

## Practice Update

# Law to Punish Companies with Cuba Ties Struck Down

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Last week, the 11th U.S. Circuit Court of Appeals in Miami declared unconstitutional a 2012 Florida law intended to prevent foreign companies with ties to Cuba — or that are in any way related to a company that does business in Cuba — from being awarded contracts worth \$1 million or more by state and local government agencies. The court ruled that the law violated the Supremacy Clause of the U.S. Constitution and in doing so upheld an earlier injunction issued by the District Court for the Southern District of Florida that had barred the Florida State Department of Transportation from enforcing the provisions at issue.

The ruling was the latest victory for plaintiff Odebrecht Construction, Inc., a Coral Gables-based firm that many believe was one of the law's original targets. The company, which itself has no dealings in Cuba, is owned by Brazilian construction giant Norberto Constructora Odebrecht S.A., which does have a non-U.S. subsidiary that is assisting in the renovation of Cuba's Port of Mariel. Odebrecht Construction, Inc. has a long track record of involvement in major Florida infrastructure projects, including American Airlines Arena, the Adrienne Arsht Center for the Performing Arts and the North Terminal at Miami International Airport.

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The law could also have prevented dozens of other companies across numerous sectors from bidding on similar contracts. One report listed 238 companies with strong ties to Florida that could also have business ties to Cuba, including pharmaceutical firms, energy companies, financial institutions and airlines.

In its ruling, the judges wrote that the law “conflicts directly with the extensive and highly calibrated federal regime of sanctions against Cuba promulgated by the legislative and executive branches over almost fifty years,” and that the plaintiff “demonstrated a substantial likelihood of success on its claim that the Cuba Amendment violates the Supremacy Clause of the Constitution under principles of conflict preemption.”

Last week’s ruling may also be the final chapter in a nearly year-long legal saga — barring an unlikely appeal to the United States Supreme Court, Odebrecht Construction, Inc. and other U.S. companies whose foreign affiliates have ties to Cuba cannot be legally excluded from bidding on projects with the state of Florida.

In response to the ruling, the company issued a statement saying it “is very gratified by the court’s ruling, and the court’s agreement with our legal position. We are extremely proud of our 21-year track record of performance and community involvement in Miami-Dade County and throughout Florida.”

### **British Firm Gets Go-Ahead on Cuba Golf Course Project**

After seven years of leg work and cutting through bureaucratic red tape, U.K.-based firm Esencia has received final approval from the Cuban government to proceed with plans to build Cuba’s first new golf course in nearly 55 years. According to the firm’s website, the \$350 million project dubbed The Carbonera Club will sit on 420 acres near the resort

town of Varadero and, in addition to the golf course, will offer private properties for sale to foreigners, as well as a hotel and spa, a beach club, tennis club, and use of the nearby yacht club and marina.

In an interview with the BBC, Cuba's Tourism Minister Manuel Marrero said the resort "will be a major complement to the tourist offering of Varadero and the start of a whole new policy to increase the presence of golf in Cuba." Likewise on a tour of the site, Esencia CEO Andrew MacDonald told reporters, "We've been working on this for seven years, step by step, so we're very excited it's finally going to happen." Construction on the project is slated to begin in 2014.

Should it succeed, The Carbonera Club will be novel in more ways than one — golf languished under the Castro regime. Once, after famously playing a round in military fatigues at a nearby Havana course with comrade in arms Ernesto "Che" Guevara, Fidel Castro declared to sport "too bourgeois" and began converting courses into everything from military barracks to art schools. What's more, this will be the first time since the Cuban revolution that foreigners will be allowed to acquire property in Cuba.

Tourism Minister Marrero had said late last year that the government is in talks with 10 foreign business consortia and is planning to build numerous golf resorts throughout the island. At least four courses have been shovel ready since 2011 and other groups that are known to be in negotiations with Cuba have included British Virgin Island-based Coral Capital Group, Canada's Standing Feather International, and a Spanish group with plans to build a resort in western Cuba.

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