



## **New US court decision rejects alleged "trafficking" under Title III of the Helms Burton Act**

On 19 August 2022, the Southern District Court of Florida dismissed the motion for summary judgment filed by ODETTE BLANCO DE FERNANDEZ, née Blanco Rosell (the Plaintiff) against Seaboard Marine, Ltd. (the Defendant), concerning alleged "trafficking" with the Container Terminal (CT) of the Mariel Special Development Zone (MSDZ) in Havana, Cuba. With this decision, the number of lawsuits filed under Title III of the Helms-Burton Act (HBA) that are dismissed by US courts on one legal basis or another continues to grow.

We remind you that Title III of the HBL, activated in 2019 by the Donald Trump administration, allows US nationals to file suit against any person who knowingly and intentionally traffics in property that was confiscated by the Cuban government on 1st January 1959 or thereafter to which he or she has any rights. The definition of "trafficking" includes the purchase, receipt, possession, control, management, use or holding of an interest in confiscated property without the owner's consent. It also includes engaging in commercial activities that use or benefit in any way from confiscated property without the owner's consent.

The applicant argued that her family (Blanco Rosell), through the company Marítima Mariel, held a 1955 Concession from the Cuban government which included the whole of Mariel Bay, including the land on which the CT sits. In addition, it argued that the CT is on land owned by Azucarera Mariel, a company in which they

held shares, and which was confiscated by the Cuban government in 1960. In summary, their arguments are based on the following allegations: (1) the Blanco Rosell family purchased approximately 11,000 acres of land in Mariel Bay up to the boundary of the naval air station; (2) the Blanco Rosell family built Azucarera Mariel on the land; (3) the Cuban government confiscated Azucarera Mariel; (4) The CT's office is located on the 11.000 acres of land formerly owned by Azucarera Mariel; (5) Respondent trafficked under the HBA, because it used the facilities to store empty containers that it uses through Agencia Marítima Taina S.A. ("Taina").

For its part, the Respondent advanced three general arguments. First, that Respondent did not traffic in any confiscated property because its activity took place at the CT, which is located on land that the Cuban Government purchased and has owned continuously ever since. Second, because the 1955 Concession did not cover the Container Terminal and was limited to Punta Coco Solo, on the east side of the Bay. Third, even if Claimant could prove that the 1955 Concession granted rights to operate the entire Bay, including the CT, Respondent's conduct did not constitute trafficking. Respondent did not sell, transfer, distribute, distribute, dispense, negotiate, manage, or otherwise dispose of the 1955 Concession, nor did Respondent purchase, lease, receive, own, obtain control, manage, use, or otherwise acquire or hold an interest in the 1955 Concession.

As the claim is based on a claim not certified by the Foreign Claims Settlement Commission ("FCSC"), it is for the Tribunal to determine the ownership and value that is the subject of Claimant's claim. That is, the Tribunal must define whether there is any certainty that the Claimant has a claim to the assets confiscated by the Cuban government. Therefore, based on the evidence and testimony provided by Claimant, the Tribunal considered that Claimant had presented evidence to establish that it has an ownership interest in the Maritima Mariel and Azucarera Mariel companies. However, having carried out the relevant analysis, the Court concluded the following:

**a** Claimant's argument that Respondent trafficked through the MSDZ is without merit. Given the Tribunal's determination that there is no evidence that Claimant owned the property on which Respondent allegedly trafficked, the Tribunal need not address whether Respondent's conduct constitutes trafficking under the HBA.

In reaching this conclusion, the Court took into account that, the CT is located on the west side of the Bay, on land not covered by the 1955 Concession. Based on a review of the evidence adduced, the Tribunal concluded that the 1955 Concession allowed for the construction of a marine terminal on the east side of the Bay, and did not grant secondary rights to the entire Bay.

**b** Claimant's argument that Respondent trafficked into the MSDZ directly through the CT has no legal basis.

**c** In relation to the argument that the Respondent trafficked in the MSDZ indirectly through the CT, the Tribunal notes, among other particulars, that the Claimant established a new theory of liability based on the CT, which was not alleged in the Amended Complaint they filed at the time.

**d** Therefore, Claimant's argument that Respondent trafficked directly or indirectly through the MSDZ or CT also fails to provide a basis for Claimant's claim under the HBA.

**e** In relation to damages, given the Tribunal's determination that there is no evidence that the Claimant owned the property on which the Respondent allegedly trafficked, the Tribunal need not rule on this issue.

**f** And as to the lawful travel exception, as the Tribunal finds that there is no evidence that Claimant owned the property on which Respondent allegedly trafficked, the COURT need not address whether the lawful travel exception applies.

On 1st September, the plaintiff filed an appeal to the United States Court of Appeals for the Eleventh Circuit, so we will have to wait to see whether or not this court upholds the opinion of the US District Court for the Southern District of Florida.

For further information please contact:

**Cuban Desk Andersen**



**Ignacio Aparicio**

Partner Corporate / M&A  
Director of the Cuban Desk  
[ignacio.aparicio@es.Andersen.com](mailto:ignacio.aparicio@es.Andersen.com)