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The Return Of Dan “Helms-Burton” & “Libertad Act” Burton What He Thought In 1995/1996 Might Be Relevant To A Judge Today

The judges presiding in United States District Courts will decide who can sue, who can't sue, who can be sued and who can't be sued. The intent of the United States Congress will be an important component as to how rulings are constructed.

The Cuban Liberty and Democratic Solidarity Act of 1996 (*Libertad Act*) is known widely as “**Helms-Burton**” for its authors: The Honorable **Jesse Helms** (R- North Carolina) of the United States Senate and The Honorable **Dan Burton** (R- Indiana) of the United States House of Representatives. Senator Helms retired in 2003 and died in 2008 and Representative Burton retired in 2013.

The now 81-year-old Mr. Burton may be shuttling between courts in Florida, New Jersey, New York and Washington DC serving as an expert witness to describe the intention of the framers of the Libertad Act; and intent can be a critical component in how lawsuits are resolved.

He would be expected to confirm that the Libertad Act, and specifically Title III and Title IV, were designed to be expansive, rather than constrictive in impact upon the Republic of Cuba.

Libertad Act

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

Title IV of the Libertad Act authorizes the United States Department of State to restrict entry into the United States by individuals who have connectivity to unresolved certified claims. One company is currently subject to this provision.

The Obama Travel Decisions

Judges will determine whether the Obama Administration when expanding who within the twelve (**12**) authorized categories of travel to the Republic of Cuba permitted by the Trade Sanctions Reform and Export Enhancement Act (**TSREEA**) of 2000 did, unlawfully, allow travel for the purpose of tourism, which is specifically prohibited by the TSREEA.

If judges determine that the Obama Administration violated the TSREEA, then there will be the question of whether the activities of United States companies (and non-United States companies) engaging in the provision of travel-related services (airlines, cruise lines, hotel management companies) incident to what would then be deemed as unlawful (based upon language in the Libertad Act- which a judge may ask Mr. Burton to interpret) have not been engaging in lawful activities despite licenses (general and specific) issued by the Office of Foreign Assets Control (**OFAC**) of the United States Department of the Treasury.

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Then, if the travel-related services companies are found to not be operating lawfully, they could be deemed to be subject to a determination of whether they are “*trafficking*” using the definition of the term in Title III:

From the Libertad Act: (13) Trafics.--(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-- (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.

From the Libertad Act: (3) Commercial activity.-- The term "commercial activity" has the meaning given that term in section 1603(d) of title 28, United States Code. [Definition: (d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose].

If a judge rules that United States companies are subject to provisions of Title III, then the companies could be potential defendants.

Twenty-three years later, the voice of Mr. Burton could one again be heard... The question will be for a judge to determine if what Mr. Burton thought then is applicable now.