

FEDERAL COURT - TRIAL DIVISION

ADMIRALTY ACTION *IN REM* AND *IN PERSONAM*

BETWEEN:

ROXFORD ENTERPRISES S.A.

Plaintiff

AND:

THE GOVERNMENT OF THE REPUBLIC OF CUBA,
THE MINISTRY OF FISHING INDUSTRY AND MERCHANT MARINE
(MINISTERIO DE LA INDUSTRIA PESQUERA Y MARINA MERCANTE),
THE MINISTRY OF TRANSPORT, EMPRESA NAVEGACION MAMBISA
and NAVIERA POSEIDON, O.E.E.

Defendants (In Personam)

AND:

THE OWNERS AND ALL OTHERS INTERESTED IN THE VESSELS M/V CALIX,
M/V AJANA (ex CARIBBEAN QUEEN), M/V GABYANA (ex CARIBBEAN
PRINCESS), M/V AVON, M/V LOTUS ISLANDS, M/V LILAC ISLANDS, M/V
AGATHE ISLANDS, M/V WEST ISLANDS, M/V ODELYS (ex ROSE ISLANDS), M/V
SOUTH ISLANDS, M/V EAST ISLANDS, M/V TEPHYS, M/V RIO YATERAS, M/V
ANACOANA, M/V GUARIONEX, M/V DAJQUIRI, M/V CAJIO, M/V MINAS DEL
FRIO, M/V GRAN PIEDRA, M/V MAGNOLIA REEFER, AND M/V BOLIVA

Defendants (In Rem)

AFFIDAVIT OF MATIAS F. TRAVIESO-DIAZ

I, Matias F. Travieso-Diaz, being duly sworn, hereby affirm as follows:

Background

1. I am a Cuban-born attorney engaged in the practice of law in the District of Columbia, United States of America. I am a member of the law firm Shaw Pittman LLP, an international firm of approximately 450 lawyers with offices in Washington, D.C., New York, Los Angeles, Northern Virginia, and London. I was admitted to practice in 1976.

2. My areas of professional practice include energy, dispute resolution, and international commercial transactions. A copy of my *curriculum vitae* is attached as Exhibit A to this Affidavit.

3. For the last ten years, I have engaged in the study of the Cuban legal system and the Cuban economy. In that regard, I have advised a number of clients based in the United States, Canada, and Europe on matters relating to doing business in Cuba. In the course of my representation of these clients, I have sought to familiarize myself with those aspects of the Cuban legal system of interest to parties seeking to do business with or in Cuba. I have written and lectured extensively on the subject, and have published a book entitled "*The Laws and Legal System of a Free-Market Cuba -- A Prospectus for Business*" (Quorum Books, 1996) (hereinafter "Cuba's Laws"). Exhibit A contains a listing of my Cuba-related papers and other presentations.

4. I have been engaged by Roxford Enterprises S. A. to provide a legal opinion regarding certain aspects of Cuban law and their applicability to the status of certain Cuban entities, as described below. In preparation for providing this opinion I examined the following materials: (1) the Motion Record *Ex Parte* filed by Plaintiff Roxford Enterprises S.A. in this proceeding, including the affidavit of Alexander Printzios and exhibits thereto; (2) the Notice of Motion filed by Cubana de Aviacion S.A., including the affidavit of Ivan Lurbe and exhibits thereto; (3) the Supplementary Affidavit of Francisco Marqués Granda and exhibits thereto; (4) the Cuban Constitution of 1976 and the 1992 amendments thereto; (5) Cuba's Civil Code, Law 59 of 1987; (6) Cuba's Foreign Investment Law, Law 77 of 1995; (7) my Cuba's Laws book and pertinent references cited therein; (8) various other legal materials, and (9) relevant articles published in periodicals or posted on the Internet.

Facts

5. The main Cuban entity of interest to which I will refer is the country's national flag air carrier, Cubana de Aviación. The airline was incorporated in 1929 as Compañía Nacional Cubana de Aviación Curtiss. It was acquired by Pan American Airlines in 1932 and renamed Compañía Nacional Cubana de Aviación. The name was shortened in 1944 to Compañía Cubana de Aviación and, as such, the company engaged in international and domestic air transportation for the following fifteen years. See the brief history of Cubana de Aviación posted at <http://www.cubaereo.com/history.htm>, copy of which is attached as Exhibit B.

6. At the time of the triumph of the Cuban Revolution in January 1959, Cubana de Aviación was a privately owned corporation. The corporation and its assets, however, were seized in May 1959 by the Cuban Government and the enterprise was renamed Empresa Consolidada Cubana de Aviación. See <http://airlines.afrigoonline.com/a179.htm>, copy of which is attached as Exhibit C. From that point forward, Cubana de Aviación became a "state-owned enterprise," as is acknowledged in Cubana de Aviación's internet web page. See <http://www.cubana.cu/ingles/historia/datos-historia.htm>, copy of which is attached as Exhibit D. As such, Cubana de Aviación lost its corporate identity and its assets became the property of the Cuban state. In the balance of this document, I will refer to the state-owned enterprise as "Cubana".

7. On August 18, 1996, a Cuban entity was established under the name Corporación de la Aviación Cubana S. A. ("CAC"). See page 1 of Exhibit C to Supplementary Affidavit of Francisco Marqués Granda ("Marqués Aff."). No evidence has been provided as to the corporate history, shareholders, capital, or enabling government decrees relating to CAC. No evidence has been provided either as to the relationship between CAC and the Cuban Government or between

CAC and the state-owned enterprise Cubana. As far as the record shows, the state-owned enterprise has never ceased to exist.

8. The President and legal representative of CAC is one Rogelio Acevedo González (“Acevedo”). Mr. Acevedo was a military leader in Cuba’s Revolution, is a long-time Division General in Cuba’s Armed Forces, is a member of Cuba’s Council of Ministers that rules the country, and is the President of the Cuban Institute of Civil Aeronautics. See, e. g., <http://www.bts.gov/itt/wtd/centamer/cuba.html>; <http://www.circa-uk.demon.co.uk/xpage90.html>; <http://www.granma.cubaweb.cu/temas/articulo14.html>. (Copies of these articles are attached as Exhibits E, F, and G). The fact that such a high government official is the President of CAC strongly suggests that CAC is a direct instrument of the Cuban state, since it is the consistent practice of the Cuban Government, and in particular its Armed Forces Ministry (often referred to by the initials "FAR"), to set up enterprises which are controlled by the state and headed by high ranking members of the military. See Domingo Amuchastegui, FAR: Mastering Reforms, Papers and Proceedings of the 10th Annual Meeting of the Association for the Study of the Cuban Economy (August 2000) at pages 437-438, copy of which is attached as Exhibit H. (The author of this paper includes CAC among the institutions and enterprises “under the direct control, supervision or influence of the FAR," see id. at page 437.)

9. On September 16, 1996 Mr. Acevedo as President of CAC and one Jose Heriberto Prieto Musa (“Prieto”) incorporated a company known as Cubana de Aviación S. A. (“Cubana S.A.”). See Exhibit C to Marqués Aff. Mr. Prieto contributed one thousand Cuban pesos (approximately C\$75.00 at the current exchange rate of C\$1=13.4 pesos) and received one share of Cubana S.A. Mr. Acevedo, on behalf of CAC, contributed 185,687,000 pesos (approximately C\$13,857,000) and was issued the remaining 185,667 shares of Cubana S.A. The contribution of CAC consisted of the right to use (“*usufructo*”), for a term of 25 years, Cubana’s fixed and

movable assets, including its aircraft. (Under Cuban law, conveyance of an *usufructo* right in property “grants the right to the enjoyment free of charge of assets belonging to others, with the obligation to preserve their form and substance, unless the deed of conveyance or the laws authorize otherwise.” Civil Code, Article 208.1, copy of which is attached as Exhibit I.) The maximum duration allowed by Cuban law for an *usufructo* is 25 years. *Id.*, Article 215.

10. The articles of incorporation of Cubana S.A. state that CAC acquired the right to use Cubana’s assets by virtue of a Resolution dated September 10, 1996 of the Executive Committee of Cuba’s Council of Ministers and a Resolution dated September 12, 1996 of the President of the Cuban Institute of Civil Aeronautics (that is, Mr. Acevedo). Again, the transfer by the state to CAC of the right to use Cubana’s assets for the maximum term allowed by law, twenty-five years, strongly suggests that CAC is an agency or instrumentality of the Cuban state.

11. Thus, when Cubana S.A. was established, its capital consisted only of a very modest amount of cash and the “right to use” Cubana’s assets, title to which did not pass to Cubana S.A. Moreover, CAC did not itself at the time have title to those assets, since all it apparently acquired by virtue of the above cited Resolution of Cuba’s Council of Ministers were the rights to use the state enterprises’s assets, which it conveyed to Cubana S.A. Title to the Cubana assets remained with the Cuban state.

12. In his affidavit, Mr. Marqués asserts at paragraph 13 that in October 1998 “outright ownership of the same assets was transferred to Cubana by its principal shareholder” CAC, and attaches as Exhibit G what is represented as the minutes of an October 16, 1998 shareholders’ meeting of Cubana S.A. (Exhibit G appears to be an incomplete document, since the relevant text, which appears on page 3 without any prior discussion, reads: “The president went on to explain that in order to ensure that the provision referenced above was complied with, the General Shareholders Meeting of CAC S.A. decided in Resolution Number 5 of October 16,

1998 to take the necessary legal steps to modify the corporate capital of CAC's subsidiaries. This requires that the right to ownership of property, shares and equipment be given to and the superficies of the pertinent land be granted to each of the subsidiaries. In CUBANA DE AVIACIÓN S.A.'s case these are as follows:"). In any case, there is no evidence as to whether, when, why or how CAC obtained title to the assets of Cubana that it purported to convey to Cubana S.A.

Analysis of Applicable Constitutional Provisions

13. In February 1976, Cuba enacted a socialist constitution. One of the fundamental tenets of that constitution is the state's almost absolute ownership and control over the country's productive assets. Article 14 of the Constitution declares, in relevant part: "In the Republic of Cuba rules the economic system based on the socialist ownership of the whole people over the means of production and the abolition of exploitation of man by man." (Article 14 of the 1976 Constitution is included in Exhibit B to the Affidavit of Mr. Alexander Printzios herein.)

14. Article 15 of the 1976 Constitution establishes state ownership over all of the country's economic assets other than lands owned by small farmers. A number of specific items are enumerated over which state ownership is vested "irreversibly," including "the fundamental means of transportation." The Article reads, in relevant part, as follows: "The socialist state property, which is the property of the entire people, is irreversibly established over the lands that do not belong to small farmers or to cooperatives formed by the same; over the subsoil, mines, the natural and living maritime resources within the zone of its sovereignty, the forests, the water bodies, the means of communication; over the sugar mills, the factories, the fundamental means of transportation, and over all enterprises, banks, installations and assets that have been nationalized and expropriated from the imperialists, the large landholders and the bourgeoisie, as well as over the people's farms, factories, enterprises and economic, social, cultural or sporting

installations built, fostered or acquired by the state and those that it may in the future build, foster or acquire.” (Article 15 of the 1976 Constitution is also included in Exhibit B to Mr. Printzios' Affidavit.) Unquestionably, the “fundamental means of transportation” includes the airlines, since in an island like Cuba air transportation is essential to the movement of persons and goods in an out of the country.

15. Article 16 of the 1976 Constitution asserts the state’s control over the economic activities of the country, including those of state-owned enterprises. The article reads, in relevant part: “The state organizes, directs and controls the economic life of the nation in accordance with the Central Plan of Economic and Social Development, in whose elaboration and execution the workers from all branches of the economy and the other spheres of society’s life have an active and conscious participation.” Article 16 of the 1976 Constitution is also included in Exhibit B to Mr. Printzios' Affidavit.

16. Thus, the combined effect of Articles 14, 15 and 16 of the 1976 Constitution is to commit Cuba to a socialist economic structure in which the assets of the country, including in particular “the fundamental means of transportation,” are to be irrevocably owned by the state and their use is to be organized, directed and controlled by the state.

17. The disintegration of world socialism at the end of the decade of the 1980s and during the early part of the 1990s had a severe impact upon the Cuban economy. Prior to 1990, Cuba’s economy was largely dependent on subsidies from, and advantageous trade with, the Soviet Union and other members of the Soviet bloc. By 1992, all economic aid to Cuba from the Soviet Union had ceased and trade between the two countries had been dramatically curtailed. Cuban National Bank, Cuban Economy in the Special Period 1990 – 2000 at pages 7-8, attached hereto as Exhibit J.

18. As a result of the collapse of socialism, between 1989 and 1993 Cuba's economic economy was severely impacted. Cuba lost 80% of its foreign trade, imports dropped by over three-fourths, and the gross domestic product decreased by about 40%. Id. This precipitous decline in the economy forced the Cuban Government to institute a series of economic changes and to encourage the entry of foreign capital, largely in the form of foreign investment. Id.

19. Foreign investment in Cuba has taken the forms of formal joint ventures ("known as mixed enterprises") between a foreign investor and a Cuban state-owned enterprise, and looser "economic associations" between foreign and Cuban concerns. The joint ventures usually result in the formation of a Cuban corporation in which the foreign investor and its Cuban co-venturer are shareholders. The economic associations are typically production agreements in which a Cuban entity supplies the labor and facilities and the foreign partner supplies equipment or materials, or provides advance credit. Another form of economic association is a joint account, in which the foreign partner manufactures and distributes abroad products designed in Cuba. See generally Cuba's Laws at 106-07 and references cited therein (copy attached as Exhibit K); see also Cuba's Foreign Investment Law (Law 77 of 1995), Articles 2, 13, and 14, copy attached as Exhibit L.

20. An important step taken by Cuba to attract foreign investment was the enactment in February 1992 of amendments to the 1976 Constitution. Those amendments permitted property ownership by "mixed enterprises" (joint ventures between foreign investors and state-owned entities), corporations, and economic associations between foreign and Cuban entities and the transfer of state property to such entities. A new Article 23 was added to the Constitution, which provided as follows: "The state recognizes the right of mixed enterprises, corporations and economic associations established in accordance with the law to own property. The use, enjoyment and disposition of the assets which are the property of the above mentioned

enterprises shall be governed by the provisions of the laws and treaties, as well as by the enterprises' own articles of incorporation and bylaws.” (The original Spanish text of Article 23 of the Cuban Constitution, as amended in 1992, is included as Exhibit A to Mr. Marqués' Affidavit herein. The English translation is my own). The provisions of new Article 23 of the Constitution are for the benefit of foreign investors and allow the various forms of foreign investment to be carried out through the ownership of property, which prior to 1992 had been exclusively reserved to the state. See, e.g., Jorge Pérez-López, Cuba's Second Economy (Transaction Publishers, New Brunswick, N.J. 1995) at 155-56 (attached as Exhibit M).

21. While the 1992 amendments to the Cuban Constitution lifted, for the benefit of enterprises including foreign investors, the limitations on the right to own property, the amendments reaffirmed the underlying ownership and control by the state over the country's economic assets not subject to foreign investment. Article 14 of the Constitution, committing the country to a socialist economy, remained essentially unchanged in the 1992 amendments. Article 15 of the Constitution was modified in 1992 to authorize the transfer of state-owned property to joint ventures. As amended, Article 15 states:

Socialist state ownership by all the people exists of:

- (a) the lands that do not belong to small farmers or to cooperatives formed by the same, the subsoil, mines, the natural resources, living or not, within the maritime economic zone of the Republic, the forests, the water bodies, the means of communication;
- (b) the sugar mills, the factories, the fundamental means of transportation, and over all enterprises, banks, installations and assets that have been nationalized and expropriated from the imperialists, the large estate holders and the bourgeoisie, as well as over the people's farms, factories, enterprises and economic, social, cultural or sporting installations built, fostered or acquired by the state and those that it may in the future build, foster or acquire.

Title to these assets cannot be conveyed to natural or juridical persons, except in exceptional cases in which the partial or total conveyance of an economic asset is intended for purposes of the country's economic development and does not impair the State's political, social and economic foundations and is approved in advance by the Council of Ministers or its Executive Committee.

With regard to the conveyance of other rights over these assets to state enterprises or other authorized entities, for the accomplishment of their purposes, this will be done in accordance with the provisions of the law.

The original Spanish text of Article 15 of the Cuban Constitution, as amended in 1992, is also included in Exhibit A to Mr. Marqués' Affidavit. The English translation is my own.

22. The addition of the last two paragraphs to Article 15 of the Constitution, which authorize the conveyance of title or other rights to state property to enterprises that include foreign investors complements the provisions of new Article 23, which as noted above authorizes the establishment of mixed enterprises, corporations and economic associations and empowers them to own property. However, this authorization is rather limited in scope. Article 15 permits the conveyance of state property to such entities "in exceptional cases" in which the conveyance is intended to foster the country's economic development. The Article enables enterprises that include foreign investors to make use of state assets in the course of their business activities, if doing so promotes economic development. For example, a joint venture formed to operate an existing hotel would be able to receive from the state title to the hotel's assets, provided the Council of Ministers determined that doing so would foster Cuba's economic development.

23. Article 16 of the Constitution was also amended in 1992. The modifications, however, consisted of a rearrangement of the text and the dropping of the express reference to a central economic plan; the declaration of the State's control over the economic activities of the country, including state-owned enterprises, remained unchanged. As modified, Article 16 reads

in relevant part: “The state organizes, directs and controls the national economic activities in accordance with a plan that guarantees the programmed development of the country, with the end of strengthening the socialist system, satisfying better the material and cultural needs of society and the citizens, fostering human development and dignity, and the progress and security of the country.” The original Spanish text of Article 16 of the Cuban Constitution, as amended in 1992, is also included as Exhibit A to Mr. Marqués' Affidavit. The English translation is my own.

24. Another change brought about by the 1992 constitutional amendments was the rewriting of Article 17, which deals with the structure and functions of state-owned enterprises. Article 17 of the 1976 Constitution read: “The State organizes enterprises and other economic entities for the administration of the socialist property of the entire people. The structure, powers and functions of the state enterprises and economic entities of production and of services and the system of their relations are prescribed by law.” See Exhibit B to Mr. Printzios' Affidavit. In the 1992 amendments, Article 17 was modified to read: “The State manages directly the assets that constitute the socialist property of all people; or it may create and organize enterprises and entities charged with their administration, whose structure, powers and functions and the form of their interrelationships are regulated by law. Such enterprises and entities meet their obligations only through their financial resources, within the limits established by law. The State does not answer for the debts incurred by those enterprises, entities or other juridical persons, and they do not answer for the State’s either.” See Exhibit A to Mr. Marqués' Affidavit for the Spanish text of Article 17 of the Constitution, as amended in 1992. The English translation is my own.

25. The changes to Article 17 can be understood, again, by bearing in mind that if a state-owned enterprise or other entity is organized to enter into a business relationship with a foreign investor, this creates the potential for liability of the state-owned participant in the joint

venture to its partner, the foreign investor. Article 17, as modified, is intended to insulate the state from the potential liability of the enterprises it organizes to take part in joint ventures to its partners and other third parties, and conversely to insulate the state-owned enterprise from the liabilities of the state.

26. Thus, the 1992 amendments to the Cuban Constitution re-affirm the state's ownership of and control over the country's assets. While enabling the transfer of some state assets to entities that include foreign investors, such transfers are narrowly circumscribed, are allowed only where they foster economic development, and are subject to approval at the highest levels of government. Because such entities are established for entering into business transactions with third parties, an attempt is made to insulate the state from claims against the entity arising out of its business activities, and conversely to protect the entity from claims raised against the state.

Application of Constitutional Principles to Cubana

27. To the extent that there was in either 1996 or 1998 an alleged transfer of the assets of the state-owned enterprise Cubana to Cubana S.A., such a transfer was inconsistent with the Cuban Constitution. Cubana, as the country's national flag airline and the main air carrier of the island, constitutes a "fundamental means of transportation" whose ownership is to remain with the State absent an "exceptional" situation in which a change in ownership will "foster economic development." No exceptional situation appears to exist with respect to Cubana that would satisfy the constitutional requirements. As discussed above, the assets of Cubana have been allegedly transferred to a corporation owned by a holding company whose shareholders are unknown, but whose President and legal representative is a high government official. No consideration appears to have been paid for these assets. There is no evidence that any capital has been injected into the airline, or that operational upgrades have taken place as a result of the

transfer, or that any unique expertise has been brought in. There is no indication that a foreign partner has been added to provide investment, marketing, know-how or other contribution to improving the airline's capabilities or economic performance. Also, no case has been made that the alleged transfer of Cubana's assets to Cubana S.A. fosters Cuba's economic development. In fact, there is no evidence that the constitutional provision requiring approval by the Council of Ministers was observed in advance of the transfer of Cubana's assets to Cubana S.A. For those reasons, it would appear that the "privatization" of Cubana, to the extent that it involved the transfer of the assets of the state enterprise to an entity different from the Cuban state, was illegal as in violation of the Constitution, because it failed to satisfy the requirements imposed by Article 15 on such a transfer. As further discussed below, the transfer was also ineffective because it did not constitute a genuine transfer of assets to an entity independent of the state.

Absence of a Genuine Transfer of Assets to a Private Party

28. As noted above, the affidavit tendered of Lic. Marqués states at paragraph 13 that in October 1998 "ownership of the same assets" (presumably, Cubana's assets) "was transferred to Cubana by its principal shareholder." Lic. Marqués does not disclose how CAC, the principal shareholder of Cubana S.A., acquired the state enterprise's assets, on what basis were these assets transferred to Cubana S.A., or what consideration was given for the assets. In fact, Lic. Marqués provides no evidence whatsoever of any economic justification for the transactions pursuant to which the state enterprise's assets were transferred to Cubana. Nor is there any reference to an obligation on the part of Cubana S.A. or CAC to pay the Cuban state for Cubana's assets, which are quoted in Exhibit G to Lic. Marqués' Affidavit as having in 1998 a value of 270,994,200 pesos (equivalent to C\$20,324,565 at the current exchange rate). In a country like Cuba, in which the state owns all economic assets, there can be no *bona fide* transfer of state property of

that magnitude to a private party with no value being received in return. There is no evidence that any such value was given to the state.

29. Moreover, as discussed above, transfers of Cuban state assets to non-government entities are allowed only in exceptional cases and only for the benefit of enterprises involving foreign investors. Indeed, I am not aware of any instance in which the transfer of state property to a privately owned Cuban corporation has taken place since a socialist economic regime was instituted in Cuba. Thus, the inevitable conclusion is that either (1) Cubana S.A. is not a private enterprise but a state instrumentality in disguise, or (2) no real transfer of the assets of Cubana to Cubana S.A. has occurred. In either case, ownership of the assets of Cubana remains with the Cuban state.

30. My conclusion that Cubana's assets remain with the Cuban state is reinforced by the fact that the airline appears to remain under the control of the Cuban Government. This is evidenced in Cubana's own promotional materials, wherein Cubana acknowledges that it lends its aircraft to carry out governmental missions, such as transporting Cuban aid to countries suffering natural disasters and transporting Cuban sports delegations to participate in international competitions. For example, Cubana boasts that "[w]hen in 1988 the hurricanes George and Mitch caused great damage in Central America and the Caribbean, Cuban medical brigades and first-aid provisions were transported to countries like Guatemala, Haiti, Honduras and Nicaragua, in airplanes that Cubana put at the disposal of the government to fulfill such an honorable mission." See <http://www.cubana.cu/ingles/historia/datos-historia.htm>, Exhibit D hereto. Cubana also transports Cuban President Fidel Castro and other Cuban government officials in all their trips abroad.

31. Cubana is often referred to in the international press as being a "state-owned" airline. See, e.g., the set of newspaper and news service accounts attached as Exhibit N. To my

knowledge, Cubana S.A. has never contested this description. The U.S. Government regards Cubana S.A. as an enterprise in which Cuba has an interest and an “alter ego” of the Cuban state. See Exhibit D to Mr. Printzios' Affidavit.

Comments on Legal Opinion by Cubana’s Counsel

32. As part of my review, I examined a legal opinion rendered by Lic. Roberto Vizcaíno Méndez, a member of the Cuban law firm Consultoría Jurídica Internacional (“Consultoría”). I would note at the outset that there are no independent legal practitioners in Cuba. As I state in my book *Cuba’s Laws*:

There are no independent law practitioners in Cuba. Under a 1973 law that reorganized the judicial system, all attorneys wishing to engage in private practice must join lawyers’ collectives (*Bufetes Colectivos de Abogados*), defined as “autonomous institutions under the supervision of the Ministry of Justice.” Attorneys in Cuba work for state enterprises or in government offices, teach at the law schools, or are part of one of the *bufetes colectivos*.

Cuba’s Laws at 53, footnotes omitted, copy attached as Exhibit O. For that reason, it is impossible to obtain legal advice or a legal opinion from a Cuban lawyer that does not reflect the positions and interests of the Cuban Government. Indeed, whereas in the United States or Canada an attorney is an officer of the courts, in Cuba an attorney is a servant of the state.

33. The lack of independence of Cuban legal practitioners, such as Consultoría and Lic. Vizcaíno, renders any legal opinion they issue suspect, particularly when they address, as does Lic. Vizcaíno’s opinion, the relations between the State and enterprises such as Cubana.

34. Lic. Vizcaíno’s legal opinion consists for the most part of a description of the formal requirements for the establishment of corporations under Cuban law (the applicable law is the Commercial Code, which dates back to 1886), and a recitation of how the formation of Cubana de Aviación, S.A. in September 1996 satisfied those formal requirements. Such a recitation, in my opinion, is irrelevant to the issue of who truly owns and controls the state

enterprise Cubana and its assets. Lic. Vizcaíno could have addressed these matters in his affidavit, for he refers on p. 5 of his opinion to Cubana S.A. as “a subsidiary” of CAC, which he describes as a “holding company.” However, he does not disclose what CAC is or who are its shareholders, nor does he address any of the issues about the true ownership of the assets of the state enterprise Cubana which are raised in this analysis.

Conclusions

35. In my opinion, the Cuban Government has sought to weave a thin veil to conceal behind an apparent corporate form the continued ownership by the Cuban state of the assets of Cubana, the national airline. For the reasons described above, the corporate veil in this instance is but a fiction intended to place the assets of Cubana abroad beyond the reach of creditors and others asserting claims against the state, even though such assets continue to be state property.

I hereby declare under penalty of perjury under the laws of the United States of America that the contents stated herein are true.

Executed on October 12th, 2001

Matias F. Travieso-Diaz

DISTRICT OF COLUMBIA)
) ss:
)

SUBSCRIBED and SWORN to before me, a Notary Public, on this 12th day of October, 2001.

_____(SEAL)
Notary Public

My Commission Expires: _____

