



## US Court of Appeals Judge Urges Congress to Correct Helms Burton Law

On November 23rd 2022, Judge Adalberto Jordan of the United States Court of Appeals for the Eleventh Circuit issued his decision in the appeal from the United States Court for the Southern District of Florida, (hereinafter "the District Court"), filed by Dr. Javier Garcia-Bengochea, (hereinafter "the plaintiff").

The action arose out of a lawsuit brought against Royal Caribbean Cruises, Ltd. (hereinafter "the defendant"), which also included Carnival Cruise Lines ("Carnival"), for the use of La Marítima del Puerto de Santiago de Cuba.

The claimant, Dr. Javier García-Bengochea, is a national of the United States of America, and claims to be the rightful owner of an 82.5% interest in certain commercial real estate in the Port of Santiago de Cuba, including La Marítima and Terminal Naviera. The rights to these properties were allegedly acquired through inheritance.

The plaintiff alleges in his complaint that both cruise lines have used the property without his permission and without payment and is therefore claiming damages under Title III of the Helms-Burton Act, hereinafter "HBA" or "the Act".

For their part, the defendants argued that the plaintiff would not have the capacity to assert his claim under the Act, as he had "acquired" the rights to the property in question after 12th March 1996, the date of entry into force of the HBA.

In his reasoning, the judge states that the plaintiff has standing to assert claims against both cruise lines under the HBA. But those claims fail under section 6082(a)(4)(B) of the Act, because the Cuban government seized La Marítima before 12th March 1996, and Dr. García-Bengochea acquired the property by inheritance after that date. He therefore considers that the District Court reached the correct conclusion.

However, the judge states that he arrives at this conclusion in a very forced way because the section of the Act regulating this particular issue would undermine the express purposes of Title III of the Act and would leave many US citizens without an instrument for trafficking their confiscated property.

He considers that, in its interpretation, the word "acquires" has both broad and narrow meanings, and if it is read to include rights or interests obtained through inheritance, then the provision would operate against the express statutory purposes of Congress, because the Cuban government carried out most of its seizures of property of US citizens and businesses in the early 1960s.

And therefore, if the US owners concerned were at least, for example, 20 years old at that time, if they were still alive, they would be more than 80 years old today.

Although the scope of Title III may be reduced by the above circumstance, there would still be a possibility for US nationals, heirs of those who were seized at the time, to bring a claim under the HBA if they acquired the property prior to the implementation of the HBA.

In his decision, the judge states that he considers that the text of the section of the Act that is the subject of interpretation was improperly drafted and, therefore, urges Congress to correct the HBA wording.

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