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

DEFENDANTS' EXPEDITED MOTION TO REMOVE CASES FROM TRIAL CALENDAR AND CONTINUE REMAINING PRETRIAL DEADLINES

Defendants Carnival Corporation d/b/a Carnival Cruise Line ("Carnival"), MSC Cruises S.A., MSC Cruises SA Co., and MSC Cruises (USA) Inc. (together, "MSC Cruises"), Royal Caribbean Cruises Ltd. ("Royal Caribbean"), and Norwegian Cruise Line Holdings Ltd. ("Norwegian") (collectively, "Defendants") file this Motion and request that the Court remove each of these cases from their current May 23, 2022, trial calendars and reset them, and the remaining pretrial deadlines in each such case, for a time reasonably after resolution of Plaintiff's Motion to Exclude Opinion of Pablo Spiller (Carnival ECF No. 328, MSC Cruises ECF No. 214, Royal Caribbean ECF No. 138, Norwegian ECF No. 226,) and Defendants' Omnibus Motion to Exclude Testimony of Plaintiff's Experts (Carnival ECF No. 320, MSC Cruises ECF No. 207, Royal Caribbean ECF No 129, Norwegian ECF No. 222,) (collectively the "*Daubert* Motions"). The *Daubert* Motions deal significantly with the damages theories advanced in this case, and thus their resolution will greatly affect pretrial filings and trial. Defendants also specifically request, pursuant to Local Rule 7.1(d)(2), that the Court grant expedited consideration of this motion by April 5, 2022, given that the current deadline for motions *in limine* is April 8, 2022 and trials are scheduled for May 23, 2022. In further support of this motion, Defendants state as follows:

The Court's January 14, 2022 Order Amending Scheduling Order and Certain Pretrial Deadlines, *see, e.g.*, *Carnival* ECF No. 444, re-set each trial for the Court's two-week trial calendar beginning on May 23, 2022, with calendar call on May 17, 2022. *See*, *e.g.*, *Carnival* ECF No. 432. On March 21, 2022, the Court entered its Omnibus Order on the parties' respective individual and omnibus summary judgment motions, indicating that trials in each case "shall proceed solely on the issue of Havana Docks' damages." *E.g.*, *Carnival* ECF No. 477, at 167.

The present deadline for the parties to file motions *in limine* and all other pretrial motions is April 8, 2022 – just 8 days from the date of filing of this Motion. *E.g., Carnival* ECF No. 466. The parties fully briefed their respective *Daubert* Motions on November 8, 2021. *E.g.*, *Carnival* ECF No. 400. Judge McAliley held a hearing on the *Daubert* Motions on January 25, 2022. Judge McAliley subsequently requested that the parties file supplemental briefing related to various issues in their *Daubert* Motions, *see*, *e.g.*, *Carnival* ECF No. 468, which the parties timely did on March 16, 2022. *See*, *e.g.*, *Carnival* ECF No. 474.

Judge McAliley's careful consideration of these motions is warranted by the number of issues involved in the voluminous *Daubert* briefing. However, and crucially, even if Judge McAliley's report and recommendation were issued today, it would still require approximately ***four weeks*** to complete the briefing of any objections, and additional time for a ruling on those objections, before the Court and the parties have an understanding of numerous issues that will significantly shape any trial. *See* Fed. R. Civ. P. 72 (providing 14 days for written objections to a Report and Recommendation, and 14 days for a response). In other words, the Report and Recommendation on the *Daubert* Motions and any objections thereto would not be fully briefed until April 28, 2022 at the earliest—long after motions *in limine* are due and just weeks before trials are slated to begin.

The pending *Daubert* Motions are exclusively focused on issues of damages,[1] which, in light of this Court's summary judgment order, are likely to be central to any trials in these cases. Since no court has ever determined the appropriate ways to measure damages under the various prongs of Title III of the Helms-Burton Act, nor resolved how such theories may be presented at

[1] The expert report of Jose Azel contains no discussion of damages, but Plaintiff has asserted relevance solely on issues of damages, not liability. Defendants disagree that his testimony is relevant on any issue.

trial, these motions raise significant, novel questions of law that will materially shape key aspects of the trials and associated pre-trial motions.

Thus, the Court's ruling on the parties' *Daubert* Motions will necessarily guide the parties' decisions on the substance and content of motions *in limine* and other pretrial motions, as well as exhibit lists, witness lists, and other trial preparation. Resolving the *Daubert* Motions before the submission of pretrial motions and other materials will promote judicial efficiency as well, likely obviating the need for the parties to file, and the Court to resolve, pretrial motions that could be mooted by resolution of the *Daubert* issues.

For example, one of the issues pending in Defendants' Omnibus *Daubert* Motion is whether Plaintiff's experts may opine on the "current value" of the confiscated property based on a theory that the existing Havana Cruise Terminal could be partially torn down and rebuilt into a mega-cruise-port with a five-star luxury hotel. Defendants' Omnibus Daubert Motion, at 6–8, 11–17 (*e.g. Carnival* ECF No. 320). Resolving whether this theory may be presented will greatly affect the scope of evidence required at any damages trial (such as evidence regarding construction plans circulated by various Cuban entities, evidence regarding hotels in Cuba, and so on), and would accordingly guide the parties on the content of their motions *in limine* and other pretrial motions.

Similarly, Plaintiff's *Daubert* motion asks the Court to resolve whether Defendants may, in accordance with 22 U.S.C. § 6082(a)(2), challenge the "presumption" that the Foreign Claims Settlement Commission's valuation is the correct measure of damages by presenting clear and convincing evidence that a different, lower valuation "is the appropriate amount of liability" under Section 6082(a)(2). *See* Plaintiff's Motion to Exclude Opinions of Ackert and Spiller, at 13–16 (*e.g., Carnival* ECF No. 328). Again, resolution of this central question of how to apply the §

6082(a)(2) presumption will almost surely guide the parties' selection and presentation of evidence at trial (such as evidence of the correct value at the time of confiscation and materials submitted to the Commission), and will thus necessarily guide the parties' briefing on motions *in limine*. Further, the parties would likely make little progress in conferring on objections to exhibits and deposition designations without information about what potential damages theories will and will not be permitted at trial.

Given that the pending *Daubert* Motions – each of which focuses on damages-related experts and issues, and several of which focus on such issues exclusively – will directly impact the scheduled jury trials, Defendants submit that these cases cannot be sufficiently prepared for trial by May 23, 2022. As such, Defendants respectfully propose that the cases be removed from their current trial calendar and that the remaining pretrial deadlines be lifted pending final resolution of the *Daubert* Motions. Removing the cases from the current trial calendar will serve the interests of judicial economy and preserve the valuable resources of the Court, the parties, and the jurors who will be called upon to decide these significant issues.

This motion is further supported by the affidavit attached as **Exhibit 1** hereto.

This relief is requested in good faith and not for purposes of delay. Moreover, neither the Court nor Plaintiff would suffer any prejudice from the brief requested continuance of pretrial deadlines and trials, which is needed in order to prepare these cases for efficient presentation to the juries.

CONCLUSION

For the foregoing reasons, the Court should enter an Order granting this Motion and removing these cases from the Court's May 23, 2022 trial calendar and continuing the remaining

pretrial deadlines, subject to further Order of the Court.[2]

CERTIFICATE OF GOOD FAITH CONFERRAL

Pursuant to Southern District of Florida Local Rule 7.1(a)(3), undersigned counsel certify that they attempted to confer in good faith with Plaintiff's counsel in writing on March 30–31 regarding this Motion, and Plaintiff opposes this motion.

[2] Should the Court in its discretion decide to reschedule the trials, Defendants submit that they will be unavailable during the following periods: Scott Ponce, counsel for Royal Caribbean, will be in Montana on a long-planned and prepaid trip from May 21 through May 28, 2022, as discussed during the January Hearing. *See* MSJ Hrg. Tr. 1/12/22, 258:20-262:8. Mr. Ponce will not have electricity, phone, or internet service while in Montana. Also discussed during the Hearing, Stuart Singer, counsel for Carnival, will be in Indianapolis for his son's wedding and unavailable from June 16 through June 19, 2022. *See* MSJ Hrg. Tr. 1/12/22, 259:10-12; 261:4-7. Further, Doug Baldridge, counsel for MSC Cruises, will be lead counsel in a trial in the District of Maryland and unavailable from August 15 through August 26, and then will be in Ireland for his daughter's wedding and unavailable from August 27 through September 15. Moreover, Ernesto Rubi, Royal Caribbean's inside counsel with primary responsibility for this matter, will be in Europe on a long-planned and prepaid trip from July 1 through July 24, 2022.

Dated: March 31, 2022

Respectfully submitted,

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Counsel for MSC Cruises

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 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

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AFFIDAVIT OF STUART SINGER

I, Stuart H. Singer, under penalty of perjury, hereby declare:

1. I am a partner at Boies Schiller Flexner LLP in Fort Lauderdale, Florida, which serves as outside counsel to Carnival Corporation ("Carnival") in this matter. I make this affidavit in support of Defendants' Expedited Motion to Remove Cases from Trial Calendar and Continue Remaining Pretrial Deadlines. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify thereto.

2. Good cause exists for the Court to enter an order removing these cases from the Court's May 23, 2022 trial calendar and rescinding the remaining pretrial deadlines.

3. Under the current Scheduling Order, pretrial motions, including motions in limine are due on April 8, 2022. Among other things, the Report and Recommendation on the various outstanding *Daubert* motions and any objections thereto will not be fully briefed and ripe for resolution until April 28, 2022 at the earliest, which would be long after motions in limine are currently due and just weeks before the trial calendar on which these cases are currently set.

4. The Court's ruling on the Parties' *Daubert* motions will necessarily guide Defendants' (and, presumably, Plaintiff's) decisions on the substance and content of motions in limine and other pretrial motions, as well as on exhibit and witness lists and other significant trial preparation.

5. Thus, good cause exists to rescind the pretrial motions deadline and remove the cases from the trial period.

6. The requested removal will afford the Parties and the Court time to brief and resolve novel and complex issues under the Helms-Burton Act.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that I executed this affidavit on March 31, 2022 in Boca Raton, Florida.

STUART H. SINGER