

## **Alert** | Latin America Practice



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### **Title III Lawsuits Are Coming: Is Your Company or Client Ready?**

Earlier this year, President Trump chose not to extend the suspension of Title III of the 1996 Cuban Liberty and Democratic Solidarity (LIBERTAD) Act (also known as the Helms-Burton Act). For more information, see our GT Alert, [Trump Administration Cracks Open Door to Private Law Suits Against Cuba with Partial Libertad Act Title III Implementation](#), dated March 19, 2019.

In 1996, Congress passed Title III to strengthen international sanctions against the Cuban government and “protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.” 22 U.S.C. §6022(6). “To deter [such] trafficking,” Congress found that “the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro’s wrongful seizures.” 22 U.S.C. §6081(11).

Specifically, Title III provides U.S. nationals with a private right of action in U.S. federal courts against persons or entities that “traffic in property which was confiscated by the Cuban Government on or after January 1, 1959.” 22 U.S.C. §6082(a)(1)(A).

Notwithstanding that Title III was passed in 1996, the private right of action had never been implemented because every president had postponed the enactment of Title III for consecutive six-month periods – in part because many foreign governments objected to the idea that non-U.S. companies could be sued in U.S. federal court because of their commercial dealings with Cuba.

With the current administration's decision to end the suspension, a number of key questions have been raised:

### **What is an Eligible Claim?**

Eligible claims generally fall into two categories: (i) certified claims, which are claims by persons who were U.S. nationals at the time of the Cuban revolution in 1959 from whom the Castro regime expropriated property in Cuba, and who have had their claims certified through the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949; and (ii) uncertified claims, which are claims by persons who were Cuban nationals at the time of the revolution from whom the Castro regime expropriated property, and who subsequently became naturalized U.S. citizens.

### **How Many Actual Suits Could Be Filed?**

Since May, more than 10 actions have been filed, but we are aware of numerous other claims that have been noticed and likely will be filed in the near future. The U.S. Foreign Claims Settlement Commission previously certified nearly 6,000 claims, and legal scholars speculate that the number of potential claims is as high as 200,000.

### **How Many Claimants Have Sufficient Evidence to Bring Suit?**

Cuban-American families whose properties were expropriated by the Cuban government would be required to provide evidence of their claims. Many of these families do, in fact, retain such records, which is evidenced by the nearly 6,000 claims that previously were certified.

### **Are There Defenses to a Title III Action?**

There are numerous potential defenses to claims brought under Title III, including, but not limited to: personal jurisdiction, statute of limitations, blocking statutes, challenges to title and international legal issues. As these cases are only starting to be filed, it is unknown how this litigation will play out, but there are a number of legal and constitutional issues that already have been raised. In addition, the validity of each claim needs to be carefully evaluated, as many claims will not meet the threshold requirements, including the amount in controversy necessary to proceed.

### **What Should a Company Do If It Receives Notice of a Potential Lawsuit?**

We expect that many companies – both non-U.S. and U.S. companies – doing business in Cuba will receive notice of potential claims against them in the near future. Simply because a company is doing lawful or licensed business in Cuba does not necessarily protect it from a Title III action. Companies need to be vigilant in determining their risk. We currently are handling these matters for clients and monitoring the legal posture of the pending cases. It is important to speak with an attorney familiar with Title III, as there may be a presumption of damages, and a plaintiff may be allowed to recover treble damages in addition to the amount of the claim, plus interest and attorneys' fees.

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