

AN INTERVIEW WITH MATIAS TRAVIESO-DIAZ ON U.S.-CUBA RELATIONS



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In a January 14 segment of the British news program, “The Briefing” (on British Internet radio channel, Monocle.com), host Nancy Durham spoke with Pillsbury partner Matias Travieso-Diaz on potential obstacles and practical implications in play in the reestablished diplomatic relations between the U.S. and Cuba.

Durham: *You are listening to the “The Briefing” on Monocle 24 with me, Nancy Durham. The process to normalize relations between Cuba and the United States is moving forward. Just on Monday, it was announced that Cuba had released all 53 political prisoners it had promised to free, as part of its rapprochement with the United States. However, there are still issues to be solved and one of them is money. U.S. nationals and companies have about 7 billion dollars in certified claims against the Cuban government. Meanwhile, Cuba is also making claims against the U.S. for all the economic damage resulting from the decades-long embargo. Joining me on the line to explain how these issues might be settled is Matias Travieso-Dias, who’s written several books on the Cuban economy. Hello!*

Diaz: Good morning, or good afternoon!

Durham: *Oh, good afternoon over here. Well look, let’s focus on the money. The American claimants are some of the big giants: Exxon, Coca-Cola, Colgate and more. Are they going to get their compensation?*

Diaz: It’s very unlikely they will get anything and even more unlikely that they want to get anything. For big companies, and you have to understand that the vast majority of monetary claims against Cuba—not necessarily the number of claims but initial dollar amount—are from big companies that have various investments in Cuba. For those companies, it is generally preferable to get investment opportunities in that country [such as] tax advantages [...] as opposed to getting money. Typically, in a settlement between the U.S. and a country that has complicated property, the amount of money that is recovered is a small portion, a very small portion, of the actual certified amounts. Typically less than ten cents on the dollar. So for the big companies, it is much more beneficial to be able to get some investment opportunities than just the money that was confiscated.

Durham: *Is it likely then that they are already on the ground or trying to get those opportunities going, or, in fact, they probably been working on it for a while. Do you know?*

Diaz: Well they have been working awhile—the United States for sure—to make themselves ready, to go back to Cuba and do business. Whether they are actually in Cuba now trying to negotiate with the Cuban government is something else that I cannot talk about with authority. I can tell you, however, that in order for them to be able to effect a negotiation of the claims against Cuba, the process of resolving those claims for Cuba will have to be different from the one that has been traditionally used in many other situations. Typically, what happens is that the U.S. government, by way of the State Department, is the only party authorized to negotiate with the Cuban government or the government that confiscated the property. They are only entitled to get whatever the government is able to recover from the expropriating country, and then only the pro rata share. That is the typical way that it is done. That's not to say that in this very complex situation the U.S. may not allow individual claimants to declare themselves outside the normal compensation scheme and try to negotiate directly with Cuba.

Durham: *What decides whether you're inside or outside the normal negotiations scheme?*

Diaz: Well, the president of the U.S. has authority to negotiate the solution of claims with the countries that have no appropriations. The only recent example in which getting outside the normal settlement process has been allowed is with respect to East Germany—East German claims. In that situation, American claimants

that wish to negotiate directly with the new German government were allowed to do that, but that was because Germany had set up its own program under which the claimants could have brought themselves. Cuba of course has not done that.

Durham: *Wow, very complicated! Tell us what you think of Cuba's chances and its claims for the revenue lost due to the embargo years?*

Diaz: Well, two answers on that: First, that is an entirely political question and it doesn't do anything to resolve either way the view of claimants' rights, which are based on something else. But secondly, you can claim as a political matter that they owe money because they have done things against you. There is nothing in the law—international law, treaties or whatever—that requires a country to do business with another. So, I think that even if it was possible for Cuba to advance that claim, it is very unlikely that the resolution that was given to it would affect the resolution with the individual claimants' appropriation claims.

Durham: *So, perhaps low expectations for happy customers here?*

Diaz: Well, it depends on how the situation evolves. I think the key issue is going to be, eventually, whether the U.S. Congress approves lifting the trade embargo. That would change the business climate and create more opportunities for the U.S. and Cuba to come a negotiated solution of all the claims that now exist.

Durham: *Thank you so much for joining us. That was Matias Travieso-Diaz, author and partner of the international law firm, Pillsbury Winthrop Shaw Pittman in Washington, DC.*

(For further information on the legal considerations of doing business in Cuba, contact any member of Pillsbury's **International Trade Group**.)