UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:19-cv-23590-BLOOM/LOUIS

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES, LTD.

Defendant.
_____/

INTERIM ORDER ON PLAINTIFF'S MOTION TO COMPEL

This cause is before the Court on Havana Docks Corporation's ("Plaintiff") Motion to Compel Production of Evidence Withheld Under the Attorney-Client Privilege and Work Product Doctrine (ECF No. 86). Upon review of the Motion, Defendant's Response in Opposition (ECF No. 91), and Plaintiff's Reply (ECF No. 92), the Court has determined an *in camera* review of certain documents is necessary to make its privilege determination.

Specifically, Plaintiff seeks otherwise responsive documents related to exchanges with COMAR, S.A., claiming that COMAR is a department of the Cuban Government and thus Defendant's expectation of confidentiality in such communications was unreasonable under the circumstances; it avers that a subset of these communications should not be protected in any event because they reflect business rather than legal advice (ECF No. 86 at 10, 13). Defendant avers in response that it retained COMAR to, in relevant part here, provide legal advice and opinions to Defendant and to represent Defendant regarding its business activity in Cuba (ECF No. 91 at 13-14). Defendant argues further that it reasonably relied on this belief the communications were confidential and thus should be permitted to withhold the 755 documents in question because they protected by attorney-client privilege (*id.*). (ECF No. 91 at 13-14). Plaintiff maintains that

COMAR was *appointed* by the Cuban government to represent Defendant in negotiations *with* the Cuban government, and Defendant, knowing these facts, had sufficient reason to question the loyalty of COMAR as to render any assumption of confidentiality unreasonable (ECF No. 92 at 8-9). Plaintiff also asserts that Defendant has offered no evidence to rebut the contention that COMAR represented parties on both sides of Defendant's negotiations with the Cuban government, nor evidence to permit the conclusion that all of the communications at issue were legal advice (*id.* at 9-10).

I find that an *in camera* inspection is warranted. The resort to *in camera* to inspect the content of the communications does not here implicate an impermissible attempt to shift the burden to the Court to determine that which the privilege holder should have established through affidavits. *See MapleWood Partners, L.P. v. Indian Harbor Ins. Co.*, 295 F.R.D. 550, 627 (S.D. Fla. 2013) (explaining circumstances under which court should decline invitation to conduct *in camera* review to resolve privilege disputes). Defendant here asserts that it entered into an attorney-client relationship with COMAR and offers a supporting affidavit as well as an executed copy of the written service agreement outlining the scope of COMAR's representation, which refers to the legal advice and opinions to be provided by COMAR, and, says Defendant, included an express statement that the services to be performed were deemed confidential (ECF No. 91 at 14). The description of withheld documents Defendant offers here to support its privilege claim, however, invokes generic recitations that COMAR provided legal advice and leaves out details that would fully explain Defendant's relationship with COMAR (ECF No. 86-5). Put differently, Defendant's facts lack sufficient specificity to carry its burden, particularly in light of the fact that COMAR is not a private law firm, was appointed by the Cuban government, and, further, the service agreement is not limited to the provision of legal services.

To that end, the Court will review **20** documents that are responsive to Plaintiff's requests for production, have been withheld by Defendant, and purport to reflect legal advice sought from or provided by COMAR. In particular, the Court will review those **14** documents cited by Defendant in its Response that it avers provide "clear examples" of COMAR's business advice intertwining with legal advice (ECF No. 86 (citing ECF No. 86-5 at rows 710, 712, 720-21, 726-27, 729, 670, 679, 686, 688, 662, 672-73). The Court has selected a further **6** documents for review from the log of withheld documents found at the following rows: 5, 21, 42, 140, 221, 322 (ECF No. 86-5).

Defendant is directed to provide the documents for *in camera* review via e-mail to chambers by no later than Tuesday, June 29, 2021. To the extent a document is in Spanish, Defendants will provide a certified English translation. Defendants may provide the documents via e-mail to chambers (louis@flsd.uscourts.gov). Each document should be submitted as a single pdf file and bear unique numbering. Each document should be submitted as a single pdf file and bear unique bates stamp numbering.

DONE AND ORDERED this 23rd day of June, 2021 at Miami, Florida.

LAUREN FLEISCHER LOUIS
UNITED STATES MAGISTRATE JUDGE

cc: All Counsel of Record