

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**Case No. 19-CV- 23591- BLOOM/Louis**

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

NORWEGIAN CRUISE LINE HOLDINGS  
LTD.

Defendant.

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**NORWEGIAN'S MOTION FOR STAY OF ACTION PENDING  
RESOLUTION OF THE INTERLOCUTORY APPEAL PROCESS OR – IN THE  
ALTERNATIVE – FOR LIMITED STAY DUE TO COVID-19 RELATED HARDSHIPS**

Defendant Norwegian Cruise Line Holdings Ltd. (“Norwegian”), through undersigned counsel, files this Motion for Stay of this Action pending resolution of the interlocutory appeal process (*see* Mot. for Cert., ECF No. 61) or, in the alternative, for a limited stay due to significant COVID-19-related hardships.<sup>1</sup>

### **INTRODUCTION**

This Motion concerns an Order entered in one of the first ever suits brought under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act (the “Act” or “Title III”). *See* Order, ECF No. 53. Now, a discrete legal question (though one with potentially broad application) on an issue of first impression within that Order forms the basis for certification for interlocutory review under Section 1292(b). Accordingly, just days ago Norwegian filed a motion asking this Court to amend its Order to certify that particular question for an interlocutory appeal. *See* Mot. for Cert., ECF No. 61. The other cruise lines that Plaintiff is separately suing in similar actions have filed motions seeking that same relief. *See* Mot. for Certification, *Havana Docks Corp. v. MSC Cruises SA Co.*, No. 19-cv-23588 (S.D. Fla. Apr. 27, 2020), ECF No. 58 (the “*MSC Cruises Case*”); Mot. for Certification, *Havana Docks Corp. v. Carnival Corp.*, No. 19-cv-21724 (S.D. Fla. Apr. 27, 2020), ECF No. 84 (the “*Carnival Case*”); *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, No. 19-cv-23590 (S.D. Fla. Apr. 27, 2020), ECF No. 47 (the “*Royal Caribbean Case*”). The disposition of this coordinated interlocutory appeal process has the potential to resolve a critical, threshold legal question in this and these other cases.

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<sup>1</sup> For purposes of this Motion, “the resolution of the interlocutory appeal process” is defined as the first-occurring of two potential events: (1) the final disposition of Norwegian’s interlocutory appeal, if such is granted, or (2) the Court’s denial of Norwegian’s Motion for Certification for Interlocutory Appeal and corresponding determination that no issue should be certified for appeal.

Given these circumstances, the Court should exercise its inherent authority to stay this case pending the resolution of the proposed interlocutory appeal process. Such a stay would sensibly avoid the unnecessary expenditure of this Court's and the parties' resources pending a binding decision from the Circuit Court. Alternatively, even if the case is not stayed as the possible appellate process moves forward, the Court should nonetheless grant a ninety-day stay of all proceedings given the immense impact that the COVID-19 pandemic has had on the public generally and on the cruise lines, including Norwegian, specifically. Finally, given that Title III has not been in effect for the approximately twenty-three years since Congress originally passed it, Plaintiff will not be unduly prejudiced by a brief further stay of its ability to pursue any claim that it may have in this forum.

For all of these reasons, the Court should grant this Motion and stay the case.

### **PROCEDURAL BACKGROUND**

Plaintiff filed the first series of lawsuits ever under Title III, after the suspension on enforcement of that title was lifted. *See* 22 U.S.C. § 6021, *et seq.* The first action Plaintiff filed in a series of related lawsuits was against Carnival Corporation ("Carnival"). *See generally* Complaint, *Carnival* Case, ECF No. 1. The Complaint against Carnival alleged substantially similar facts as those alleged in the instant case, except that the trafficking by Carnival allegedly began in May 2016. *See generally id.* On May 30, 2019, Carnival filed a Motion to Dismiss, arguing in relevant part that Plaintiff failed to state a claim under Title III because the Complaint and the Certified Claim attached as an exhibit indicated that Plaintiff Havana Docks Corporation ("Plaintiff" or "Havana Docks") did not have an ownership interest in the Subject Property at the time Carnival allegedly began utilizing it. *See* Mot. to Dismiss, *Carnival* Case, ECF No. 17 at 11-15. Denying Carnival's Motion to Dismiss, this Court rejected the argument and agreed with Plaintiff that Carnival's interpretation conflated ownership of an interest in property and

ownership of a certified claim to such property, noting that the Act does not contain any requirement that the trafficking occur during the time in which a claimant holds its interest in the property. *See Order, Carnival Case*, ECF No. 47 at 8.

On August 27, 2019, Havana Docks filed three additional actions under Title III against Norwegian, MSC Cruises SA Co. and MSC Cruises (USA) Inc. (collectively, “MSC”), and Royal Caribbean Cruises, Ltd. (“Royal Caribbean”). *See generally* Compl., ECF No. 1; Compl., *MSC Cruises Case*, ECF No. 1; and Compl., *Royal Caribbean Case*, ECF No. 1

Norwegian and MSC both moved to dismiss, arguing in relevant part that Plaintiff’s claim failed as a matter of law because Plaintiff’s interest in the Subject Property was a leasehold interest that expired in 2004, and Plaintiff therefore could only assert a claim under Title III for trafficking that occurred prior to the expiration of its leasehold interest (which it did not and cannot allege was done in the *Norwegian Case* and *MSC Cruises Case*). *See* Mot. to Dismiss, ECF No. 31 at 16-20 (“Norwegian’s Motion to Dismiss”); Mot. to Dismiss, *MSC Cruises Case*, ECF No. 24 at 8-9 (“MSC’s Motion to Dismiss”). In ruling on Norwegian and MSC’s Motions to Dismiss, the Court found it necessary to reconsider its ruling in the *Carnival Case* that denied Carnival’s Motion to Dismiss. Following that reconsideration, the Court granted Norwegian’s and MSC’s Motions to Dismiss, dismissing both cases with prejudice. *MSC Cruises*, 2020 WL 59637, at \*5; *Norwegian*, 2020 WL 70988, at \*5. The Court held in both cases that Plaintiff could not state a claim under Title III based on allegations of trafficking that took place after Plaintiff’s property interest in the subject Cuban property expired in 2004.

Plaintiff then moved for reconsideration and leave to amend in both cases, asking the Court *for the fourth time* to find that the fact that Plaintiff’s property interest expired years before the alleged trafficking is legally irrelevant. Following briefing and oral argument, the Court granted those Motions for Reconsideration, *see Order*, and again reconsidered the

reasoning that led to it denying Carnival's Motion to Dismiss but then granting Norwegian's Motion to Dismiss. Because the Order involves a controlling question of law for which there is substantial difference of opinion, and an immediate appeal may eliminate a substantial portion, if not all, of Plaintiff's claim premised on the time-limited concession such that its resolution would materially advance the ultimate termination of the litigation, Norwegian has filed a Motion for Certification for Interlocutory Appeal. *See* Mot. for Cert., ECF No. 61.

In the meantime, just days after the Court entered its Order granting Plaintiff's Motion for Reconsideration, Plaintiff informed Norwegian that Plaintiff intends to resume its press for overbroad and unduly burdensome discovery that was served prior to this Court's dismissal of the case. That discovery includes forty-one separate requests for production and twenty interrogatories.

To allow for this case to proceed in the most just and efficient fashion possible, the Court should stay this action pending resolution of the interlocutory appeal process or, in the alternative and at a minimum, should grant a ninety-day stay of this case due to hardships attributable to the COVID-19 global pandemic. As has been well documented in the media, those hardships include (but are not limited to) the complete suspension of all of Norwegian's sailings, the organizational challenges that result from having its headquarters closed and its staff working from home, and – most importantly – ensuring the health and safety of its staff, customers, and crew.<sup>2</sup>

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<sup>2</sup> Norwegian's Motion for a Stay due to COVID-19 related hardships is supported by the declaration of Lincoln M. Vidal dated May 4, 2020, Norwegian's Vice President and Assistant General Counsel, attached as Exhibit "A."

## **LEGAL STANDARD**

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). A stay is warranted where it will not prejudice the Court or either party and will avoid unnecessary expenditure of judicial resources. *See id.* at 254-55 (“How this [*i.e.*, achieving the identified goals of a proposed stay] can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.”); *see also* 28 U.S.C. § 1292(b) (noting that although “application for an appeal hereunder shall not stay proceedings,” “the district judge or the Court of Appeals of a judge thereof [can] so order”).

## **ARGUMENT**

### **I. The Court Should Exercise Its Inherent Authority to Stay This Action Pending the Resolution of the Interlocutory Appeal Process.**

While application for appeal under Section 1292(b) does not automatically stay proceedings, the statute provides that the District Court has ample discretion to order such a stay. *See* 28 U.S.C. § 1292(b). Given the circumstances set forth in Section II, below, a stay pending the disposition of the possible interlocutory appeal in this action is warranted to conserve both the Court’s and the parties’ resources. And neither the Court nor either of the parties would be prejudiced by such a stay. This request is not novel; courts in this Circuit routinely grant such stays in tandem with certification orders. *See, e.g. Washburn v. Beverly Enterprises-Georgia, Inc.*, No. 106-051, 2007 WL 9700927, at \*1 (S.D. Ga. Jan. 8, 2007) (granting 1292 motion concurrently with motion to stay); *In re Pacific Forest Products*, 335 B.R. 910, 924 (S.D. Fla. 2005) (same); *Lipton v. Documation, Inc.*, 590 F. Supp. 290, 291–92 (M.D. Fla. 1982) (same), *aff’d*, 734 F.2d 740 (11th Cir. 1984).

Indeed, in this context, a stay would be congruent with the spirit of Section 1292 because it would avoid the parties and the Court expending resources on a case whose trajectory may ultimately be diverted by additional input from the Eleventh Circuit. *See Mamani v. Berzain*, No. 07-22459, 2014 WL 12689038, at \*3 (S.D. Fla. Aug. 18, 2014) (granting 1292 motion and staying action because “discovery in this case would be complex, time consuming, and expensive. Given that at least one issue certified on appeal may be dispositive of the case in its entirety, the interests of judicial economy would best be served by a stay of this case. Moreover, the Plaintiffs will suffer minimal prejudice from a further delay of this case pending appeal.”).

The same is true in this action as in *Mamani* and the other cases cited herein. Here, the parties are in the midst of costly international discovery on potentially hundreds of thousands of pages of documents and dozens of witnesses across multiple separate actions, and all in the context of a global pandemic that has stifled operations and life in general. A stay would be more than prudent. Indeed, as the Eleventh Circuit explained in one such case, “[F]urther proceedings should not be undertaken pending resolution of [the] appeal” in order “*to realize the full benefit from this procedure.*” *Harris v. Luckey*, 918 F.2d 888, 894 (11th Cir. 1990) (granting petition to appeal district court order under Section 1292 and staying all proceedings in the district court pending resolution of the appeal) (emphasis added). The Court, here, should likewise “realize the full benefit” of the certification procedure and impose a concurrent stay.

## **II. In the Alternative, a Stay Is Warranted Given COVID-19 Related Hardships.**

In the alternative, the Court should nonetheless grant a ninety-day stay of all proceedings in this case given the immense impact that the COVID-19 pandemic has had on the public generally and on the cruise lines specifically.

At this point, it goes nearly without saying that the COVID-19 crisis has caused an unprecedented disruption to the operations of the cruise line industry, with sailings coming to a complete halt. Norwegian's main priority throughout this crisis continues to be the safety of its staff, customers, and crew. Accordingly, Norwegian has diverted substantial resources to address their needs. Although there can of course be no guarantee, at present Norwegian anticipates that the immediate and increased allocation of its resources to address the novel travel safety, employment, and corporate operations issues will have subsided enough within ninety-days to allow the parties to reengage in this litigation. Finally, this stay will not cause any prejudice to Plaintiff.

A. Background on the COVID-19 Pandemic

On March 13, 2020, President Donald Trump declared a national emergency in response to the novel COVID-19 outbreak in the United States. *See Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, The White House (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>. In an effort to limit the spread of COVID-19, Florida Governor Ron DeSantis issued a state-wide "stay at home" order. *See Fla. Exec. Order No. 20-91* (Apr. 1, 2020). Miami-Dade County Mayor Carlos Gimenez has also issued a "stay at home" order specific to Miami-Dade County, the county in which Norwegian's headquarters are located and where Norwegian's employees and in-house counsel who are necessary to this case are located. *See Miami-Dade Cty. Emergency Order 12-20* (Mar. 26, 2020). Miami-Dade County is also where Plaintiff's counsel and Norwegian's counsel are based.

Similarly, Kentucky Governor Andy Beshear has issued a state-wide "stay at home" order, which is where Plaintiff's headquarters are located. *See Ky. Exec. Order No. 2020-257*



(Mar. 25, 2020). Governor Beshear subsequently issued another order instructing Kentucky residents not to travel into any other states and directing that residents of any state other than Kentucky may not travel into the state subject to a few enumerated exceptions. *See* Ky. Exec. Order No. 2020-266 (Apr. 2, 2020).

These orders restricting the ability to travel outside of one's home have created unprecedented challenges for workers who are now working from home, if their job allows them to, while caring for children who cannot go to school, and straining the resources of companies' abilities to operate remotely for an extended period of time.

B. *COVID-19's Impact on the Cruise Line Industry and Norwegian*

The cruise line industry has been one of the most severely and immediately impacted by COVID-19. *See* Vidal Decl. Ex. A, at ¶ 3. Sailings have been suspended since March 13, 2020. *See id.* This decision was not made lightly, as “[t]he cruise industry is a vital artery of the U.S. economy, supporting over 421,000 American jobs, with every 30 cruisers supporting one U.S. job.” *See CLIA Announces Voluntary Suspension in U.S. Cruise Operations*, Cruise Lines Int'l Ass'n (Mar. 13, 2020), <https://cruising.org/news-and-research/press-room/2020/march/cliacovid-19-toolkit>.

Throughout this crisis, Norwegian's priority has been and continues to be the safety of its staff, customers, and crew. *See* Vidal Decl. Ex. A, at ¶ 4. Norwegian has accordingly re-directed its resources to deal with the operational challenges of addressing its staff's, customers', and crew's health concerns and implementing measures to ensure the health and safety of future guests and crew, including the decontamination of its vessels. *See id.* at ¶ 5. Due to the current global environment, Norwegian recently had to extend the suspension of all sailings through June 30, 2020. *See id.* at ¶ 3.

Norwegian's limited time and resources are thus focused on protecting its customers, employees, and business in these very challenging times. A stay of the instant proceedings will allow Norwegian to focus its efforts on the immediate crisis to ensure the safety of the public and the survival of the cruise line industry through, and after, the COVID-19 pandemic.

"The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket." *Floyd v. Sallie Mae, Inc.*, No. No. 12-CIV-22649, 2015 WL 12978798, at \*1 (S.D. Fla. Nov. 30, 2015) (quoting *Clinton v. Jones*, 520 U.S. 681, 706 (1997)). Such discretion in favor of a stay should be exercised when a party "demonstrate[s] reasonableness and good cause." *Id.* at \* 2; *see, e.g., Garbutt v. Ocwen Loan Servicing, LLC*, No. 8:20-CV-136-T-36JSS, 2020 WL 1476159, at \*2 (M.D. Fla. Mar. 26, 2020) (finding COVID-19's disruption to business justifies a stay of discovery until June 1, 2020).

Here, the requested stay is both reasonable and supported by good cause. Indeed, any delay that may result from staying the case is necessary due to the hardships resulting from the protective measures being taken globally to combat COVID-19, which are outside of the parties' control. These hardships are magnified when it comes to the cruise line industry given that its operations have grounded to a complete halt. *Kleiman v. Wright*, No. 18-CV-80176, 2020 WL 1472087, at \*2 (S.D. Fla. Mar. 26, 2020) (recognizing that "workforces across the nation are stretched thin" such that an amendment to the scheduling order is appropriate).

Several Judges in this District have already recognized the impact of COVID-19 on various parties' ability to perform pre-trial activities and have not hesitated to grant reasonable stays where appropriate. *See, e.g., Lopez Regueiro v. American Airlines Inc., et al.*, No. 19-23965 (S.D. Fla. Apr. 6, 2020) (ordering a Title III case administratively closed "[g]iven the inability to proceed with the orderly progress of the case due to the uncertainty regarding the duration of the restrictions and worldwide pandemic, and to conserve the parties' and judicial

resources”) (Exhibit B); *C.W. v. NCL (Bahamas) Ltd.*, No. 19-cv-24441 (S.D. Fla. Mar. 31, 2020) (same) (Exhibit C); Paperless Order, *C.W. v. NCL (Bahamas) Ltd.*, No. 19-cv-24441 (S.D. Fla. Mar. 21, 2020) (finding “it [is not] rational to expect defense counsel to enlist assistance from cruise ship attorneys and other employees (e.g., to track down documents and information) to adequately prepare the corporate representative when the entire cruise ship industry is on lockdown and thousands of employees have been let go”) (Exhibit D); *Mata et al. v. Expedia, Inc., et al.*, No. 19-22529, at 1 (S.D. Fla. Mar. 13, 2020) (ordering a Title III case closed for statistical purposes “[g]iven it is impossible to proceed with the orderly progress of the case due to the uncertainty regarding the duration of travel restrictions, and to conserve the parties’ and judicial resources”) (Exhibit E).

Similar relief here is equally reasonable and Norwegian has shown good cause for such relief in light of its allocation of resources to the immediate challenges it is working to overcome as one of the industries most impacted by COVID-19. The ongoing difficulties of working remotely with limited staff and resources against the COVID-19 backdrop present profound logistical issues for the fact-intensive discovery ahead in this action. Moreover, Plaintiff – who has not indicated that it is seeking time-sensitive or emergency relief on any matter in this action – will not be prejudiced by this relief. Thus, given the inability to proceed with the orderly progress of the case due to the uncertainty regarding the duration of the restrictions and the worldwide pandemic, and to conserve the parties’ and judicial resources, this Court should stay the case for ninety-days.

### **CONCLUSION**

For the foregoing reasons, the Court should enter an Order granting this Motion and staying this action pending resolution of the interlocutory appeal process or, in the alternative, staying this case for ninety days due to hardships attributable to the COVID-19 global pandemic.

**CERTIFICATE OF GOOD FAITH CONFERENCE**

Pursuant to Local Rule 7.1(a)(3), undersigned counsel for Norwegian certify that they have conferred with opposing counsel, and Plaintiff opposes the relief sought herein.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 4, 2020, 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/ Allen P. Pegg

Allen P. Pegg