
procurement .

Whereas: It is evident that this behavior of the Government o
of North America reveals the desperation and impotency of impe
Government to utilize more violent and iniquitous methods of a
fatherland.

Whereas: It is the duty of the revolutionary Government to de
the country.

Whereas: Moreover, it is fundamental for the liberation and e
of our country to liquidate the Northamerican commercial or i

7-24-19 FOIA Re

We Resolve:

First: The nationalization by means of forced expropriation is ordered, and consequently, all the properties and enterprises located within the National Territory and set forth bellow are adjudicated in favor the Cuban State in absolute ownership as well as the rights and actions emerging from the exploitation of same which are the properties of natural persons or corporations, nationals of the United States of North America or operators of enterprises whose predominant interest are nationals of said country:

"GROUP XVII"

MARITIME

1.- Cia. Antillana de Lanchajes, S.A.

2.- Havana Docks Corp.

3.- Standard Fruit & Steamship Co.

(CCO, ECF No. 73-6; MSC, ECF No. 41-6; Royal, ECF No. 31-6; NCL, ECF No. 43-6), at 3)

Defendants Do Not Dispute the Cuban Government Confiscated All Assets of HDC after Jan. 1, 1959

Q. Okay. I believe you said before that the concession was an asset of the Havana Docks Corporation; correct?

A. Yes.

Q. Okay. And you agree that the Cuban Government confiscated all of the assets of the Havana Docks Corporation; correct?

A. The Cuban Government passed a law confiscating all the assets of American companies in Cuba. It have a long list of American companies.

* * *

A. Okay. Among those companies is Havana Docks.

Q. Okay.

A. However, this happened in -- and that's why I mention the two dates before. This happened on October 24, 1960, and then -- but Havana Docks kept operating the concession because the actual taking of the Cuban Government -- I mean, taking over the premises happened later in November.

(Diaz Dep. 44:8-45:5)

Undisputed Facts Before the Court

- Havana Docks owns the Certified Claim.
  - Defs.' Resp to Pl.'s Facts ¶ 40-42 (CCO D.E. 367; MSC D.E. 252; Royal D.E. 176; NCL D.E. 280)
- Havana Docks obtained the Certified Claim before March 1, 1996.
  - Defs.' Resp to Pl.'s Facts ¶ 34, 40 (CCO D.E. 367; MSC D.E. 252; Royal D.E. 176; NCL D.E. 280)
- The Cuban Government confiscated all assets of Havana Docks in Cuba after January 1, 1959.
  - Defs.' Resp to Pl.'s Facts ¶ 27-28, 30-31 (CCO D.E. 367; MSC D.E. 252; Royal D.E. 176; NCL D.E. 280)
  - Diaz Dep. 41:6-8: "For sure the assets of Havana Docks were confiscated – were nationalized by the Cuban Government."
- In 1971, the FCSC certified that Havana Docks owned a concession to operate the Havana Port Terminal and the real estate at the Havana Port Terminal, including land and piers, at time of confiscation.
  - Defs.' Resp to Pl.'s Facts ¶ 32, 34, 35 (CCO D.E. 367; MSC D.E. 252; Royal D.E. 176; NCL D.E. 280)

Defendants' claims of fraud on the FCSC as an avoidance of liability are improper

- ICSA's forfeiture provision (22 U.S.C § 1623(e)) provides that any person who commits any act proscribed by 18 U.S.C. § 1001 forfeits his right to the claim:

(e) Penalties

In addition to the penalties provided in section 1001 of Title 18, any person guilty of any act, as provided therein, with respect to any matter under this subchapter, shall forfeit all rights under this subchapter, and, if payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same.

- Defendants have never raised this statute as an affirmative defense, nor otherwise pled that the FCSC award was procured by fraud.

Defendants' claims of fraud are baseless

- To forfeit the FCSC award under §1623(e), Defendants must show misrepresentation that would rise to the level of a violation of 18 U.S.C. 1001:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

No Evidence of Knowing or Willful Misrepresentation

- Defendants primarily point to 3 pieces of evidence to show fraud/intentional misrepresentation:
  1. 2018 email from Robert MacArthur
  2. Claim Form 666 submitted to FCSC
  3. Information Questionnaire submitted to FCSC

- These documents do not evidence fraud or intentional misrepresentation:
  - Mr. MacArthur has no personal knowledge and is not a shareholder on the company's shareholder registry
  - Forms submitted to FCSC are consistent with the Concession Decrees and Havana Docks' contemporaneous (and audited) financial records.

September 2018 Email from Robert MacArthur

On 10 Sep 2018, at 20:02, "romac106@comcast.net" <romac106@comcast.net> wrote:

Would you have records of the Concession (the leasing of the docks).

I do not believe Havana Docks owns any property in Cuba or ever did. The cruise lines may be taking comfort in that. We need to establish exactly what has been stolen before we can establish a claim. Clearly the right-to-operate was 'stolen' when Castro came into power. But, that right would have expired by now under the original terms. So, is it correct to claim that the cruise lines are operating with stolen property? We need to prove Havana Docks property ownership.

Defs.' Omnibus Ex. 2 (HDC15214-215)

Mickael Behn's response to Robert MacArthur

From: Mickael Behn <mickaelbehn@havanadockscorp.com>
Sent: Monday, September 10, 2018 5:38 PM
To: romac106@comcast.net
Cc: Jerry Johnson <jjohnson@bankofthebluegrass.com>
Subject: Re: Havana Docks small Progress

What is part of our Cuban claim that was recognized as loss of material buildings and material items within those building as well at the operational period of the lease.
The claim covers the fact that the building where ours under the lease and we would lose the land (with the building) if we didn't renew our lease.
We technically still own that lease of time lost and the materials on that land within our claim.
I don't have the records of that lease at hand. They are in my house in Miami. As are the incorporation papers of the company in 1917. All that paperwork was submitted to the be able to get recognition of our claims. It's really why we have the claim system to avoid having to prove every time.

Defs.' Omnibus Ex. 2 (HDC15214)

Deposition Testimony of Robert MacArthur - April 8, 2021

BY MR. BALMORI:

Q Before the confiscation, Mr. MacArthur, what assets did the company have?

A It had rights to operate the docks, and it had some other property.

Q What other property?

A I think it -- I think it owned -- it owned some buildings and structures there. It operated, maybe, a gift shop. I'm not too sure.

Q On what basis do you believe that Havana Docks owned some buildings and structures?

A Just I surmise that the company was operating there and that passengers were able to -- to make some purchases on -- at gift stores at -- that the company operated. But I'm uncertain about that. I just felt that there was revenues coming from there. I have no specific knowledge about it.

Q So you don't have any specific knowledge about the Havana Docks Corporation owning any buildings or other property?

A No.

MacArthur Dep. 56:2-21 (Pl.s' Omnibus Opp. Ex. 10 (CCO D.E. 365-10))

Claim Form 666 submitted to FCSC

FCSC Form 666

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
Washington, D.C. 20579

IN THE MATTER OF THE CLAIM OF

HAVANA DOCKS CORPORATION (DELAWARE)

Against the Government of Cuba under Title V of the International Claims Settlement Act of 1949, as amended by Public Law 88-666, approved October 16, 1964.

CLAIM No. CU 2492

RECEIVED
APR 28 1967
Bad Boxes
Foreign Claims
(DO NOT WRITE IN THIS SPACE)

An original and one copy of this form and each supporting exhibit must be filed. Each document in a foreign language must be accompanied by a verified English translation. Answers should be typed or printed. Attach additional sheets as needed for any items where space on the form is insufficient. The information and instruction sheet attached hereto, with directions for each numbered item on the claim form, was prepared for the purpose of assisting you in the preparation of your claim. It is suggested that you read it thoroughly before completing this claim form.

See also CU-2493

IMPORTANT—ALL QUESTIONS CONTAINED IN THIS FORM MUST BE ANSWERED.—If claimant does not know the answer to a question or the question is not applicable to his claim, claimant should write "UNKNOWN" or "INAPPLICABLE" in the proper space.

1. Name of claimant Havana Docks Corporation (Delaware) (Last) (First) (Middle)
2. Address of claimant Congress Bldg., Room 609, 111 N.E. 2nd Ave., Miami, Fla., 33132
3. Name and address of attorney (if any) Davis Polk Wardwell Sunderland & Kiendl; 1 Chase Manhattan Plaza, New York, N. Y. Att: Mr. Robert F. Dobbin

100 OS

SU

4. Real estate:
   (a) Land and concession
   (b) Buildings
5. Personal property, furniture, equ
6. Securities (name of corporation e
7. Debts:
   (a) Owed by nationalized enterp
   (b) Charges upon property natio
8. Death, injury, or permanent disability . . . . . .
9. TOTAL AMOUNT OF CLAIM $9,915,879

10. If claimant is an individual, indicate how United States nationality was acquired (check one), and submit supporting documentary evidence. INAPPLICABLE
   - ☐ Birth . . . . . Date ____ Place ____
   - ☐ Naturalization . . . Date ____ Place ____ Cert. No. ____
   - ☐ Marriage . . . . . Date ____ Name of spouse ____
   - ☐ Through parents . . Date ____ Name of parent(s) ____
   - ☐ Reacquired . . . . . Date ____

(This information must be furnished with respect to a deceased person. If claim is being filed by the heir or survivor of a deceased person, this information must also be furnished with respect to such person.)

7-24-19 FOIA Response FCSC 00272

HDC-CCL 000552

SUMMARY OF LOSSES CLAIMED

	Amount in dollars	Total claimed
4. Real estate:		
(a) Land and concession	$2,000,000	
(b) Buildings	6,892,557	$8,892,557

Defs.' Omnibus Ex. 4 (CCO D.E. 334-3)

Information Questionnaire submitted to FCSC

Answers to:

INFORMATION QUESTIONNAIRE FOR
UNITED STATES PROPERTY OWNERS IN CUBA

I. The HAVANA DOCKS CORPORATION owns and operates in Havana Harbor, three Ocean Steamship piers, named respectively, the San Francisco, Machina and Santa Clara piers linked by a marginal building. This terminal company offers docking and warehousing facilities for import and export, bonded warehouses and provisional cargo deposits for merchandise pending customs appraisement, etc.

Each pier consists of a two story concrete building with an apron equipped with platforms, and a double railroad track to permit direct unloading of cargo from ships to railroad cars.

The 1,153 foot marginal building faces the Avenida del Puerto. Its main floor is used as a deposit for bulky merchandise with ready access to elevators, and has central and lateral entrances to each pier, vehicle loading platforms at the head of the elevators, etc.

Length of piers in feet:

San Francisco,	North	Side	662 -	South	Side	662
Machina,	"	"	661 -	"	"	602
Santa Clara,	"	"	625 -	"	"	562

The eastern end of each pier measures 210 feet.

At December 31, 1959 the corporation held in Havana, Cuba cash in banks and on hand of $126,577 and Accounts Receivable of $522,446.

II. The two oldest piers were acquired from the predecessor Port of Havana Docks Company, a Maine corporation, and the Santa Clara pier was constructed in 1921-2 by the Havana Docks Corporation. The entire pier properties are held under the terms of a concession granted by the Cuban Government in 1905 and as modified in 1910, 1920 and 1922. The terms provide for transfer of ownership of the pier properties to the Cuban Government in the year 2004, in good state of preservation and service without payment to the company.

Defs.' Omnibus Ex. 3 (CCO D.E. 334-2)

The Concession Decrees Support the Certified Claim's Findings

Year IV – No. 139 Havana, Thursday, December 14, 1905 Volume II – Page 4285

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[…]

PUBLIC WORKS DEPARTMENT

DECREE NO. 467

2.- This concession is deemed included among those contemplated in Articles 44 and 45 of the Ports Act of October 31, 1890, and Article 97 of the General Public Works Act of April 19, 1883, and is granted for a term of fifty (50) years, reckoned as of the date of the concession, and is subject to the provisions of Article 50 of the aforesaid Ports Act.

(Exhibit A to Defendants' Omnibus Motion to Exclude Plaintiff's Experts)

The Concession granted authorization to construct the Havana Port Terminal

TRANSLATION

OF

THE LAW OF PORTS

IN FORCE IN

THE ISLAND OF CUBA.

DIVISION O

GOVER

ART. 44. It is the duty of the colonial secretary to grant authorization, after hearing the naval authorities, for the construction on the sea or beaches and adjoining lands, or in ports, whether for private or public use, of such wharves, quays, dockyards, floating docks, shipyards, and other similar works as are complementary and auxiliary to those existing for the service of the port. Such authorization shall not constitute a monopoly, and therefore others may be granted for the same class of works in the same harbor, beach, or stretch of coast, provided the public service or use does not suffer thereby.

(Defs.' Omnibus Ex. 1-2 (CCO D.E. 331-3))

The Concession granted authorization to establish works and buildings on public land for private use

TRANSLATION

OF

THE LAW OF PORTS

IN FORCE IN

THE ISLAND OF CUBA.

DIVISI

ART. 45. It is the duty of the colonial secretary, after hearing the naval authorities, to grant authorization for the establishment of salt ponds, works, and other buildings which may wholly or in part occupy public lands for private use.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1900.

(Defs.' Omnibus Ex. 1-2 (CCO D.E. 331-3))

The Concession included a cession of public land to the concessionaire

TRANSLATION

OF THE

GENERAL LAW OF PUBLIC WORKS

OF THE

ISLAND OF CUBA,

RE

WITH TH
PRO

DIV

ART. 97. If, from the investigation referred to in Article 94, it should appear that the work does not hinder or impede the use and profit to which the part of the public domain affected by the work may be devoted, the concession may also be granted by the Colonial Department when it is thus deemed proper for the general interests.

The concession, in the case of the present article, shall always be made after public bidding, which shall be based in the first place on the reductions in the rates approved for the use and profit of the work; and in case of equality of these rates, on the raising of the price which shall previously have been designated for the part of the public domain which shall have to be ceded.

(Articles 135 and 136 of the Regulations.)

(Defs.' Omnibus Ex. 1-4 (CCO D.E. 331-5))

Cuban law authorized the Cuban Government to cede land in the public domain

TRANSLATION

OF

THE LAW OF PORTS

THE I

DIVISION

GOV

ART. 49. Proper authorization may also be granted to a private company for executing the works of a port in charge of the State or for completing those which are constructed or suspended, or carrying out one part of the plan while the State executes the other, in which case special conditions may be established in compensation of the expenses thereof and for the benefit of the company in the shape of the cession of the land where the works are carried on, for a limited time, or other privileges, according to the available portion of the work, the cost of those that may be executed and the nature or importance of the public services existing in the port, provided prior rights to the use of the port and its works are reserved in full force, as stated in the preceding article.

Under Decree Condition No. 4, the State assigned the existing real estate and public land to the concessionaire

Year IV – No. 139 Havana, Thursday, December 14, 1905 Volume II – Page 4285

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[...]

PUBLIC WORKS DEPARTMENT

DECREE NO. 467

4.- The State assigns in usufruct during the term of the concession that part of the San Francisco docks, as well as the public domain area, that will be occupied by the project's works.

(Exhibit A to Defendants' Omnibus Motion to Exclude Plaintiff's Experts)

Decree No. 467, Condition No. 7 recognized expropriation was required to retake the works

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7.- If at any time during the term of the concession the works were to be expropriated, also by virtue of the application of the aforesaid Article 50 of the Ports Act, the Government or its agencies shall indemnify the concession holder for the value of all works built by the latter, including the Customs Inspectors Department and the dock on the north side of the jetty, but not for the value of the machinery, rolling stock, equipment, and devices referred to in the previous clause, in case that the concession holder should decide to remove them.

(Exhibit A to Defendants' Omnibus Motion to Exclude Plaintiff's Experts)

Decree No. 467, Condition No. 31 provides ownership rights are held exclusively by concessionaire

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31.- This concession is understood to be granted with no prejudice to third parties, except as regards the right of ownership, and on the understanding that the concession holder is bound by such laws of a general nature as have been, or may in the future be, issued with respect to this class of concessions.

(Exhibit A to Defendants' Omnibus Motion to Exclude Plaintiff's Experts)

Decree No. 467, Condition 14 allows concessionaire to choose means of execution of the works

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DECREE NO. 467

14.- The means of execution, the agents, and all other employees for the construction, maintenance, and administration of the works shall be chosen by the concession holder.

Undisputed Contemporaneous Records Support the FCSC's Findings

Plaintiff's Evidence	Defendants' Counter-Evidence
Havana Docks and its predecessor, Port of Havana Docks Company, constructed the piers and buildings at the Havana Port Terminal. **Evidence:** • Port of Havana Docks Meeting Minutes (Pl.'s Ex. 21) • HDC Meeting Minutes re acquisition and authorizing contracts for the construction (Pl.'s Exs. 31, 15, 19) • Indentures to fund the construction of the piers (Pl.'s Exs. 14, 25) • United Fruit Co. lease documents (Pl.'s Exs. 13, 12) • Decree Nos. 1022 and 1944	No contrary factual evidence presented.

Undisputed Contemporaneous Records Support the FCSC's Findings

Plaintiff's Evidence	Defendants' Counter-Evidence
Port of Havana Docks Company transferred all assets to HDC, including "land buildings piers wharves docks." **Evidence:** • Port of Havana Docks Company Meeting Minutes (Pl.'s Exs. 21, 24) • Havana Docks Meeting Minutes (Pl.'s Ex. 31) • Pre-confiscation financial reports (Pl.'s Ex. 35, 36) • Decree No. 2424	No contrary factual evidence presented.

Undisputed Contemporaneous Records Support the FCSC's Findings

Plaintiff's Evidence	Defendants' Counter-Evidence
Havana Docks and its predecessor, Port of Havana Docks Company, mortgaged the real estate at the Havana Port Terminal and publicly recorded the mortgage in Havana. **Evidence:** • The National City Bank of New York Indenture (Pl.'s Ex. 18) • Registration of indenture (Pl.'s Ex. 55)	No contrary factual evidence presented

Undisputed Contemporaneous Records Support the FCSC's Findings

Plaintiff's Evidence	Defendants' Counter-Evidence
Havana Docks and its predecessor, Port of Havana Docks Company, leased the Machina pier (and the soon-to-be-built Santa Clara pier) to United Fruit Company. **Evidence:** • United Fruit lease documents (Pl.'s Ex. 13, 12) • Financial reports identify income from operation and lease of the piers (Pl.'s Ex. 36.)	No contrary factual evidence presented.

Undisputed Contemporaneous Records Support the FCSC's Findings

Plaintiff's Evidence	Defendants' Counter-Evidence
Havana Docks' pre-confiscation balance sheets identify the "Concession, Piers, Equipment, Etc." as assets of the company. (Pl.'s Ex. 36)	No contrary factual evidence presented.

Undisputed Contemporaneous Records Support the FCSC's Findings

Plaintiff's Evidence	Defendant's Response/ Counter-Evidence
Havana Docks' financial records show revenue generated from passenger operations. (Pl.'s Ex. 35)	No contrary factual evidence presented.