

## Cruise Lines Forced To Face Helms-Burton Claims

Starting in May of last year, Carnival Corporation (Carnival), Norwegian Cruise Line Holdings Ltd. (NCL), Royal Caribbean Cruises Ltd. (Royal) and MSC Cruises S.A./MSC Cruises (USA) Inc. (MSC and together with Carnival, NCL and Royal, the Cruise Lines), cruise lines calling in Cuba, were the target of U.S. lawsuits, claiming they must pay damages for the alleged use of property that had been confiscated some 60 years ago by the Castro regime. A series of recent decisions by the Hon. Beth Bloom of the U.S. District Court for the Southern District of Florida suggest that the Cruise Lines may have great difficulty in defending against these claims.

On April 15, 17, and 20, 2020, Judge Bloom issued decisions in four separate but related cases that allowed Havana Docks Corporation (plaintiff) to continue to pursue its claims under the Cuban Liberty and Democratic Solidarity Act, 22 U.S.C. Sec. 6021-91, also known as the “Helms-Burton” or “Libertad” Act (the Act), for the Cruise Lines’ use of the Havana Cruise Port Terminal (the terminal), a facility that the Castro regime confiscated in 1960.

### Statutory Background

In 1996, Congress passed the Act to support international sanctions against the Castro government “to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.” 22 U.S.C. Sec. 6022(2), (6). The Act further provides that “[t]o deter trafficking in wrongfully confiscated property, United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from ... Castro’s wrongful seizures.” *Id.* § 6081(11); *see also* 22 U.S.C. § 6082(a)(1)(A). This Act “created a private right of action against any person who ‘traffics’ in confiscated Cuban property.” *Garcia-Bengochea v. Carnival*, 407 F.Supp.3d 1281, 1284 (S.D. Fla. 2019).

The Act had never previously been enforced because it contained a waiver provision that had been invoked by every president since the statute’s enactment in 1996. That changed on April 17, 2019, when Secretary of State Michael R. Pompeo announced the federal government would no longer suspend enforcement of the Act. This position was in stark contrast to the Obama administration’s policy, which sought to normalize relations with the Castro regime and which permitted cruise lines to call in Cuba where, as alleged by plaintiff, they berthed and discharged passengers at the terminal. The four lawsuits described below were plaintiff’s attempt to claw back compensation for the loss of its property interest in the terminal.

### Havana Docks Corporation’s Suits

As a result of the April 17, 2019, announcement, the Act became enforceable on May 2, 2019. On the same day, plaintiff commenced its first lawsuit alleging that Carnival was “trafficking” in its property that had been seized by the Cuban regime after Fidel Castro seized power in 1959. Plaintiff’s ownership interest in the terminal and the damages it incurred were certified in 1971 by the Foreign Claims Settlement Commission (FCSC) that stated *inter alia*:

[Havana Docks] obtained from the Government of Cuba the renewal of a concession for the construction and operation of wharves and warehouses in the harbor of Havana, formerly granted to its predecessor concessionaire, the Port of Havana Docks Company; that claimant acquired at the same time the real property with all improvements and appurtenances located on the Avenida del Puerto between Calle Amargura and Calle Santa Clara in Havana, facing the Bay of Havana; ... and that claimant corporation also owned the mechanical installations, loading and unloading equipment, vehicles and machinery, as well as furniture and fixtures located in the offices of the corporation.



Christopher Raleigh

Member

craleigh@cozen.com  
Phone: (212) 908-1245  
Fax: (212) 509-9492

### Related Practice Areas

- Cruise Industry
- Maritime Litigation

### Industry Sectors

- Maritime

The FCSC also stated that “[t]he terms of the concession granted by the Cuban Government **were to expire in the year 2004**, at which time the corporation had to deliver the piers to the government in good state of preservation.” (emphasis added). The words in bold proved to be a source of confusion for Judge Bloom.

Carnival moved to dismiss by arguing plaintiff’s claim was based on a leasehold interest in the terminal that expired in 2004 and, therefore, it could only assert a claim under the Helms-Burton Act for trafficking while the leasehold would have been in force. Judge Bloom initially disagreed with this argument and denied Carnival’s motion.

On the same date that Judge Bloom issued her ruling in the Carnival action, plaintiff filed separate actions against NCL, Royal and MSC, all of which sought compensation under the same theory advanced against Carnival. In response to motions to dismiss by NCL and MSC, the court issued a ruling that was contrary to her decision in the Carnival case, holding that plaintiff could not, as a matter of law, state a claim for relief under the Act based on trafficking that occurred after plaintiff’s leasehold interest would have expired. Royal, which had filed an answer to the complaint, promptly moved to dismiss based on the rationale articulated by the court in its dismissal of the NCL and MSC cases; and, Carnival moved for reconsideration of the court’s denial of its motion to dismiss on the same grounds. In response, plaintiff moved for reconsideration of the court’s dismissals of the NCL and MSC cases, and opposed Royal’s motion to dismiss on the pleadings and Carnival’s motion for reconsideration. Plaintiff also sought leave to file amended complaints in all four proceedings.

In response to this procedural onslaught, Judge Bloom held a consolidated hearing that resulted in her reversing herself again. The judge concluded that she had made an error in fact by finding that the Cuban government had previously granted plaintiff a concession that expired in 2004. After receiving a more complete record, Judge Bloom held that plaintiff had actually been granted a 99-year leasehold interest, not a leasehold interest ending in 2004. In addition, Judge Bloom concluded she had made an error in law, specifically with respect to the scope of the remedy available under the Act. Relying upon *Glen v. Club Mediterranee S.A.*, 450 F.3d 1251 (11th Cir. 2006), she ruled that the Act affords a remedy for being deprived of a property interest, clarifying that her earlier dismissals had mistakenly regarded plaintiff’s claim as simply an interest in the confiscated property itself. Relying upon *Glen*, she reasoned that obtaining a claim certified by the FCSC allows the victim to memorialize the value of the property interest lost and to put other actors on notice of the victim’s outstanding right to compensation based on the extinguished property interest taken.

Judge Bloom’s interpretation of the Act provides potential claimants with a broad remedy; however, the actions are far from over. The Cruise Lines will likely present additional legal challenges after plaintiff files its amended complaints. Further, it remains to be seen how these issues will ultimately be resolved at the appellate level. Until that occurs, it would be wise for U.S. based companies either doing business or considering doing business in Cuba to investigate whether their operations could arguably constitute “trafficking” in property that was confiscated by the Castro regime and subject them to claims under the Act.

---