

Trump Administration to Allow Suits Against Companies Operating in Cuba

April 17, 2019

In 1996, President Clinton signed into law the Cuban Liberty and Democratic Solidarity (Libertad) Act (the “Helms-Burton Act” or Act). Title III of the Act allows U.S. nationals to sue any person who “traffics in property which was confiscated by the Cuban government on or after January 1, 1959.”¹ Given its potentially broad application, Title III has never been implemented, but instead, has been suspended for successive six-month periods following its enactment. Today, April 17, 2019, Secretary of State Pompeo announced that the Trump Administration will not renew the suspension, causing Title III to come into full force effective May 2, 2019.

The Helms-Burton Act was highly controversial, even when it was enacted. A pivotal escalation point in the Cuban embargo policy that guided the U.S. approach toward Cuba for decades, the Helms-Burton Act’s most extreme measure was Title III. That portion of the Act potentially creates numerous new claims and today’s announcement has created global concern, especially within the European Union.

Insofar as Title III has been suspended since its enactment, its full reach has not been tested in court and remains unclear. By its own terms, however, it allows U.S. businesses and citizens whose property was expropriated by the Cuban government on or after January 1, 1959, to sue any individual or business who “traffics” in that property. This would include claimants who were Cuban nationals when the property was confiscated, but who have subsequently become U.S. citizens.

Authors

Nova J. Daly
Senior Public Policy Advisor
202.719.3282
ndaly@wiley.law

Richard W. Smith
Partner
202.719.7468
rwsmith@wiley.law

John R. Shane
Partner
202.719.7222
jshane@wiley.law

Lori E. Scheetz
Partner
202.719.7419
lscheetz@wiley.law

Practice Areas

International Trade

Trafficking is defined broadly in the Act to include anyone who directly or indirectly causes, directs, participates in, or profits from any activity involving confiscated property, including any act of selling, transferring, distributing, dispensing, brokering, purchasing, leasing, receiving, possessing, controlling, using, managing, or otherwise disposing of any such property.² This potentially includes financial institutions and companies transacting with any person or entity operating on confiscated Cuban lands. Compensation for claims under the Act is based on the value of the property at issue, and **treble damages** are available if certain conditions are met.³

How to Prepare

The full implementation of Title III could trigger numerous claims. It is important, therefore, that both potential plaintiffs and defendants be prepared for the implementation of Title III, effective May 2.

- **Plaintiffs.** If a prospective claimant has a claim certified by the Foreign Claims Settlement Commission, the claim can be filed immediately upon implementation of Title III. Certain claimants who plan to assert a claim not previously certified must provide 30-days notice to the defendant before seeking treble damages.⁴ Potential plaintiffs should evaluate their claims and all claimants with previously certified claims should prepare to bring their claim on or after May 2.
- **Defendants.** Companies active in Cuba, or with significant relations to Cuban entities, should undertake an assessment of their Cuban operations and interactions to evaluate their potential exposure to claims under Title III.

Further Background on Title III and Its Suspension

Title III of the Helms-Burton Act creates a federal cause of action against any person that “traffics in property which was confiscated by the Cuban Government on or after January 1, 1959.” Following its enactment in 1996, every presidential administration had suspended Title III. In January 2019, however, the Trump Administration extended suspension of Title III for only 45 days, through March 17, 2019, as opposed to six months. A 30-day extension was later announced, extending suspension of Title III through April 17, 2019. In granting this 30-day extension, the Trump Administration partially allowed Title III to go into effect, permitting limited suits under Title III against entities on the U.S. State Department’s Cuba Restricted List that are linked to the Cuban government. The Administration further extended suspension of Title III (while still allowing the limited suits against entities related to the Cuban government) until May 1, 2019. The Administration announced today, however, that it will let suspension of Title III expire. This allows the full extent of Title III to enter into effect, allowing plaintiffs to bring claims against entities “trafficking” in property expropriated by the Cuban government.

Already, the Foreign Claims Settlement Commission, an independent entity within the U.S. Department of Justice, has certified 6,000 claims valued at nearly \$2 billion before interest and \$8 billion with interest. It is estimated that there could be up to 200,000 additional uncertified claims.

Wiley Rein has unparalleled sanctions and litigation experience. Should you have any questions regarding the implementation of Title III of the Helms-Burton Act, or if you would like more detail on the specifics of assessing individual claims, please do not hesitate to contact one of the members of the national security and litigation practices listed on this alert.

[1] Pub. L. No. 104-114, 110 Stat. 785 (1996) (codified at 22 U.S.C. §§ 6021-91) (“Helms-Burton Act”).

[2] *Id.* at § 4(13).

[3] *Id.* at § 302(a)(1)-(3).

[4] *Id.* at § 302(a)(3).