

# Client Alert

September 2020

## Court Holds that Helms-Burton Plaintiffs Have Article III Standing

**What Happened:** A Florida federal judge denied the defendant's motion to dismiss a Helms-Burton claim, finding that the plaintiff sufficiently satisfied Article III standing and that, because the complaint alleged a series of trafficking spanning two decades and ending in 2019, under the Helms-Burton Act, the lawsuit was brought within two years of when the trafficking giving rise to the action ceased to occur.

**The Bottom Line:** Under the court's order, an allegation of profiting from the use of property that was confiscated by the Cuban government is a sufficiently concrete harm for purposes of Article III standing. The court's order also establishes that a court may not dismiss or strike trafficking allegations that are, by themselves, time-barred where the plaintiff alleges a longstanding course of conduct, including non-time-barred trafficking, in support of its claim.

### The Full Story

In *Havana Docks Corporation v. Carnival Corporation*, the plaintiff sued Carnival under Title III of the Helms-Burton Act (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.

Havana Docks alleged to be the rightful owner of an interest in and a certified claim to commercial waterfront real property in the Port of Havana, Cuba, identified as the Havana Cruise Port Terminal. Carnival allegedly used the subject property through Airtours Plc from 1996 to 2001, through Costa Cruises in 1997, and then itself from 2016 to 2019, to embark and disembark its passengers when it operated cruises to Havana. Through Costa, it also allegedly renovated, expanded, and managed the property under a joint venture and concession agreement with the Cuban Government.

After filing this action, Havana Docks filed additional suits against three cruise lines—MSC Cruises, Norwegian Cruise Line Holdings, and Royal Caribbean Cruises—that also used the Havana Cruise Port Terminal. The court initially interpreted the liability created by the Helms-Burton Act narrowly, and dismissed the claims against MSC and Norwegian. It found that Havana Docks' leasehold interest in the property expired in 2004, and that Havana Docks could therefore not sue cruise lines that did not begin to use the dock until after that lease had expired. However, in April, the court reconsidered its prior rulings, concluding that it incorrectly dismissed the actions due to legal and factual errors. The court found that it had construed the liability provision of the Helms-Burton Act too narrowly, which it determined was not in keeping with the purpose and legislative history of the Act.

In May 2020, Carnival moved to dismiss the complaint on the grounds that the plaintiff lacked Article III standing, and that the plaintiff's allegations were time-barred under the Helms-Burton Act because such claims were brought "more than two years" after the alleged trafficking "ceased to occur."

The court first examined whether Havana Docks had Article III standing to sue. Standing is a threshold question that must be explored at the outset of a case. If a party lacks standing, the court has no power to judge the merits of the plaintiff's claim. To establish standing, a plaintiff must allege that (1) it suffered an

injury in fact, (2) that the injury can be traced to the conduct of the defendant, and (3) that the injury will be redressed by a favorable court decision.

The plaintiff argued that it sufficiently satisfied all of the Article III standing requirements, and the court agreed. The court determined that the plaintiff alleged sufficient facts to recover damages for the injuries it sustained because of the defendant's unlawful trafficking in the property, to which the plaintiff owned a certified claim. The court also found that the defendant's conduct of using and profiting from the property was traceable to plaintiff's claimed injuries. The court then determined that, if the plaintiff obtains a favorable judgment, the plaintiff could recover monetary damages, which would redress the harm the plaintiff allegedly suffered from the Cuban Government's confiscation of the property and the defendant's subsequent use of the confiscated property.

The court then examined whether the plaintiff's claims as to pre-2004 trafficking were time-barred under the Helms-Burton Act. The Act provides that an action "may not be brought more than 2 years after the trafficking giving rise to the action has ceased to occur." The plaintiff's allegations that Carnival used the property through Airtours and Costa concerned trafficking that allegedly occurred between 1996 and 2001 and ceased to occur more than 18 years before the plaintiff filed suit. However, because the plaintiff alleged that Carnival trafficked in the property through May 2019, the court held that, under the Act's plain language, the lawsuit was brought within two years of when the trafficking at issue ceased. That the complaint also included trafficking allegations preceding that period, but related to the same course of conduct as that of the post-2004 allegations, did not make the plaintiff's claim any less actionable. In so holding, the court also rejected the defendant's argument that the court could resolve the time-bar issue, which is an affirmative defense, at the motion to dismiss stage.

For these reasons, the court denied the defendant's motion to dismiss. This ruling is significant because, if it withstands appeal, it would allow Helms-Burton plaintiffs to establish a concrete injury against companies that allegedly trade in wrongfully confiscated property, despite the fact that the injury has its origin in the Cuban government's actions. In addition, if other courts follow this ruling, they may not dismiss a complaint that contains specific trafficking allegations that may otherwise be time-barred under the Helms-Burton Act, where the plaintiff alleges a longstanding course of conduct, including non-time-barred trafficking, in support of its claim. 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. Note, however, that the *Havana Docks* 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 US 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. Please contact us if you have any questions or would like further information regarding the Act.

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