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# Federal Judge Reverses Course on LIBERTAD Act Claim

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Federal Judge Reverses Course on LIBERTAD Act Claim

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On January 7, 2019, Judge Beth Bloom granted MSC Cruises SA CO's ("MSC") motion to dismiss the case of *Havana Docks Corporation v. MSC Cruises SA Co* (the "MSC case"). This case was one of the first filed under the Cuban Liberty and Solidarity ("LIBERTAD") Act, and its dismissal is surprising because the legal conclusion reverses course on a point of law previously decided by Judge Bloom in the case of *Havana Docks Corporation v. Carnival Cruise Lines* (the "Carnival case").

Title III of the LIBERTAD Act creates a private cause of action against a party that "'traffics' in" property nationalized by the Castro regime.[1] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_edn1) However, until May 2, 2019, the right to bring an action under Title III was repeatedly suspended in six-month intervals by "successive Presidents and Secretaries of State." [2] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_edn2) With the suspension lifted, *Havana Docks Corporation* ("HDC"), a Delaware corporation, filed multiple actions with

the same allegation: when US travel restrictions to Cuba were eased, multiple cruise lines trafficked in HDC's property by disembarking passengers at port facilities in Havana.[3] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_edn3) HDC based its suits on a certified claim issued to *Havana Docks Corporation* by the Foreign Claims Settlement Commission in 1971.[4] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_edn4) At the time the claim was authorized, the nationalized property included a concession for HDC to operate three piers at the entrance of the harbor of Havana, and the concession was valued at approximately \$9 Million.[5] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_edn5)

Judge Bloom's reversal from the Carnival Case to the MSC Case was based on the rights conferred to HDC by the Cuban government in the terms of the concession.[6] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_edn6) *Carnival Cruise Lines* filed a motion to dismiss arguing that

HDC had no interest in the subject property because the concession certified by HDC was to expire in 2004 and the alleged trafficking did not commence until 2016.[7] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_edn7) This argument was rejected because “the plain language of the Libertad Act states that ‘any person... that traffics in property which was confiscated by the Cuban Government... shall be liable to any United States national who owns the claim to such property.’”[8] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_edn8) Because of the plain language, “the Defendant incorrectly conflate[d] a claim to a property and a property interest.”[9] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_edn9) However, in MSC, Judge Bloom shifted the emphasis of her interpretation of the statute from “who owns the claim to such property” to “who owns the claim to such property.”[10] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_edn10) By doing so, she concluded that the property owned by HDC was a “time-limited” leasehold interest, and it would only have been possible for the defendant to traffic in such property during the period of the leasehold.[11] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_edn11)

The reinterpretation of the rights of a certified claimant in the MSC case demonstrates the complex issues created by the intersection of property, federal statutory, and international laws that Libertad Act claims are likely to present. In conjunction with these legal questions, however, should be fundamental questions of fairness, such as whether the Libertad Act, clearly intended to deter profiting from the nationalization of property without compensation, should provide no recourse when an unlawful taking still has not been corrected after 60 years.

[1] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_ednref1) 22 U.S.C § 6023 (LexisNexis).

[2] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_ednref2) *Cuba: Title III FAQs (LIBERTAD)*, U.S. Department of State, <https://www.state.gov/cuba-title-iii-faqs-libertad> (last visited Jan. 23, 2020).

[3] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_ednref3) Complaint at 3–4, *Havana Docks Corp. v. Carnival Corp.*, No. 1:19-CV-21724 (S.D.Fl. May 2, 2019); Complaint at 3–4, *Havana Docks Corp. v. MSC Cruises SA Co*, No. 1:19-CV-23588 (S.D. Fl. Aug. 27, 2019); Complaint at 3-4, *Havana Docks Corp. v. Norwegian Cruise Lines Holdings, Ltd.*, No. 1:19-CV-23591 (S.D. Fl. Aug. 27, 2019); Complaint at 3-4, *Havana Docks Corp. v. Royal Caribbean Cruises, LTD.*, No. 1:19-CV-23590 (S.D. Fl. Aug. 27, 2019).

[4] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_ednref4) *Id.*

[5] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_ednref5) In the Matter of Havana Docks Corporation, Claim No. CU-2492, Decision No. CU-6165, Foreign Claim Settlement Comm’n (Sep. 28, 1971), <https://www.justice.gov/fcsc/cuba/documents/1501-3000/2492.pdf>.

[6] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_ednref6) *Havana Docks Corp. v. Carnival Corp.*, No. 1:19-CV-21724 (S.D. Fl. Aug. 28, 2019) (order denying motion to dismiss); *Havana Docks Corp. v. MSC Cruises SA Co*, No. No. 1:19-CV-23588, slip op. at 3 (S.D. Fl. Jan. 6, 2020).

[7] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_ednref7) *Carnival*, No. 1:19-CV-21724 (order denying motion to dismiss).

[8] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_ednref8) *Id.*

[9] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_ednref9) *Id.*

[10] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_ednref10) *MSC*, slip op. at 3.

[11] (applewebdata://D0146C4C-3894-408C-B27A-10264BE205C7#\_ednref11) *Id.*

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