

# Cuba Policy Expert Says \$440M Ruling Should Be Affirmed

By **Caroline Simson**

Law360 (October 10, 2023, 7:34 PM EDT) -- An expert on U.S. policy toward Cuba is urging the Eleventh Circuit to affirm a ruling ordering four major cruise lines to pay nearly a half-billion dollars in damages for "trafficking" in property seized by the Communist Cuban government.

Daniel W. Fisk, who was associate counsel of the U.S. Senate Foreign Relations Committee from 1994 until 1997, told the circuit court in an amicus brief on Friday that the damages awarded to Havana Docks Corp. must be affirmed, saying that the U.S. company's claim against the cruise companies "goes to the heart of the LIBERTAD Act's history, purpose, and text."

The law in question – referred to interchangeably as the Helms-Burton Act, the Cuban Liberty and Democratic Solidarity Act, or the LIBERTAD Act – was enacted in 1996. In addition to strengthening the embargo against the Fidel Castro government, its goal was to protect U.S. nationals against "confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime," according to Fisk's brief. Fisk told the court that he served as the principal committee staff member involved in the drafting and legislative strategy of the LIBERTAD Act.

Havana Docks accuses Carnival Cruise Line, MSC Cruises, Royal Caribbean and Norwegian Cruise Line in the litigation of violating the act by docking at the Havana Cruise Port Terminal, which it says was wrongfully confiscated from it by the Cuban government in 1960. U.S. District Judge Beth Bloom agreed last year, issuing the **damages ruling** that prompted the present appeal.

The cruise lines argue in the case that the trafficking claims cannot stand, saying that – among other things – they only started using the port terminal after the former administration of Barack Obama decided in 2016 to begin allowing cruise lines to return to Cuba. His administration "affirmatively encourag[ed] the travel at issue as part of its changed policy toward Cuba," and Judge Bloom's ruling gave the Helms-Burton Act's lawful-travel exemption "an unduly narrow reading," MSC, Royal Caribbean and Norwegian argued in a June brief.

But Fisk, who was also directly involved in the implementation of Cuban policy at the U.S. Department of State in the early 2000s, argued in his amicus brief that the cruise lines knew that the port terminal in question had been wrongfully seized and that they used it anyway.

"The District Court correctly applied the LIBERTAD Act consistent with the intent of Congress," he said. "Havana Docks' claim reaches the core purpose of the LIBERTAD Act's private remedy: to deter the injection of private equity into the Cuban communist regime by providing a remedy to claimants, like Havana Docks, whose confiscated property was used without their consent."

Counsel for the parties declined to comment or could not immediately be reached for comment on Tuesday.

The cruise lines are asking the Eleventh Circuit to reverse Judge Bloom's ruling forcing them to pay some \$440 million in damages to Havana Docks, an amount she decided on after ruling earlier in 2022 that the four cruise lines had engaged in prohibited tourism and trafficking activities in violation of the Helms-Burton Act by allowing passengers to disembark at the Havana port terminal.

Carnival Cruise Line, MSC Cruises SA, Royal Caribbean Cruises Ltd. and Norwegian Cruise Line Holdings Ltd. had all used the Havana Cruise Port Terminal when traveling to Cuba. Havana Docks

says it is the "rightful owner" of the port terminal since, at the time it was confiscated by the Castro government in 1960, it held a 99-year concession to operate there.

The company says that it filed a claim with the U.S. Foreign Claims Settlement Commission in 1967, and it was awarded a certified claim for the port terminal in 1971.

Havana Docks originally filed the litigation in 2019, accusing the cruise lines of "trafficking" in their confiscated property in violation of the Helms-Burton Act, by allowing its passengers to disembark at the port terminal.

The Helms-Burton Act was enacted in 1996 in order to "assist the Cuban people in regaining their freedom and prosperity, strengthen international sanctions against the communist Cuban Government, and to deter the exploitation of wrongfully confiscated property in Cuba belonging to United States nationals," according to the suit.

Fisk is represented by Marcos Daniel Jiménez of León Cosgrove Jiménez LLP.

Havana Docks is represented by Roberto Martinez, Stephanie A. Casey, Thomas Kroeger and Zachary Lipshultz of Colson Hicks Eidson PA, Christopher Landau and Richard Klingler of Ellis George Cipollone O'Brien LLP and Vincent H. Li of Ellis George Cipollone O'Brien LLP.

Norwegian is represented by Derek L. Shaffer, Christopher G. Michel, Jonathan G. Cooper and Nicholas J. Caluda of Quinn Emanuel Urquhart & Sullivan LLP.

Carnival was represented in the district court by Stuart Singer, Corey Gray, Meredith Schultz and Pascual Oliu of Boies Schiller Flexner LLP, Pedro Freyre of Akerman LLP and George J. Fowler III and Luis E. Llamas of Jones Walker LLP. Its counsel information at the Eleventh Circuit wasn't immediately available.

MSC is represented by J. Douglas Baldrige, Andrew T. Hernacki and Justin B. Nemeroff of Venable LLP and Robert M. Loeb, Robbie Manhas, Jonas Q. Wang, E. Joshua Rosenkranz and Katherine Munyan of Orrick Herrington & Sutcliffe LLP.

Royal Caribbean is represented by Paul D. Clement, Matthew D. Rowen and Chadwick J. Harper of Clement & Murphy PLLC.

The case is Havana Docks Corporation v. Royal Caribbean Cruises Ltd., case numbers 23-10151 & 23-10171 in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Patrick Reagan.