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

**New York, New York**

**Telephone (917) 453-6726 • E-mail:** **council@cubatrade.org**

**Internet:** [**http://www.cubatrade.org**](http://www.cubatrade.org/) **• Twitter: @CubaCouncil**

**Facebook:** [**www.facebook.com/uscubatradeandeconomiccouncil**](http://www.facebook.com/uscubatradeandeconomiccouncil)

**LinkedIn**[**: www.linkedin.com/company/u-s--cuba-trade-and-economic-council-inc-**](http://www.linkedin.com/company/u-s--cuba-trade-and-economic-council-inc-)

**Title III Operative At 12:01 Am- First Lawsuit Expected Today**

**What Might Plaintiffs Want**

**Get Out**

**Give Us A Fee**

**Give Us A Percentage**

**Make Us Your Partner**

At 12:01 am on 2 May 2019, the Trump Administration 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.

**What Plaintiffs May Seek From Courts**

**1)** Ask Circuit Court to reduce court filing fee for Title III on the basis that it is unconstitutionally high- an unreasonable and arbitrary barrier to file a lawsuit.

“For filing an action brought under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104-114, 110 Stat. § 785 (1996), $6,548. (This fee is in addition to the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus.). Related: 28 U.S. Code § 1914 - District court; filing and miscellaneous fees; rules of court (a) The clerk of each district [court](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=28-USC-94851467-191212297&term_occur=3909&term_src=title:28:part:V:chapter:123:section:1914) shall require the parties instituting any civil action, suit or proceeding in such [court](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=28-USC-94851467-191212297&term_occur=3910&term_src=title:28:part:V:chapter:123:section:1914), whether by original process, removal or otherwise, to pay a filing fee of $350, except that on application for a writ of habeas corpus the filing fee shall be $5.”

**2)** Ask Circuit Court to rule that travel-related decisions by the Obama Administration (20 January 2009 to 20 January 2017) violated a provision of the Trade Sanctions Reform and Export Enhancement Act (**TSREEA**) of 2000 which prohibits individuals subject to United States law from visiting the Republic of Cuba for the purpose of tourism. If successful, a Circuit Court ruling could provide a foundation for lawsuits against United States-based companies engaged in the provision of travel-related services (airlines, cruise lines, hotel management).

The statute within the TSREEA: “(b) Prohibition on travel relating to tourist activities (1) In general Notwithstanding any other provision of law or regulation, the Secretary of the Treasury, or any other Federal official, may not authorize the travel-related transactions listed in subsection (c) of section 515.560 of title 31, Code of Federal Regulations, either by a general license or on a case-by-case basis by a specific license for travel to, from, or within Cuba for tourist activities. (2) Definition. In this subsection, the term ‘‘tourist activities’’ means any activity with respect to

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

travel to, from, or within Cuba that is not expressly authorized in subsection (a) of this section, in any of paragraphs (1) through (12) of section 515.560 of title 31, Code of Federal Regulations, or in any section referred to in any of such paragraphs (1) through (12) (as such sections were in effect on June 1, 2000). (Pub. L. 106–387, § 1(a) [title IX, § 910], Oct. 28, 2000, 114 Stat. 1549, 1549A–71.)”

There are twelve (12) categories of travel authorized by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury; the categories were codified into law by the TSREEA: 1) family visits 2) official business of the U.S. government, foreign governments, and certain intergovernmental organizations 3) journalistic activity 4) professional research and professional meetings 5) educational activities 6) religious activities 7) public performances, clinics, workshops, athletic and other competitions, and exhibitions 8) support for the Cuban people 9) humanitarian projects 10) activities of private foundations or research or educational institutes 11) exportation, importation, or transmission of information or information materials and 12) certain authorized export transactions.

Travel to the Republic of Cuba for the purpose of tourism by individuals subject to United States law is prohibited by United States law- not by regulation and not by policy.

**What Plaintiffs May Seek From Defendants (“Traffickers”)**

1) Defendant to cease operation(s) in the Republic of Cuba;

2) Defendant to purchase asset(s) from Plaintiff;

3) Defendant pay to Plaintiff a percentage of all funds Defendant pays to Republic of Cuba government-operated entities. For example, rent, utilities, taxes, duties, product payments, etc.

**For Travel-Related Defendants**

A 2,000-passenger **cruise ship** docks at the Port of Havana or Port of Santiago de Cuba and pays US$70,000.00 in port fees. A Plaintiff wants 100% of the port fee or a percentage of the port fee.

The 2,000-passenger cruise ship has passengers paying US$2,000 per person; gross revenues exceeds US$4 million when adding food and beverage. A Plaintiff wants a percentage of the total revenue from each vessel that docks at the port.

A 200-passenger commercial aircraft lands at Jose Marti International Airport in Havana and pays US$500.00. A Plaintiff wants 100% of the landing fee or a percentage of the landing fee. The 200-passenger aircraft has passengers paying US$200.00 per person; gross revenues US$40,000.00. A Plaintiff wants a percentage of the total revenue from each flight that lands at the airport.

A 200-room hotel is located on land for which there is a certified claim or non-certified claim. The Plaintiff wants a percentage of all payments by management contract holder to Republic of Cuba government-operated entities. The gross annual revenues of the hotel are US$7 million. A Plaintiff wants a percentage of the gross revenues. A Plaintiff wants an equity share of the management contract.

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

**For Real Estate Defendants**

Defendant pay to Plaintiff a percentage of rent Plaintiff pays to Republic of Cuba government-operated entity for use of a structure/building/hotel/airline ticket office, etc.

**For Exporters Of Products**

Defendant pays to Plaintiff a percentage of the value of product exported from the Republic of Cuba.

**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**.

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.

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

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

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 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

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

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.