

Client Alert

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Helms-Burton Claim Must Be Acquired Prior to March 12, 1996

What Happened: A Florida federal judge dismissed a plaintiff's Helms-Burton claim because he inherited it after March 12, 1996, in contravention of the statute.

The Bottom Line: Under this ruling, foreign nationals cannot will their property claims to US citizens to use as the basis of a Helms-Burton claim. While not touching on Title IV risk, this is a significant win for entities with potential risk under Helms-Burton as a result of their business interests related to Cuba, lowering the number of potential valid Helms-Burton claims. The ruling is subject to appeal to the United States Court of Appeals for the Eleventh Circuit.

The Full Story

In *Garcia-Bengochea v. Carnival*, the plaintiff sued under Title III of the Helms-Burton Act. The Act provides to US nationals with claims to property confiscated by Cuba's Castro regime a cause of action against those who traffic in such property.

The plaintiff, a US citizen, claimed an ownership interest in waterfront property in the Port of Santiago, and that Carnival "trafficked" in that property by using its docks. The property claim originated with a Cuban national and passed, according to his will, to his brother, a Costa Rican national. In 2000, the brother died after executing a will devising the claim to his cousin, the plaintiff.

Carnival argued that according to the Act, for property confiscated before March 12, 1996, a Helms-Burton claimant must "acquire ownership" of the claim before that date. Because, Carnival argued, the plaintiff inherited his property claim in 2000, after the statutory cutoff, his action was barred. The plaintiff responded that the language "acquire ownership" did not include acquisition by inheritance—that is, that a Helms-Burton claim to property confiscated before the cutoff date could be inherited after it. This was so, the plaintiff argued, because "acquire" means to take affirmative action to obtain the property, while inheritance is a passive form of property transfer.

But the court disagreed. It first reasoned that the common-sense and dictionary meanings of "acquire" are broad enough to include acquiring through devise. Second, the court noted that Congress had, in the section of the Act involving property confiscated after the cutoff date, made a clear distinction between property acquired for value—the plaintiff's proposed definition—and property acquired through other means, such as inheritance. If Congress was capable of making that distinction once, it stood to reason that the broad "acquire" in the relevant section of the statute was as broad as it seemed. Third, the court looked to the Act's legislative history, which indicated that Congress sought to prevent the transfer of claims to confiscated property for the sole purpose of taking advantage of the remedy the Act provides. The court suspected the plaintiff's cousin had willed the property claim to him because he was a US national who could bring suit under the Act, the sort of forum-shopping that, if allowed, would frustrate Congress' intentions.

For these reasons, the Court dismissed the case on the pleadings. This ruling is significant because it makes it much more difficult for a potential claimant to acquire a valid Helms-Burton claim. For property confiscated before March 12, 1996, there can essentially be no new claimants, as, according to the court in *Garcia-Bengochea*, claims to such property cannot be validly devised or inherited.

As before, companies doing business in or with Cuba, especially involving property known to have been confiscated, should be careful to avoid liability under the Helms-Burton Act. But this is a victory, allowing for doing safer business involving property confiscated before March 12, 1996. Note, however, that the ruling is subject to appeal to the United States Court of Appeals for the Eleventh Circuit. In addition, the risk under Title IV of being subject to visa restrictions or exclusion from the United States is not affected by the ruling.

The Latin America practice group and the Commercial Litigation practice group at Hunton Andrews Kurth LLP will continue to closely monitor related developments on this issue and the broader issue of the US government's enforcement of the Helms-Burton Act. In the meantime, please contact us if you have any questions or would like further information.

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