UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 19-cv-21724-BLOOM/MCALILEY

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

CARNIVAL CORPORATION d/b/a CARNIVAL
CRUISE LINE, a foreign corporation,

Defendant.
_____/

DEFENDANT CARNIVAL CORPORATION'S
MOTION TO STAY DISCOVERY FOR 90 DAYS

Defendant Carnival Corporation d/b/a Carnival Cruise Line ("Carnival" or "Defendant") respectfully moves this Court for a stay of discovery in this case, which will not prejudice Plaintiff and is necessary because Carnival does not have the ability to meaningfully participate in discovery in the midst of a global pandemic that has disproportionately impacted the cruise line industry. Under these circumstances, this Court should stay discovery in this case for 90 days, subject to renewal pending regular status reports concerning the impact of the pandemic on Carnival's ability to respond to discovery.

LEGAL STANDARD

This "Court 'has broad discretion to stay proceedings as an incident to its power to control its own docket.'" *Goode v. Celebrity Cruises, Inc.*, 2017 WL 4347133, at *2 (S.D. Fla. Sept. 29, 2017) (*quoting Clinton v. Jones*, 520 U.S. 681, 706 (1997)); *Johnson v. Bd. of Regents of Univ. of Georgia*, 263 F.3d 1234, 1269 (11th Cir. 2001) ("[W]e accord district courts broad discretion over the management of pre-trial activities, including discovery and scheduling."). Such discretion in

favor of a stay should be exercised when a party "demonstrate[s] reasonableness and good cause." *Goode*, 2017 WL 4347133, at *2.

A STAY OF DISCOVERY IS WARRANTED

The COVID-19 pandemic has caused an unprecedented disruption to the cruise line industry and the lives and working conditions of these companies' employees, even beyond the massive impact on the general public. Carnival, one of the largest cruise lines, has been hard hit by the global pandemic and the complete shuttering of its operations. This action must be stayed because, right now, discovery is infeasible in this case. Plaintiff has added allegations dating back to 1996 related to entities in the UK and Italy. Document custodians and potential deponents are unavailable. Defendant's counsel cannot get these documents from all over the world in the midst of widespread stay at home orders and travel restrictions. Discovery in this case requires travel, and travel is impossible. These concerns are further amplified by Plaintiff's allegations related to Costa Crociere, which is headquartered in Italy, a country that has been among the hardest hit by the pandemic.

Carnival has good cause for the requested discovery stay. Carnival voluntarily halted all sailings departing March 13 through June 26 across all North-American based ships in response to the Covid-19 pandemic.[1] The cruise line industry has been one of the most severely and immediately impacted industries as a result of the COVID-19 pandemic[2] with the entire industry

[1] Important Information – Carnival Extends Pause in Operations. https://twitter.com/CarnivalCruise/status/1249698865193811968/photo/1 (last accessed Apr. 23, 2020).

[2] "The coronavirus pandemic has roiled the travel industry across the globe, but perhaps no sector has been hit like the cruise industry." https://www.cnbc.com/2020/04/14/carnival-ceo-despite-devastating-coronavirus-2021-cruise-bookings-are-strong.html (last accessed April 23, 2020); "The COVID-19 outbreak has laid waste to entire sectors of the global economy, but none faster than the cruise industry. The pandemic has basically shut down the cruise-ship business, with the three largest publicly traded cruise companies suspending some, if not all, of their operations."

shuttered by a CDC no-sail order in effect for the foreseeable future.[3] Carnival has announced that, for some of its ships, there will be no voyages for the rest of the year.[4] The Company's headquarters are located in Miami-Dade County, which is subject to strict lockdown directives.[5] The impact to Carnival's operation and its employees has been severe, and the organization cannot adequately and feasibly respond to document requests spanning more than two decades and across three countries during a time when staffing is limited and travel is banned. Documents and electronic document repositories are difficult, if not impossible, to access in light of social-distancing and lockdown orders. Video depositions conducted on home laptops are an inadequate substitute for in-person depositions where hundreds of millions of dollars are at stake.

These compelling circumstances make a 90-day stay of discovery appropriate. The requested stay is necessary to allow this case to progress, while giving Carnival a much-needed brief reprieve to cope with the financial and logistical difficulties imposed by the COVID-19 catastrophe. This path would conserve judicial and party resources during a time in which discovery cannot proceed as usual and much of the litigation will be delayed or stalled by factors outside the parties' control. Further, a brief stay of discovery would provide an opportunity for the Court to address the legal issues raised by Carnival's Motion for Certification of Interlocutory

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https://www.cnbc.com/2020/04/05/carnivals-struggle-to-survive-the-coronavirus-as-outbreak-wipes-out-the-cruise-industry.html (last accessed April 23, 2020).

[3] On March 14, 2020, the CDC first issued a No Sail Order, https://www.cdc.gov/quarantine/pdf/signed-manifest-order_031520.pdf , which was extended on April 9, 2020. CDC Announces Modifications and Extension of No Sail Order for All Cruise Ships https://www.cdc.gov/media/releases/2020/s0409-modifications-extension-no-sail-ships.html (last accessed Apr. 23, 2020).

[4] *See* Footnote 1, above.

[5] Miami-Dade County extended its Declaration of Local State of Emergency on April 29, 2020. https://www.miamidade.gov/information/library/04.29.20-state-of-emergency-declaration-extension-7.pdf (last accessed May 1, 2020).

Appeal, D.E. 84.[6] Resolving these threshold questions will move this litigation forward while allowing the parties to optimally utilize their resources in discovery and litigation efforts and avoid the practical difficulties of the parties and counsel conducting discovery while staying "Safer At Home" until normalcy returns. State of Florida Executive Order Number 20-91[7]; *accord* S.D. Fla. Admin. Order 2020-20 (Mar. 18, 2020).

There is good cause for this stay, which will not cause any prejudice to Plaintiff. The absence of a stay will require Defendant to allocate scarce resources that are needed to keep employees and crew safe and keep its business afloat while pursuing the fruitless enterprise of chasing currently-unattainable-documents during a pandemic.

Magistrate Judge Goodman, faced with a discovery dispute in a case involving a cruise line, recently offered this accurate description of the perils facing the cruise lines, and how that necessarily impacts their ability to participate in discovery:

> "Is it 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? Of course not."

C.W. v. Ncl (Bahamas) Ltd., 19-cv-24441, D.E. 38 (S.D. Fla. Mar. 21, 2020).

Indeed, numerous courts in this district and around the country have issued discovery stays on account of the pandemic. *See, e.g.*, *Kleiman v. Wright*, 2020 WL 1472087 at *2 (S.D. Fla. March 26, 2020) (Bloom, J.) (extending discovery deadlines "in light of the COVID-19 global

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[6] Indeed, courts routinely stay proceedings pending interlocutory appeal. *See Washburn v. Beverly Enterprises-Georgia, Inc.*, 2007 WL 9700927, at *1 (S.D. Ga. Jan. 8, 2007) (staying litigation pending resolution of interlocutory appeal); *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); *Mamani v. Berzain*, 2014 WL 12689038, at *3 (S.D. Fla. Aug. 18, 2014) (same) (noting that "the interests of judicial economy would best be served by a stay of this case" and that "the Plaintiffs will suffer minimal prejudice from a further delay of this case pending appeal").

[7] Online at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91-compressed.pdf.

pandemic, the profound logistical issues affecting Florida and New York residents, businesses, and the courts . . . The Court recognizes the present difficulties of working remotely with limited staff and resources against the COVID-19 backdrop . . . In this setting, it is therefore appropriate to amend the current deadlines."); *C.W.*, D.E. 41 (March 31, 2020) (Altonaga, J.) (staying case "Given the inability to proceed with the orderly progress of the case due to the uncertainty regarding the duration of the restrictions, and to conserve the parties' and judicial resources"); *Mata v. Expedia*, 19-22529, D.E. 122 (S.D. Fla. March 13, 2020) (Altonaga, J.) (staying discovery and administratively closing case "[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"); *Roguerio v. American Airlines*, 19-23965, D.E. 85 (S.D. Fla. April 6, 2020) (Martinez, J.) (granting 60 day renewable stay and administratively closing case "[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"); *Garbutt v. Ocwen Loan Servicing, LLC*, 2020 WL 1476159, at *1 (M.D. Fla. Mar. 26, 2020) (staying discovery because "Defendant and its counsel is required to work from home, limiting their ability to access information for discovery . . . Due to the circumstances caused by COVID-19, the Court will stay discovery in this action until June 1, 2020"); *Libutan v. MGM Grand Hotel LLC*, 2020 WL 1434440, at *2 (D. Nev. Mar. 24, 2020) (granting request to stay discovery and all proceedings until June 1, 2020 finding that "the unavailability of witnesses and documents due to the closure of MGM Grand will significantly infringe on both parties' ability to meaningfully participate in the discovery process, which is an appropriate basis for staying proceedings") (citations omitted); *Sears v. Russell Rd. Food & Bev.*, 2020 U.S. Dist. LEXIS 44385, at *4 (D. Nev. Mar. 13, 2020) (finding that due to the "parties' infringed ability to

meaningfully participate in the discovery process because of COVID-19, the Court will grant in part the parties' instant motion as to this basis for a stay of discovery). A stay is likewise appropriate in this case.

Moreover, the requested stay is not "'immoderate'—that is to say, too long, too indefinite or without proper justification." *NIACCF, Inc. v. Cold Stone Creamery, Inc.*, 2012 WL 1852941, at *1 (S.D. Fla. 2012). Granting this stay would conserve the parties' and the Court's resources, and have no prejudicial effect on Plaintiff. Meanwhile, being forced to participate in practically impossible and expensive discovery will harm Defendant, which is currently in the throes of protecting its business and its employees during an unprecedented pandemic.

CONCLUSION

For these reasons, Carnival requests that this Court stay discovery in this case for 90 days, subject to renewal upon review of a status report submitted by the parties apprising the Court of the feasibility of moving forward with discovery at that time.

CERTIFICATE OF GOOD FAITH CONFERENCE;
CONFERRED BUT UNABLE TO RESOLVE ISSUES PRESENTED IN THE MOTION

Pursuant to Local Rule 7.1(a)(3), I hereby certify that counsel for movant has conferred with Plaintiff in a good faith effort to resolve the issues raised in the motion and can state that Plaintiff opposes the relief sought herein.

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

Dated: May 4, 2020

Respectfully submitted,

By: *s/ Stuart H. Singer*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all counsel of record via the court's CM/ECF System on May 4, 2020.

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

UNITED STATES DISTRICT COURT
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HAVANA DOCKS CORPORATION,

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Defendant.
_____/

[PROPOSED] ORDER STAYING DISCOVERY

THIS CAUSE is before the Court on Defendant Carnival Corporation's Motion to Stay Discovery for 90 Days, ECF No. 85 ("Motion"). The Court has reviewed the Motion, the record in this case, and is otherwise fully advised.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Motion, ECF No. 85, is **GRANTED**;
2. Discovery in this case is stayed for 90 days, subject to renewal pending regular status reports concerning the impact of the pandemic on the ability of the parties to conduct discovery.

DONE AND ORDERED in Chambers at Miami, Florida, on _____, 2020.

_____
BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record