

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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| ODETTE BLANCO DE FERNANDEZ | * | CIVIL ACTION NO.: 2:21-CV-00339 |
| NEÉ BLANCO ROSELL ET AL | * | |
| | * | SECTION B(2) |
| VS. | * | |
| | * | JUDGE IVAN L.R. LEMELLE |
| A.P. MOLLER-MAERSK A/S | * | |
| A/K/A A.P. MOLLER-MAERSK | * | MAGISTRATE JUDGE CURRAULT |
| GROUP ET AL | * | |
| ***** | | |

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

NOW INTO COURT, through undersigned counsel, come defendants – A.P. Moller-Maersk A/S (a/k/a A.P. Moller-Maersk Group), Maersk A/S (a/k/a Maersk Line A/S), Maersk, Inc., and Maersk Agency U.S.A., Inc. – and move this Court to dismiss plaintiffs’ claims pursuant to Federal Rule of Civil Procedure 12(b)(6), on the basis that plaintiffs fail to state a claim under the Helms-Burton Act. The grounds for this Motion are set forth fully in the attached Memorandum in Support.

Respectfully Submitted,

**MURPHY, ROGERS, SLOSS,
GAMBEL & TOMPKINS**

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR
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INTRODUCTION

MAY IT PLEASE THE COURT:

This case arises under Title III of the Cuban Liberty and Democratic Solidarity Act of 1996, 22 U.S.C. § 6021, *et seq.* (“Helms-Burton”). Defendants A.P. Moller-Maersk A/S, Maersk A/S, Maersk, Inc. and Maersk Agency U.S.A., Inc. (collectively, “Maersk”) operate the world’s largest container shipping line. Plaintiff Odette Blanco De Fernandez née Blanco Rosell (“Ms. Fernandez”) and her four siblings (together with Ms. Fernandez, the “Rosell Siblings”) allegedly owned various corporations and other assets in Cuba that were confiscated by the Cuban Government in 1960. One such corporation, Maritima Mariel SA (“Maritima Mariel”), allegedly held a concession right to the Bay of Mariel. Ms. Fernandez and the four estates and 13 descendants of her deceased siblings allege Maersk is liable under Helms-Burton for “trafficking” in property confiscated by the Cuban Government because they operated or directed container ships to the Port of Mariel in Cuba. Plaintiffs’ claims against Maersk fail for multiple reasons.

First, Plaintiffs fail to meet their burden to show that they have standing to bring this action. Article III standing is not established by the mere fact that Helms-Burton gives Plaintiffs a right to sue persons who allegedly traffic in confiscated property. Plaintiffs’ alleged injury is not fairly traceable to Maersk because Maersk does not own, operate, or use any of the confiscated property. The lack of compensation Plaintiffs claim to have suffered is traceable only to the Cuban Government’s retention of any revenue generated on the confiscated property, not to Maersk.

Second, Plaintiffs have not established, as they must, that Maersk trafficked in property that was confiscated by the Cuban Government and to which Plaintiffs own a claim. The allegation that Maersk operated container ships that called at the Port of Mariel, which is somewhere *near* land that the Cuban Government confiscated, is not an allegation of trafficking in the confiscated property itself. Moreover, Plaintiffs’ concession rights to develop the Bay of Mariel were

contingent and non-exclusive, and the Cuban Government did not confiscate the new container terminal but rather built it. Plaintiffs do not own a claim to the container terminal and, therefore, it cannot be property subject to a Helms-Burton claim.

Third, Plaintiffs fail to allege, as they must, *facts* showing that Maersk *knowingly and intentionally* trafficked in confiscated property. Critically, and unlike other Helms-Burton cases, the Foreign Claim Settlement Commission did not certify Plaintiffs' claims to the confiscated property. Lacking a certified claim, Plaintiffs rely on a few publications in Cuba to establish Maersk's requisite knowledge that the Cuban Government confiscated property from the Rosell Siblings. But Plaintiffs do not allege the documents identify any particular property that was confiscated by the Cuban Government or that Maersk reviewed the documents. Plaintiffs' attempt to establish scienter from the demand letter their counsel sent Maersk shortly before filing suit is similarly flawed.

Fourth, Plaintiffs (other than Ms. Fernandez) fail to sufficiently plead that they acquired a claim to the confiscated property as necessary to maintain a claim under Helms-Burton. By the statute's express terms, a plaintiff must "acquire[] ownership" of a claim to the confiscated property "before March 12, 1996." 22 U.S.C. § 6082(a)(4)(B). The 13 descendants of the deceased Rosell Siblings (the "Descendant Plaintiffs") allegedly acquired their respective claims to the confiscated property after the death of the deceased Rosell Siblings, which occurred after 1996. By the plain wording of the Act, the Descendant Plaintiffs cannot maintain a Helms-Burton claim, and for this independent reason, their claims should be dismissed.

FACTUAL BACKGROUND

A. Confiscation of the Rosell Siblings' Property and Assets

The Rosell Siblings allegedly once owned various real properties and intangible assets in Cuba. (Compl. ¶¶ 4, 80–86.) Plaintiffs allege that the Rosell Siblings owned Maritima Mariel, a

Cuban corporation that was granted a 70-year concession to develop docks, warehouses, and port facilities on Mariel Bay by the Cuban Government. (*Id.* ¶¶ 4, 80–82.) The Concession Decree was allegedly reported in the Cuban Official Gazette in 1955. (*Id.* ¶ 81.) Accepting, for purposes of this motion, the translated terms of the alleged Concession Decree quoted in the Complaint, the alleged concession rights to the future development of the Bay of Mariel were not exclusive to the rights of others, including the Cuban Government. (*Id.* (“‘Maritima Mariel, SA’ is hereby granted the concession . . . without prejudice to the rights acquired by third persons or entities under previous concessions still in force . . .”.)

The concession rights were also contingent on several preconditions, none of which Plaintiffs allege was met prior to the alleged confiscation. (Composite Exhibit A).¹ Specifically, Maritima Mariel’s concession rights were, among other preconditions, contingent upon: (1) work on the various construction projects commencing within 18 months of the concession’s publication in the Cuban Official Gazette; (2) the completion of the construction projects within four years of commencing; and (3) on Maritima Mariel not abandoning the provision of services for a period greater than 2 years excluding war or force majeure events. (Composite Exhibit A).

The Rosell Siblings also allegedly owned Compañía Azucarera Mariel S.A. and “several other companies” that are unidentified in the Complaint (*id.* ¶ 84), approximately 11,000 acres of

¹ A true and correct copy of the concession and a certified translation are attached hereto as **Composite Exhibit A**. In ruling on this motion to dismiss the Court may consider these documents because “they are: (1) attached to the motion; (2) referenced in the complaint; and (3) central to the plaintiff[s]’ claims.” *Martin v. Dep’t of Child. & Fam. Servs.*, 500 F.Supp.3d 527 (E.D. La. Nov. 13, 2020) (“In deciding a Rule 12(b)(6) motion to dismiss, a court is generally prohibited from considering information outside the pleadings, but may consider documents outside of the complaint when they are: (1) attached to the motion; (2) referenced in the complaint; and (3) central to the plaintiff’s claims. The Court can also take judicial notice of matters that are of public record, including pleadings that have been filed in a federal or state court.”) (citing *Albright v. Oliver*, 510 U.S. 266, 271 (1994); *Hernandez ex rel. Hernandez v. Texas Dept. of Protective & Regulatory Servs.*, 380 F.3d 872, 879-80 (5th Cir. 2004))

land near Mariel Bay (*id.* ¶ 85), and unidentified “roads, railways, buildings, and utilities” (*id.*). The Complaint defines “all of [the Rosell Siblings’] ‘property and rights, whatever their nature,’ including but *not limited to*” the property identified above, as the “Confiscated Property.” (*Id.* ¶ 4 (emphasis added).)

Plaintiffs allege that in 1960 the Castro regime confiscated these various companies and their properties and assets. (*Id.* ¶¶ 4, 87–88.) In September of 1960, “[t]he story of the confiscation” was reported by a Cuban newspaper, and the Cuban Gazette published that the Cuban Government confiscated “all of the property and rights” of the Rosell Siblings. (*Id.* ¶¶ 88, 91.) Plaintiffs also allege that “stories” appeared on a Cuban television and radio program in 2019 stating that the “Mariel Special Development Zone”—a “special economic zone” created by the Cuban Government and referred to in the Complaint as “ZEDM”—was built on land where the Blanco-Rosell family along with two other families “owned sugar and hemp processing plants.” (*Id.* ¶¶ 92, 95.) Fundamentally, the document purportedly memorializing the confiscation (Resolution No. 436, the “Confiscation Order”) does not indicate that the Cuban Government confiscated any concession rights.²

The Rosell Siblings left Cuba and became U.S. citizens some time before March 12, 1996. (*Id.* ¶ 5.) Ms. Fernandez alleges that she maintains her claim to the Confiscated Property. (*Id.* ¶ 9.) The other Rosell Siblings each died after March 12, 1996. (*Id.* ¶ 10 (Alfredo Blanco Rosell - December 10, 2006), ¶ 11 (Byron Blanco Rosell - February 25, 2001), ¶ 12 (Enrique Blanco Rosell - November 27, 2014), ¶ 13 (Florentino Blanco Rosell - March 18, 2005). Neither the Estate

² A true and correct copy of the Confiscation Order and a certified translation are attached hereto as **Composite Exhibit B**. In ruling on this motion to dismiss the Court may consider these documents because “they are: (1) attached to the motion; (2) referenced in the complaint; and (3) central to the plaintiff[s]’ claims.” *Martin*, 500 F.Supp.3d 527.

Plaintiffs nor the Descendant Plaintiffs acquired claims to the Confiscated Property before March 12, 1996, which is required to state a claim for Helms-Burton relief.

B. Alleged “Trafficking” by Non-Party ZEDM

On an unidentified date, the Cuban Government created the “Zona Especial de Desarrollo Mariel (‘ZEDM’)” a “special economic zone” at Mariel Bay. (*Id.* ¶ 95.) Starting in 2009, the Cuban Government rebuilt the Port of Mariel and constructed a container terminal in the ZEDM. (*Id.* ¶ 98.) Plaintiffs allege that the “container terminal subsumes the 70-year Concession rights.” (*Id.* ¶ 99.) Also, the ZEDM operated a “logistics zone” where the Rosell Siblings once owned land. (*Id.* ¶ 100.) Plaintiffs claim that Maersk “is trafficking” in the Confiscated Property by benefitting from “the trafficking of the ZEDM in Plaintiffs’ Confiscated Property.” (*Id.* ¶ 129.)

C. Alleged “Trafficking” By Maersk

According to the Complaint, on four occasions during 2020, Maersk purportedly operated or directed a container ship from New Orleans, Louisiana to the Port of Mariel in Cuba. (*Id.* ¶¶ 32, 108–110.) Plaintiffs also allege that Maersk operated or directed other container ships from non-U.S. ports to the Port of Mariel. (*Id.* ¶¶ 105-107.) Plaintiffs allege that “[w]hen at the Port of Mariel, the [container ships] call at and/or otherwise use, benefit, and profit from the container terminal in the ZEDM” (*Id.* ¶ 104.) Plaintiffs do not allege that the container terminal was confiscated by the Cuban Government, that Maersk knew that the container terminal was confiscated property, or that Maersk intended to use or benefit from the container terminal. There are no factual allegations about Maersk trafficking in the Confiscated Property, which does not include the container terminal. Indeed, the Complaint does not allege that Maersk trafficked in any of the various roads, railways, buildings, and utilities, the 11,000 acres of land, the 70-year concession, or any other property of the unidentified corporations included in the definition of “Confiscated Property.”

LAW AND ARGUMENT

A. Plaintiffs Lack Article III Standing Because They Have Not Suffered an Injury in Fact.

To plead Article III standing, a plaintiff “must ‘clearly . . . allege facts demonstrating’” (1) an actual, concrete, and imminent “injury in fact” that is (2) “fairly traceable to the challenged conduct of the defendant” and (3) “likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547–48 (2016) (citations omitted). The alleged injury must amount to “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) ‘actual or imminent, not conjectural or hypothetical.’” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (citations omitted). And a plaintiff cannot assert an “injury that results from the independent action of some third party not before the court.” *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976). Here, Plaintiffs have not alleged an invasion of a legally protected interest or any injury fairly traceable to Maersk.

As an initial matter, Article III standing is not established by the mere fact that Helms-Burton gives Plaintiffs a right to sue persons who traffic in confiscated property. *See Spokeo, Inc.*, 136 S. Ct. at 1549 (“Congress’ role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right.”); *see also Glen v. Am. Airlines, Inc.* No. 4:20-CV-482-A, 2020 WL 4464665, at *2–3 (N.D. Tex. Aug. 3, 2020) (dismissing plaintiff’s Helms-Burton claim based on his failure to establish Article III standing). “Congress cannot erase Article III’s standing requirement by statutorily granting the right to sue to a plaintiff who would not otherwise have standing.” *Raines v. Byrd*, 521 U.S. 811, 820 n.3 (1997); *see also Spokeo, Inc.*, 136 S. Ct. at 1547–48; *Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009) (“[T]he requirement of injury in fact is a hard floor of Article III jurisdiction

that cannot be removed by statute.”). Plaintiffs, therefore, bear the burden of establishing that they have Article III standing based on an actual injury in fact that is fairly traceable to Maersk. Plaintiffs fail to meet this burden, which requires dismissal.

Plaintiffs primarily allege that in 1960, the Cuban government seized the Confiscated Property from the Blanco Rosell Siblings without compensation. (Compl. ¶¶ 2–5, 88, 93.) Plaintiffs further allege that the Cuban Government created ZEDM, built a container terminal allegedly incorporating the Confiscated Property, and subsuming their concession rights, and that, as a result, ZEDM traffics in the Confiscated Property. (*Id.* ¶¶ 95–103.) Any injury from the alleged confiscation; creation, management, or control of the ZEDM, or the building of the Port of Mariel or its container terminal, is traceable *only* to the Cuban Government. Plaintiffs have no standing to sue Maersk, or anyone else, for an “injury that results from the independent action of [the Cuban Government which is] not before the court.” *Simon*, 426 U.S. at 41–42.

Plaintiffs do not allege that they own claims to the Port of Mariel or its container terminal, as required by Helms-Burton. Indeed, neither the port nor the terminal is part of the Confiscated Property—even as defined in the Complaint. (Compl. ¶ 4). Plaintiffs also fail to allege, because they cannot, that they had a right to use or benefit from either. This case is thus distinguishable from other Helms-Burton cases where the allegations were sufficient to allege Article III standing. For example, in *Havana Docks*, the plaintiff had a certified claim to “waterfront real property in the Port of Havana, Cuba, identified as the Havana Cruise Port Terminal[,]” which the plaintiff “owned, possessed, managed , and used . . . from 1917 until the Cuban Government confiscated it in 1960.” *Havana Docks Corp. v. MSC Cruises SA Co.*, 484 F. Supp. 3d 1177, 1187 (S.D. Fla. 2020). The complaint alleged that the defendant cruise line “use[d] the [Havana Cruise Port Terminal] by regularly embarking and disembarking their passengers on the [Havana Cruise Port

Terminal]. *Id.* The court held standing existed because plaintiff was not receiving “the benefit of its interest in the [Havana Cruise Port Terminal]” *Id.* at 1992. By contrast, Plaintiffs have not suffered a “real” injury because they do not have a claim, certified or otherwise, to the Port of Mariel, its container terminal, or to any benefit arising from them.

Plaintiffs also allege that Maersk “did not seek nor obtain Plaintiffs’ authorization to traffic in the Confiscated Property” (Compl. ¶ 141.) But this alleged injury is insufficient to establish Article III standing to sue anyone other than the Cuban Government. As the Eleventh Circuit held in *Glen v. Club Mediterranee, S.A.*, the confiscation of property by the Cuban Government extinguished any private ownership interests anyone may have had in the property. *See* 450 F.3d 1251, 1255 (11th Cir. 2006) (rejecting plaintiff’s argument that “the expropriations committed by the Cuban government failed to extinguish the ownership rights of those who owned the properties prior to the takings”); *accord Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 414–15 (1964) (determining that confiscation by Cuba “constituted an effective taking of the sugar, vesting in Cuba [the] property right in it”); *Havana Docks Corp. v. MSC Cruises SA Co.*, No. 19-cv-23588, 2020 WL 59637, at *4 (S.D. Fla. Jan. 6, 2020) (“[T]he Cuban Government’s confiscation extinguished Plaintiff’s property rights.”).

Plaintiffs have no separate “legally protected interest” in ongoing activities on the Confiscated Property. *See Lujan*, 504 U.S. at 560. Because they have no ownership interest in the Confiscated Property, Plaintiffs cannot, for example, sue someone for trespassing on the premises. *See Glen*, 365 F. Supp. 2d at 1270. Plaintiffs “may own a claim for compensation under U.S. law, but they do not own the [Confiscated Property] itself.” *Glen v. Club Mediterranee, S.A.*, 365 F. Supp. 2d 1263, 1270 (S.D. Fla. 2005). Thus, even if the Port of Mariel and its container terminal were part of the Confiscated Property (they are not), Maersk was not required to seek Plaintiffs’

authorization before directing container ships to call at the Port because Plaintiffs hold no legally protected interest in the ongoing activities on the Confiscated Property. *See id.*; *see also Lujan*, 504 U.S. at 560.

Furthermore, even if Plaintiffs could establish a right to receive compensation from Maersk’s alleged trafficking in the Port of Mariel and its container terminal, this injury would still not be fairly traceable to Maersk. Maersk does not own, operate, or use any of the Confiscated Property. And the lack of compensation that Plaintiffs claims to have suffered is traceable only to Cuba’s retention of any revenue generated on the Confiscated Property, not to Maersk. Thus, any alleged injury to Plaintiff resulting from the loss of monetary benefits from ongoing activities on the Confiscated Property—to the extent it exists at all—can only exist as a part of the injury resulting from Cuba’s alleged confiscation, not as an independent injury. *See Bassett Furniture Indus. of N. Carolina, Inc. v. NVF Co.*, 576 F.2d 1084, 1088 (5th Cir. 1978) (“Generally, unless lost profits are capable of definite ascertainment, and are traceable directly to the acts of the defendant, they are not recoverable.”).

As such, even if Plaintiffs had an interest in the ongoing activity at the Port of Mariel—which they do not and, importantly, never did—any plausible injury suffered by Plaintiffs could not be fairly traced to Maersk’s alleged conduct and, therefore, Plaintiffs fail to meet their burden under Article III, which warrants dismissal.

B. Plaintiffs Fail to Plausibly Allege That Maersk Trafficked in the “Confiscated Property.”

To survive a motion to dismiss, a complaint must contain sufficient well-pleaded facts to allow the court to infer that Plaintiffs’ right to relief is plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rule 8 requires that Plaintiffs do more than just plead legal conclusions or recitations of the elements of a cause of action. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The

facts pleaded must suggest liability; allegations that are merely consistent with unlawful conduct are insufficient. *Id.* at 566–69. “Determining whether a complaint states a plausible claim for relief ... [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679. To state a claim under Helms-Burton, Plaintiffs must plead that (1) in the case of property confiscated before March 12, 1996, such as the one at issue here, they acquired ownership of a claim to the Confiscated Property before March 12, 1996; and (2) that Maersk trafficked in the Confiscated Property on or after January 1, 1959. *See* 22 U.S.C. § 6082(a)(1)(A).

Under Helms-Burton, “any person that . . . traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to *such* property.” 22 U.S.C. § 6082(a)(1)(A) (emphasis added). Taking this liability language together with the statutory definition of “confiscated,” courts have articulated this comprehensive statement of liability under Helms-Burton:

any person that . . . traffics in, any property . . . whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest, [] which was confiscated by the Cuban Government . . . through the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property . . . without the property having been returned or adequate and effective compensation provided,[] shall be liable to any United States national who owns the claim to such property for money damages

Havana Docks Corp. v. MSC Cruises SA Co., 455 F. Supp. 3d 1355, 1372 (S.D. Fla. 2020) (internal quotations and citations omitted).³ Courts have further explained that, “‘such property’ in the phrase ‘the claim to such property’” refers to “property which was confiscated by the Cuban

³ *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, No. 19-CV-23590, 2020 WL 1905219, at *11 (S.D. Fla. Apr. 17, 2020) (same), *certificate of appealability denied*, No. 19-CV-23590, 2020 WL 3489372 (S.D. Fla. June 26, 2020); *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, 454 F. Supp. 3d 1259, 1277 (S.D. Fla. 2020), *certificate of appealability denied*, No. 19-CV-23591, 2020 WL 3433147 (S.D. Fla. June 23, 2020) (same).

Government.” *Id.* (quoting Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/such> (last visited Mar. 29, 2020) (defining the adjective “such” as “of the character, quality, or extent previously indicated or implied”)); *see also Glen v. Club Mediterranee S.A.*, 365 F. Supp. 2d 1263, 1269 (S.D. Fla. 2005) (“Title III permits any U.S. national ‘who owns a claim to such [confiscated] property for money damages’ to sue those who traffic in such property.” (alteration in original; emphasis added and citation omitted)), *aff’d*, 450 F.3d 1251 (11th Cir. 2006). Stated otherwise, to state a Helms-Burton claim, Plaintiffs must allege facts that the property defendant allegedly trafficked in was the property confiscated by the Cuban Government and to which Plaintiffs own the claim.⁴

That the “trafficking” activity must involve the confiscated property for which the Plaintiffs own a claim is not only clear from the text of the statute but also furthers the purpose of the Helms-Burton Act. Congress specifically intended to and did limit liability under Helms-Burton to commercial activity involving the confiscated property. *See* H.R. REP. NO. 1645-02, at 1660 (1996), 1996 WL 90487 (“Conference Report”) (Referencing the private right of action under Helms-Burton, the Conference Report states that “[t]he purpose of this civil remedy is, in part, to discourage persons and companies from engaging in commercial transactions involving confiscated property.”)⁵ Consistent with Helms-Burton’s purpose, “actions brought pursuant to

⁴ The Helms-Burton Act refers to the property interest that former owners of confiscated property now have as ownership of a “claim to such property.” *Havana Docks Corp. v. Carnival Corp.*, No. 19-CV-21724, 2020 WL 5517590, at *8 n.6 (S.D. Fla. Sept. 14, 2020) (quoting *Glen*, 450 F.3d at 1255).

⁵ “The report of a conference committee is important to a determination of congressional intent, and ‘[b]ecause the conference report represents the final statement of terms agreed to by both houses, next to the statute itself it is the most persuasive evidence of Congressional intent.’” *In re Timbers of Inwood Forest Assocs., Ltd.*, 793 F.2d 1380, 1399 n.33 (5th Cir. 1986), *on reh’g*, 808 F.2d 363 (5th Cir. 1987) (quoting *Demby v. Schweiker*, 671 F.2d 507, 510 (D.C.Cir.1981) (opinion of MacKinnon, J.)) (emphasis in original) (internal citations omitted). *See also United States v. Bird*, 124 F.3d 667, 678–79 (5th Cir. 1997); *League of United Latin Am.*

[Title III] would be actions brought ‘on a claim to the confiscated property’ against traffickers in the property.” *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, 484 F. Supp. 3d 1215, 1229, n.5 (S.D. Fla. 2020) (quoting *Glen*, 450 F.3d at 1255).⁶

Plaintiffs’ Complaint does not allege that Maersk trafficked in property confiscated by the Cuban Government and to which Plaintiffs own a claim. The Confiscated Property to which Plaintiffs allegedly own a claim includes: (1) Maritima Mariel; (2) the non-exclusive Concession Decree; (3) Central San Ramón and Compañía Azucarera Mariel S.A.; (4) approximately 11,000 acres of land near Mariel Bay; and (5) unidentified roads, railways, buildings, and utilities. (Compl. ¶ 4.) Plaintiffs do not allege facts to support a plausible inference that Maersk trafficked in those properties.

First, allegedly operating ships in transit to the newly-constructed Port of Mariel does not constitute “trafficking” in the Confiscated Property. There are no allegations that the Plaintiffs had claim to the newly-constructed Port of Mariel, which Plaintiffs allege was constructed in 2009, or that the Cuban Government confiscated it. Nor do Plaintiffs allege—because they cannot—that they own a claim to the Port of Mariel. Additionally, any rights granted upon Maritima Mariel by the concession were explicitly contingent on the company satisfying certain preconditions. (Composite Exhibit A). Plaintiffs, however, fail to make any allegations that Maritima Mariel satisfied those certain preconditions and thereby held concession rights at the time of the alleged confiscation. Assuming it did, Plaintiffs do not allege that Maersk should have known of those

Citizens, Council No. 4434 v. Clements, 986 F.2d 728, 741 n.3 (5th Cir.), *on reh'g*, 999 F.2d 831 (5th Cir. 1993) (citing *Thornburg v. Gingles*, 478 U.S. 30, 43–46 (1986)).

⁶ *Havana Docks Corp. v. Carnival Corp.*, 2020 WL 5517590, at *8, n.6 (same); *Havana Docks Corp. v. MSC Cruises SA Co.*, 484 F. Supp. 3d 1177, 1193, n.5 (S.D. Fla. 2020) (same).

concession rights. Thus, the Concession Decree does not make “evident” that the Cuban Government confiscated any concession rights from the Rosell Siblings.

There are no facts that Maersk used, benefited from, or otherwise trafficked in the various companies that were owned by the Rosell Siblings, the concession, the 11,000 acres of land near Mariel Bay, or the unidentified roads, railways, buildings, and utilities. These are the properties Plaintiffs allege the Cuban Government confiscated and to which Plaintiffs allegedly own a claim. Therefore, to state a claim for relief, these are “such propert[ies]” that Plaintiffs must allege Maersk trafficked in. There are no allegations that Maersk “acquire[d] or holds an interest in” any of these properties. *See* 22 U.S.C. § 6023(13)(A)(i). Nor are there allegations that Maersk “engage[d] in commercial activity using or otherwise benefiting from” these properties. (*Id.* § 6023(13)(A)(ii).) Accordingly, the Complaint does not allege any facts to show that Maersk “trafficked” in the Confiscated Property, which it must to state a Helms-Burton claim.

Second, unable to allege trafficking in the Confiscated Property, the Complaint attempts to allege that Maersk trafficked in a “container terminal” constructed decades after the Cuban Government confiscated the property in 1960. (Compl. ¶¶ 99.) Plaintiffs claim that the construction of the container terminal by non-parties “subsumes” Plaintiffs’ concession rights. (*Id.* ¶¶ 98-99.) The newly-constructed container terminal, however, is not alleged to be part of the Confiscated Property or to have been confiscated by the Cuban Government. Nor do Plaintiffs allege that they have a claim to the container terminal. Therefore, the container terminal is not property to which Plaintiffs’ own a claim that could provide a basis for their Helms-Burton claims.

Even if the Cuban Government had confiscated and Plaintiffs held a claim to the container terminal, there are no facts to support a plausible inference that Maersk trafficked in the container terminal or that Plaintiffs would have been entitled to any of the benefits arising from Maersk’s

alleged conduct. The conclusory allegation that the [v]essels call at and/or otherwise use, benefit, and profit from the container terminal in the ZEDM . . .” (*id.* ¶ 104) merely tracks the statutory definition of “trafficking,” 22 U.S.C. § 6091(b)(2)(A)(ii). *See Twombly*, 550 U.S. at 545 (“a formulaic recitation of a cause of action’s elements will not do”); *Iqbal*, 556 U.S. at 678 (Rule 8 requires more than “naked assertion[s] devoid of further factual enhancement.”) (internal quotations omitted).⁷ Moreover, there are no allegations that Maersk *knew or had reason to know* that the container terminal was confiscated property (it was not), or that Maersk intended to use or benefit from the container terminal. (*See infra* § III.D.)

Lastly, the “Confiscated Property” consists of properties as to which the Plaintiffs do not even attempt to allege trafficking. (Compl. ¶ 4.) The Confiscated Property includes various Cuban corporations and their assets, such as unidentified “roads, railways, buildings, and utilities” and “approximately 11,000 acres” of lands near Mariel Bay. (*Id.*; *see also id.* ¶¶ 80–86.) These are separate and individual properties. Absent from the Complaint are any factual allegations that Maersk trafficked in any of these properties or assets. It would lead to absurd results if alleging that a defendant trafficked in one property (*e.g.*, a concession right) made defendant liable for trafficking in all confiscated properties to which a plaintiff purportedly owns a claim. *In re Chapman*, 166 U.S. 661, 667 (1897) (“[N]othing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion.”); *see also Johnson v. United States*, 529 U.S. 694, 707 n.9 (2000). Applying that logic, had Plaintiffs alleged that Maersk trafficked only in one confiscated “road” then Maersk would be liable for the entirety of the “Confiscated Property”

⁷ The balance of the allegations of “trafficking activity” are also entirely conclusory and recite the elements of a Title III cause of action. (Compl. ¶¶ 104–105, 109–10128–32.)

regardless of whether Defendants actually trafficked in anything other than one “road.”⁸ By failing to make a single factual allegation that Maersk trafficked in the Confiscated Property, Plaintiffs have failed to “nudge[] their claims across the line from conceivable to plausible.” *Twombly*, 550 U.S. at 570. Accordingly, Plaintiffs’ Helms-Burton claims should be dismissed because Plaintiffs have failed to plead factual allegations to support the basic elements of a Helms-Burton cause of action.

C. Plaintiffs’ Conclusory Allegations of “Trafficking” by the ZEDM Does Not Serve as a Basis for a Claim Against Maersk.

Plaintiffs attempt to establish Maersk’s Helms-Burton liability through the acts of a supposed non-party trafficker: ZEDM—“a special economic zone”—and Maersk Corporation—the parent company of Maersk. (Compl. ¶ 95.) Plaintiffs’ non-party trafficking theory fails because the Complaint contains no facts showing that Maersk trafficked through the acts of a non-party.

Plaintiffs allege in conclusory fashion that non-party ZEDM “is trafficking” in the Confiscated Property and merely copies the statutory definition of “trafficking” into the pleading. (*Id.* ¶ 102.) The Complaint does not allege that ZEDM engaged in *any* activity relating to Mariel Bay (apart from operating a “logistics zone” (*id.* ¶ 100)), much less any that could constitute trafficking under Helms-Burton.

⁸ In *Havana Docks Corp. v. MSC Cruises SA Co.*, where plaintiff had a *certified claim to confiscated property* “delineat[ing] the various property interests,” this Court held that allegations that defendant trafficked in some of the confiscated property was “sufficient to give the defendant fair notice of what the ... claim is and the grounds upon which it rests.” 484 F. Supp. 3d at 1204 (internal quotation omitted). Here, in contrast, Plaintiffs do not hold a certified claim and the Complaint does not delineate all the specific property interests that constitute the “Confiscated Property.” Worse, as the Confiscated Property is defined such that it could consist of any conceivable piece of property (*see* Compl. ¶ 4 (defining confiscated property as “including but not limited to . . .”)), it falls woefully short of providing Maersk “fair notice.”

Moreover, the Complaint does not allege any facts to establish Maersk’s scienter with respect to any supposed trafficking activity by a third party. The reasons that Plaintiffs fail to allege that Maersk itself “knowingly and intentionally” trafficked (*see infra* § III.D.) apply equally to any alleged trafficking by a non-party. There is an additional missing link as to alleged trafficking by or through acts of a non-party: Plaintiffs must, but do not, allege facts to show that *Maersk knew* that the non-party trafficked in confiscated property and Maersk intended to benefit from that activity. The Complaint, however, contains no allegations concerning what Maersk knew or intended with respect to any non-party activity and particularly with respect trafficking by a non-party in the property confiscated by Cuba. For this reason, Plaintiffs fail to state a claim under Helms-Burton.

D. Plaintiffs Fail to Plausibly Allege That Maersk “Knowingly and Intentionally” Trafficked in the Confiscated Property.

The Helms-Burton Act imposes liability only on a person who knowingly and intentionally “traffics in property which was confiscated by the Cuban Government.” 22 U.S.C. § 6082(a)(1)(A). “Traffics” is defined to require that the person acted “knowingly and intentionally.” 22 U.S.C. § 6023(13)(A).⁹ As Congress explained, “the only companies that will run afoul of [Helms-Burton] are those that are knowingly and intentionally trafficking in the stolen property of U.S. citizens.” *Gonzalez*, 2020 WL 1169125, at *2 (quoting 142 Cong. Rec. H1724-04, at H1737 (Mar. 6, 1996)). Like other elements, “knowledge, intent, and other conditions of a person’s mind” are “subject to the plausibility pleading standard” of *Twombly* and *Iqbal*. *See United States v. Bollinger Shipyards, Inc.*, 775 F.3d 255, 260 (5th Cir. 2014).¹⁰

⁹ The Act defines “knowingly” as “with knowledge or having reason to know.” 22 U.S.C. § 6023(9).

¹⁰ Courts in this district dismiss claims for failure to allege facts establishing the requisite knowledge and/or intent elements. *See, e.g., Alaska Elec. Pension Fund v. Asar*, 768 F. App’x

Fatal to Plaintiffs’ claim here, the Complaint does not contain factual allegations that allow a plausible inference that Maersk “knowingly and intentionally” trafficked in confiscated property. There are no facts supporting the inference that Maersk knew or had reason to know that Plaintiffs’ property had been confiscated; no facts supporting the inference that Maersk knew or had reason to know that it used confiscated property; and no facts supporting the inference that Maersk intended to traffic in confiscated property. *See Glen v. Am. Airlines, Inc.*, 2020 WL 4464665, at *6 (“To commit trafficking under the Act, a person must know that the property was confiscated by the Cuban government and intend that such property be the subject of their commercial behavior.”); *Gonzalez*, 2020 WL 1169125, at *2 (dismissing complaint because allegations do not support inference that “Defendants knew the property was confiscated by the Cuban government . . .”).

A critical distinction here from other Helms-Burton cases is that Plaintiffs *do not own a certified claim to the Confiscated Property*. *See Havana Docks Corp. v. MSC Cruises SA Co.*, 455 F. Supp. 3d at 1368 (“obtaining a *claim certified* by the FCSC allows the victim of such a confiscation to . . . *put other actors on notice* of the victim’s outstanding right to compensation based on the now-extinguished property interest taken.”) (emphasis added).¹¹ A certified claim is not a prerequisite to bringing a Helms-Burton claim; but, having a certified claim supports the scienter requirement because the certification specifically delineates the claimant’s property

175, 189 (5th Cir. 2019) (affirming district court’s dismissal of complaint for failure to sufficiently allege scienter requirements); *Alaska Elec. Pension Fund v. Flotek Indus., Inc.*, 915 F.3d 975, 986 (5th Cir. 2019) (same); *Firefighters Pension & Relief Fund of the City of New Orleans v. Bulmahn*, 147 F. Supp. 3d 493, 520 (E.D. La. 2015) (dismissing claim for plaintiffs’ failure to plead sufficient facts establishing defendants’ knowing or reckless misbehavior).

¹¹ *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, 2020 WL 1905219, at *7 (same); *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, 454 F. Supp. 3d at 1273 (same).

interests. In *Havana Docks*, the plaintiff's certified claim identified all property interests confiscated by the Cuban Government to which the plaintiff held a claim. *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, 454 F. Supp. 3d 1259, 1273 (S.D. Fla. 2020). Because they do not have a certified claim, Plaintiffs resort to arguments that Maersk should have known the property that was confiscated from the Concession Decree, the Confiscation Order, and certain Cuban publications. Plaintiffs' arguments fail for several reasons.

First, even assuming Maersk knew of the Confiscation Order (which Plaintiffs do not allege), it does not identify any confiscated property that is the subject of Plaintiffs' trafficking claims. (*See generally*, Composite Exhibit B.) Rather, the Confiscation Order states that, with certain exceptions, the Cuban Government confiscates the property and assets of the Rosell Siblings and their companies, including Maritima Mariel. *Id.* It does not state that the Cuban Government confiscated any concession rights, and it certainly does not state that the Cuban Government confiscated the Port of Mariel or the container terminal, which had not yet been built at the time of the confiscation.

Second, the Confiscation Order could not have put Maersk on notice that the Cuban Government confiscated any concession rights because, as discussed in *supra* in § II.B., Maritima Mariel's concession rights were *contingent* on the company satisfying certain preconditions. There are no allegations that Maritima Mariel satisfied any preconditions and thereby held concession rights at the time of confiscation.

Third, the concession rights to plan, study, execute, maintain, or exploit a public dock or warehouse in Mariel Bay were *non-exclusive*, as discussed in § II.B. As such, Maersk could not have known that calling at the Port of Mariel amounted to using the concession rights (it plainly

did not). And there certainly are no factual allegations that Maersk *intended* to use or benefit from the concession rights.

Fourth, Plaintiffs' conclusory allegations regarding publications in Cuba do not support a plausible inference that Maersk knew or should have known that the property was confiscated by the Cuban Government in 1960 or that it used or benefited from confiscated property by allegedly operating ships to the Port of Mariel. As an initial matter, Plaintiffs do not allege that the article from 1960 in the Cuban *Revolucion* newspaper and a statement in 2019 on Radio Marti and TV Marti in Cuba even mentions the property that was confiscated by the Cuban Government. (*See* Compl. ¶¶ 78–79 (identifying interest in the “Mariel Special Development Zone” generally).) As such, they could not have provided Maersk (or anyone else) notice that any particular property had been confiscated. The publication in the Cuban Gazette from 1960 allegedly references confiscation of a concession right but nothing more, such as whether it applies to all of Mariel Bay or whether the right is an exclusive one, which it is not. (*Id.* ¶¶ 87–89.)¹² Furthermore, Plaintiffs do not allege that Maersk was aware that the publications existed, much less that Maersk reviewed them.

Finally, Plaintiffs' suggestion that the Court can infer knowledge and intent, from a demand letter Plaintiffs allegedly sent Maersk less than three months before filing suit, is without merit. (Compl. ¶¶ 116–117.) The Complaint does not attach the demand letter or provide any details regarding the letter's contents. Indeed, the entire allegation regarding the demand letter is reduced to just three sentences:

On September 18, 2020, Plaintiffs, through counsel, sent Defendants Maersk and Maersk A/S a letter pursuant to 22 U.S.C. § 6082(a)(3)(D) (“Notice Letter”) notifying them that they were trafficking in confiscated property as defined in Title

¹² Indeed, Plaintiffs allege that two families that are non-parties owned some of the property that was confiscated by the Cuban Government on which the MSDZ was built. (Compl. ¶ 92.)

III, the claims to which are owned by Plaintiffs, without the authorization of Plaintiffs. The Notice Letter was delivered to Maersk and Maersk A/S by FedEx on September 21, 2020. The Notice Letter was delivered to Maersk and Maersk A/S by U.S. Postal Service Registered Mail on October 16, 2020.

(*Id.* at ¶ 116.) Without any allegations regarding the letter’s specific content, it cannot provide a plausible basis to infer that Maersk “knowingly and intentionally” trafficked in the Confiscated Property. Plaintiffs do not allege, for example, that the letter included any documentation reflecting that the Rosell Siblings owned any property in Cuba or that the Cuban Government confiscated any such property. Sending a generic demand letter shortly before filing suit is no substitute for satisfying Helms-Burton’s scienter requirement. For this reason, Plaintiffs fail to state a claim under Helms-Burton.

E. The Descendant Plaintiffs Do Not Have an Actionable Ownership Interest.

The plain language of Helms-Burton requires that to bring a claim under Title III, the plaintiff must have acquired ownership of a claim to the confiscated property before March 12, 1996. Helms-Burton states: “In the case of property confiscated before March 12, 1996, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before March 12, 1996.” 22 U.S.C. § 6082(a)(4)(B). Applying this clear threshold requirement, Helms-Burton claims brought by individuals who did not allege that they inherited or otherwise acquired their claims to confiscated property before March 12, 1996 are dismissed. *See, e.g., Gonzalez v. Amazon.com, Inc.*, No. 19-23988-CIV, 2020 WL 2323032, at *2 (S.D. Fla. May 11, 2020) (“Gonzalez does not allege that he inherited the property before 1996 (and instead alleges that he inherited it sometime after November 2016), and therefore he fails to state a claim”), *aff’d*, 835 F. App’x 1011 (11th Cir. 2021); *Garcia-Bengochea v. Carnival Corp.*, No. 1:19-CV-21725-JLK, 2020 WL 4590825, at *4

(S.D. Fla. July 9, 2020) (same).¹³ In affirming dismissal of a Helms-Burton claim on these grounds, the Eleventh Circuit held that the “language that Congress used in this provision is clear and unambiguous” and “because the statute’s text is plain, we have no power to waive or extend [the March 12, 1996] deadline.” *Gonzalez*, 835 F. App’x at 1012 (unpublished).

The claims of the 13 Descendant Plaintiffs were acquired *after* March 12, 1996, if at all. For each individual Descendant Plaintiff, the Complaint repeats the identical allegation that he or she “inherited” a portion of a claim “to the extent” it “does not remain within [an] estate.” (*Id.* ¶¶14–26.) Accordingly, if any of these Plaintiffs own a claim to the Confiscated Property, it was acquired sometime after the death of a Rosell Sibling, which would have been long after that operative date. (*Id.* ¶¶ 10, 14–16 (Emma Ruth Blanco, Liana Maria Blanco, and Susannah Valentina Blanco inherited any claims after December 10, 2006), 11, 17–20 (Hebe Blanco Miyares, Lydia Blanco Bonafonte, Jacqueline M. Delgado, and Byron Diaz Blanco, Jr. inherited any claims after February 25, 2001), 12–13, 22 (Sergio Blanco inherited any claim after November 27, 2014 or March 18, 2005), 13, 21, 23–26 (Magdalena Blanco Montoto, Florentino Blanco de la Torre, Joseph E. Bushman, Carlos Blanco de la Torre, and Guillermo Blanco de la Torre inherited any claims after March 18, 2005).) As noted by the Eleventh Circuit in *Gonzalez v. Amazon.com, Inc.*:

The language that Congress used in this provision is clear and unambiguous. A U.S. national whose property was confiscated before March 12, 1996, cannot recover damages for another person's unlawful trafficking of that property unless ‘such national’—i.e., the specific person bringing suit—acquired the claim to the property before March 12, 1996.

¹³ As explained by Judge Scola, “Congress did not intend for those who acquired an interest in confiscated property after 1996 to bring Helms-Burton Act claims if their property was confiscated before March 12, 1996.” *Gonzalez*, 2020 WL 2323032, at *2 (citing Conference Report at H1660, 1996 WL 90487).

835 F. App'x 1011, 1012 (11th Cir. 2021) (concluding that plaintiff could not recover under the Helms-Burton Act because he failed to allege that he acquired ownership of a claim to confiscated property by March 12, 1996).

In addition, the Descendant Plaintiffs fail to adequately allege facts to show that or how they acquired any claim to the Confiscated Property. The only allegation regarding their ownership interest in the Confiscated Property is the limited conclusory assertion that “[t]o the extent that [the initial interest holder]’s claim does not remain with [his or her] Estate, [Plaintiff] “inherited and owns a portion of that claim.” (*Id.* ¶¶ 20–26.) As such, there are no allegations that a property interest was devised or otherwise conveyed to any Descendant Plaintiff. But Descendant Plaintiffs must allege facts, rather than legal conclusions, sufficient to state a claim to relief that is plausible on its face under *Twombly* and *Iqbal*. See *Matter of Connect Transp., L.L.C.*, 825 F. App'x 150, 153 (5th Cir. 2020) (“‘simply pleading the legal status’ of ownership ‘does not alone suffice.’ The complaint must put forward ‘more than labels and conclusions’ to survive a motion to dismiss. It must contain ‘well-pleaded facts’ that make the allegation of ownership plausible.”) (citing *Smit v. SXSX Holdings, Inc.*, 903 F.3d 522, 528 (5th Cir. 2018)). The Descendant Plaintiffs fail to do so. Because there are no alleged facts as to how these plaintiffs came to obtain their claims to the Confiscated Property, they fail to plead facts to state a claim under Helms-Burton.

CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' Complaint for failure to state a claim upon which relief can be granted.

DATED: July 6, 2021

Respectfully Submitted,

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U.S.A., Inc.***

4847-4687-2561, v. 1

EXHIBIT A

TRANSLATION

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PUBLIC WORKS

Decree No. 2367

Whereas: Having seen the file processed by the Nacional Financing Agency of Cuba with regard to the applications made and projects submitted by “Marítima Mariel, S.A.” for the financing of and authorization for the construction of different works such as walls, docks, warehouses, dredging, fillings-in, and others in low lands and mangroves of its property, and in the maritime-terrestrial zone of the littoral adjacent to such land plot of the ownership of “Marítima Mariel, S.A.” in the north coast of the province of Pinar del Rio, Bay of Mariel, Municipality of Mariel.

Whereas: Per articles number 264 y 271 of the current Constitution of the Republic, it is incumbent on the State the duty of propounding to the increase of the Nation’s commerce and industrial development, to thus obtain the better performance of its economic possibilities above all in those cases that represent new sources of jobs through which the primordial goal of attaining the Nation’s wellbeing is made true.

Whereas: In the last years, commerce has increased notably and with it the movement of commodities, the importation as well as exportation of them, without the parallel upsurge in necessary conveniences for the acquisition of larger advantages and the lowering of the prices of products through easier and safer handling.

Whereas: It is of public notice the growth had in the Port of Mariel during the last decade for, without large port facilities or guarantees for the workers and for the State, it has become the second port of importance in the Republic based on imports and exports movement, not only with regard to the number, size, and quality of the commodity moved therein but also in relation with the collection of custom revenue that has such an important role in the public economy.

Whereas: After the studies conducted by the National Financing Agency of Cuba by virtue of case initiated by the entity “Marítima Mariel, S.A.” on the present and future conveniences and possibilities of said port of Mariel, it is concluded that, to rapidly carry forward the construction of docks and warehouses at the Port of Mariel that meet the necessary conditions to attend to the movement of that currently important port, it is convenient that the State grant to that entity all the facilities to build said docks and warehouses that shall also give facilities and guarantees to importers, exporters, workers, the State and the public at large.

Whereas: All that results from the file above-referred, in which the application of the aforesaid “Marítima Mariel, S.A.” addressed to the Executive Branch is lodged, asking for a concession for the construction of said docks and warehouses, dredging and improvement of the maritime-terrestrial zone that shall need a partial filling-in; application file which has been processed according to the provisions of the Law-Decree No. 1998 of January 27,

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1955, where the approval granted by the Court of Accounts by its accord No.1868 of June 14 of the extant year is lodged.

Whereas: Said “Marítima Mariel, S.A.,” which is an entity entirely of national capital, organized and formed under the Laws of the Republic, has among its social objects principally the construction of docks and maritime terminals for the loading and unloading of cargo, the movement of passengers, and of the public warehouses among others of similar nature; which social objects as well as the fees that it feels it should perceive in compensation for the services that it shall render have been planned and revised by Cuban Engineers and Public Accountants; and it has been verified that the business is affordable including that it has potential to fulfill the obligations that it shall enter into with the Nacional Financing Agency of Cuba, the official organ instituted to cooperate with and make possible the economic policy practice by Government of promoting the spirit of enterprise through private capitals to sponsor new centers of commercial

and industrial activity that create new and permanent sources of jobs and employment, granting those privates who cooperate with the development and growth of the national wealth all the guarantees and facilities necessary for the execution of their projects, and duly granting in cases like this the same benefits already granted in similar cases to entities established with objectives that are the same or alike.

Whereas: “Marítima Mariel, S.A.” has requested through the National Financing Agency of Cuba to be authorized to convert to public use the dock and warehouse located on land of its property which were legalized and authorized for private use by Presidential Decree No.1655, of June 26, 1934, acquired by the deed of incorporation, converting said warehouses into public according to the provisions of the current Commercial Code.

Whereas: Exercising the powers on me vested by the laws, upon proposal of the National Financing Agency of Cuba, the Minister of Public Works being heard, and with the assistance of the Council of Ministers, I

RESOLVE:

First: A concession is granted to “Maritima Mariel, S. A.” to plan, study, execute, maintain, and exploit public docks and warehouses in the bay of Mariel, Province of Pinar del Rio, and for the construction of new buildings and works, without detriment to the vested rights of third parties and entities by virtue of previous and current concessions for the same goals as those expressed in the paragraph herein.

By ministry of this Decree, the study, planning, execution, operation, and exploitation of the following works are declared of public interest, of social interest, and of public convenience:

- A) The construction of a Maritime Terminal with new docks, containment walls, public warehouses, tanks, silos, ferry mooring piers, and other construction works in the Bay of Mariel, Province of Pinar del Rio, contained in the memory and maps filed by that entity with the National Financing Agency of Cuba and to the stated in the last paragraph of Part Third.

B) The draining, dredging, and filling-in of part of said Bay of Mariel, in the maritime and terrestrial-maritime zone, in the portions and parts indicated in the memory and maps referred to, needed for the construction, unfolding, operation, and exploitation of said project for a Maritime Terminal.

C) The realization of works, constructions and installations of machinery, devices, instruments, buildings, and whatever equipment be deemed necessary or convenient for the achievement of the aforesaid goals.

Second: The declaration of public utility contained in Part First entails the following rights in favor of the concessionary of the works:

a) The temporary or permanent occupation and use of the empty lots and waters of public domain or of the State, the Province, or the Municipality's ownership insofar as those be indispensably necessary for the execution and exploitation of the jobs and works of reference.

b) The power of condemnation by expropriation according to the Decree No. 595, of May 22, 1907 or to any subsequent regulation regarding the ownership, possession and use of any private real estate and ownership right whatever which shall be occupied for the works, uses and services dealt with in Part First; procedure that it may carry out also in relation to whatever right granted by the State, the Province, or the Municipality in relation with the maritime-terrestrial zone or the empty lots of public domain or of the ownership of said entities of the Nation.

c) The right of imposing any type of easement on realty of private property for the construction of any type of ways of communications, access, movement and parking of vehicles, for the establishment of air or underground electric lines, for the laying of pipes and conductors of water, gas, ventilation and drainage, and in general for whatever turn out to be inherent to or necessary for the goals of carrying out, maintaining and exploiting the works dealt with said paragraph First, with the faculty of resorting also in these cases to expropriation as in the previous subsection.

d) The right of evicting any leaseholder, sharecropper, tenants-at-sufferance, and otherwise tenants by any concept from any realty or installation that shall be temporarily or permanently occupied for the works referred to in the aforesaid Part

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First, paying to those so evicted a compensation equivalent to the sum of one year of the rent or lease that they pay in each case.

e) The right to exercise the aforesaid related acts by means of the enforcement of the provisions contained in the Law-Decrees 1015, of August 7, 1953, and 1998 of January 27, 1955, considering that the National Financing Agency of Cuba shall provide the financing for said works.

Third: This concession shall be granted for a term of 70 years counted from the termination of the works, which, on expiration of said term shall revert to the State. The concession shall be totally forfeited if the execution of any of the works referred to in letters A), B), and C) of Part First do not start within the term of 18 months counted from the publication of this Decree in the OFFICIAL GAZETTE, and if they were not completed within the four years following the beginning of the same, or if the provisions of the services were abandoned for a period longer than two years, except in cases of war or *force majeure*. Likewise the concession shall be partially forfeited regarding any of the objectives indicated in letters A), B) and C) of Part First, if within a term of three years counted from the day this Decree come into force, the works necessary for any of said objectives were not initiated and if the same were not completed in four years following their commencement, or if the provision of the services were abandoned for a period larger than two years, except in cases of war or *force majeure*.

Within the term of five years counted from the day when this Decree come into force, the entity "Marítima Mariel, S.A." shall indicate what concessions it intends to exploit; and all other works that it shall not intend to exploit shall be deemed forfeited if the definitive project shall not include all the improvements and services listed in Part First of this Decree. In so declaring before the President of the Republic, "Marítima Mariel, S.A.," through the National Financing Agency of Cuba shall present the blueprint of the works that it intend to carry out, with details relative to the cost of the same, the form of execution of the projects both in the constructive and financial aspects, and the additional data that may turn out to be necessary for the due enforcement of the rules on forfeiture contained in the Part herein.

Within the term of ten years counted from the date when this Decree come into force, the entity “Marítima Mariel, S.A.” could, through the National Financing Agency of Cuba that shall likewise give advice regarding its convenience, execution and financing, request and obtain a public utility concession according to the goals of this Decree, for the study, planning, execution, operation, and exploitation of any of the works mentioned therein, be those included or not in the Memory and Maps submitted to the National Financing Agency of Cuba, without detriment to its right to expand, adapt, or modify the buildings and works executed according to the needs of those goals and to the improvement of the public services as it may be required by or may be convenient to foresee the changes that might come up in the technology of the industry or in commerce.

The public concession herein shall likewise be forfeited if, within the term of one year counted from the publication of the Decree herein, the financing operation for the construction and operation of said concession in principle agreed to by the National Financing Agency of Cuba and “Marítima Mariel, S. A.” shall not be formalized through the execution of the pertinent deed.

Fourth: “Marítima Mariel, S.A.” shall provide the services of its business to the State, the Province, and the Municipality with a thirty percent (30%) bonification of discount in its fees.

Fifth: The highest fees that “Marítima Mariel, S.A.” may collect shall be those current at the moment of the promulgation of the Decree herein at the Port of Havana; and it is authorized to alter said fees at any time complying with the dispositions that might be in force on the subject, upon the National Financing Agency of Cuba’s prior approval, while debt balances owed it were not satisfied.

Sixth: “Marítima Mariel, S.A.” is authorized to record this concession in the Property Record’s Office, to issue mortgage bonds secured by its properties, including the concessions to which this Decree refers, to record them, and to freely alienate those properties

Seventh: Should the President of the Republic consider it necessary for the service of the Port to mark the works with a light, the concessionaries shall be obligated to put such light in the site with the appearance that might be designated.

Eighth: In case that the Treasury consider it necessary, the concessionaries shall be obligated to build at their expense, at the location that they be instructed to, a booth for the lodging of the Custom and Immigration Inspectors immediate to the works.

Ninth: The construction of the docks and the realization of all the works referred to in Part First, shall be subject to, supervised, and approved by the National Financing Agency of Cuba for purposes of financing.

Tenth: It is hereby granted and “Marítima Mariel, S.A.” is hereby authorized to the conversion to the public service of the dock and warehouses with its modifications, expansions, and improvements the private use of which was granted by Presidential Decree number 1655 of June 26, 1934; being [the corporation] able to freely encumber and alienate all said properties according to the provisions of Part Sixth of the Decree herein.

Eleventh: This concession shall be considered also included among those of articles 44 and 51 of the current Law of Ports, and it is so granted

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subject to the provisions of articles 50 and 54 of said Law.

Twelfth: “Maritima Mariel, S. A.” is obligated to place a bond as guarantee for the performance of these provisions, equivalent to one percent (1%) of the budget of the works that it shall build forthwith; said guarantee shall be left without effect when it proves that the value of the works executed cover a third of the budget.

Thirteenth: The declaration of public utility contained in the Decree herein is issued because the works are necessary for the improvement of hygiene in the zone, and also because they tend to promote national wealth.

Fourteenth: The forfeitures proposed in the Decree herein, in what regards to the non-execution of the works within the term fixed, shall only affect the non-executed parts of the project according to the partial receipts practiced and referred.

Fifteenth: Given the nature of the works and the discontinuity that it is produced in the littoral with the walls, docks, and constructions and so forth under construction project, the surveillance zone contemplated in articles 7 and 10 of the Law of Ports shall be moved in and be relocated to the back end of the property of what shall become the concession, understanding that the front of the same properties is the one that faces the sea.

Sixteenth: The concession and the conversion to public use granted by the Decree herein are issued in accordance with the faculties given to the Executive by Law-Decree No. 1998 of January 27, 1955.

Seventeenth: The Minister of Public Works and the National Financing Agency of Cuba are charge with the enforcement this Decree in the parts concerning each one.

Eighteenth: This concession is granted without prejudice to the ownership right of third parties, and in the understanding that the corporation is obligated to comply with all applicable provisions contained in Law-Decrees numbers 1015, of August 7, 1953, and 1998 of January 27, 1954, and with those of the Decree herein.

Nineteenth: All Decrees, orders, or administrative dispositions opposed to the provisions of the Decree herein are deemed abrogated. The Decree shall become effective on the day of its publication in the OFFICIAL GAZETTE of the Republic.

Issue at the Palace of the Presidency, in Havana, on the third day of the month of August of 1955.

Fulgencio Batista, President

Jorge García Montes, Prime Minister

Nicolás R. Arroyo, Minister of Public Works

TRANSCRIPTION

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OBRAS PUBLICAS

Decreto No. 2367

Por Cuanto: Visto el expediente instruido en Financiera Nacional de Cuba, con motivo de solicitudes y proyectos presentados por "Marítima Mariel, S.A.", de financiamiento y autorización para construir diversas obras de muros, muelles, almacenes, dragados, relleno y otras en terrenos bajos y manglares de su propiedad y en la zona marítimo terrestre del litoral colindante con dicha parcela de terreno propiedad de "Marítima Mariel, S.A." en la costa norte de la provincia de Pinar del Rio, Bahía de Mariel, Término Municipal del Mariel.

Por Cuanto: Por los artículos números 264 y 271 de la vigente Constitución de la República, se impone al Estado el deber de propender a incrementar el desarrollo del comercio y la industria de la Nación, para así obtener el mejor rendimiento de sus posibilidades económicas, sobre todo, en aquellos casos que representen nuevas fuentes de trabajo, con lo cual se realiza el fin primordial de obtener el bienestar de la Nación.

Por Cuanto: En los últimos años se ha incrementado de manera notable el comercio y con ello el movimiento de mercancías, tanto en la importación como en la exportación, sin que a ese auge marchen aparejadas las facilidades necesarias para obtener mayores ventajas y abaratamiento de los productos mediante su más fácil y segura manipulación.

Por Cuanto: Es notorio el incremento habido en el Puerto del Mariel en la última década que, sin grandes facilidades portuarias y de garantías para los trabajadores y el Estado, ha llegado a ser el segundo puerto de importancia de la República en el movimiento de importación y exportación, no solo en cuanto al número, tamaño y calidad de las mercancías en él movidas, sino también en relación con las recaudaciones aduanales que tan importante papel juegan en la economía pública.

Por Cuanto: Después de estudios llevados a cabo por la Financiera Nacional de Cuba, a virtud de expediente iniciado por la entidad "Marítima Mariel, S.A." sobre las conveniencias y posibilidades presentes y futuras de dicho puerto del Mariel, se llega a la conclusión de que es conveniente, a fin de llevar rápidamente adelante la construcción de muelles y almacenes en el Puerto del Mariel que reúnan las condiciones necesarias para atender al movimiento de ese actualmente importante puerto, que por el Estado se concedan a todas las facilidades a esta entidad para construir dichos muelles y almacenes, que darán, además, facilidades y garantías a importadores, exportadores, trabajadores, al estado y al público en general.

Por Cuanto: Todo ello resulta del expediente anteriormente aludido, en el cual obra solicitud de la referida "Marítima Mariel, S.A.", dirigida al Poder Ejecutivo, pidiendo una concesión para la construcción de dichos muelles y almacenes, dragado y aprovechamiento de la zona marítimo-

terrestre la cual será preciso rellenar en parte; expediente este que ha sido tramitado conforme a las disposiciones de la Ley-Decreto No. 1998 de 27 de enero

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de 1955, en la cual consta la aprobación dada por el Tribunal de Cuentas, por su acuerdo No.1868 de junio 14 del año en curso.

Por Cuanto: Dicha “Marítima Mariel, S.A.” que es una entidad organizada y constituida al amparo de las Leyes de la República , enteramente con capital nacional, tiene entre sus objetos sociales principalmente, la construcción de muelles y terminales marítimas para la carga y descarga de mercancías, movimiento de pasajeros y de almacenes públicos; entre otros de índole similar, los cuales objetivos han sido planificados y revisados por Ingenieros y Contadores Públicos cubanos, así como las tarifas que estima debe percibir en compensación de los servicios que prestara, habiéndose comprobando la costeabilidad de ese negocio, incluso su potencialidad para cumplir con compromisos que se ha de contraer con la Financiera Nacional de Cuba, órgano oficial este instituido para cooperar y hacer posible la política económica practicada por el Gobierno de propiciar el espíritu de empresa mediante las inversiones de capitales privados en el fomento de nuevos centros de actividad comercial e industrial que proporcionen nuevas y permanentes fuentes de trabajo y empleo, otorgando a particulares que cooperen al desarrollo y bienestar de la riqueza nacional, todas las garantías y facilidades necesarias para la ejecución de sus planes, debiendo otorgarse en casos como el presente los mismos beneficios concedidos ya en casos similares a entidades establecidas con los mismos o parecidos objetivos.

Por Cuanto: “Marítima Mariel, S.A.” ha solicitado por conducto de la Financiera Nacional de Cuba que se le autorice para convertir en uso público el muelle y almacenes, sitios estos en terrenos de su propiedad que para su uso privado fueron legalizados y autorizados por el Decreto Presidencial No. 1655, de 26 de junio de 1934, que con tal objeto hubo de adquirir por la escritura de su constitución, convirtiendo en públicos dichos almacenes conforme a las disposiciones del Código de Comercio vigente.

Por Cuanto: En uso de las facultades que me están conferidas por las leyes, a propuesta de Financiera Nacional de Cuba, oído el Ministro de Obras Públicas y asistido del Consejo de Ministros,

RESUELVO:

Primero: Se otorga a la “Maritima Mariel, S. A.” concesión para planear, estudiar, ejecutar, mantener y explotar muelles y almacenes públicos en la bahía del Mariel, Provincia de Pinar del Rio, y la construcción de nuevas edificaciones y obras, sin perjuicio de los derechos adquiridos

por terceras personas y entidades en virtud de anteriores concesiones vigentes para los fines que en el presente párrafo se expresan.

Se declara de utilidad pública, de interés social y de conveniencia pública por ministerio de este Decreto, el estudio, la planificación, la ejecución, la operación y la explotación de las siguientes obras:

A) La edificación de una Terminal Marítima con nuevos muelles, muros de contención, almacenes públicos, tanques, silos, atraque de ferries y demás obras de construcción, en la Bahía del Mariel, Provincia de Pinar del Rio, contenidas en la memoria y planos presentados por esa entidad a la Financiera Nacional de Cuba o a lo expresado en el último párrafo del Apartado Tercero.

B) La desecaciones, dragado y relleno de parte de la dicha Bahía del Mariel, en la zona marítima y marítimo-terrestre en las porciones y partes que constante de la referida memoria y planos, necesarios para la construcción, desenvolvimiento, operación y explotación del mentado proyecto de una Terminal Marítima.

C) La realización de obras, construcciones e instalaciones de maquinarias, aparatos, instrumentos, edificios y cuantos equipos se estimen necesarios o convenientes para la consecución de los anteriores fines.

Segundo: La declaración de utilidad pública contenida en el apartado primero, lleva aparejados a favor del concesionario de las obras, los derechos siguientes:

a) La ocupación y utilización, temporales o permanentes, de los terrenos y aguas de dominio público o de propiedad de Estado, la Provincia o el Municipio, en cuanto resulten indispensables para la ejecución y explotación de las obras y trabajos de referencia.

b) El derecho de expropiación forzosa, de acuerdo con el Decreto No. 595 de 22 de mayo de 1907, o cualquiera otra disposición posterior respecto del dominio, posesión o uso de cualesquiera inmuebles y derechos de propiedad particular que deban ser ocupados para los trabajos, usos y servicios de que trata el Apartado Primero; procedimiento que podrá utilizar también en relación con cualesquiera derechos concedidos por el Estado, la Provincia o el Municipio en relación con la zona marítimo-terrestre, o terrenos de dominio público o de propiedad de dichas entidades de la Nación.

c) El derecho a imponer sobre bienes de propiedad particular cualquiera clase de servidumbre para la construcción de cualquier clase de vía de comunicaciones, acceso, movimiento y estacionamiento de vehículos, establecimiento de líneas eléctricas, aéreas o soterradas, instalación de tuberías y conductos para agua, gas, ventilación o drenaje, y, en general para cuanto resulta inherente o se estime necesario para los fines de realizar, mantener y explotar las obras de que trata dicho párrafo Primero, con la facultad de acudir también en estos casos a la expropiación forzosa, como se prevé en el inciso anterior.

d) El derecho a desalojar a cualesquiera arrendatarios, apareceros, precaristas u ocupantes por cualquier otro concepto, de cualesquiera inmuebles o instalaciones que deban ser ocupados temporal o permanentemente para las obras a que se refiere el repetido apartado

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primero, con pago a los así desalojados de una indemnización equivalente al importe de un año de renta o alquiler que pague en su caso.

e) El derecho a realizar los anteriormente relacionados actos mediante la aplicación de las disposiciones contenidas en las Leyes-Decretos 1015 de 7 de agosto de 1953 y 1998 de 27 de enero de 1955, por cuanto Financiera Nacional de Cuba proveerá el financiamiento de dichas obras.

Tercero: Esta concesión se otorgará por término de 70 años, contados desde la terminación de las obras, las cuales, al vencimiento de dicho término, serán revertidas al Estado. La concesión caducará totalmente si no se comenzara la ejecución de ninguna de las obras señaladas en las letras A), B) y C) del apartado Primero, dentro del término de 18 meses a contar desde la publicación en la GACETA OFICIAL de este Decreto y no quedaren terminadas en los cuatro años posteriores al inicio de la misma o se abandonara la prestación de los servicios por un periodo mayor de dos años, excepto en los casos de guerra o fuerza mayor. La concesión caducará, asimismo, de modo parcial, en cuanto a cualesquiera de los objetivos señalados en las letras A), B) y C) del apartado Primero, si dentro del término de tres años a contar de la vigencia de este Decreto, no se iniciasen las obras necesarias para cualesquiera de dichos objetivos y si las mismas no quedan terminadas en los cuatro años posteriores a su inicio o se abandonara la prestación de los servicios por un periodo mayor de dos años, excepto en los casos de guerra o fuerza mayor.

Dentro del término de cinco años a contar de la vigencia de este Decreto, la entidad “Marítima Mariel, S.A.” precisará las concesiones que intenta explotar y se entenderán caducadas las obras que no intente explotar si el proyecto definitivo no comprendiese todos los aprovechamientos y servicios señalados en el apartado Primero de este Decreto. Al hacerse una declaración al Presidente de la República “Marítima Mariel, S.A.”, por conducto de Financiera Nacional de Cuba, presentara el ante-proyecto de las obras que intente realizar con detalles relativos a costos del mismo, forma de ejecución de proyectos, tanto en su aspecto constructivo como financiero, y los datos adicionales que resulten necesarios para la debida aplicación de las reglas sobre caducidad contenidas en el presente apartado.

Dentro del término de diez años a contar de la vigencia de este Decreto, la entidad “Marítima Mariel, S.A.” podrá, por conducto de Financiera Nacional de Cuba que dictaminará, igualmente respecto a la conveniencia, ejecución y financiamiento, solicitar y obtener concesión de utilidad pública a los fines de este Decreto, para el estudio, la planificación, la ejecución, la operación y explotación de cualesquiera obras mencionadas en el mismo, háyanse incluido o no en la Memoria

y Planos presentados a Financiera Nacional de Cuba, sin perjuicio de su derecho a ampliar, adaptar o modificar a las necesidades de esos objetivos y al mejoramiento del servicio público las edificaciones y obras ejecutadas, conforme lo requieran o sea conveniente prever por los cambios que surjan en la técnica de la industria o el comercio.

Igualmente caducará la presente concesión pública, si dentro del término de un año a contar de la publicación del presente Decreto, no se formalizara mediante el otorgamiento de la correspondiente escritura, la operación de financiamiento en principio concertada entre Financiera Nacional de Cuba y “Marítima Mariel, S. A.” para la construcción y operación de dicha concesión.

Cuarto: La “Marítima Mariel, S.A.” prestará al Estado, la Provincia o Municipio los servicios que le sean propios con una bonificación del treinta por ciento (30%) de descuento en sus tarifas.

Quinto: Las tarifas máximas que podrá cobrar la “Marítima Mariel, S.A.” serán las que rijan en el Puerto de La Habana en el momento de promulgarse el presente Decreto, y se la autoriza para alterar en cualquier tiempo dichas tarifas cumpliendo las disposiciones que se encuentre vigentes sobre la materia, previa la aprobación de Financiera Nacional de Cuba, mientras no se le hubiese satisfecho su acreencia.

Sexto: La “Marítima Mariel, S.A.” queda autorizada para inscribir esta concesión en el Registro de la Propiedad, para emitir bonos hipotecarios con la garantía de sus propiedades, incluyendo las concesiones a que se refiere este Decreto, inscribirlos en el Registro de la Propiedad y enajenar libremente esos bienes.

Séptimo: Si el Presidente de la República considerase necesario para el servicio del Puerto señalar las obras con una luz, los concesionarios tendrán la obligación de colocarla en el sitio y con la apariencia que se designe.

Octavo: En el caso de que por el Ramo de Hacienda se considere necesario, los concesionarios quedan obligados a construir por su cuenta una casilla inmediata a las obras en el lugar que se les designe, para el alojamiento de los Inspectores de Aduana e Inmigración.

Noveno: La edificación de los muelles y la realización de todas las obras a que se refiere el apartado Primero, deberán ser sometidas, supervisadas y aprobadas por Financiera Nacional de Cuba, a los fines de su financiamiento.

Décimo: Se autoriza y otorga a “Marítima Mariel, S.A.” la conversión al servicio público del muelle y almacenes cuyo uso particular fue concedido por el Decreto Presidencial número 1655 de 26 de junio de 193, con sus modificaciones, ampliaciones y mejoras, pudieron gravar y enajenar libremente todos dichos bienes conforme a lo dispuesto en el apartado sexto del presente Decreto.

Undécimo: Esta concesión se considerará, además, comprendida entre las que determinan los artículos 44 y 51 de la vigente Ley de Puertos y se otorga

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quedando sujeto a lo prescrito en los artículos 50 y 54 de dicha Ley.

Duodécimo: La “Marítima Mariel, S. A.” queda obligada a constituir una fianza como garantía del cumplimiento de estas prescripciones, equivalente al uno por ciento (1%) del presupuesto de las obras que ha de construir de inmediato, cuya garantía será dejada sin efecto cuando acredite estar las mismas ejecutadas por valor de una tercera parte de su presupuesto.

Décimo Tercero: La declaración de utilidad pública contenida en el presente Decreto se hace por ser necesarias las obras para mejorar la higiene de la zona, y también por tender al fomento de la riqueza nacional.

Décimo Cuarto: Las caducidades propuestas en el presente Decreto en lo que se refiere a la no realización de las obras dentro del término fijado, solamente afectarán a la parte no ejecutada del proyecto de acuerdo con las recepciones parciales practicadas y referidas.

Décimo Quinto: Dada la naturaleza de las obras y discontinuidad que se produce en el litoral con los muros, muelles y construcciones y demás que se proyecta construir, la zona de vigilancia contemplada en los artículos 7 y 10 de la Ley de Puertos se internará situándola al fondo de la propiedad que constituirá la concesión, entendiéndose por el frente de las mismas el que dé al mar.

Décimo Sexto: La concesión otorgada y la conversión a pública concedida por el presente Decreto, se hace en uso de las facultades concedidas al Ejecutivo por la Ley-Decreto No. 1998 de 27 de enero de 1955.

Décimo Séptimo: Quedan encargados del cumplimiento del presente Decreto el Ministro de Obras Públicas y Financiera Nacional de Cuba, en la parte que a cada cual concierne.

Décimo Octavo: Esta concesión se otorga sin perjuicio del derecho de propiedad de terceros y en la inteligencia de quedar obligada la compañía a cuanto le era aplicable de las disposiciones contenidas en las Leyes-Decretos números 1015 de 7 de agosto de 1953 y 1998 de 27 de enero de 1954, y en este Decreto.

Décimo Noveno: Se dejan sin efecto cuantos Decretos, órdenes o disposiciones administrativas se opongán a lo dispuesto en el presente Decreto que comenzara a regir desde la fecha de su publicación en la GACETA OFICIAL de la República.

Dado en el Palacio de la Presidencia, en La Habana, a los tres días del mes de agosto de 1955.

Fulgencio Batista, Presidente

Jorge García Montes, Primer Ministro

Nicolás R. Arroyo

Ministro de Obras Públicas

Agosto 15 de 1954

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y el inciso 10 del Artículo 15 del Reglamento, por que ambos preceptos exigen ese requisito "si hubiere comenzado operaciones comerciales" la entidad solicitante. La Compañía Cubana de Conductores Eléctricos, S. A., no ha iniciado aún esas operaciones, por hallarse pendiente de la forma en que se resuelva la presente solicitud. De todos modos, si fuese necesario cumplir el requisito indicado, de inmediato nos inscribiríamos en la Zona Fiscal correspondiente.

Por tanto:

Al señor Ministro de Hacienda suplico, por conducto del señor Primer Subsecretario, se sirva tener por presentado este escrito (por quintuplicado) con los documentos y copias que se acompañan; por solicitada la protección económica correspondiente a industria nueva en la forma dispuesta por la Ley-Decreto 1038 de 1953; y en su día, previa la tramitación correspondiente, otorgar a favor de la Compañía Cubana de Conductores Eléctricos, S. A., esa protección como operadora de una industria nueva consistente en la producción y elaboración de conductores eléctricos de todos los tipos y tubos metálicos para instalaciones eléctricas, declarándola incluida en los beneficios que esa protección económica implica en cuanto a las exenciones fiscales, arancelarias y demás que concede la legislación vigente para estos casos.

Primer Otrrosí: Se acompañan un "Estado de Costo de Fabricación Estimado" y otro "Estado de Ganancias y Pérdidas Estimado", mareados con los números 6 y 7.

Segundo Otrrosí: Si se estimare que la exposición contenida en este escrito o la documentación presentada con él no es suficiente al objeto que se persigue, ofrezco toda la información complementaria que se requiriese, la cual presentaré tan pronto se me indique.

Tercer Otrrosí: En cumplimiento de lo dispuesto en la Ley-Decreto 439 de 1952, declaro bajo juramento que no soy contribuyente directo del Impuesto sobre la Renta Personal, debido a que aún no tengo ingresos en el territorio de Cuba, pero me inscribiré así que deba hacerlo.

Cuarto Otrrosí: Señalo como domicilio de la Compañía, para las notificaciones y citaciones que se le deban hacer, el despacho de su Secretario (Dr. Ernesto Dihigo) sito en Aguilar 556, Departamento 43, Teléfonos M-8308 y M-8309.

Compañía Cubana de Conductores Eléctricos, S. A.

Mauricio Pessis,
Presidente.

Y a los efectos de su publicación en la GACETA OFICIAL de la República, conforme lo dispone el Artículo 17 del Decreto 2136 de 1954, expido la presente, en La Habana, a nueve de agosto de mil novecientos cincuenta y cinco.

1-22481-6876-6895-15

OBRAS PUBLICAS

Decreto N° 2367

Por Cuanto: Visto el expediente instruido en Financiera Nacional de Cuba, con motivo de solicitudes y proyectos presentados por "Marítima Mariel, S. A.", de financiamiento y autorización para construir diversas obras de muros, muelles, almacenes, dragados, relleno y otras en terrenos bajos y manglares de su propiedad y en la zona marítima terrestre del litoral colindante con dicha parcela de terreno propiedad de "Marítima Mariel, S. A." en la costa norte de la provincia de Pinar del Río, Bahía del Mariel, Término Municipal del Mariel.

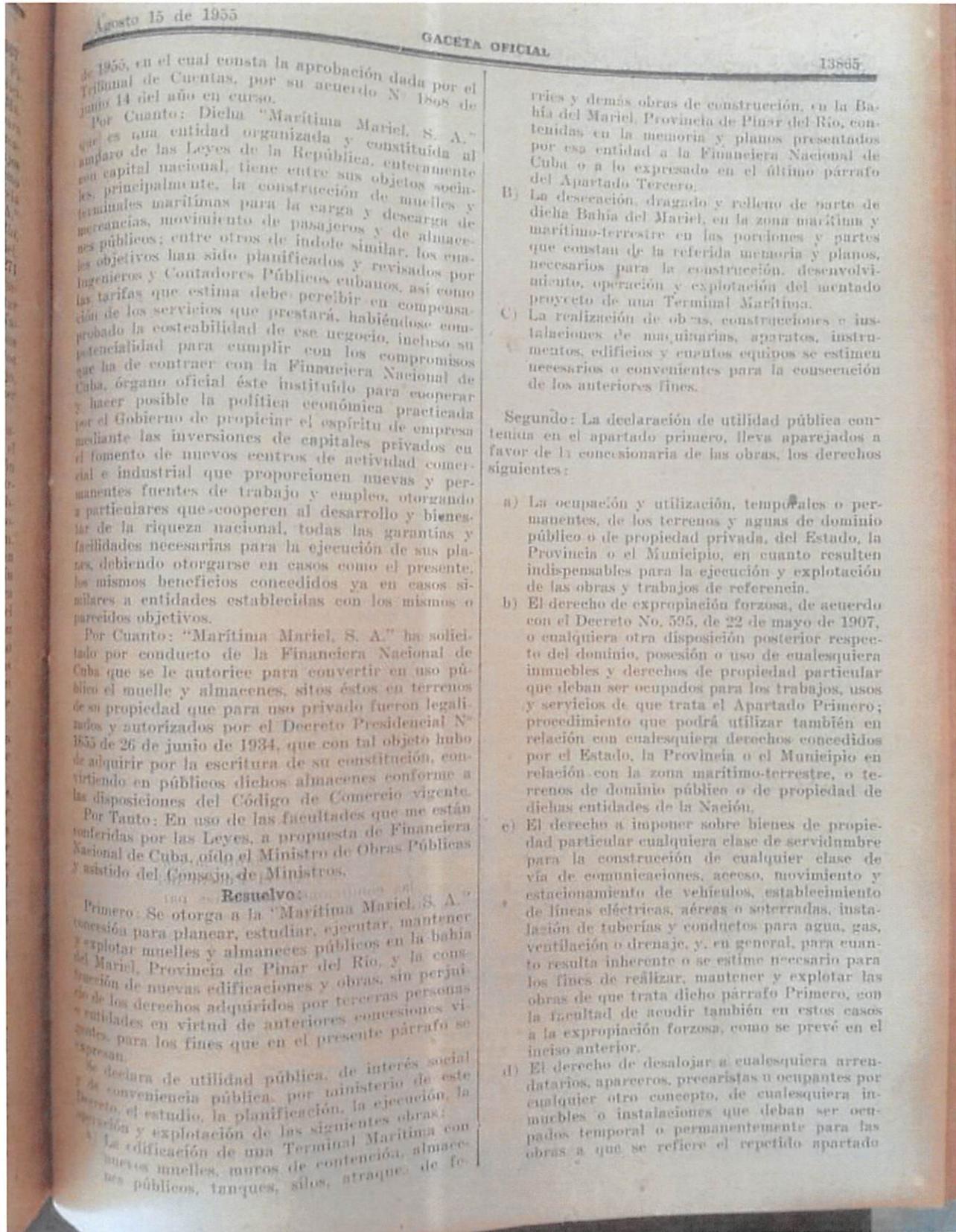
Por Cuanto: Por los artículos números 264 y 271 de la vigente Constitución de la República, se impone al Estado el deber de propender a incrementar el desarrollo del comercio y la industria de la Nación, para así obtener el mejor rendimiento de sus posibilidades económicas, sobre todo, en aquellos casos que representen nuevas fuentes de trabajo, con lo cual se realiza el fin primordial de obtener el bienestar de la Nación.

Por Cuanto: En los últimos años se ha incrementado de manera notable el comercio y con ello el movimiento de mercancías, tanto en la importación como en la exportación, sin que a ese auge marchen aparejadas las facilidades necesarias para obtener mayores ventajas y abaratamiento de los productos mediante su más fácil y segura manipulación.

Por Cuanto: Es notorio el incremento habido en el Puerto del Mariel en la última década que, sin grandes facilidades portuarias y de garantías para los trabajadores y el Estado, ha llegado a ser el segundo puerto de importancia de la República en el movimiento de importación y exportación, no solo en cuanto al número, tamaño y calidad de las mercancías en él movidas, sino también en relación con las recaudaciones aduanales que tan importante papel juegan en la economía pública.

Por Cuanto: Después de estudios llevados a cabo por la Financiera Nacional de Cuba, a virtud de expediente iniciado por la entidad "Marítima Mariel, S. A." sobre las conveniencias y posibilidades presentes y futuras de dicho puerto del Mariel, se llega a la conclusión de que es conveniente, a fin de llevar rápidamente adelante la construcción de muelles y almacenes en el Puerto del Mariel que reúnan las condiciones necesarias para atender al movimiento de ese actualmente importante puerto, que por el Estado se concedan todas las facilidades a esa entidad para construir dichos muelles y almacenes, que darán, además, facilidades y garantías a importadores, exportadores, trabajadores, al Estado y al público en general.

Por Cuanto: Todo ello resulta del expediente anteriormente aludido, en el cual obra solicitud de la referida "Marítima Mariel, S. A.", dirigida al Poder Ejecutivo, pidiendo una concesión para la construcción de dichos muelles y almacenes, dragado y aprovechamiento de la zona marítima terrestre, la cual será preciso rellenar en parte; expediente este que ha sido tramitado conforme a las disposiciones de la Ley-Decreto N° 1998 de 27 de enero



primero, con pago a los así desalojados de una indemnización equivalente al importe de un año de renta o alquiler que pague en su caso.

e) El derecho de realizar los anteriormente relacionados actos mediante la aplicación de las disposiciones contenidas en las Leyes Decretos 1015 de 7 de agosto de 1953 y 1998 de 27 de enero de 1954, por cuanto Financiera Nacional de Cuba proveerá el financiamiento de dichas obras.

Tercero: Esta concesión se otorgará por término de 70 años, contados desde la terminación de las obras, las cuales, al vencimiento de dicho término, serán revertidas al Estado. La concesión caducará totalmente si no se comenzara la ejecución de ninguna de las obras señaladas en las letras A) B) y C) del apartado Primero, dentro del término de 18 meses a contar desde la publicación en la GACETA OFICIAL de este Decreto y no quedaren terminadas en los cuatro años posteriores al inicio de la misma o se abandonara la prestación de los servicios por un período mayor de dos años, excepto en los casos de guerra o fuerza mayor. La concesión caducará, asimismo, de modo parcial, en cuanto a cualesquiera de los objetivos señalados en las letras A), B) y C) del apartado Primero, si dentro del término de tres años a contar de la vigencia de este Decreto, no se iniciasen las obras necesarias para cualesquiera de dichos objetivos y si las mismas no quedan terminadas en los cuatro años posteriores a su inicio o se abandonara la prestación de los servicios por un período mayor de dos años, excepto en los casos de guerra o fuerza mayor.

Dentro del término de cinco años a contar de la vigencia de este Decreto, la entidad "Marítima Mariel, S. A." precisará las concesiones que intenta explotar y se entenderán caducadas las obras que no intente explotar si el proyecto definitivo no comprendiese todos los aprovechamientos y servicios señalados en el apartado Primero de este Decreto. Al hacerse esta declaración al Presidente de la República "Marítima Mariel, S. A.", por conducto de Financiera Nacional de Cuba, presentará el ante-proyecto de las obras que intente realizar, con detalles relativos a costos del mismo, forma de ejecución de proyectos, tanto en su aspecto constructivo como financiero, y los datos adicionales que resulten necesarios para la debida aplicación de las reglas sobre caducidad contenidas en el presente apartado.

Dentro del término de diez años a contar de la vigencia de este Decreto, la entidad "Marítima Mariel, S. A." podrá, por conducto de Financiera Nacional de Cuba que dictaminará, igualmente, respecto a la conveniencia, ejecución y financiamiento, solicitar y obtener concesión de utilidad pública a los fines de este Decreto, para el estudio, la planificación, la ejecución, la operación y explotación de cualesquiera obras mencionadas en el mismo, háyanse incluido o no en la Memoria y Planos pre-

sentados a Financiera Nacional de Cuba, sin perjuicio de su derecho a ampliar, adaptar o modificar a las necesidades de esos objetivos y al mejoramiento del servicio público las edificaciones y obras ejecutadas, conforme lo requieran o sea conveniente prever por los cambios que surjan en la técnica de la industria o del comercio.

Igualmente caducará la presente concesión pública, si dentro del término de un año a contar de la publicación del presente Decreto, no se formalizara mediante el otorgamiento de la correspondiente escritura, la operación de financiamiento en principio concertada entre Financiera Nacional de Cuba y "Marítima Mariel, S. A." para la construcción y operación de dicha concesión.

Cuarto: La "Marítima Mariel, S. A." prestará al Estado, la Provincia o Municipio los servicios que le sean propios con una bonificación del treinta por ciento (30%) de descuento en sus tarifas.

Quinto: Las tarifas máximas que podrá cobrar la "Marítima Mariel, S. A." serán las que rijan en el Puerto de La Habana, en el momento de promulgarse el presente Decreto, y se le autoriza para alterar en cualquier tiempo dichas tarifas cumpliendo las disposiciones que se encuentren vigentes sobre la materia, previa la aprobación de Financiera Nacional de Cuba, mientras no se le hubiese satisfecho su acreencia.

Sexto: La "Marítima Mariel, S. A." queda autorizada para inscribir esta concesión en el Registro de la Propiedad, para emitir bonos hipotecarios con la garantía de sus propiedades, incluyendo las concesiones a que se refiere este Decreto, inscribirlos en el Registro de la Propiedad y enajenar libremente esos bienes.

Séptimo: Si el Presidente de la República considerase necesario para el servicio del Puerto señalar las obras con una luz, los concesionarios tendrán la obligación de colocarla en el sitio y con la apariencia que se designe.

Octavo: En el caso de que por el Ramo de Hacienda se considere necesario, los concesionarios quedan obligados a construir por su cuenta una casilla inmediata a las obras en el lugar que se les designe, para el alojamiento de los Inspectores de Aduana e Inmigración.

Noveno: La edificación de los muelles y la realización de todas las obras a que se refiere el apartado Primero, deberán ser sometidas, supervisadas y aprobadas por Financiera Nacional de Cuba, a los fines de su financiamiento.

Décimo: Se autoriza y otorga a "Marítima Mariel, S. A." la conversión al servicio público del muelle y almacenes cuyo uso particular fué concedido por el Decreto Presidencial número 1654 de 26 de junio de 1934, con sus modificaciones, ampliaciones y mejoras, pudiendo gravar y enajenar libremente todos dichos bienes, conforme a lo dispuesto en el apartado sexto del presente Decreto.

Undécimo: Esta concesión se considerará, además, comprendida entre las que determinan los artículos 144 y 51 de la vigente Ley de Puertos y se otorga

Agosto 15 de 1955

GACETA OFICIAL

quedando sujeto a lo prescrito en los artículos 50 y 51 de dicha Ley.

Doceésimo: La "Marítima Mariel, S. A." queda obligada a constituir una fianza como garantía del cumplimiento de estas prescripciones, equivalente al uno por ciento (1%) del presupuesto de las obras que ha de construir de inmediato, cuya garantía será dejada sin efecto cuando acredite estar las mismas ejecutadas por valor de una tercera parte de su presupuesto.

Décimo Tercero: La declaración de utilidad pública contenida en el presente Decreto se hace por ser necesarias las obras para mejorar la higiene pública, y también por tender el fomento de la riqueza nacional.

Décimo Cuarto: Las caducidades propuestas en el presente Decreto en lo que se refiere a la no realización de las obras dentro del término fijado, solamente afectarán a la parte no ejecutada del proyecto de acuerdo con las recepciones parciales practicadas y referidas.

Décimo Quinto: Dada la naturaleza de las obras y discontinuidad que se produce en el litoral con los muelles y construcciones y demás que se proyecta construir, la zona de vigilancia contemplada en los artículos 7 y 10 de la Ley de Puertos se internará situándola al fondo de la propiedad que constituirá la concesión, entendiéndose por el frente de las mismas el que dé al mar.

Décimo Sexto: La concesión otorgada y la concesión a pública concedida por el presente Decreto, se hace en uso de las facultades concedidas al Ejecutivo por la Ley-Decreto N° 1998 de 27 de enero de 1955.

Décimo Séptimo: Quedan encargados del cumplimiento del presente Decreto el Ministro de Obras Públicas y Financiera Nacional de Cuba, en la parte que a cada cual concierne.

Décimo Octavo: Esta concesión se otorga sin perjuicio del derecho de propiedad de terceros y en la inteligencia de quedar obligada la Compañía a cuanto sea aplicable de las disposiciones contenidas en las Leyes-Decretos números 1015 de 7 de agosto de 1953 y 1998 de 27 de enero de 1954 y en este Decreto.

Décimo Noveno: Se dejan sin efecto cuantos Decretos, órdenes o disposiciones administrativas se opongan a lo dispuesto en el presente Decreto que comenzará a regir desde la fecha de su publicación en la GACETA OFICIAL de la República.

Dado en el Palacio de la Presidencia, en La Habana, a los tres días del mes de agosto de 1955.

FULGENCIO BATISTA, Presidente

Decreto

Por cuanto: Con motivo de entrar en vigor los Presupuestos Generales de la Nación que regirán durante el Ejercicio Fiscal de 1955, es necesario estructurar la designación de personal Temporero, de acuerdo con los créditos a ese fin para el Ministerio de Obras Públicas.

Por cuanto: En el Ministerio de Obras Públicas existe personal temporero que viene percibiendo sus haberes con cargo a créditos y apropiaciones concedidas, que no han sido incluidas en los presupuestos generales que han de entrar en vigor el próximo día 1.º de julio de 1955.

Por tanto: En uso de las facultades que conferidas por la Constitución y las leyes a propuesta del Ministro de Obras Públicas y del Consejo de Ministros,

Resuelvo:

Primero: Declarar excedente a partir del día 1.º de julio de 1955, a todo el personal temporal que viene percibiendo sus haberes con cargo a los créditos Cap. 1-Epígrafe No. 100-Partida Nacional Temporero-Presupuesto Extraordinario de 1955, con motivo de haberse suprimido dicha partida totalmente de los presupuestos que han de entrar en vigor a partir del día 1.º de julio de 1955.

Segundo: Declarar la excedencia, a partir del día 1.º de julio de 1955, de todos los empleados de carácter temporero, que perciban sus haberes con cargo a los créditos del 15% de las apropiaciones del Ministerio de Obras Públicas.

Tercero: El Negociado de Personal del Ministerio de Obras Públicas, remitirá copia de este Decreto a los interesados, a los que se les dará la debida constancia en el expediente respectivo.

Cuarto: Una vez que se concedan al Ministerio de Obras Públicas las cantidades indispensables necesarias para el mantenimiento de los servicios que actualmente presta el personal en funciones, el Ministro de Obras Públicas, podrá firmar en sus cargos al personal objeto de este Decreto.

Dado en el Palacio de la Presidencia, en La Habana, a 30 de junio de 1955.

FULGENCIO BATISTA

Presidente.

Jorge García Monte,

Primer Ministro.

Nicolás R. Arroyo,

Ministro de Obras Públicas.

S 6970-1

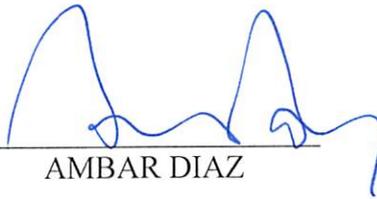
Decreto No. 2

Por cuanto: El Administrador de "Acueducto de Marianao y Regla", Dr. Carlos N. Calvet, solicitó con fecha marzo 30 del presente año, de la Presidencia, se facilitara al Acueducto de Marianao, un carácter devolutivo, 800 metros lineales de obra para reemplazar tramo, bajo la Vía Pública...

CERTIFICATE OF TRANSLATOR'S COMPETENCE

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

BEFORE ME, A NOTARY PUBLIC IN AND FOR THE STATE OF FLORIDA AT LARGE, PERSONALLY APPEARS **AMBAR DIAZ**, PERSONALLY KNOWN TO ME, WHO, AFTER BEING DULY SWORN, DEPOSES AND SAYS THAT SHE HAS PERFORMED THIS TRANSLATION OF **DECREE 2367 OF 1955, CONCESSION** FROM **SPANISH** INTO **ENGLISH**, AND THAT SHE HAS DONE THIS TRANSLATION TO THE BEST OF HER ABILITY. THE SOURCE DOCUMENT CONSISTING OF **7** PAGES, AND THE TRANSLATION CONSISTING OF **8** PAGES; THIS CERTIFICATION BEING ATTACHED THERETO. THIS CERTIFICATION ATTACHED TO THE PRINTED DOCUMENT, DOES NOT INCLUDE THE CERTIFICATION OF ANY ELECTRONIC FILE.



AMBAR DIAZ

SWORN TO AND SUBSCRIBED THIS 6th DAY OF MAY, A.D., 2021.



NOTARY PUBLIC, STATE OF FLORIDA
AT LARGE

MY COMMISSION EXPIRES:

 **Nelsy Blanco**
COMMISSION # GG297171
EXPIRES: February 4, 2023
Bonded Thru Aaron Notary

EXHIBIT B

TRANSLATION

[OFFICIAL GAZETTE, Page 23405]

EDICT

Notice is hereby given that the Minister of the Treasury has issued the Resolution which, copied *verbatim*, states thus:

Resolution No. 436

Whereas: Having seen case files numbers 3-2-3143, 3-2-8930, and 3-2-9832, relative to the investigations carried out as to Misters Alfredo, Enrique, Florentino, Byron, and Ms. Odette Blanco Rosell.

Whereas: The links of those individuals have been proven, photographs having been found in which Mr. Alfredo Blanco Rosell appears with the tyrant, with Orlando Piedra Negueruela, Pilar García, Silito Tabernilla, Luis Manuel Martínez and others.

Whereas: According to documents available in the case files related in the first Whereas, there have been proven also the relations of said Misters and Miss Blanco Rosell with the tyrant and with Andrés Domingo y Morales del Castillo.

Whereas: According to said linkages, they obtained the concession of the Maritime Terminal of Mariel per Presidential Decree number 2367, of August 3, 1955, paying Mr. Jorge García Montes, the amount of \$10,000.00 for his “agency” in the realization of works of Marítima del Mariel, S. A.

Whereas: Marítima del Mariel, S.A. obtained from the National Financing Agency of Cuba a \$1,600,000.00 loan; said Enterprise assigned to itself under the rubric of expenses in which it did not incur, sums that were tantamount to the embezzlement of \$336,116.50; all that without accounting for the fact that up the moment in which the enterprise was placed under receivership,

it owes to the National Financing Agency of Cuba the payment of \$27,000.00 and interests for \$149, 430.00 that it had to make on August 1st, 1958.

Whereas: Misters and Miss Blanco Rosell, at Central San Ramón, S. A. as well as in Central Ramona and its colonies, used the thugs of the rural guard to throw hundreds of works out into misery, getting to extreme cases like the one of Cía. Agrícola Pinillos, in the Province of Camagüey, where they demolished and burned 36 houses of rural workers, according to Resolutions issued by the Minister of Labor, lodged in the case files.

Whereas: Following orders of Misters and Miss Blanco Rosell, the enterprises kept special accounts to which they gave fictitious names and used relatives and trusted employees, where they deposited the gains that they obtained from or the reimbursements of allocations that they effected of different officials, all that in amounts [illegible], one being able to calculate that they had more than twenty accounts used for these illicit deals of fiscal evasion.

Whereas: As evidenced in the case files, through their enterprises Misters and Miss Blanco Rosell disposed of the contributions pertaining to the workers and did not deposit them in the Sugar Worker's Retirement Fund and in the Maternity Fund.

Whereas: Through their enterprises, Misters and Miss Blanco Rosell took part in the electoral farces held in 1954 and 1958, contributing sums of money to propaganda expenses and to the purchase of electoral identification cards in the Municipalities where their sugar mills were located, to obtain be

[OFFICIAL GAZETTE, Page 23406]

nefits and privileges from municipal authorities.

Whereas: Misters and Miss Blanco Rosell ordered the manufacturing of sugar in their sugar mills beyond the quota of local consumption, according to documents lodged in the case files, availing themselves of their influences in the Public Power and enriching themselves illicitly to the detriment of the National Patrimony.

Whereas: It has been proven that among the properties of said persons, be so under their names or using interposed third parties, there have been found the shares pertaining to the entities Compañía Azucarera Mariel, S. A., the owner and operator of Central San Ramón; Compañía Azucarera Central Ramona, S. A., the owner and operator of Central Ramona; Compañía Marítima Mariel, S. A., Cía. Agrícola Pinillos, S. A., Cía. Mercantil San Ramón, S.A., Cía. Mercantil Ramona, Cía. Territorial Pinillos, S. A., Cía. Nacional de Almacenes, S.A., Cía. Agrícola Comercial Sucane, S. A., Cía. Agrícola Xavier, S. A., Cía. Agrícola Guayabo, S. A., Comodity Trading Company, Cía. Inversiones Onix, S.A., Corporación Lynx, S. A., Cía. Constructora Omar, S.A., Manapa Trading Company, Arva Trading Company, and Consignataria Mariel, S.A.

Whereas: The investigations carried out and the documents lodged in the case files demonstrate that Misters and Miss Blanco Rosell enriched themselves under the cloak of the public power and to the detriment of the National Patrimony, incurring therefore in the recovery cases established by Law 78 of 1959 and amendment thereto.

Whereas: Exercising the Powers to me conferred, I

Resolve:

First: To confiscate in favor of the State all the properties and rights, whatever their nature, that make part of the estate of the individuals listed in the first Whereas, excluding from the confiscation those properties and rights of strictly personal nature.

Second: To confiscate in favor of the Cuban State the shares, or the Certificates that contain them, representing the capital of the entities listed in the eleventh Whereas of this Resolution, with all the entities' properties, rights, and actions.

Third: To decide that the properties, rights, and actions that integrate the estate of the legal entities listed in the previous paragraph be transferred to the National Institute of the Agrarian Reform (I.N.R.A.).

Fourth: Let the Resolution herein be published in the OFFICIAL GAZETTE of the Republic to the effect of notification, and for compliance with the provisions of the Law 715 of 1960.

Issued in Havana, on the nineteenth day of the month of August of nineteenth sixty.

Rolando Díaz Aztaráin
Major of the Navy
Minister of the Treasury

S. 8181

TRANSCRIPTION

[Gaceta Oficial, p. 23405]

EDICTO

Por la presente se hace saber que el Sr. Ministro de Hacienda ha dictado la Resolución que, copiada íntegramente, dice así:

Resolución No. 436

Por Cuanto: Han sido vistos los expedientes número 3-2-3143, 3-2-8930 y 3-2-9832 relativos a las investigaciones practicadas acerca de los señores Alfredo, Enrique, Florentino, Byron y Odette Blanco Rosell.

Por Cuanto: Han sido comprobadas las vinculaciones de esos individuos, habiéndose encontrado fotografías en que aparecen el Sr. Alfredo Blanco Rosell con el tirano, Orlando Piedra Negueruela, Pilar García, Silito Tabernilla, Luis Manuel Martínez y otros.

Por Cuanto: Se ha comprobado también, según documentos obrantes en los expedientes relacionados en el primer Por Cuanto, las relaciones de dichos señores Blanco Rosell, con el tirano y Andrés Domingo y Morales del Castillo.

Por Cuanto: De acuerdo con dichas vinculaciones obtuvieron la concesión de la Terminal Marítima del Mariel, según Decreto Presidencial número 2367, de 3 de agosto de 1955, y pagándole al señor Jorge García Montes, la cantidad de \$10,000.00 por sus "gestiones" en la realización de obras de la Marítima del Mariel, S. A.

Por Cuanto: La Marítima del Mariel, S.A., obtuvo de Financiera Nacional de Cuba un préstamo de \$1,600,000.00. Dicha empresa se adjudicó a su favor por el concepto de gastos en los cuales no incurrió, partidas que ascendieron a una malversación acta de \$336,116.50 todo ello sin contar que hasta el momento en que la empresa fue intervenida le debe a la Financiera Nacional de Cuba, el pago que tenían que efectuar el 1º de agosto de 1958, \$27,000.00 e intereses por \$149,530.00.

Por Cuanto: Los señores Blanco Rosell, tanto en el Central San Ramón, S. A., como en el Central Ramona y sus colonias utilizaron a los esbirros de la guardia rural para lanzar a la miseria a cientos de obreros, llegado a casos extremos como el de la Cía. Agrícola Pinillos, en la Provincia de Camagüey, donde demolieron e incendiaron 36 casas de obreros agrícolas, según Resoluciones dictadas por el Ministerio del Trabajo, que obran en los expedientes.

Por Cuanto: Las empresas siguiendo órdenes de los señores Blanco Rosell, mantenían cuentas especiales a las cuales les daban nombres ficticios y utilizaban familiares o empleados de confianza, donde ingresaban las utilidades que obtenían o los reintegros que efectuaban, de las

asignaciones de diversos funcionarios, todo ello en cantidades [ilegible] pudiendo calcularse que tenían más de veinte cuentas utilizadas para estos menesteres ilícitos de evasiones fiscales.

Por Cuanto: Según obra en los expedientes, los señores Blanco Rosell, por medio de sus empresas ordenaban de las partidas correspondientes a los obreros y no las ingresaban en la Caja de Retiro Azucarero y en la Caja de Maternidad.

Por Cuanto: Los señores Blanco Rosell, por medio de sus empresas tomaron parte en las farsas electorales que se celebraron en 1954 y 1958, aportando sumas de dinero para los gastos de propaganda y comprar de cédulas en los Municipios donde estaban enclavados sus Centrales y obtener be

[Gaceta Oficial, p.23406]

neficios y privilegios de las autoridades Municipales.

Por Cuanto: Los señores Blanco Rosell, ordenaron la fabricación en sus ingenios de azúcar fuera de cuota de consumo local, según documentos que obran en los expedientes, valiéndose de sus influencias en el Poder Público y enriqueciéndose ilícitamente en detrimento del Patrimonio Nacional.

Por Cuanto: Se ha comprobado que entre los bienes de dichas personas, ya bien sea a su nombre o utilizando terceros interpuestos, se encuentran las acciones correspondientes a las entidades Compañía Azucarera Mariel, S. A., propietaria y operadora del Central San Ramón, Compañía Azucarera Central Ramona, S. A.: propietaria y operadora del Central Ramona, Compañía Marítima Mariel, S. A., Cía. Agrícola Pinillos, S. A., Cía. Mercantil San Ramón, S.A. Cía. Mercantil Ramona, Cía. Territorial Pinillos, S. A., Cía. Nacional de Almacenes, S.A., Cía. agrícola Comercial Sucane, S. A., Cía. Agrícola Xavier, S. A., Cía. Agrícola Guayabo, S. A., Comodity Trading Company, Cía. Inversiones Onix, S.A., Corporación Lynx, S. A., Cía. Constructora Omar, S.A., Manapa Trading Company, Arva Trading Company y Consignataria Mariel, S.A.

Por Cuanto: Las investigaciones practicadas y los documentos que obran en los expedientes demuestran que los Señores Blanco Rosell, se enriquecieron al amparo del poder público y en detrimento del Patrimonio Nacional, incurriendo[sic] por tanto en las causas de recuperación que establece la Ley 78 de 1959 y su modificación.

Por Cuanto: En uso de las facultades que me están conferidas:

Resuelvo:

Primero: Confiscar a favor del Estado Cubano todos los bienes y derechos, cualquiera que sea su naturaleza, que integran el patrimonio de los señores relacionados en el primer Por Cuanto, exceptuándose de la confiscación aquellos bienes y derechos de naturaleza estrictamente personal.

Segundo: Confiscar a favor del Estado Cubano las acciones, o los Certificados que las contenga representativos del capital emitido y en circulación de las entidades relacionadas en el onceno Por Cuanto de esta Resolución, con todos sus bienes, derechos y acciones.

Tercero: Disponer el traspaso al Instituto Nacional de la Reforma Agraria (I.N.R.A.) de los bienes, derechos y acciones que componen el patrimonio de las personas jurídicas relacionadas en la disposición precedente.

Cuarto: Publíquese la presente Resolución en la GACETA OFICIAL de la Republica a los efectos de su notificación y se cumplimente lo dispuesto por la Ley 715 de 1960.

Dada en la Habana, a los diecinueve días del mes de agosto de mil novecientos sesenta.

Rolando Díaz Aztaráin

Capitán de Corbeta

Ministro de Hacienda

S. 8181

Septiembre 29 de 1960

GACETA OFICIAL

23495

en ella, con las modificaciones tomadas de los títulos que produjeron las inscripciones 4 y 5 a las folios 75 y 76 vuelto del tomo 104 del Registro de la Propiedad No. 4.
Por Tanto: En uso de las facultades que me están conferidas.

Resuelvo:

Primero: Disponer la confiscación y consiguiente adjudicación a favor del Estado Cubano de los inmuebles descriptos en el Tercer Por Cuanto de la presente Resolución, que fueron traspasados por la S. A. "Fosforera La Estrella S. A." y "Fosforera del Caribe S. A." a las siguientes personas físicas y naturales:

- Francisca Casas Gómez y Guillermo Casas Gómez
- "Digón y Hermanos Inmobiliaria S. A."
- "Compañía Internacional para el Comercio Exterior S. A."

respectivamente con el objeto de cubrir las responsabilidades que sobre los mismos corresponde por formar parte del patrimonio de las entidades que integraron el Trust Fosforero y que se beneficiaron con las participaciones del préstamo de \$10,500,000.00 que los industriales del fósforo obtuvieron para ellas del Estado Cubano, calificado de sus relaciones con el Gobierno dictatorial de Batista, en detrimento del Patrimonio Nacional.

Segundo: Disponer la confiscación y consiguiente adjudicación a favor del Estado Cubano de todos los derechos y acciones que el señor Alberto Pérez Valdés tiene inscripto a su favor sobre los inmuebles descriptos en el Por Cuanto quinto de la presente Resolución.

Tercero: Traspasar a favor del Instituto Nacional de Reforma Agraria (INRA) los inmuebles y los derechos y acciones que se confiscan por la presente Resolución y a los que se hace referencia en el Tercer y Quinto Por Cuanto de la misma.

Cuarto: Notificar la presente Resolución a las partes afectadas y publicarla en la GACETA OFICIAL a todos los efectos legales correspondientes, ordenándose las oportunas mandamientos.

La Habana, 17 de agosto de 1960. "Año de la Reforma Agraria"

Cag. Corb. Rolando Díaz Antarama, Ministro de Hacienda.

Y para su publicación en la GACETA OFICIAL de la República, se expide el presente edicto en La Habana, a los 22 días del mes de septiembre de 1960. — CP Luciano Pérez Díaz, Director del Departamento de Recuperación de Bienes Malversados.

S. 4180

EDICTO

Por el presente se hace saber que el Sr. Ministro de Hacienda, ha decretado la Resolución que se titula "Revaluamiento diez mil"

Resolución No. 436

Por Cuanto: Han sido vistos los expedientes números 3-2-3143, 3-2-2930 y 3-2-9632, relativos a las solicitudes practicadas acerca de los señores

Alfredo Enrique Florentino Biron y Odette Blanco Rosell

Por Cuanto: Han sido comprobadas las vinculaciones de esos individuos, habiéndose encontrado fotografías en que aparecen el Sr. Alfredo Blanco Rosell con el tirano, Orlando Pineda Negueruela, Pilar García, Sibila Tabernilla, Luis Manuel Martínez y otros.

Por Cuanto: Se ha comprobado también, según documentos obrantes en los expedientes relacionados en el primer Por Cuanto, las relaciones de dichos señores Blanco Rosell con el tirano y Andrés Domingo y Morales del Castillo.

Por Cuanto: De acuerdo con dichas vinculaciones, obtuvieron la concesión de la Terminal Marítima del Mariel, según Decreto Presidencial número 2367, de 3 de agosto de 1955, y pagándole al señor Jorge García Montes, la cantidad de \$40,000.00, por sus "acciones" en la realización de obras de la Marítima del Mariel, S. A.

Por Cuanto: La Marítima del Mariel, S. A., obtuvo de Financiera Nacional de Cuba, un préstamo de \$1,000,000.00. Dicha empresa se adjudicó a su favor por el concepto de gastos en los cuales no incurrió, partidas que ascendieron a una malversación neta de \$336,116.50, todo ello sin contar que hasta el momento en que la empresa fue intervenida le debe a la Financiera Nacional de Cuba, el pago que tenían que efectuar el 1ro. de agosto de 1958, \$27,500.00, e intereses por \$149,330.00.

Por Cuanto: Los señores Blanco Rosell, tanto en el Central San Ramón, P. R., como en el Central Ramona y sus colonias utilizaron a los obreros de la guardia rural para tanzar a la miseria a cientos de obreros, llegando a casos extremos como el de la Cía. Agrícola Pinillos, en la Provincia de Camagüey, donde demolió y incendió 30 casas de obreros agrícolos, según Resoluciones dictadas por el Ministerio del Trabajo, que obran en los expedientes.

Por Cuanto: Las empresas siguientes ordenes de los señores Blanco Rosell, ocultaban cuentas especiales a las cuales les daban nombres ficticios y utilizaban familiares o empleados de confianza, donde ingresaban las utilidades que obtenían o los reintegros que efectuaban, de las asignaciones de diversos impuestos, todo ello en cantidades considerables pudiendo calcularse que tenían más de veinte cuentas, utilizadas para estos menesteres ilícitos de evasión fiscal.

Por Cuanto: Según obra en los expedientes, los señores Blanco Rosell, por medio de sus empresas ordenaban la repenión de las partidas correspondientes a los obreros y no les ingresaban en la Caja del Retiro Americano y en la Caja de Maternidad.

Por Cuanto: Los señores Blanco Rosell, por medio de sus empresas tomaron parte en las Inrmas de las empresas tomaron parte en las Inrmas de las empresas que se celebraron en 1951 y 1958, aportando cuotas de dinero para los gastos de propaganda y compra de cedulas en los Municipios donde se celebraban sus Centrales y obtener be

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neficios y privilegios de las autoridades Municipales.

Por Cuanto: Los señores Blanco Rosell, ordenaron la fabricación en sus ingenios de azúcar fuera de cuota de consumo local, según documentos que obran en los expedientes, valiéndose de sus influencias con el Poder Público y enriqueciéndose ilícitamente en detrimento del Patrimonio Nacional.

Por Cuanto: Se ha comprobado que entre los bienes de dichas personas, ya bien sea a su nombre o utilizando terceros interpuestos, se encuentran las acciones correspondientes a las entidades Compañía Azucarera Mariel, S. A., propietaria y operadora del Central San Ramón, Compañía Azucarera Central Ramona, S. A.; propietaria y operadora del Central Ramona, Compañía Marítima Mariel, S. A. Cía. Agrícola Pinillos, S. A., Cía. Mercantil San Ramón, S. A., Cía. Mercantil Ramona, Cía. Territorial Pinillos, S. A., Cía. Nacional de Almacenes S. A., Cía. Agrícola Comercial Sucane, S. A., Cía. Agrícola Xavier, S. A., Cía. Agrícola Guayabo, S. A., Comodity Trading Company, Cía. Inversiones Onix, S. A. Corporación Lynx, S. A., Cía. Constructora Omar, S. A. Manapa Trading Company, Arva Trading Company y Consignataria Mariel, S. A.

Por Cuanto: Las investigaciones practicadas y los documentos que obran en los expedientes demuestran que los señores Blanco Rosell, se enriquecieron al amparo del poder público y en detrimento del Patrimonio Nacional, incurriendo por tanto en las causas de recuperación que establece la Ley 78 de 1959 y su modificación.

Por Tanto: En uso de las facultades que me están conferidas:

Resuelvo:

mento del Patrimonio Nacional, incuriendo por tanto en las causas de recuperación que establece la Ley 78 de 1959 y su modificación.

Por Tanto: En uso de las facultades que me están conferidas:

Resuelvo:

Primero: Confiscar a favor del Estado Cubano todos los bienes y derechos, cualquiera que sea su naturaleza, que integran el patrimonio de los señores relacionados en el primer Por Cuanto, exceptuándose de la confiscación aquellos bienes y derechos de naturaleza estrictamente personal.

Segundo: Confiscar a favor del Estado Cubano las acciones, o los Certificados que las contenga representativos del capital emitido y en circulación de las entidades relacionadas en el oncenno Por Cuanto de esta Resolución, con todos sus bienes, derechos y acciones.

Tercero: Disponer el traspaso al Instituto Nacional de la Reforma Agraria (I.N.R.A.) de los bienes, derechos y acciones que componen el patrimonio de las personas jurídicas relacionadas en la disposición precedente.

Cuarto: Publíquese la presente Resolución en la GACETA OFICIAL de la República a los efectos de su notificación y se cumplimente lo dispuesto por la Ley 715 de 1960.

Dada en la Habana, a los diecinueve días del mes de agosto de mil novecientos sesenta.

Rolando Díaz Aztatáin,

Capitán de Corbeta.

Ministro de Hacienda.

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CERTIFICATE OF TRANSLATOR'S COMPETENCE

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

BEFORE ME, A NOTARY PUBLIC IN AND FOR THE STATE OF FLORIDA AT LARGE, PERSONALLY APPEARS **AMBAR DIAZ**, PERSONALLY KNOWN TO ME, WHO, AFTER BEING DULY SWORN, DEPOSES AND SAYS THAT SHE HAS PERFORMED THIS TRANSLATION OF **RES. 436 OF 1960, CONFISCATION** FROM **SPANISH** INTO **ENGLISH**, AND THAT SHE HAS DONE THIS TRANSLATION TO THE BEST OF HER ABILITY. THE SOURCE DOCUMENT CONSISTING OF 3 PAGES, AND THE TRANSLATION CONSISTING OF 4 PAGES; THIS CERTIFICATION BEING ATTACHED THERETO. THIS CERTIFICATION ATTACHED TO THE PRINTED DOCUMENT, DOES NOT INCLUDE THE CERTIFICATION OF ANY ELECTRONIC FILE.



AMBAR DIAZ

SWORN TO AND SUBSCRIBED THIS 6th DAY OF MAY, A.D., 2021.



NOTARY PUBLIC, STATE OF FLORIDA
AT LARGE

MY COMMISSION EXPIRES:



Nelsy Blanco
COMMISSION # GG297171
EXPIRES: February 4, 2023
Bonded Thru Aaron Notary

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ODETTE BLANCO DE FERNANDEZ * CIVIL ACTION NO.: 2:21-CV-00339
NEÉ BLANCO ROSELL ET AL *
 * SECTION B(2)
VS. *
 * JUDGE IVAN L.R. LEMELLE
A.P. MOLLER-MAERSK A/S *
A/K/A A.P. MOLLER-MAERSK * MAGISTRATE JUDGE CURRAULT
GROUP ET AL *

NOTICE OF SUBMISSION

PLEASE TAKE NOTICE that the attached Motion to Dismiss for Failure to State a Claim will be submitted to the Honorable Judge Ivan L.R. Lemelle for decision on Wednesday, September 1, 2021, at 9:00 a.m.

New Orleans, Louisiana, this 6th day of July, 2021.

Respectfully Submitted,

**MURPHY, ROGERS, SLOSS,
GAMBEL & TOMPKINS**

/s/ Peter B. Tompkins

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