

# Client Alert

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## Courts Narrow Bases for Personal Jurisdiction Over Foreign Helms-Burton Defendants

**What Happened:** A Florida federal judge dismissed a Helms-Burton claim for want of personal jurisdiction over the defendant but allowed the plaintiffs leave to amend the complaint.

**The Bottom Line:** Federal judges continue to narrow the bases for personal jurisdiction over foreign Helms-Burton defendants. They also are following *Garcia-Bengochea v. Carnival*, which held that, under the Act, plaintiffs whose claims involve property confiscated before March 12, 1996, must have acquired ownership of the claim before that date.

### The Full Story

In *Cueto Iglesias v. Pernod Ricard*, the plaintiffs sued under Title III of the Helms-Burton 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. The plaintiffs alleged to have inherited a property interest in a rum company confiscated by the Cuban government in 1959, the assets and intellectual property of which Pernod allegedly uses in the distribution of its Havana Club brand. Pernod, a French company, moved to dismiss for want of personal jurisdiction, want of subject matter jurisdiction, failure to state a claim, and other grounds.

The court first examined whether it had general personal jurisdiction over Pernod. General jurisdiction is broad; it allows a court to hear any case involving the defendant, even if the case has nothing to do with the state in which the court is located. Consequently, for general jurisdiction to attach, the defendant must have substantial contacts with the forum state.

The plaintiffs argued that a Pernod subsidiary, Pernod USA, conducted the substantial activity within Florida necessary for general jurisdiction and that its activities could be imputed to its parent Pernod on an alter ego theory. The court disagreed. For their alter ego theory to succeed under Florida law, the plaintiffs had to allege not only that Pernod USA was a "mere instrumentality" of Pernod, but also that Pernod engaged in "improper conduct" in the formation or use of the subsidiary, and that such improper conduct caused the plaintiffs harm. Because the plaintiffs failed to allege anything beyond factors arguably indicating Pernod USA's status as an instrumentality, the court rejected the alter ego theory.

Moreover, the court held that it had no general jurisdiction even assuming the alter ego theory's validity. The Supreme Court has held that a court may exercise general jurisdiction over an out-of-state defendant only when the defendant's contacts with the forum state are so substantial as to render them essentially at home there. For corporate defendants, being "at home" in a state generally requires that the state be the corporation's place of incorporation or principal place of business, though a similarly intimate corporation-state relationship may also suffice. Here, while Pernod and Pernod USA both did business within Florida, neither was incorporated nor principally operated in the state. In short, neither company was at home in Florida, and thus there was no general jurisdiction.

The court then examined whether it had specific jurisdiction over Pernod. Specific jurisdiction attaches when a case arises out of or sufficiently relates to a defendant's contacts with the forum state. The plaintiffs failed to meaningfully address any issues relevant to the exercise of specific jurisdiction, and the court therefore ordered dismissal on personal jurisdiction grounds. The court did, however, provide the plaintiffs with an opportunity to amend their complaint to better tackle the jurisdictional issues discussed in its opinion.

The court turned next to Pernod's argument that there was no subject-matter jurisdiction because the plaintiffs lacked standing. Specifically, Pernod argued that it did not cause the plaintiffs' injuries – it was the Cuban government that confiscated the relevant property, not Pernod, and Pernod had no power to return it. The court rejected this argument, reasoning that the injury at issue was not the confiscation of the property, but Pernod's alleged trafficking in that property. Although that injury may be somewhat inchoate, it is one that Congress specifically recognized and provided a remedy for through the Act. Congress, having determined that the trafficking in confiscated property by foreign investors undermines national policy, intended to create a chilling effect. Thus, it made no difference if, as Pernod claimed, the commercial activity alleged to be trafficking under the Act occurred nearly 30 years after the confiscation at issue. All the plaintiffs had to do was allege that Pernod used their property in distributing its products, and they did so.

Lastly—as relevant here—the court addressed Pernod's arguments that the plaintiffs failed to state a claim under the Act. First, Pernod argued that plaintiffs had not plausibly alleged that Pernod “knowingly and intentionally” dealt in confiscated property, as necessary under the Act. But the court found sufficient, at the motion to dismiss stage, the plaintiffs' allegations that Pernod knew or should have known the property at issue was confiscated. The court pointed to the plaintiffs' citations to Cuban newspaper articles regarding the government's confiscation of private property, including alcohol companies, and their allegations regarding markings on rum barrels and other seized property.

The court similarly rejected Pernod's argument that the plaintiffs had not pled ownership of a *claim*, as contemplated by the Act, but to a Cuban corporate entity which *itself* held the claim – or would, if it were a US national capable of bringing a Helms-Burton suit. The court reasoned that even if, as a matter of corporate law, the plaintiffs owned a corporation rather than the individual property confiscated, that was enough; an ownership claim in property once owned by a corporation confiscated by the Castro regime is all the Act requires. A contrary result would frustrate Congress's intentions and produce an absurd result: almost no one would be able to bring suit under the Act. For these reasons, the court denied Pernod's motion on failure-to-state-a-claim grounds.

It is notable, however, that the court cited with approval *Garcia-Bengochea v. Carnival*, the subject of a recent Client Alert. In *Garcia-Bengochea*, a different judge of the same court held that under the Act, plaintiffs whose claims involve property confiscated before March 12, 1996, must have acquired ownership of the claim before that date. This requirement, the *Garcia-Bengochea* court held, included acquisition by inheritance, meaning that plaintiffs such as those in *Cueto Iglesias v. Pernod Ricard* must have inherited their claims prior to March 12, 1996. The *Cueto Iglesias* court observed, with some skepticism, that the plaintiffs would soon have to meet their burden of showing exactly when their property interest accrued.

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