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VOL. 1, ISSUE NO. 7

DECEMBER 2000



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President's Message



This 26th year was an extremely active period for our Bar Association. We value tremendously the sacrifices of our founders and the reasons they fought for equality and representation. Furthermore, we gain strength through our obligation to take a larger role involving community issues. In fact, leadership, equality and public service prove more important than ever as we charge towards opportunities and accomplishments. The organizational mandate is to be on the cutting edge of legal issues. We strive to promote access, improve opportunities and the administration of justice for everyone.

The members are our greatest resource. For example, we filed three amicus briefs during the year. The Eleventh Circuit brief was followed by an amicus brief supporting the Cuban Adjustment Act. The Florida Supreme Court brief regarding so-called "merit selection" was a team effort with other organizations. These outstanding briefs were written by excellent lawyers who volunteered their time. These persons worked nights and weekends because critical rights were at stake. Similarly, we received countless telephone calls throughout the year. This feedback by members and friends reinforced our commitment to build bridges, forge pathways and advocate legal positions. Moreover, the Board of Directors is grateful for your sacrifice, efforts and encouragement. They are committed to emphasizing the needs of our membership.

We continue promoting an organizational environment encouraging participation. For example, the newsletter and judicial/court liaison committees performed in an outstanding manner. The judicial poll and JNC initiative were a great success. Similarly, the effort by members working with Citizens for an Open Judiciary was second to none. CABA members and our organizational constituents share a stake in common opportunities and problems. We formed community alliances working together to achieve common goals. The future personal and group potential is enormous. Therefore, I encourage you to step forward and make a commitment to achieve results through CABA because this is your organization.

There were some controversies during this interesting year. Nevertheless, we took the initiative with trust and confidence, despite adversity, because of our beliefs. I also believe the qualities necessary to achieve results are the ability to assess, discuss, understand and move forward with resolve. Furthermore, the Board of Directors is commended for its hard work. The power of individuals working together as a team committed to our cause is limitless. It has been a privilege serving as CABA President. I urge you to increase your commitment to CABA programs as we work together in the future.

A handwritten signature in black ink, which appears to read "Oscar Marrero". The signature is fluid and cursive, with a long horizontal stroke at the end.

Oscar E. Marrero, Esq.

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NON-UNION EMPLOYERS

ARE YOU AWARE OF YOUR EMPLOYEES' "WEINGARTEN RIGHTS"?

By: ENA T. DIAZ, Esq.

I. THE NLRB'S RULING: EPILEPSY FOUNDATION OF NORTHEAST OHIO ET. AL., 331 NLRB No. 92 (2000).

The National Labor Relations Board ("NLRB") issued a significant decision ruling that a non-union employee has the right upon request to have a co-worker present at an investigatory interview that the employee reasonably believes may lead to disciplinary action by the employer. *Epilepsy Foundation of Northeast Ohio et. al.*, 331 NLRB No. 92 (2000). The NLRB's decision in *Epilepsy Foundation* reverses its own earlier precedent and expands the scope of the landmark United States Supreme Court case of *NLRB v. Weingarten*, 420 U.S. 251 (1975). The U.S. Supreme Court in *Weingarten* enunciated the right of a unionized employee to have a union representative present during an investigatory interview when the employee reasonably believes that disciplinary action may result. This right is commonly referred to as an employee's "Weingarten rights."

The NLRB's rationale in extending Weingarten rights to the non-unionized workplace was grounded in the language of Section 7 of the National Labor Relations Act. Section 7 provides that "employees shall have the right...to engage in...concerted activities for the purpose of mutual aid or protection." The NLRB found that the language of Section 7 is equally applicable to the non-unionized workplace and further stated that "Section 7 rights are enjoyed by all employees and in no way dependent on union representation for their implementation." In other words, Section 7 affords both unionized and non-unionized employees the opportunity to act together by making certain that the employer is not imposing punishment unjustly.

II. THE FACTS OF EPILEPSY FOUNDATION

Arnis Borgs and Ashraf Hasan were employed by the Epilepsy Foundation of North East Ohio and they were assigned to a school-to-work transition project supervised by Rick Berger. The two employees wrote a memorandum to their supervisor informing him that they no longer required his supervision on the project. Mr. Berger, their supervisor, and Executive Director, Christine Loehrke, were upset about the memorandum. When Borgs and Hasan learned of Berger and Loehrke's reaction, they drafted another memorandum explaining the previous memorandum and further criticizing Berger in support of their reasons as to why they no longer needed his supervision on the project. After this second memorandum, Loehrke directed Borgs to meet with her and Berger. Borgs asked if Hasan could be present with him at the meeting, but his request was denied. Since Borgs refused to meet with Berger and Loehrke he was sent home for the day. Borgs returned to work on the following day at which time he was notified that his refusal to attend the meeting the previous day was insubordination, and thus, he was terminated.

As discussed above, the employer's refusal to allow Borgs to have a co-worker present at the meeting and his subsequent termination for refusing to attend the meeting alone was in violation of the National Labor Relations Act since Weingarten rights should also apply to non-unionized employees. Thus, the NLRB determined that the employer had committed an unfair labor practice.

III. FOUR KEY POINTS REGARDING NON-UNION EMPLOYEES AND WEINGARTEN RIGHTS

- The rights only apply to investigatory interviews at which the employee reasonably believes may result in disciplinary action. It does not apply to disciplinary meetings in which the employee is to be informed of a disciplinary action that has already been made by the employer.
- The employee must request that a co-worker be present because the employer is under no obligation to advise the employee of this right.
- The employer must allow adequate time for the employee to obtain the presence of the co-worker requested. If the selected co-worker is not available, the employee must be allowed to choose another co-worker to be present. However, the employer cannot be unreasonably delayed in conducting the investigatory meeting to wait for the availability of a particular co-worker.
- The co-worker representative has the right to ask questions and elicit facts during the investigatory interview as long as the co-worker does not obstruct the process. The co-worker, however, may not "bargain" on behalf of the employee.

IV. CONCLUSION

This decision has far reaching implications for the non-unionized workplace. The NLRB in its decision clearly requires that non-unionized employers grant an employee's request for a co-worker's presence at an investigatory interview that the employee has reason to believe may result in disciplinary action.

DEMAHY LABRADOR & DRAKE, P.A.

-Trial Attorneys-

We wish to thank CABA for recognizing the contributions to our community made by the Cuban American Women Lawyers.

We are also pleased to announce that SUZANNE ARBIDE and BART COZAD have become members of the firm.

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Judicial Profile Series



By: FRANK SILVA, Esq.

Approximately six years ago, Mercedes A. Bach ran without opposition for an open seat on the County Court bench. Upon being elected to that position, Judge Bach presided over civil matters wherein the parties appearing before her were often being exposed to our court system for the very first time in their lives. As a testament to the excellent job which Judge Bach had done during her first two years on the bench, she was re-elected in 1998 without opposition. A closer look at Judge Bach's background indicates that she is a truly special judge who cares deeply about our community and about all those who come before her in her courtroom.

Judge Bach was born in Cuba and came to the United States when she was five years old. Her father had been doing quite well as an attorney in Cuba, but he was forced to flee to that country with his family when his partner was arrested by Castro's government for representing individuals in what purported to be eminent domain proceedings. According to Castro's government, such legal representation was seen as 'anti-revolutionary activity.' Judge Bach, along with her parents and two brothers, arrived in Miami in 1961 where she has remained throughout the present day. Her father went to work for the Department of Health and Rehabilitative services, where he worked for thirty years, and managed to put two of his children through law school and one of his sons through medical school.

Among her many accomplishments, Judge Bach's commitment to education was demonstrated early on when she graduated magna cum laude from the University of Miami at the age of nineteen. She later obtained her Juris Doctor degree from the University of Miami School of Law and went into private practice where she represented clients in civil matters for approximately ten years. Judge Bach then became a certified mediator which required that she participate in our adversarial system from a more neutral position. It was a sign of things to come.

She describes herself as someone who is passionate about judicial education. Judge Bach has served as the Civil Coordinator for the Education Committee of the Conference of County Judges and presently serves as Co-Chair of Education for that same committee. She has lectured on subjects ranging from the economic loss rule to domestic violence and was most recently nominated to the position of Associate Dean for the College of Advanced Judicial Studies. In 1997, she was invited by the Head of Psychiatry at La Universidad de Alcala in Madrid, Spain to participate in a forum on domestic violence. The panel of speakers included some very distinguished individuals which included one of the judges from the supreme court of Spain and a member from Spain's National Institute of Health. Judge Bach became part of a joint effort to help raise awareness within Spain's medical community on how to recognize the signs and symptoms of domestic violence in its patients. They helped make some of Spain's health care professionals better able to recognize the signs of domestic violence

and provided guidance on implementing precautions which are designed to protect the victims involved.

Over the past four years, Judge Bach has been assigned to the traffic division of our county court system. As when she presided in the civil division, Judge Bach continues to deal with individuals who are being exposed to our court system for the first time in their lives. This time, however, she also deals with young assistant state attorneys and young assistant public defenders who are benefitting tremendously from having someone such as Judge Bach presiding over their cases. She enjoys trying cases in her courtroom and watching the dynamics of our adversarial system at work.

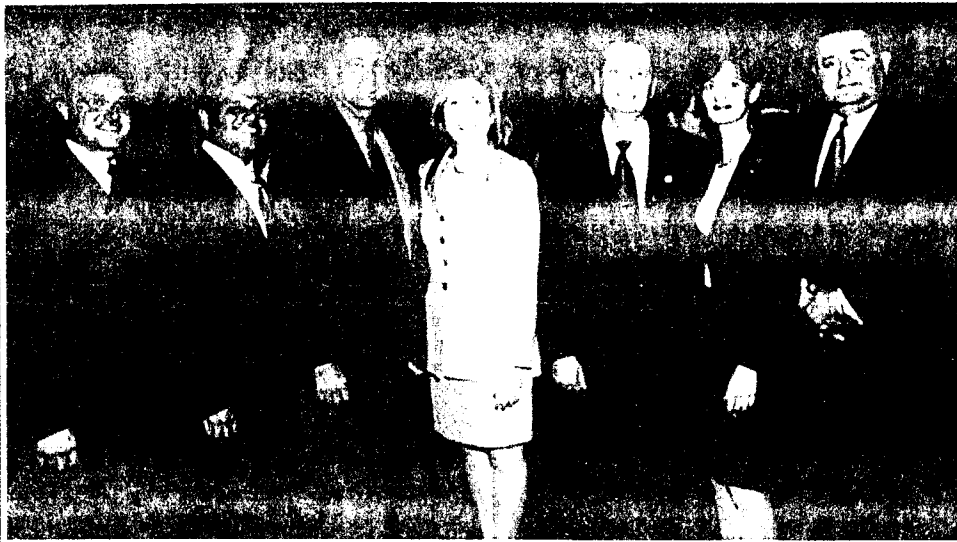
Whether she is right here at home or in a foreign country, Judge Bach is someone who has clearly earned the respect and admiration of her community.

Frank Silva, Esq., is a partner at Womack, Appleby, & Brennan, P.A., specializing in medical malpractice, nursing home and products liability defense.



Judge Mercedes A. Bach

CABA'S



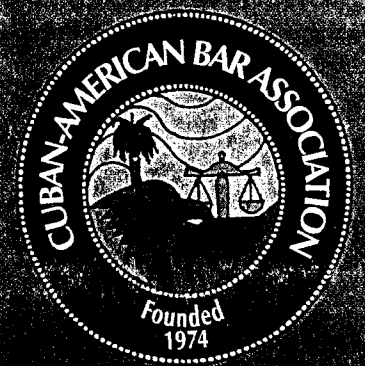
Richard Kuper, Michael Diaz, Representative Gastón Cantens, Ena T. Díaz, Senator Alex Villalobos, Rosa Figarola, Héctor Lombana

On October 18, 2000, CABA hosted a Legislative Reception to honor our legislators and other elected officials for their work and support in keeping various issues that are of concern to CABA in the forefront.

This well-attended cocktail reception was sponsored by *First Union National Bank* at the Miami City Club. CABA's members and distinguished guests exchanged ideas while enjoying a beautiful view of Miami and listening to the lovely music sponsored by the *Downtown Development Authority*. CABA also thanks Mr. Richard Kuper, Director on CABA's Board for organizing this event.



Rosa Figarola, Rep. Manuel Prieguez, Rep. Renier Diaz de la Parilla, Richard Kuper, Oscar Marrero, Ena T. Díaz, Rep. Alex Villalobos, Héctor Lombana, Rep. Gustavo Barreiro, Rep. Gastón Cantens, Sen. Mario Diaz-Balart



Richard Kuper, Oscar Marrero, Héctor Lombana, Rep. Gustavo Barreiro, Rep. Gastón Cantens

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Ena T. Diaz, Sen. Alex Villalobos, Rosa Figarola, Héctor Lombana



Maggie Cabezas, Villacampa, Jose Villalobos, Sen. Alex Villalobos, Mercedes García, Sara Abril (First Union)



Gerardo Simms, Clara Valera, Leonardo Pimentel



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Five Things You Should Know About Revised ARTICLE NINE

By: LUIS SALAZAR, Eso.



The UCC's Article Nine is undergoing its first major revision since 1972. No doubt it will be affecting your practice before you know it - revised Article Nine has already been adopted by over 30 states and been introduced in the Florida legislature. If all goes as planned, the revised Article will simultaneously go into effect in all adopted states on July 1, 2001. Although a complete review of all the changes is beyond the scope of this short article, here are five things you should know about the coming revisions.

One: The Revised Article's Scope is Broader.

Revised Article Nine will have a broader scope than its predecessor. It will apply to security interests in deposit accounts, commercial-tort claims, and healthcare-insurance receivables. While the old law applies to sales of accounts and chattel paper, the new law will also cover sales of promissory notes, license fees, health care receivables, and "payment intangibles." Agricultural liens are now covered too.

It will also now be possible to perfect a security interest on instruments - like promissory notes - by simply filing a financing statement. The old requirement of possession is no longer strictly required.

Two: Security Agreements will be Simpler.

The old requirement that compelled a writing has been replaced with an authentication requirement. In addition, for most transactions, a category description (e.g., equipment) is enough, and you will no longer need to extensively describe collateral of this type.

Three: The Rules for Perfection Have Changed.

Article Nine looks to the collateral location to determine the place of filing. But the revised article will instead look to the debtor's location. And for corporations or other entities created by a state-filing, the debtor's location is the state of its formation, not its principal place of business. So, if a debtor is a Virginia corporation, the proper place to file will be there, even if the collateral to be subject to the security interest is located in Florida. While this change may simplify the process by eliminating the need to file in multiple locations, it will also create some complications. You will likely need to know something about filing procedures in other states.

The debtors are also no longer obligated to sign the financing statement, while the new provisions permit the use of "all assets" as a collateral description. In certain cases, the perfection-by-control rule has been expanded.

Four: First in Time Still Rules, but there are New Exceptions.

The revised Article continues the first in-time rule. But there are also some new, complicated exceptions geared primarily to avoiding a bankruptcy trustee's "strong arm" lien powers under Section 544 of the Bankruptcy Code.

Five: Significant Foreclosure Changes are Included. Revised Article Nine rejects the "absolute bar" rule for deficiencies in non-consumer cases. No longer will a secured creditor's failure to comply with Article-Nine sale rules bar collection of a deficiency. Instead, it will merely limit the deficiency to the amount that would have resulted if the sale had complied. Also, if the secured party itself purchases the collateral and seeks a deficiency, that deficiency will be based on the price that a third-party would have paid at a complying sale. The existing article's strict foreclosure rules have also changed - partial strict foreclosure will be allowed in non-consumer cases. And the "constructive" strict foreclosure that sometimes results from a creditor's unreasonable delay in disclosing a collateral will be eliminated.

Certainly, revised Article Nine will cause quite a bit of confusion and quite a lot of headaches once it is enacted. And, even if it is not immediately enacted in Florida, it will be the law in most other states. Conflicts in various state laws will be inevitable. But these revisions will ultimately simplify obtaining liens and security interests.

Luis Salazar is a senior associate in Greenberg Traurig's Miami office, and a member of the firm's Corporation Reorganization, Bankruptcy & Restructuring Department. He can be reached at salazarl@gtlaw.com. This article is for general information purposes and should not be considered legal advice.

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The Florida Commission on the Status of Women is established in the Office of Attorney General and consists of twenty-two members. This marks the seventh year that the Commission has recognized "women-friendly" employers in the State.

Kozyak Tropin is a commercial litigation and bankruptcy firm in Miami. Corali ("Cori") Lopez-Castro a Director of the Cuban American Bar Association was named partner while on maternity leave. The most recent managing partner, Laurel Isicoff, was named partner while working part-time.

Senior partner, John Kozyak, accepted the award for the firm and pointed out that the three partners who started the firm in 1982 are all married to lawyers and recognize the importance of family to all of the firm's employees. "We pride ourselves on litigating hard and effectively in some of the biggest cases and we recognize our families help us. We have tried hard to be very supportive of women and all employees and they, in turn, have helped us successfully battle with some of the largest, toughest opponents all over the country. We are all dedicated jugglers."

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The Federal Offer of Judgment Rule: A Primer

Federal Rule of Civil Procedure 68, known as the "offer of judgment rule," shifts the burden of post-offer costs to a plaintiff who rejects a settlement offer which proves more favorable than the ultimate judgment. Despite its benefits, Rule 68 remains relatively obscure and understandably so. The rule is fraught with ambiguities and inconsistencies. The purpose of this article is to remove some of the mystery.

Rule 68 provides in pertinent part:

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the order, with costs then accrued... If the judgment finally obtained by the offeree is not more favorable than the offer, **the offeree must pay the costs incurred after the making of the offer.**

Fed.R.Civ.P. 68 (emphasis added).

Simply put, Rule 68 shifts to the plaintiff the cost of litigating a claim which the defendant should not have been forced to litigate. A plaintiff who rejects a Rule 68 offer which exceeds the judgment at trial (1) forfeits the recovery of his own post-offer costs, which usually are awarded as a matter of course under Rule 54(d), and (2) must pay the defendant's post-offer costs from the date of the offer forward. See Tunison v. Continental Airlines Corp., 162 F.3d 1187 (D.C. Cir. 1998).

In Marek v. Chesny, 473 U.S. 1 (1985), the Supreme Court held that the term "costs" under the Rule refers to "all costs properly awardable" under the relevant substantive statute. *Id.* at 8. As a result, plaintiff, who prevailed in a § 1983 action, was foreclosed from recovering his (substantial) post-offer attorneys' fees.¹ *Id.* Accordingly, Marek raised the stakes for a plaintiff who receives a Rule 68 offer where the relevant substantive statute awards attorneys' fees as part of costs.

However, Marek did not address whether the rule requires plaintiff to pay defendant's post-offer costs and fees. Several courts since have held that Rule 68 requires a plaintiff against whom it is invoked successfully to pay post-offer defense costs. See, e.g., Tunison, 162 F.3d at 286; Crossman v. Marcoccio, 806 F.2d 329, 333 (1st Cir. 1986). The plaintiff, however, is not required to pay the defendant's attorneys' fees. See In re Water Valley Finishing, Inc., 139 F.3d 325, 328 (2d Cir.1998); O'Brien v. City of Greers Ferry, 873 F.2d 1115, 1120 (8th Cir.1989); Zackaroff v. Koch Transfer Co., 862 F.2d 1263 (6th Cir.1988); Crossman, 806 F.2d at 334.

An interesting quirk in the operation of the Rule developed as a result of the Supreme Court's decision in Delta Air Lines v. August, 450 U.S. 346 (1980). It held that the plain language of the Rule requires that a judgment be rendered in favor of the plaintiff. In other words, where the defendant prevails, either on summary judgment, directed verdict or at trial, the rule, by its express terms, is inapplicable. *Id.* at 349. Accordingly, the rule may operate to the disadvantage of a plaintiff who rejects a reasonable settlement offer and prevails at trial, but not against a plaintiff who rejects the same offer and loses outright on summary judgment.

Notwithstanding the anomaly created by Delta, Rule 68 still provides defendants with an effective tool for limiting litigation costs. As the Marek Court aptly observed, "Prevailing at trial [says] little about whether the expenditure of counsel's time was reasonable in relation to the success achieved." 473 U.S. at 11. A successful Rule 68 offer not only relieves a losing defendant of liability for plaintiff's post-offer costs, he can also recover his own post-offer costs from the plaintiff. Moreover, if a plaintiff sues under a statute which awards attorneys' fees as part of costs, Rule 68 also precludes the plaintiff from recovering post-offer fees. In this way, the rule removes the incentive for a plaintiff to pursue a claim in the face of a reasonable offer.

¹ The Civil Rights Attorney's Fees Awards Act of 1976, as amended, 42 U.S.C. § 1988(b) (1999), provides that a prevailing party in a § 1983 action may be awarded attorney's fees "as part of the costs." For a list of other statutes which award attorneys' fees as costs, see Marek, 473 U.S. at 44-46, app. (Brennan, J., dissenting).

ALEX O. SOTO, ESQ.

Is an Associate at Clarke, Silvergate,
Williams & Montgomery specializing in
the practice of tort defense litigation.

By: Nicolas J. Gutierrez, Jr., Esq.

"The Economic Impact of U.S. Sanctions with Respect to Cuba"

Investigation No. 332-413, pursuant to Section 332(g) of the Tariff Act of 1930, as requested by the Committee on Ways and Means of the United States House of Representatives

Pre-Hearing Brief of Nicolas J. Gutierrez, Jr., Esq. Secretary and General Counsel to the National Association of Sugar Mill Owners of Cuba

September 19, 2000 - 9:30 a.m.,
Main Hearing Room 101
Secretary, USITC, 500 E Street, S.W.
Washington, D.C. 20436

TESTIMONY OF NICOLAS J. GUTIERREZ, JR., SECRETARY AND GENERAL COUNSEL TO THE NATIONAL ASSOCIATION OF SUGAR MILL OWNERS OF CUBA

On behalf of the National Association of Sugar Mill Owners of Cuba (the "NASMOC"), which, together with the Sugar Producers of Cuba (the "SPC") (who are also testifying at this hearing), represent all of the legitimate owners of Cuba's original 161 sugar mills, I would like to convey their appreciation for the opportunity to address you at this prestigious forum, a Congressionally-requested hearing of the U.S. International Trade Commission (the "USITC"). I am also speaking on behalf of the National Federation of Sugar Workers of Cuba (the "NFSWC") and the National Association of Sugar Cane Growers of Cuba (the "NASCG").

United States Inter

I. INTRODUCTION

The Members of the NASMOC today (just like the Members of the SPC) are overwhelmingly U.S. citizens, and include nearly all of the many U.S. certified claimants owning properties in Cuba's pre-Castro sugar industry. In 1960, all of their properties were illegally and forcibly confiscated, without any compensation whatsoever, by Fidel Castro's revolutionary regime in Cuba. Likewise, the Members of the NASCG, which duly represents Cuba's approximately 65,000 sugar cane farmers before the Revolution (most of whom are now also U.S. citizens), also had their farms similarly confiscated as well. Besides these thousands of owners, the NFSWC represents Cuba's nearly 600,000 sugar workers (both in the factories and the fields), many of whom are U.S. citizens today. Fidel Castro expelled the leadership of the NFSWC from Cuba and disbanded its rank-and-file membership, after his highly touted "worker's paradise" no longer had any room for the rights to unionize, strike, collectively bargain, profit-sharing, employer-funded maternity leave, etc., championed by the NFSWC.

For the record, all of the above-referenced organizations whole-heartedly support the current U.S. economic sanctions against Cuba and vehemently oppose any unilateral lifting of such sanctions by this or any other U.S. administration.

II. STOLEN PROPERTY

It nearly goes without saying that the original cause of the imposition of these sanctions remains completely unresolved. To wit, the massive, illegal, forcible and uncompensated confiscation of all of the properties of the 5,911 U.S. citizens and companies in Cuba, at the commencement of Castro's revolution. Today, there are hundreds of thousands more naturalized U.S. citizens, who also have legitimate claims to their confiscated properties in Cuba. Any unilateral lifting of sanctions by the U.S., without first adequately resolving the critical issue of the restitution (or fair compensation) of these stolen properties to its citizens, is not only morally repugnant to basic American principles, but is also "doomed to die a thousand deaths" legally.

As explained in a recent article in the American Lawyer, (Jan. 2000, p.65, "The Gathering Storm", by Adrián Campo-Flores), any such occurrence would inevitably lead to a series of court-ordered injunctions potentially seizing every plane and ship which enters U.S. jurisdiction bearing any cargoes of agricultural or other products produced on stolen U.S. property in Cuba. Particularly in the sugar industry, those who might take some comfort in the fact that sugar is essentially a fungible commodity should consider the full implications of the "market-share allocation" theory adopted by several U.S. courts in well-publicized, class-action product liability cases. That is, the individual Members of the NASMOC and the SPC would not have to prove that the imported Cuban sugar cargo at issue was produced at his or her respective confiscated mill, but rather, since the owners of all of Cuba's sugar mills would potentially join such a lawsuit, the origin of any specific shipload of sugar would be largely immaterial.

Last March, for instance, a delegation of the National Association of U.S. Sugar Refiners, in a trip to Cuba organized by John Hopkins University's Wayne Smith, toured the "Camilo Cienfuegos" sugar mill (formerly, Hershey) outside Havana with Cuban officials, who pitched it as a potential business opportunity for U.S. sugar producers in a post-embargo scenario, as per the recent Miami Herald article, entitled "U.S. Sugar Industry Officials Tour Cuba" (Sat., Mar.25th, 2000, p. 11a). The Cuban officials, however, conveniently forgot to mention that the mill in question was illegally confiscated and its owner is now a U.S. citizen, Ms. Leonor Lobo de Gonzalez of Vero Beach, Florida. Quite simply, the Castro regime has no right to market this mill (or any of the others) to U.S. refiners, since it does not own this or any other mill.

Obvious reference points for any serious analysis of confiscated property issues are Central/Eastern Europe and Nicaragua. An overriding tenet of the post-communist experience in these areas has been that the rate and extent of economic recovery is directly proportional to the willingness of the new democratic gov-

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ernments to provide restitution or fair compensation to the legitimate owners of properties confiscated by the now vanquished communist and Nazi regimes. Even the economic stand-out in both of these categories, the Czech Republic, has faced innumerable legal obstacles in attracting foreign investment to its Sudeten region, due to still unresolved property claims.

Again, I would suggest to those who might opine that claimants of confiscated properties should merely "forgive and forget", that they should contemplate the precedents being forged in today's Europe (with full U.S. governmental support and backing), particularly with regard to third-party traffickers, in the successful multi-billion dollar group claims versus Swiss bankers, Austrian insurance companies and German industries, for the heinous systematic property confiscations, fencing of stolen goods and slave labor carried out during the darkest days of its Nazi past. This significant point should not be lost on Fidel Castro's current foreign business partners, or, more importantly, on those U.S. businessmen who long to join their ranks.

Therefore, U.S. policymakers cannot simply wish away or ignore the issue of confiscated property in deciding to lift the current sanctions, at least not without knowingly unleashing severe negative repercussions.

III. EFFECTIVENESS OF THE EMBARGO

Critics of current U.S.-Cuba policy are fond of alleging that "after four decades, the embargo still has not worked." Upon closer inspection, the following facts become apparent. From the embargo's imposition in 1962 until the collapse of the former Soviet Union in 1991, the embargo's punitive effects on the Castro regime were considerably cushioned by the annual \$7-8 billion subsidy provided to Mr. Castro by his main foreign backer. Additionally, it was not until the end of 1992 that the Cuban Democracy Act terminated the \$700-800 million yearly trade between the third-country subsidiaries of U.S. companies and the outlaw regime in Havana. Moreover, the principal right-of-action

(Title III) and visa denial (Title IV) provisions of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 have yet to be even minimally enforced. Thus, it is fair to say that the embargo has yet to be fully given a chance to take effect.

Even this half-hearted embargo, with its (at best) haphazard enforcement by the U.S. Treasury Department's Office of Foreign Assets Control and the enormous amounts of humanitarian, informational and pro-democracy assistance permitted (and even, correctly, encouraged), has forced Fidel Castro to "dollarize" his economy, allow somewhat deregulated "farmers markets", permit limited self-employment, as well as court foreign investment and financing.

More to the point, these critics should be demanding evidence of even a single tangible "reform" by Fidel Castro in response to over 40 years of Canadian, and nearly a full decade of European, "constructive engagement". In reality, Mr. Castro's record in response to this foreign generosity has been the murder of U.S. citizens, continued subversion abroad and iron-fisted repression of his own people.

Finally, much has been made over the fact that current U.S. sanctions against Cuba do not enjoy a broad consensus of support among the members of the United Nations' General Assembly, many of whom are despots not overly concerned with the rights of their own people. By comparison, it is hard to conceive of Winston Churchill basing his lonely and heroic decision to stand up to Adolf Hitler's war machine, upon a survey of the world's heads-of-state at that time.

IV. PERILS OF DOING BUSINESS IN CUBA

Naive or uninformed U.S. businessmen and farmers, who are looking to Cuba to consolidate their own commodity world market positions, increase sales figures in their public disclosure documents and obtain eventual U.S. taxpayer subsidies for their Cuban bad debts, should take note of the following harsh realities of doing business with one of the planet's last remaining totalitarian dictators.

Investors in Cuba, in addition to having

no choice but to deal directly through joint ventures with a regime that owes about \$30 billion to the former Soviet Union, \$12 billion to the Paris Club countries and has amassed its own internal \$6 billion operating deficit during the past decade, cannot hire their own Cuban workers or take on their own local business partners. Additionally, Cuba has no independent judiciary or any meaningful protections for foreign (or that of its own nationals, for that matter) investments and property rights, nor even any labor, environmental or antitrust laws, let alone a legalized free press.

Even some of its most sanguine foreign investors, such as Grupo Doms (telecommunications), Grupo Posadas (hotelier) and CEMEX (cement) [Mexican], FirstKey (power generation) Sherritt (mining) and Red Path (sugar) [Canadian], Tate & Lyle (sugar) and EDF Mann (sugar) [British], Amerop (sugar) and Banque Nacional de France (sugar) [French], ING Bank (sugar) [Dutch] and AeroRepública (airline) [Colombian], have become substantially disillusioned after losing considerable amounts of money, infrastructure plans, time and effort in wholly or partially abortive investment ventures in Cuba, as attested to, for example, by last year's Wall Street Journal article, entitled "Canadian Engineers Hit Snag in Havana" (Jun. 28th, 1999, p. A-1) and an El Financiero article entitled "Helms-Burton Fears Force Posadas Hotels to Withdraw from Negotiations" (Sep. 14th, 1999).

V. CONCLUSION

In light of all of the foregoing, the above-mentioned organizations fully support current U.S. sanctions towards Cuba and oppose any effort to unilaterally relax same. We sincerely hope that the clear preponderance of the results of this Investigation No. 332-413 by the USITC, and its corresponding Hearing, pursuant to Section 332(g) of the Tariff Act of 1930, as requested by the Committee on Ways and Means of the United States House of Representatives, supports our unequivocal position.

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