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, et al.,
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

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR RECONSIDERATION OF THE COURT'S ORDER CONFIRMING THE CALCULATION OF INTEREST UNDER 22 U.S.C. § 6082(a)(1)(B)[1]

[1] Given the Court's consolidation order, this response—which relates to a common issue of law regarding damages—will cite only the relevant docket entries in the *NCL* action, No. 19-cv-23591.

INTRODUCTION

There is no reason for the Court to reconsider its Order on Defendants' Motion to Confirm Interest Calculation Pursuant to 22 U.S.C. § 6082(a)(1)(B). (ECF No. 428.) Reconsideration is an "'extraordinary remedy'" that may not be used "to 'relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.'" *Tropical Paradise Resorts v. JBSHBM, LLC*, 2019 WL 78983, at *1 (S.D. Fla. Jan. 1., 2019) (Bloom, J.) (quoting *Burger King Corp. v. Ashlan Equities, Inc.*, 181 F. Supp. 2d 1366, 1370 (S.D. Fla. 2002), and *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009)). Rather, reconsideration is appropriate only if there is (1) an intervening change in controlling law, (2) new evidence, or (3) a need to correct clear error. *See id.* (citing *Hood v. Perdue*, 300 F. App'x 699, 700 (11th Cir. 2008)). Neither of the arguments Defendants advance in their motion—one new, and the other moot—satisfies the narrow grounds for reconsideration. Accordingly, the Court should deny the motion.

ARGUMENT

I. Procedurally and substantively, there is no basis for the Court to tether Title III's pre-filing interest rate to the week the complaint was filed.

In its Order, the Court correctly concluded that "the proper [interest] rate to be applied [under § 6082(a)(1)(B)] is the weekly average 1-year constant maturity Treasury yield for each week over the period between the date of confiscation and the date Plaintiff brought each of these actions against each Defendant." (ECF No. 428 at 9.) Although Defendants previously pressed the Court to apply the interest rate for

the calendar week preceding judgment (ECF No. 398 at 4-9), they now press for a completely different rate, *viz.,* the rate for the week each complaint was filed. (ECF No. 434 at 3-5.) This argument should be denied for at least two reasons.

First, this is an entirely new argument, which, as noted above, is not a proper ground for reconsideration. *See Tropical Paradise Resorts*, 2019 WL 78983, at *1. Because this argument was "previously available, but not pressed," this Court can and should reject it out of hand. *Id.* (internal quotation omitted); *see also Stabb v. GMAC Mortg., LLC*, 579 F. App'x 706, 710 (11th Cir. 2014) (affirming denial of motion for reconsideration that "raised [] arguments for the first time[.]"); *see also Wilchombe*, 555 F.3d at 957 (reviewing for abuse of discretion).

If Defendants wanted an interest rate tied to the week the complaint was filed, they could and should have argued for it in their underlying briefing. *See Mays v. U.S. Postal Serv.*, 122 F.3d 43, 46 (11th Cir. 1997) ("This circuit has held that a motion to reconsider should not be used by the parties to set forth new theories of law."). Merely suggesting—as they do now—that the Court's reasoning "should" lead to such a result does not change the analysis. *See Hood*, 300 F. App'x at 700 (noting that a motion for reconsideration "is not an opportunity for the moving party … to instruct the court on how the court could have done it better the first time.") (cleaned up); *see also Hughes v. Stryker Sales Corp.*, 2010 WL 2608957, at *2 (S.D. Ala. Jun. 28, 2010) (rejecting the argument that reconsideration is available to a "losing party [that] thinks the District Court 'got it wrong[.]'").

Second, the argument is wrong on the merits. The Court's order correctly awards interest at the "rate" specified in the federal post-judgment interest statute, 28 U.S.C. § 1961, *i.e.*, the "rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System" for the period specified in the Helms-Burton Act, *i.e.,* "the date of confiscation of the property involved to the date on which the action is brought under this subsection," 22 U.S.C. § 6082(a)(1)(B).[2] That approach harmonizes the two statutes, and accounts for the difference between pre-filing interest (which is a substantive component of a Title III plaintiff's underlying damages that must be calculated prior to judgment) and post-judgment interest (which is governed by § 1961(a), and compensates the plaintiff for the time-value of money from the date of judgment until the date of payment). Indeed, as the Court explained, the Helms-Burton Act would be unworkable if the interest rate to be applied under § 6082(a)(1)(B) were not known or knowable until the entry of judgment. (ECF No. 428 at 7-9). The Court's approach is faithful to the text of the relevant statutes, reflects a plaintiff's lost investment potential and brings the FCSC's 1960 valuation closer to present value—the purpose of pre-filing interest.

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[2] Defendants characterize this as a "highly burdensome calculation," (ECF No. 434 at 4.) It is not. The Federal Reserve's historical rates can be downloaded from the Internet directly into an Excel spreadsheet and automatically calculated over the accrual period. *See* Federal Reserve's Data Download Program, H. 15 Table, *available at* https://www.federalreserve.gov/datadownload/Choose.aspx?rel=H15 (last visited Sep. 23, 2022). Regardless, any perceived burden in calculating interest is not a basis to disregard the Act's text.

Defendants' current argument that "the Court's reasoning should lead to application of the interest rate of the week that the complaint was filed in a given action" (ECF No. 434 at 3) has no merit. There is nothing in *either* the Helms-Burton Act *or* § 1961(a) that supports calculating pre-filing interest by reference to the interest rate for the week the complaint is filed. This new argument has no statutory foundation. Nothing in either the Helms-Burton Act or § 1961(a) gives the Court discretion to pick an arbitrary date, such as the one Defendants now proffer.[3] Moreover, a fixed rate from the week the complaint is filed (Defendants' current argument) bears as little a relationship to the lost time-value of money as a fixed rate from the week before a judgment (their initial argument).[4] Both are equally untethered to (and incompatible with) the plain language and purpose of Title III. Just as the Court correctly rejected Defendants' original argument, it may safely reject their new one.

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[3] Defendants suggest that "caselaw … supports the use of the rate from the week the Complaint was filed, at least in the context of prejudgment interest." (ECF No. 434 at 4-5) (citing cases). That suggestion is misplaced. Although courts have discretion to set the appropriate rate for *pre-judgment* interest, and some have chosen to use the date of filing of a complaint, where the interest rate is prescribed by statute—as it is for *prefiling* interest under the Act—there is no discretion to choose a different rate. *See, e.g., Werner Enters., Inc. v. Westwind Maritime Int'l, Inc.*, 554 F.3d 1319, 1328 (11th Cir. 2009).

[4] The timing of Defendants' new argument is notable. Just as the 1-year constant maturity Treasury yield has spiked (which would result in a higher interest rate under their original position), they seek the lower interest rates from 2019. Needless to say, the law cannot change to suit Defendants' desired outcome at any given time.

II. Because Havana Docks is not seeking a trial on fair market value, Defendant's arguments concerning the rebuttable presumption are moot.

Based on the Court's pre-trial rulings (including its order on Defendants' motions to confirm interest calculation, ECF No. 428) Havana Docks has elected to calculate its damages pursuant to § 6082(a)(1)(A)(i)(I)—"the amount … certified to the claimant by the Foreign Claims Settlement Commission …, plus interest."[5] There will be no trial, and thus no need to apply Title III's rebuttable presumption to determine whether a greater current fair market value has been proven by clear and convincing evidence. As a result, Defendants' various arguments as to why the rebuttable presumption requires the certified claim amount to be inclusive of interest are moot.[6] *See United States v. Josey*, 2021 WL 5022387, at *1 (M.D. Ga. Aug. 16, 2021) (denying motion for reconsideration as moot where the issue presented was "no longer live[.]") (quoting *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335-36 (11th Cir. 2001)).

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[5] Should the Court reconsider its rulings, Havana Docks reserves the right to reconsider that election.

[6] Insofar as Defendants contend that the Court erred by construing the rebuttable presumption in a manner that neither they nor Havana Docks argued (*see* ECF No. 343 at 5), this argument lacks merit. Courts "[are] not limited to choosing one side's position or the other's. The court's role is to get it right, not to choose which side's argument is better[.]" *United States v. Undetermined Quantities of all Articles of Finished and In-Process Foods*, 936 F.3d 1341, 1350 (11th Cir. 2019). "[W]hen an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law." *Id.* (quoting *U.S. Nat'l Bk. Of Oregon v. Independent Ins. Agents of Am., Inc.*, 508 U.S. 439, 446 (1993)).

CONCLUSION

With their motion, Defendants raise a new argument and ask the Court to revisit an issue that is moot. On both accounts, the motion fails to articulate a cognizable ground for reconsideration. It should be denied.

Dated: September 23, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of the Court. I also certify that the foregoing document is being served this 23rd day of September 2022 on all counsel of record or pro se parties either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/ Roberto Martínez
Roberto Martínez