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Trump Administration Expected To Permit Third Claims Program

The Trump Administration is likely to authorize a Third Program by the United States Foreign Claims Settlement Commission (**USFCSC**) within the United States Department of Justice in an effort to increase the number of certified claims, thus reducing the expectation that the current 5,913 certified claimants will receive any compensation from the Republic of Cuba. According to the United States Department of State, there may be approximately 200,000 potential plaintiffs whose claims are not certified. The majority of the potential plaintiffs reside in the state of Florida and state of New Jersey.

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 Republic of Cuba has acknowledged legitimacy of the 5,913 certified claims as they were for assets owned by individuals subject to United States jurisdiction. Accepted international legal precedence dictate that citizens of a country whose assets were expropriated without compensation need seek restitution directly from their government; that is the avenue for non-certified claimants who were Republic of Cuba nationals at the time of expropriation.

Adding to the number of certified claims would expectantly render any current or future government of the Republic of Cuba unable to provide the value of court judgements, which would in many instances include treble damages.

For the 5,913 certified claimants, the currently-implemented strategy by the Trump Administration is not viewed as viable or efficient or serious because there is no focus- no analysis of whether announcements lessen the distance between the issue of the certified claims and a settlement of the certified claimants.

Why is this a rational view for the certified claimants? Because neither The White House (including the National Security Council) nor the United States Department of State have held a formal briefing, let alone briefings, for the two largest certified claimants (who represent 24% of the total value of the certified claims) or the thirty (30) largest certified claimants (who represent 56% of the total value of the certified claims).

If the Trump Administration wants to assist the certified claimants, wouldn't sound decision-making processes require formal input from the injured parties? Yes, it would. Why hasn't there been a formal outreach to the largest certified claimants? Because the Trump Administration does not want to resolve the issue of the certified claims; formal briefings would hold them accountable for action or inaction; no formal briefings, no formal accountability for what is done or left dangling for future presidents.

The Trump Administration has thus far in its first twenty-seven (27) months focused upon commerce- the terms of trade for exports and imports. Consistent with that theme would be for a singular focus upon negotiating compensation for the 5,913 certified claimants who have been awaiting fifty-eight (58) years for an occupant of the Oval Office to surgically engage in a bilateral negotiation with the Republic of Cuba.

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Foreign Claims Settlement Commission Programs

"First Program - Title V of the International Claims Settlement Act of 1949, as amended (the Act) authorized the Commission to consider claims of nationals of the United States against the Government of Cuba, based upon: (1) losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property by that government; and (2) the disability or death of nationals of the United States resulting from actions taken by or under the authority of that government. The program covered claims for losses which occurred on or after January 1, 1959, when the Castro regime took power. Ordinarily, the Commission would have held that its jurisdiction extended only to claims arising before October 16, 1964, the date the program was authorized. In this case, however, the Commission reasoned that, because the statute was remedial, and because it had as one of its main purposes the collection, examination and preparation of evidence and information relating to the claims while it was still fresh and available, it would adjudicate any otherwise valid claim even if it arose after the filing deadline of January 1, 1967.

When the program was authorized, there were no funds available with which to make payment on the claims, and the statute precluded Congress' appropriation of funds for such payments. As was the case with the First China Program, the statute provided only for the determination of the validity and amounts of such claims, and for the certification of the Commission's findings to the Secretary of State for use in the future negotiation of a claims settlement agreement with the Government of Cuba. The Cuban Claims Program was completed on July 6, 1972. The Commission adjudicated a total of 8,816 claims in the program, of which it found 5,911 to be compensable. The adjudicated total principal value of those claims was $1,851,057,358.00.

Second Program - By letter dated July 15, 2005, Secretary of State Condoleezza Rice requested that the Commission conduct a Second Cuban Claims Program. As specified in the Secretary's letter, the purpose of the program was to effect the adjudication and certification by the Commission of claims for uncompensated taking of United States nationals' property by the Cuban government that arose after May 1, 1967, and were not adjudicated in the Commission's original Cuban Claims Program, described above. The Commission published notice of the commencement of the claims program in the *Federal Register* on August 11, 2005 (70 F.R. 46890), in accordance with its usual procedures, and set a filing period of six months and a program length of twelve months, as specified in the Secretary's letter. The notice announced that the filing deadline was February 13, 2006, and that the program would end on August 11, 2006.

During the six-month filing period, the Commission received a total of five claims, and denied three of them because they failed to meet the criteria set out in the Secretary of State's referral letter. The other two claims did meet those criteria, and after careful review the Commission issued Proposed Decisions certifying the two claims as valid in the total principal amounts of $51,128,926.95 and $16,000.00, respectively. Neither of the claimants objected to these Proposed Decisions, and they were accordingly entered as final. After the program's end in August 2006, the Commission certified these two claims to the Secretary of State, for eventual use in negotiation of a lump-sum claims settlement agreement with the Cuban government."

https://www.justice.gov/fcsc/claims-against-cuba

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Certified Claims Background

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 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 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.