

New York Times (May 3, 2019)

In Cuba, Carnival Cruise Ships Have Been Using Stolen Ports, Original Owners Say

Revolutionaries confiscated the Havana Docks Company in 1960.



By Frances Robles

Mickael Behn grew up attending shareholder meetings of a port company that no longer existed, except on paper.

The Havana Docks Company used to run maritime operations in the busy harbor of Cuba's capital, until they were confiscated at gunpoint by revolutionaries in 1960. The company's officers, in the quixotic hope of one day getting their port business back, went on keeping the books, paying taxes and meeting annually in exile.

Now Mr. Behn, who succeeded his grandfather as president of Havana Docks, is trying to make that patience finally pay off. **Taking advantage of a recent policy change by the Trump administration, he is suing the company that currently uses his family's lost property: Carnival Cruise Lines.**

His action was one of at least two suits seeking compensation for “trafficked” properties that were filed on Thursday against Carnival in United States District Court in Miami. Experts say the suits could signal legal trouble for many companies around the world that do business in Cuba using assets confiscated after the revolution.

Not since Fidel Castro first rode into Havana on an open-topped Jeep have Americans been able to demand compensation in an American court from the current users of assets seized by his government. The administration said **last month** that it would begin allowing such suits, one of a series of measures to toughen Washington’s stance against Cuba.

“The cruise lines just completely ignored us, and are using our port without any care that it was stolen from us,” said Mr. Behn, a 43-year-old television production editor who shuttles between Miami and London. “They are profiting from people who lost their businesses.”

The Carnival Corporation’s website advertises five-day cruises to Cuba from Miami and Fort Lauderdale for as little as \$299. The cruises began in 2016, after the Obama administration loosened restrictions on travel to the island nation and trade with it.

A company spokesman, Roger Frizzell, declined to comment on the lawsuits except to say, “We continue to operate our normal cruise schedule to Cuba.”

An industry group, the Cruise Lines International Association, said that a “lawful travel exemption” in American law protects companies that have United States government authorization to operate cruises to Cuba.

Nearly 900,000 people cruised to Cuba last year aboard ships operated by 17 different companies, according to the Cuban government, and Carnival has announced plans to add more routes to the island from Florida, Virginia and New York.

For years, the legal quest to be compensated for confiscated properties in Cuba was futile.

After Cuban fighter jets shot down small private planes operated by a Miami volunteer group, Brothers to the Rescue, that sought to assist refugees fleeing the island and sometimes dropped leaflets from the air, Congress passed the Cuban Liberty and Democratic Solidarity Act in 1996. The legislation, more commonly known as the Helms-Burton law, tightened the American trade embargo and included a section known as Title III that authorized compensation claims against foreign companies over their use of seized assets.

However, the law allowed the president to temporarily waive Title III, and all four presidents since then have done so, until the Trump administration decided last month to finally let Title III take effect.

Capt. William Behn, once president of Havana Docks, and two Cuban revolutionary men on Nov. 21, 1960. Credit Havana Docks Company



Capt. William Behn, once president of Havana Docks, and two Cuban revolutionary men on Nov. 21, 1960.

Lawyers who specialize in the issue say that the law and the new policy are ambiguous enough that the lawsuits will probably be vigorously contested in court.

“This is a very technical piece of legislation, which has never been litigated,” said Pedro A. Freyre, a Miami lawyer who represents companies doing business in Cuba. “It was enacted at a time when interaction between Cuba and the U.S. was very different than at present. There are a number of defenses and ambiguities which will undoubtedly be brought up.”

A lawyer for Carnival, George Fowler, told the newspaper El Nuevo Herald that the Helms-Burton law shields commercial activities related to authorized travel to Cuba from compensation claims, and added that Carnival and other cruise lines have Treasury Department licenses.

“The law is clear: If the trip was allowed, the Helms-Burton does not apply,” Mr. Fowler, who worked on the 1996 legislation, told the paper. “It was not the intention of the Helms-Burton law to go after American companies with legal business in Cuba. They can try it, but I’ve been here for 40 years, and I tell them: Good luck.”

John S. Kavulich, head of the U.S.-Cuba Trade and Economic Council, said the key to the lawsuits will be proving that when the Obama administration expanded the ways Americans would be allowed to travel to Cuba, it broke the law. He said a court could decide that sailing aboard a luxury cruise liner does not qualify for any of the categories permitted under the law, like educational travel.

“If it’s tourism, it wasn’t legal,” Mr. Kavulich said. “If it was legal, then the cruise companies are off the hook.”

Both of the lawsuits against Carnival were filed by Roberto Martínez, a former United States attorney in Miami who has won enormous verdicts against the Cuban government in a variety of cases, including a \$188 million wrongful death suit over the four people who were killed when the Brothers to the Rescue planes were downed. Frozen Cuban assets in the United States were used to pay some of those awards.

Mr. Martínez said his clients had been preparing for years and were more than ready to file suit on the first day they could.

“Their family businesses were destroyed, stolen by the Castro government, and these American companies were put on notice for many years that they were using properties that were stolen, and they did nothing about it,” he said. “They miscalculated the decision that it was worth doing business and ignoring the pleas not to use stolen properties, and now they are basically going to court and having to deal with the consequences of that risk.”

He said the law stipulates that former property owners can seek triple the value of the property as compensation, and the property can be valued several different ways. The Havana Dock Company has a claim certified by a United States commission saying that its property was worth \$9.1 million in 1960; under the law, it could be awarded three times that amount, plus interest, or three times the current fair market value.

The other plaintiff is Dr. Javier Garcia-Bengochea, a neurosurgeon in Jacksonville, Fla., whose family owned port facilities in Santiago de Cuba, on the eastern part of the island.

Dr. Garcia-Bengochea has spent years writing to Carnival, sending letters to the editors of newspapers and going public in any way he could about his family’s claim, which he said was more about principle than money.

He was 15 months old when his family fled the island, he said, and has seen the confiscated property just once, when he traveled to Cuba in the late 1990s.

“You grow up raised under a certain shadow or cloud of the culture and a country that you left,” Dr. Garcia-Bengochea said. “The enduring symbol of that, the physical symbol of that, is the property you lost.”