

Cuba: Experienced and Multifaceted Strategy Required to Defend Lawsuits Under Title III of Helms-Burton Act

Background

On May 2, the Trump Administration ceased waiving Title III of the Helms-Burton Act, thus allowing US individuals and companies to file lawsuits against companies that are operating in Cuba and “trafficking” in (meaning, using or profiting from) property in Cuba which was confiscated from them by the government of Cuba. The new policy puts the US, the EU, Canada, Mexico and other companies active in Cuba in a precarious position. Four lawsuits have already been filed against companies that allegedly “traffick” in property nationalized following the Cuban Revolution.

How We Can Help

For years, we have advised companies both inside and outside the US on the US embargo of Cuba, including the provisions of Titles III and IV of Helms-Burton. We have also advised non-US companies in connection with the US sanctions risks of pursuing investment opportunities in Cuba.

Title IV of Helms-Burton requires that the US government deny visas to owners and executives (and their family members) of companies that “traffick” in property in Cuba, on which a claim is held by a US person. We are among the few law firms that have represented non-US companies under State Department investigation for alleged “trafficking” in confiscated property. Our client was the subject of several separate State Department investigations relating to several separate properties in Cuba. No visa denials were ever issued.

Our Representative Litigation Experience

We also have a consistent record of success in defeating US litigation brought under statutes inspired by political agendas. As relevant to Title III litigation, our success stems from our creative strategies that limit the application of US law to international business transactions and inter-governmental relations. Our most notable victories include:

- Obtaining dismissal of two separate rounds of US Anti-Terrorism Act (ATA) claims against Saudi Arabia’s largest bank, government-owned National Commercial Bank (NCB), defeating multibillion-dollar claims based on the bank’s overseas actions. *In re Terrorist Attacks on September 11, 2001*, 295 F. Supp. 3d 416 (S.D.N.Y. 2018) (Second Round); *O’Neill v. Asat Tr. Reg.* (In re Terrorist Attacks on September 11, 2001 (Asat Tr. Reg.)), 714 F.3d 659 (2d Cir. 2013) (First Round). The Supreme Court denied *certiorari* review in the first round of cases, and the plaintiffs abandoned their appeal in the second round of cases.
- Obtaining reversal of a US\$655.5 million judgment under the ATA, demonstrating the absence of US jurisdiction over actions taken by a foreign government in its home territory. *Waldman*, 835 F.3d 317 (2d Cir. 2016). Plaintiffs further appealed this case to the Supreme Court and *certiorari* review was denied after our submission of the required briefing and meetings with the Solicitor General of the US.
- Successfully vacating a default judgment in a terrorism-financing case, where the plaintiffs sought damages of a half-billion dollars.
- Defeating a half-billion-dollar claim against a foreign government, therefore establishing a landmark appellate precedent confirming due process protection against US jurisdiction. *Livnat*, 851 F.3d 45 (D.C. Cir. 2017). This case was further appealed to the Supreme Court and *certiorari* review was denied.
- Defeating a US\$600 million claim against a foreign government on summary judgment, based on the lack of supporting evidence. *Gilmore*, 843 F.3d 958 (D.C. Cir. 2016). Similarly, here, after winning at the D.C. Circuit, plaintiffs petitioned the Supreme Court for further review of their case, but this request was denied.
- Obtaining the dismissal of multimillion-dollar foreign law claims alleging that the Bank of China knowingly provided financial services to US-designated Foreign Terrorist Organizations by demonstrating that the bank’s actions did not violate the laws of its home country. *Wultz v. Bank of China Ltd.*, 2012 WL 5431013 (S.D.N.Y. Nov. 5, 2012); *Wultz v. Bank of China Ltd.*, 2013 WL 1641179 (S.D.N.Y. Apr. 16, 2013).
- Defeating multimillion-dollar claims under the Torture Victims Protection Act and Alien Tort Statute against a former high-ranking government official. *Mohamad v. Rajoub*, 2018 U.S. Dist. LEXIS 41238 (S.D.N.Y. Mar. 12, 2018). The US Court of Appeals for the Second Circuit recently affirmed the judgment of dismissal.
- Successful application of the Act of State Doctrine in favor of a sovereign nation, limiting the power of US courts to determine the legality of seizures undertaken by a sovereign state within that sovereign’s own territory.
- In one of the first Alien Tort Statute cases to apply the Supreme Court’s *Kiobel* decision, establishing the sovereign immunity of the government of Cameroon – and related immunities for the President of Cameroon and high-ranking Cameroon government officials – securing the dismissal of claims against them under the FSIA and international law. *Fotso v. Republic of Cameroon*, 2013 U.S. Dist. Lexis 25424 (D. Or. Jan. 25, 2013), adopted by *Fotso v. Republic of Cameroon*, 2013 U.S. Dist. Lexis 24483 (D. Or. Feb. 22, 2013); *Fotso v. Republic of Cameroon*, 2013 U.S. Dist. Lexis 83948 (D. Or. May 16, 2013), adopted by *Fotso v. Republic of Cameroon*, 2013 U.S. Dist. Lexis 83772 (D. Or. June 11, 2013).
- Securing the dismissal of claims under US law in another high-profile Alien Tort Statute case alleging “command responsibility” for extrajudicial killings against the President of Sri Lanka during that nation’s long-running civil war. In coordination with the US Departments of State and Justice, we successfully invoked the President’s Head of State immunity. *Manoharan v. Rajapaksa*, 711 F.3d 178 (D.C. Cir. 2013).
- Obtaining the plaintiffs’ dismissal of claims under the Trafficking Victims Protection Act, attacking Vietnam’s labor export program, demonstrating that Vietnam’s Ministry of Labor and senior Ministry officers were entitled to foreign sovereign and official immunity. *Vu v. W&D Apparel*, No. 4:12-cv-282 (S.D. Tex.).

We have additional examples, but we believe the above provides a clear picture of our experience. This information is a matter of public record and can be looked into independently.

Our Public Policy Credentials

Our Litigation team also works closely with our colleagues in our renowned Public Policy Practice, which includes former high-ranking US government officials and can, at a moment's notice, help manage litigation-related interactions with the White House, the State Department, the Department of the Treasury, the Justice Department and Congress, whose views can impact the judicial process in high-profile cases.

Our public policy colleagues include former Speaker of the House of Representatives John A. Boehner; former Majority Leader of the US Senate Trent Lott; former Minority Whip of the US Senate John Breaux; former Congressman Jack Kingston, who served as a senior advisor to Donald Trump's campaign for the presidency; former Congressman and Chairman of the Democratic Caucus Joseph Crowley; former Congressman Bill Shuster; and the Honorable Frank G. Wisner, who was US ambassador to Zambia, Egypt, the Philippines and India, as well as Under Secretary of Defense for Policy and as Under Secretary of State for International Security Affairs. This group is supplemented by a bipartisan team of professionals who served as senior appointees or career staff in the Executive Branch, including Angela Mariana Freyre, who served as Special Advisor for Cuba Policy in the National Security Council in the Obama Administration.

Moving forward, our team stands ready to assist those entities that are similarly targeted under this statute.

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