UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

Case No. 19-cv-21724
BLOOM/McAliley

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

MSC CRUISES SA,
MSC CRUISES SA CO, and
MSC CRUISES (USA) INC.,

Defendants.
_____/

Case No. 19-cv-23588
BLOOM/Louis

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES, LTD.,

Defendant.
_____/

Case No. 19-cv-23590
BLOOM/Louis

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

NORWEGIAN CRUISE LINE HOLDINGS LTD.,

Defendant.
_____/

Case No. 19-cv-23591
BLOOM/Louis

REPLY IN SUPPORT OF DEFENDANTS' MOTION SEEKING CLARIFICATION OF THE COURT'S MARCH 21, 2022 OMNIBUS ORDER ON MOTIONS FOR SUMMARY JUDGMENT

Defendants' Motion (*Carnival* Docket No. 480) seeks to clarify that any damages awarded in this case may be challenged as unconstitutionally excessive and disproportionate under the Fifth Amendment, after a trial or award of damages, notwithstanding the Court's Order granting summary judgment on these affirmative defenses.[1] In its Response (*Carnival* Docket No. 495), ***Plaintiff agrees with the substance of this request***. As Plaintiff explains: "Following Eleventh Circuit precedent, the Court has twice held that a Fifth Amendment excessiveness argument is a post-trial issue to be addressed 'after a jury has delivered a damages award.'" Response at 2.[2] That is precisely the basis of Defendants' Motion: under this Court's holdings, any Fifth Amendment excessiveness and disproportionality issues should be resolved only after there is an award of damages. Accordingly, Defendants seek to clarify that the Court's Summary Judgment Order does not preclude them from raising these challenges should damages be awarded.

Plaintiff also concedes that it never sought summary judgment on Defendants' Fifth Amendment excessiveness and disproportionality defenses. It nonetheless contends that the Court had the power to grant summary judgment on this point *sua sponte*, but solely on the grounds that this defense is not an affirmative defense because it "is not an avoidance that may be presented at trial." Response at 3. Again, Plaintiff's argument concedes this is a post-trial issue. To the extent this Court granted summary judgment solely because the Fifth Amendment arguments are not

---

[1] The Court's March 21, 2022, Omnibus Order on Motions for Summary Judgment (the "Order") granted summary judgment for Plaintiff on Carnival's Eleventh Affirmative Defense, Royal Caribbean's Fifth Affirmative Defense, Norwegian's Ninth Affirmative Defense, and MSC's Fourth Affirmative Defense. Order at 165.

[2] Quoting *Havana Docks Corp. v. MSC Cruises SA Co.*, 484 F. Supp. 3d 1177, 1202-03 (S.D. Fla. 2020); citing also *Havana Docks*, --- F. Supp. 3d ----, 2022 WL 831160, at *85; *Harris v. Mexican Specialty Foods, Inc.*, 564 F.3d 1301, 1308-13 (11th Cir. 2009).

appropriate until after an award of damages, the instant Motion should be granted, clarifying what all parties agree on: that these defenses may be raised after trial should damages be awarded.

Thus, Defendants respectfully request that the Court grant Defendants' Motion, clarifying that the Court has not reached a determination on the excessiveness and disproportionality of potential damages (that remain as of yet unknown), and that Defendants may raise their Fifth Amendment excessiveness and disproportionality arguments after an initial award of damages has been made.

Dated: April 19, 2022

Respectfully submitted,

BOIES SCHILLER FLEXNER LLP
401 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida
Telephone: (954) 356-0011
Facsimile: (954) 356-0022

By:/s/ *Stuart H. Singer*
Stuart H. Singer
Florida Bar No. 377325
ssinger@bsfllp.com
Meredith Schultz
Florida Bar No. 29536
mschultz@bsllp.com
Pascual A. Oliu
Florida Bar No. 0107737
Corey P. Gray
Florida Bar No. 0115473
cgray@bsfllp.com

Pedro A. Freyre
Florida Bar No. 192140
Pedro.freyre@akerman.com
AKERMAN LLP
98 S.E. 7th Street, Suite 1100
Miami, Florida 33131
Telephone: (305) 374-5600

George J. Fowler, III (admitted *pro hac vice)*

HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, Florida 33131
Telephone: (305) 459-6500
Facsimile: (305) 459-6550

By: /s/ *Allen P. Pegg*
Richard C. Lorenzo
Florida Bar No. 071412
richard.lorenzo@hoganlovells.com
Allen P. Pegg
Florida Bar No. 597821
allen.pegg@hoganlovells.com

Counsel for Norwegian Cruise Line Holdings Ltd.

HOLLAND & KNIGHT LLP
701 Brickell Avenue, Suite 3300
Miami, Florida 33131
Telephone: (305) 374-8500
Facsimile: (305) 789-7799

By: */s/ Scott D. Ponce*
Scott D. Ponce
Florida Bar No. 0169528
sponce@hklaw.com

gfowler@joneswalker.com
Luis Llamas
Florida Bar No. 89822
llamas@joneswalker.com
JONES WALKER LLP
201 St. Charles Avenue
New Orleans, LA 70170
Telephone: (504) 582-8752

Counsel for Carnival Corporation

Counsel for Royal Caribbean Cruises Ltd.

VENABLE LLP
600 Massachusetts Avenue
Washington, D.C. 20001
Telephone: (202) 344-4703
Facsimile: (202) 344-8300

By:*/s/ J. Douglas Baldridge*
Florida Bar No. 708070
JBaldridge@venable.com
Andrew T. Hernacki (admitted *pro hac vice*)
ATHernacki@venable.com
Justin B. Nemeroff (admitted *pro hac vice*)
JBNemeroff@venable.com

Counsel for MSC Cruises

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2022, the foregoing was filed with the Clerk of Court using CM/ECF, which will serve a Notice of Electronic Filing on all counsel of record.

By:/s/ *Stuart H. Singer*
Stuart H. Singer