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**Senator Klobuchar Could Be A Hero To 5,913 Companies & Individuals
Being Catalyst To Settle 58-Year Problem Is Good Presidential Politics
Her Candidacy Could Also Doom The Effort
Company In Her State Has Certified Claim
Four Senators Will Try To Prevail To Derail
Impact Of Trump Administration March 2019 Title III/Title IV Decision
Embassy Meeting
Cuba: Ask For Assistance- Quickly
Risking Another Tombstone In The Legislative Graveyard**

The Honorable **Amy Klobuchar** (D- Minnesota), a member of the United States Senate, has framed two (2) announcements- each may impact upon the success of the other.

Senator Klobuchar, elected to a third term in 2018, was first elected to the United States Senate in 2006.

On 10 February 2019, Senator Klobuchar commenced an effort to obtain the nomination in 2020 of the Democratic Party for President of the United States. That announcement could jeopardize any legislation attached to her as opponents (Democratic, Republican, Independent) of her candidacy seek to limit her successes.

On 8 February 2019, Senator Klobuchar introduced legislation that would make changes to provisions of United States statutes that impact the commercial, economic and political bilateral relationship between the United States and the Republic of Cuba.

That legislation. S. 428 (“*A bill to lift the trade embargo on Cuba*”), does “***not repeal portions of law that address human rights or property claims against the Cuban government.***” Why not? Then they must be important.

Maplewood, Minnesota-based **3M** (2018 revenues approximately US\$32 billion) has the 615th largest certified claim (CU-0242) against the Republic of Cuba in the amount of US\$94,409.20. Adjusted for inflation (3.70% annual rate), the certified claim is valued at approximately US\$835,102.34 in 2019. Adjusted for 6% annual interest as permitted by the United States Foreign Claims Settlement Commission (USFCSC- <https://www.justice.gov/fcsc>) at the United States Department of Justice, the certified claim is valued at approximately US\$3,114,341.50 in 2019.

Initial co-sponsors of the legislation are The Honorable **Mike Enzi** (R- Wyoming) and The Honorable **Patrick Leahy** (D- Vermont. There appear not to be any certified claimants located in the states of Wyoming or Vermont.

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. The USFCSC permitted interest to be accrued in the amount of 6% per annum; with the current value of the 5,913 certified claims approximately **US\$8,521,866,156.95**.

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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 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 by providing a logistically-reasonable individual and group outreach opportunity.

Title III of the Cuban Liberty and Democratic Solidarity (**Libertad**) Act of 1996 authorizes lawsuits in United States District Courts against entities that 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 restricts entry into the United States of individuals who have connectivity to unresolved certified claims.

Title III 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, thus the 2019 value of US\$50,000.00 is approximately US\$1,649,384.54.

Headwinds (Derailment) For The Legislation

With the three senators specifically excluding from their legislation any impact upon the certified claims, they are confirming the fundamental importance of the certified claims, the rights of the certified claimants, and that the Republic of Cuba must agree to a settlement of the certified claims.

Which leads to the question of why these three senators have focused their public advocacy for changing the bilateral commercial relationship between the United States and the Republic of Cuba, but not public advocacy on behalf of the certified claimants- one of which is a constituent of Senator Klobuchar?

If the three senators have been convinced by advocates that excluding any impact upon the certified claimants from the legislation will create another “*path forward*” for the legislation through the United States Senate and United States House of Representatives, they have been misled.

By excluding the certified claims from the legislation, the three senators likely ensure an outcome they may not desire.

At least four (4) members of the United States Senate will oppose the legislation with every legislative tool available to them.

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) will require the

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legislation (unless they scuttle it) to **1)** have a settlement of the certified claims in advance of the implementation of the legislation and **2)** substantial carve-outs for any interaction with entities controlled by the Revolutionary Armed Forces of the Republic of Cuba (FAR).

The four senators will have support from a bipartisan group of their colleagues including committee chairs and sub-committee chairs.

Those efforts in the United States Senate will be joined by members of the United States House of Representatives, including those from the State of Florida and the State of New Jersey; along with members who are committee chairs and sub-committee chairs.

The Trump Administration

The Trump Administration is focusing upon seeking a resolution of the certified claims and is expected to implement (partially or fully) Title III and enhance activity relating to Title IV of Libertad on 17/18 March 2019.

For Senator Klobuchar

Senator Klobuchar would be served well by convening a meeting in Washington DC with the Ambassador of the Republic of Cuba to the United States where all co-sponsors of the legislation, as one group, would convey the importance of the Republic of Cuba negotiating a settlement of the certified claims and obtaining a commitment to negotiate a settlement of the certified claims.

In December 2018, a proposal was submitted to the Republic of Cuba and to the Trump Administration that would create a specific timetable to reach a settlement. **LINK:** <https://www.cubatrade.org/blog/2018/11/18/lojx6s6oe5epgonh6mub855d5ak143>

While advocating for legislation, Senator Klobuchar and her co-sponsors and supporters should encourage the implementation of *Direct Correspondent Banking* by Conway, Arkansas-based **Home BancShares** (2018 assets approximately US\$14 billion). In September 2017, Pompano, Florida-based Stonegate Bank (2017 assets approximately US\$2.9 billion) was purchased by Home BancShares through its Centennial Bank subsidiary:

In 2015, the Office of Foreign Assets Control (**OFAC**) of the United States Department of the Treasury authorized Stonegate Bank to have an account with BICSA. Stonegate Bank provides commercial operating accounts for the Embassy of the Republic of Cuba in Washington, DC and the Permanent Mission of the Republic of Cuba to the United Nations in New York City; the financial institution also handles other types of OFAC-authorized transactions. Stonegate Bank has a correspondent account with Republic of Cuba government-operated Banco Internacional de Comercia SA (**BICSA**). However, because BICSA does not have a correspondent account with Stonegate Bank, the fully-operational direct correspondent relationship does not exist, and a multi-country triangular payment process continues- financial institutions in third countries have received fees on more than **US\$5.8 billion** in transactions during the last eighteen years. The Obama Administration did not authorize BICSA under a general OFAC license or reportedly in the OFAC license issued to Stonegate Bank for it to have an account with Stonegate Bank, so Stonegate Bank has processed some transactions through **Panama City, Panama-based Multibank**, which has dealings with the Republic of Cuba.

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For The Republic Of Cuba

The Republic of Cuba needs to uncouple its issues with the Trump Administration from the 5,913 certified claimants.

The negotiation to settle the certified claims must not be linked to the value the Republic of Cuba places (previously stated as a cumulative US\$900 billion) upon the impact of statutes, regulations and policies by the United States since 1960.

One issue (US\$1,902,202,284.95 to US\$8,521,866,156.95) which represents assets expropriated without compensation from private entities has no linkage to the perceived value (US\$900 billion) of actions by one government against another.

According to one New York City, New York-based attorney, *“They are distinct from one another and attempts to conflate them only delays reckoning and harms the aspirations of the citizens of Cuba and the ROI (Return on Investment) of those governments and companies who have engaged with Cuba during the last fifty-eight years.”*

Maintaining one issue must be negotiated with the other issue may transition certified claimants from a benign group, but which does include some with enthusiasm to seek a settlement, into an attorney-inspired aggressive lot- and the worst outcome would be for the largest certified claimants to become aggressive globally. It only takes one to create a fire from a spark.

The **Obama Administration** and **Castro Administration** failed to use their unique moment from 17 December 2014 through 20 January 2017 to begin negotiations to settle the certified claims; there is an opportunity for the **Diaz-Canel Administration** to succeed where predecessors failed.

If the Diaz-Canel Administration can seek assistance from third parties- European Union (EU)-member countries, specifically *France, Spain, Switzerland and the United Kingdom, along with Canada*, then it should do so promptly. They can assist with outreach directly to the largest of the certified claimants where the response is likely to be positive.

Final Thought

Without a resolution of the certified claims, or at minimum an implemented negotiation process that has a reasonable expectation for success, the legislation proposed by Senator Klobuchar is unlikely to remain intact and could be destined for an already robust legislative graveyard.