UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-21724-CIV-BLOOM/McAliley

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

HAVANA DOCKS' *CORRECTED* OPPOSITION
TO CARNIVAL'S MOTION TO COMPEL EVIDENCE
WITHHELD UNDER THE WORK PRODUCT DOCTRINE[1]

The undersigned counsel conferred by phone with Carnival Corporation ("Carnival") on at least seven separate occasions concerning Carnival's substantive challenges to Havana Docks' privilege log in this case. These conferrals were attended by at least two, and often three, Carnival attorneys. With exception for one occasion, each of these calls spanned multiple hours, with one comprising an entire work day. Most recently, on the Friday before the filing of its Motion to Compel (the "Motion," D.E. 231), Carnival requested to speak again and Havana Docks answered Carnival's privilege questions for hours until 7:30 at night.

[1] Havana Docks' original opposition to Carnival's motion to compel, filed at docket entry 242, miscited the bates-numbered documents that are the subject of Carnival's motion. This revised brief corrects the citations to those documents in the argument section.

The undersigned approached these conferrals in the frank and open manner that the Court expected. Havana Docks listened to Carnival's questions, provided the substance of the withheld evidence, and considered (and re-considered) privilege and work product determinations on the narrowest possible grounds. The parties engaged each other with their respective legal arguments, and some challenges were resolved. This process also resulted in Havana Docks producing certain documents to Carnival in full. Where privileged or work product information appeared in only a small portion of the document, Havana Docks produced the record with redactions and explained to Carnival, often verbatim, the substance of the communication being withheld. Through this process, Carnival was read most of the redactions now challenged in the Motion.

After undertaking this process, it is surprising that Carnival would characterize the work product now challenged as "instructions to, and summaries from, public relations government lobbyists concerning efforts to influence" federal government agencies. (Mot. at 2.) Havana Docks' lobbying records were not withheld and Carnival was informed of this.

To respond to Carnival's Motion, Havana Docks now provides the declaration of Jerry Johnson, its Vice President, Comptroller, Treasurer, Secretary and Board Member. (**Exhibit A**.) Mr. Johnson reviewed the challenged documents and thoroughly explains the substance of the redactions. His declaration provides the evidence necessary to sustain the work product invocations over the challenged redactions. Although Havana Docks takes no position on Carnival's request for an *in*

camera review, if the Court is inclined to conduct one, Havana Docks would also request such a review for the evidence withheld by Carnival that is the subject of Havana Docks' motion to compel (D.E. 234, 239).

For the following reasons, Havana Docks respectfully requests that the Motion be denied.

LEGAL STANDARD

As codified by Federal Rule of Civil Procedure 26(b)(3), the work-product doctrine "offers qualified protection for materials that are: (1) a document or a tangible thing, (2) prepared in anticipation of litigation, and (3) by or for a party, or for his representatives," including the "other party's attorney, consultant, surety, indemnitor, insurer, or agent." *Bridgewater v. Carnival Corp.*, 286 F.R.D. 636, 639 (S.D. Fla. 2011) (McAliley, Mag. J.); Fed. R. Civ. P. 26(b)(3)(A). *Fojtasek v. NCL (Bahamas) Ltd.*, 262 F.R.D. 650, 653 (S.D. Fla. 2009) (Simonton, Mag. J.).

Emails constitute "documents and tangibles things" under Rule 26(b)(3). *Diamond Resorts U.S. Collection Dev., LLC v. U.S. Consumer Att'ys, P.A.*, --- F. Supp. 3d ---- , 2021 WL 505122, *17 (S.D. Fla. Feb. 11, 2021) (Reinhart, Mag. J.).

Documents are prepared in anticipation of litigation if the "primary motivating purpose" behind the creation of the document was to aid in possible litigation. *United States v. Davis*, 636 F.2d 1028, 1040 (5th Cir. 1981)[2] (concluding that "litigation need not necessarily be imminent"); *Bridgewater*, 286 F.R.D. at 641-42, n.5 (courts should

[2] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all decisions handed down by the former Fifth Circuit before October 1, 1981.

ask "whether the document would have been prepared regardless of whether litigation was also in the offing"); *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, No. 19-cv-23591, D.E. 151 at 5, 9-14 (S.D. Fla. Feb. 26, 2021) (Louis, Mag. J.) (applying the primary motivating purpose test and denying Norwegian's motion to compel production of Havana Docks' work product communications).

"[B]ecause the work product privilege looks to the vitality of the adversary system rather than simply seeking to preserve confidentiality, it is not automatically waived by the disclosure to a third party." *In re Grand Jury Subpoena*, 220 F.3d 406, 409 (5th Cir. 2000); *see also Fojtasek v. NCL (Bahamas) Ltd.*, 262 F.R.D. 650, 656 (S.D. Fla. 2009) (Simonton, Mag. J.) (applying common interest doctrine to cruise lines' work product assertion).

Two types of work product are protected under Rule 26(b)(3): fact work product and opinion work product. The former consists of information gathered in anticipation of litigation, while the latter is comprised of materials that reflect an attorney's or a party's representative's "mental impressions, conclusions, opinions, or legal theories concerning the litigation." Fed. R. Civ. P. 26(b)(3)(B). Fact work product is subject to discovery only upon a party's showing that it has a substantial need for the discovery and that it cannot obtain the substantial equivalent by other means. *Bridgewater*, 286 F.R.D. at 640. Opinion work product, however, "enjoys a nearly absolute immunity and can be discovered only in very rare and extraordinary circumstances." *Id.* (quoting *Cox. v. Adm. United States Steel & Carnegie*, 17 F.3d 1386, 1422 (11th Cir. 1994)); *see also* Fed. R. Civ. P. 26(b)(3)(B).

Carnival's Motion seeks disclosure of opinion work product in the form of documents and communications containing the opinions, conclusion, mental impressions and legal theories of Havana Docks, its attorneys and its representatives about litigation strategy under Title III of the LIBERTAD Act.

ARGUMENT

Carnival challenges redactions in ten emails on one ground: that none of the redacted information constitutes work product because it was not prepared in anticipation of litigation. According to Carnival, the primary motivating purpose behind the redacted information was to "influenc[e] the Department of State, the Department of Treasury, and the National Security Council," and not to prepare for or aid in possible litigation. (Mot. at 5.) Carnival, however, is incorrect. To the extent any of the information in the ten challenged emails contains such information, that information was not redacted and has been produced.

It is important to note at the outset that due to the means by which Havana Docks coordinated and developed its litigation strategy under Title III before filing suit, the subject line or surrounding emails in a given thread often do not provide a true reflection of the intended purpose of every email in the thread. Many of these threads are lengthy and span numerous subjects. Some cover the course of days. In certain instances, the opinions and mental impressions about litigation strategy under Title III were developed through email exchanges among a group consisting of Havana Docks' principals and Dr. Javier Garcia Bengochea, and three hired consultants (Otto Reich, Jose Cardenas and Jonathan Slade) who assisted Havana Docks and Dr. Garcia with, among other things, developing their common legal

strategy under Title III. (**Exhibit A** at ¶¶ 2 - 15.) Due to the informal nature of the group's communications, at times, work product regarding defenses and arguments under Title III were discussed during the course of email exchanges about other matters, including past or future meetings with government representatives. Discussions about these meetings or public relations advice were not redacted and have been produced, as reflected by Carnival's discussion of these communications its Motion. Conversations containing mental impressions, conclusions, opinions and legal theories about affirmative defenses and counter arguments and other work product concerning litigation under Title III, however, were redacted. In short, the primary motivating purpose behind the redacted information was to formulate and develop a strategy in preparation for litigation against cruise lines under Title III of the LIBERTAD Act.

HDC 021316ddp (D.E. 231-3).

With respect to the email bates labelled "HDC_021316ddp," Mr. Johnson declares as follows:

> The portions of this email concerning public relations advice were produced to Carnival and are not redacted. The redacted portion of this document is a November 1, 2018 email from Mr. Behn to Dr. Garcia, Mr. Slade, Mr. Cardenas, Mr. Reich, Mr. Johnson and myself. The redactions contain Mr. Behn's mental impressions, conclusions and opinions concerning the legal import of the cruise lines' license to a lawsuit under Title III of the LIBERTAD Act, his beliefs as to a possible resolution for the cruise lines' trafficking in the port, and his analysis regarding the prospect of a settlement with cruise lines. The primary motivating purpose behind the redacted email was to plan for and aid in future litigation under Title III of the LIBERTAD Act. The redacted communication involving mental impressions and opinions concerning the lawful travel affirmative defense and settlement of a Title III lawsuit

> would not have been created absent the prospect of litigation under Title III of the LIBERTAD Act.

(**Exhibit A** at ¶ 17(a).) As stated by Mr. Johnson, the redacted portion of HDC 021316ddp was prepared in anticipation of litigation against cruise lines under Title III of the LIBERTAD Act. Carnival's motion to compel with respect to this record should therefore be denied.

HDC_021459ddp (D.E. 231-4).

Carnival challenges redactions to an email bates labelled "HDC_021459ddp." Havana Docks has withdrawn its work product assertion over the redactions to this email and will produce it to Carnival in unredacted form. (**Exhibit A** at ¶ 17(h).)

HDC_021525ddp (D.E. 231-5).

With respect to the email bates labelled "HDC_021525ddp," Mr. Johnson declares as follows:

> The portions of this email relating to lobbying were produced to Carnival and are not redacted. The redacted portion of this document are two lines from a November 17, 2018 email from Dr. Garcia to Mr. Slade, Mr. Cardenas, Mr. Reich and myself. The redaction contains mental impressions, conclusions and opinions regarding a strategy to settle Title III lawsuits with cruise lines. The primary motivating purpose behind the redacted portion of this email was to plan for and aid in future litigation under Title III of the LIBERTAD Act. The redacted communications concerning settlement of a Title III lawsuit would not have been created absent the prospect of litigation under Title III of the LIBERTAD Act.

(**Exhibit A** at ¶ 17(b).) As stated by Mr. Johnson, the redacted portion of HDC_021525ddp was prepared in anticipation of litigation against cruise lines under Title III of the LIBERTAD Act. Carnival's motion to compel with respect to this record should therefore be denied.

HDC_021523ddp (D.E. 231-6).

With respect to the email bates labelled "HDC_021523ddp," Mr. Johnson declares as follows:

> It is my understanding that the first email in this thread has never been withheld from Carnival, and that the portions of this email relating to lobbying were produced to Carnival and are not redacted. The redacted portion of this document is four lines from a November 22, 2018 email from Dr. Garcia to Mr. Reich, Mr. Slade, Mr. Behn, Mr. Johnson and myself. The redactions contain communications relaying legal advice from lawyers at the law firm of Covington Burling who were retained to provide legal opinions on the LIBERTAD Act and Cuban Asset Control Regulations and whose services were paid for by Havana Docks and Dr. Garcia. The substance of the redaction concerns the opinions of those attorneys on the subject of violations of the Cuban Asset Control Regulations. Although it is not reflected on the privilege log, Havana Docks invokes the attorney-client privilege over the redacted information.

(**Exhibit A** at ¶ 17(c).)

HDC_021512ddp (D.E. 231-7) and HDC_021494ddp (D.E. 231-8).

Carnival challenges redactions to emails bates labelled "HDC_021512ddp" and "HDC_021494ddp." Havana Docks has withdrawn its work product assertion over the redactions to these emails and will produce them to Carnival in unredacted form. (**Exhibit A** at ¶ 17(h).)

HDC_021485ddp (D.E. 231-9).

With respect to the email bates labelled "HDC_021485ddp," Mr. Johnson declares as follows:

> I disagree with Carnival's characterization in its motion that this email contains public relations or lobbying information. The redacted portion of this document is four lines from a January 18, 2019 email from Dr. Garcia to Mr. Slade, Mr. Cardenas, Mr. Reich, Mr. Johnson and myself. The redaction contains mental impressions, conclusions and opinions concerning the lawful travel affirmative defense under

> Title III of the LIBERTAD Act, which has been asserted by Carnival in this litigation. The redactions also contain mental impressions and legal theories about possible arguments we could raise to counter this affirmative defense in a Title III litigation. The primary motivating purpose behind the redacted portion of this email was to plan for and aid in future litigation under Title III of the LIBERTAD Act. The redacted communication containing mental impressions, opinions and conclusions concerning the lawful travel defense, and counter-arguments to that defense, would not have been created absent the prospect of litigation under Title III of the LIBERTAD Act.

(**Exhibit A** at ¶ 17(d).) As stated by Mr. Johnson, the redacted portion of HDC_021485ddp was prepared in anticipation of litigation against cruise lines under Title III of the LIBERTAD Act. Carnival's motion to compel with respect to this record should therefore be denied.

HDC_021470ddp (D.E. 231-10).

With respect to the email bates labelled "HDC_021470ddp," Mr. Johnson declares as follows:

> This is an email thread from March 6, 2019, less than two months before the filing of this lawsuit. The individuals involved in the exchange are Mr. Cardenas, Mr. Behn, Dr. Garcia, Mr. Johnson, Mr. Slade, Mr. Reich and myself. The unredacted portion of this email concerns a future meeting with the United States Government regarding the Cuba Restricted List. The redacted portions of this email involve a request by Mr. Behn to Mr. Cardenas to obtain information concerning the terms of the license that the cruise lines travelled to Cuba under to inform strategy in a future Title III lawsuit. Mr. Behn explains how the terms of the license are material to the cruise lines' defense of future law suits, and provides his opinion about a conflict of law between executive regulations and a federal statute. Dr. Garcia responds and provides his opinions and legal theories about the cruise lines' defenses in litigation for using confiscated port properties, and provides his opinion and legal theory on a conflict of law between executive regulations and a federal statute. The primary motivating purpose behind the redacted portion of this email was to plan for and obtain information in aid of in future litigation under Title III of the LIBERTAD Act. The redacted communications containing mental impressions, opinions and conclusions concerning the terms of the cruise lines' licenses and

> conflicts of law, and the legal import of those licenses to future lawsuits, would not have been created absent the prospect of litigation under Title III of the LIBERTAD Act.

(**Exhibit A** at ¶ 17(e).) As stated by Mr. Johnson, the redacted portion of HDC_021470ddp was prepared in anticipation of litigation against cruise lines under Title III of the LIBERTAD Act. Carnival's motion to compel with respect to this record should therefore be denied.

HDC_021714ddp (D.E. 231-11).

With respect to the email bates labelled "HDC_021714ddp," Mr. Johnson declares as follows:

> This is an email thread from March 9, 2019, less than two months before the filing of this lawsuit. The subject line of this email is "Title III." The individuals involved in this thread are Dr. Garcia, Mr. Reich, Mr. Cardenas, Mr. Slade, Mr. Behn and myself. The first email from the beginning of the thread is from Dr. Garcia, who provides his opinion about how to move forward in pursuing a full lifting of the suspension of Title III's right to sue. This portion of the thread was not prepared in anticipation of litigation and was not redacted. The redacted portion of this email concerns mental impressions and opinions regarding defenses that American companies can raise for trafficking in confiscated property and the application of United States law to those companies. In the second email in the thread, Mr. Cardenas responds to Dr. Garcia and provides his opinion that we need to prepare for legal arguments that will be raised by companies that operated in Cuba under a license and are profiting from confiscated property, and provides his opinion and conclusion on what that argument will be. The third email in the thread is from Dr. Garcia who responds to Mr. Cardenas and provides his opinion and legal theory about what our counter argument could be with respect to companies that have a license but are trafficking in stolen property. In the fourth email, Mr. Cardenas responds with a counter to the counter-argument that cruise lines may raise. In the fifth email, Mr. Behn responds to Mr. Cardenas with his opinion on the legality of the cruise lines' licenses and operating on confiscated property. The redacted portion of the sixth email is Dr. Garcia providing his theory and opinion regarding the viability of a government reliance argument by the cruise lines. The primary motivating purpose behind the redacted portions of this email thread was to strategize and plan for

> future litigation under Title III of the LIBERTAD Act by assessing strengths and weaknesses of a potential lawsuit against cruise lines under that law. The redacted portions of this email thread containing mental impressions, opinions, conclusions and legal theories concerning the defenses and counter arguments to a Title III cause of action would not have been created absent the prospect of litigation under Title III of the LIBERTAD Act.

(**Exhibit A** at ¶ 17(f).) As stated by Mr. Johnson, the redacted portion of HDC_021714ddp was prepared in anticipation of litigation against cruise lines under Title III of the LIBERTAD Act. Carnival's motion to compel with respect to this record should therefore be denied.

HDC_021434ddp (D.E. 231-12).

With respect to the email bates labelled "HDC_021434ddp," Mr. Johnson declares as follows:

> This is an email from April 29, 2019, three days before this lawsuit was filed. The email was sent by Dr. Garcia to Mr. Reich, Mr. Behn, Mr. Cardenas, Mr. Slade and myself. The redacted portion of the email concerns a request for assistance in litigation with the cruise lines under Title III of the LIBERTAD Act. The primary motivating purpose behind the redacted portions of this email was to strategize and plan for future litigation under Title III of the LIBERTAD Act. The redacted portions of this email thread requesting assistance in litigation against cruise lines under Title III would not have been created absent the prospect of litigation under Title III of the LIBERTAD Act.

(**Exhibit A** at ¶ 17(g).) As stated by Mr. Johnson, the redacted portion of HDC_021434ddp was prepared in anticipation of litigation against cruise lines under Title III of the LIBERTAD Act. Carnival's motion to compel with respect to this record should therefore be denied.

CONCLUSION

For the foregoing reasons, Havana Docks respectfully requests that the Court deny the Motion (D.E. 131).

Dated: April 2, 2021.

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 2nd day of April, 2021, 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/ Zach Lipshultz
Zach Lipshultz

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-21724-CIV-BLOOM/McAliley

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

DECLARATION OF JERRY JOHNSON

I, Jerry Johnson, declare as follows:

1. My name is Jerry Johnson. I am over 21 years of age, I am a citizen and resident of the United States, and I am competent to make this declaration.

2. I make this declaration in my capacity as Vice President, Comptroller, Treasurer, Secretary and Board Member of Havana Docks Corporation ("Havana Docks").

3. I began my work on behalf of Havana Docks in the fall of 2011 as engaged by Mickael Behn, Director and then-Vice President and Secretary of Havana Docks, and by Aphra Behn, Director and then-Vice President of Havana Docks. Since that time, I have performed numerous duties for Havana Docks, including, but not limited to, the following:

a. maintaining the corporate status active and in good standing to protect Havana Docks' rights under the claim certified to it by the Foreign Claims

Settlement Commission of the United States Government, including for the recovery of property that was confiscated from Havana Docks by the Cuban Government and/or to receive settlement or compensation under the certified claim;

b. managing Havana Docks' investments;

c. engaging lawyers, lobbyists, and consultants to develop a legal strategy to protect and pursue Havana Docks' rights under the LIBERTAD Act, including planning for all legal actions and instituting all lawsuits filed by Havana Docks;

d. meeting and communicating with United States Government officials to protect and pursue Havana Docks' rights under the LIBERTAD Act;

e. meeting and communicating with other claim owners with common interests with Havana Docks in protecting and pursuing Havana Docks' rights under the LIBERTAD Act;

f. coordinating with the Havana Docks' certified public account ("CPA") each year in regard to the company's Form 1120 tax filing to the IRS;

g. coordinating with the Havana Docks' CPA each year in regard to the annual franchise tax filing to the state of Delaware;

h. maintaining Havana Docks' ledger (balance sheets and income statements);

i. paying all bills on behalf of Havana Docks;

j. updating and maintaining Havana Docks' Stockholders' Registry;

k. coordinating and distributing information to stockholders for annual meetings, and

l. recording results from those meetings.

4. I am the person at Havana Docks most knowledgeable of the above-stated subjects and I make this declaration based on my personal knowledge.

5. Aaron Johnson worked as an intern with Havana Docks beginning in the summer of 2018, and has since performed assignments for the company from time to time pertaining to issues of corporate governance and this lawsuit.

EFFORTS TO ENFORCE THE LIBERTAD ACT

6. It was my understanding, based on public reporting at the time, that Carnival Corporation ("Carnival") began cruising to Cuba through its Fathom brand on May 2, 2016, and operated those cruises on the Havana Cruise Port Terminal. Havana Docks owns a certified claim to the Havana Cruise Port Terminal and Carnival did not seek or obtain Havana Docks' authorization to operate its cruises on that property.

7. Around this time, I also learned of Dr. Javier Garcia-Bengochea ("Dr. Garcia"). Dr. Garcia is the holder of a certified claim to an interest in the Port of Santiago de Cuba. It was my understanding that Carnival was also operating its cruises to Cuba on port property that was subject to Dr. Garcia's claim.

8. On or about May 9, 2016, I contacted and spoke for the first time with Dr. Garcia regarding Carnival's operations on the port properties that are the subject of our respective certified claims. We discussed our common concern that Carnival was not respecting Havana Docks' and Dr. Garcia's rights under the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, and we began to coordinate and

develop a common legal strategy to enforce our respective rights under that law, including under Title III.[1]

9. In pursuit of our common legal interests under the LIBERTAD Act, we retained attorneys to provide legal opinions on a variety of issues pertaining to the enforcement of the LIBERTAD Act and the Cuban Asset Control Regulations, we engaged public relations professionals and lobbyists, we consulted expert witnesses for potential use in Title III lawsuits against cruise lines, and we formulated legal theories and litigation strategies for use in future Title III lawsuits on our respective claims, among other things.

10. On March 1, 2017, Havana Docks first consulted with an attorney named Rodney Margol of the law firm Margol & Margol, P.A. in connection with instituting, prosecuting, and/or negotiating any claims that may be asserted against any cruise line for trafficking on Havana Docks' Subject Property in Cuba. Mr. Margol is Havana Docks' lawyer in this lawsuit. It was and is my understanding that on March 1, 2017, Mr. Margol was Dr. Garcia's lawyer in connection with his efforts to enforce the LIBERTAD Act and continued to represent Dr. Garcia in that capacity through the filing of this lawsuit.

11. In early 2018, Havana Docks became aware of early indications that U.S. Government officials or representatives may be considering no longer suspending the Title III cause of action. Around this time, Havana Docks and Dr. Garcia hired consultants Otto Reich, Jose Cardenas and Jonathan Slade, Esq., to

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[1] **Exhibit 1**, Email Thread Between Jerry Johnson and Javier Garcia-Bengochea (May 10, 2016) (HDC 018287).

assist, among other things, in devising a legal strategy in anticipation of litigation under Title III of the LIBERTAD Act.

12. During the course of their engagement, Havana Docks and Dr. Garcia consulted Mr. Reich, Mr. Cardenas and Mr. Slade regarding legal strategy under Title III of the LIBERTAD Act. Among other things, these individuals were consulted in anticipation of litigation regarding factual and legal theories to rebut affirmative defenses under Title III that have been raised by Carnival in this litigation and regarding the prospect of settling the claims against cruise lines.

13. To the extent these consultants also engaged in consulting or lobbying efforts with respect solely to Title IV of the LIBERTAD Act or solely to efforts to lift the suspension of Title III's right to sue, Havana Docks is not asserting work product protection over such documents or communications in this litigation.

14. Between 2017 and early 2019, Havana Docks undertook activities in anticipation and preparation for future litigation under Title III. Among these activities were discussions between Havana Docks' principals, attorneys, consultants and experts about theories of liability and damages in potential litigation under Title III against cruise lines and collecting and developing information regarding the cruise lines' travel to Cuba and use of the Subject Property for use in future litigation under Title III.

15. In 2019, Havana Docks retained attorneys at Colson Hicks Eidson to file lawsuits under Title III. On May 2, 2019, through its attorneys at Colson Hicks Eidson and Margol & Margol, Havana Docks filed this lawsuit against Carnival under Title III of the LIBERTAD Act. It is my understanding that Dr. Garcia was

also represented by these same attorneys and filed a separate lawsuit against Carnival on that same day under Title III of the LIBERTAD Act.

THE CHALLENGED DOCUMENTS

16. I understand that Carnival was not provided in discovery certain email communications containing the mental impressions, conclusions, opinions and legal theories of Havana Docks and its attorneys, representatives and consultants that were prepared in anticipation of litigation against cruise lines under Title III of the LIBERTAD Act.

17. I also understand that Carnival has filed a motion to compel the production of some of these communications (D.E. 231). I have reviewed the documents challenged by Carnival in its motion and state as follows:

a. HDC 021316ddp (D.E. 231-3). The portions of this email concerning public relations advice were produced to Carnival and are not redacted. The redacted portion of this document is a November 1, 2018 email from Mr. Behn to Dr. Garcia, Mr. Slade, Mr. Cardenas, Mr. Reich, Mr. Johnson and myself. The redactions contain Mr. Behn's mental impressions, conclusions and opinions concerning the legal import of the cruise lines' license to a lawsuit under Title III of the LIBERTAD Act, his beliefs as to a possible resolution for the cruise lines' trafficking in the port, and his analysis regarding the prospect of a settlement with cruise lines. The primary motivating purpose behind the redacted email was to plan for and aid in future litigation under Title III of the LIBERTAD Act. The redacted communication involving mental impressions and opinions concerning the lawful

travel affirmative defense and settlement of a Title III lawsuit would not have been created absent the prospect of litigation under Title III of the LIBERTAD Act.

b. HDC_021525ddp (D.E. 231-5). The portions of this email relating to lobbying were produced to Carnival and are not redacted. The redacted portion of this document are two lines from a November 17, 2018 email from Dr. Garcia to Mr. Slade, Mr. Cardenas, Mr. Reich and myself. The redaction contains mental impressions, conclusions and opinions regarding a strategy to settle Title III lawsuits with cruise lines. The primary motivating purpose behind the redacted portion of this email was to plan for and aid in future litigation under Title III of the LIBERTAD Act. The redacted communications concerning settlement of a Title III lawsuit would not have been created absent the prospect of litigation under Title III of the LIBERTAD Act.

c. HDC_021523ddp (D.E. 231-6). It is my understanding that the first email in this thread has never been withheld from Carnival, and that the portions of this email relating to lobbying were produced to Carnival and are not redacted. The redacted portion of this document is four lines from a November 22, 2018 email from Dr. Garcia to Mr. Reich, Mr. Slade, Mr. Behn, Mr. Johnson and myself. The redactions contain communications relaying legal advice from lawyers at the law firm of Covington Burling who were retained to provide legal opinions on the LIBERTAD Act and Cuban Asset Control Regulations and whose services were paid for by Havana Docks and Dr. Garcia. The substance of the redaction concerns the opinions of those attorneys on the subject of violations of the Cuban Asset Control

Regulations. Although it is not reflected on the privilege log, Havana Docks invokes the attorney-client privilege over the redacted information.

d. HDC 021485ddp (D.E. 231-9). I disagree with Carnival's characterization in its motion that this email contains public relations or lobbying information. The redacted portion of this document is four lines from a January 18, 2019 email from Dr. Garcia to Mr. Slade, Mr. Cardenas, Mr. Reich, Mr. Johnson and myself. The redaction contains mental impressions, conclusions and opinions concerning the lawful travel affirmative defense under Title III of the LIBERTAD Act, which has been asserted by Carnival in this litigation. The redactions also contain mental impressions and legal theories about possible arguments we could raise to counter this affirmative defense in a Title III litigation. The primary motivating purpose behind the redacted portion of this email was to plan for and aid in future litigation under Title III of the LIBERTAD Act. The redacted communication containing mental impressions, opinions and conclusions concerning the lawful travel defense, and counter-arguments to that defense, would not have been created absent the prospect of litigation under Title III of the LIBERTAD Act.

e. HDC 021470ddp (D.E. 231-10). This is an email thread from March 6, 2019, less than two months before the filing of this lawsuit. The individuals involved in the exchange are Mr. Cardenas, Mr. Behn, Dr. Garcia, Mr. Johnson, Mr. Slade, Mr. Reich and myself. The unredacted portion of this email concerns a future meeting with the United States Government regarding the Cuba Restricted List. The redacted portions of this email involve a request by Mr. Behn to Mr. Cardenas to obtain information concerning the terms of the license that the cruise lines travelled

to Cuba under to inform strategy in a future Title III lawsuit. Mr. Behn explains how the terms of the license are material to the cruise lines' defense of future law suits, and provides his opinion about a conflict of law between executive regulations and a federal statute. Dr. Garcia responds and provides his opinions and legal theories about the cruise lines' defenses in litigation for using confiscated port properties, and provides his opinion and legal theory on a conflict of law between executive regulations and a federal statute. The primary motivating purpose behind the redacted portion of this email was to plan for and obtain information in aid of in future litigation under Title III of the LIBERTAD Act. The redacted communications containing mental impressions, opinions and conclusions concerning the terms of the cruise lines' licenses and conflicts of law, and the legal import of those licenses to future lawsuits, would not have been created absent the prospect of litigation under Title III of the LIBERTAD Act.

f. HDC_021714ddp (D.E. 231-11). This is an email thread from March 9, 2019, less than two months before the filing of this lawsuit. The subject line of this email is "Title III." The individuals involved in this thread are Dr. Garcia, Mr. Reich, Mr. Cardenas, Mr. Slade, Mr. Behn and myself. The first email from the beginning of the thread is from Dr. Garcia, who provides his opinion about how to move forward in pursuing a full lifting of the suspension of Title III's right to sue. This portion of the thread was not prepared in anticipation of litigation and was not redacted. The redacted portion of this email concerns mental impressions and opinions regarding defenses that American companies can raise for trafficking in confiscated property and the application of United States law to those companies. In

the second email in the thread, Mr. Cardenas responds to Dr. Garcia and provides his opinion that we need to prepare for legal arguments that will be raised by companies that operated in Cuba under a license and are profiting from confiscated property, and provides his opinion and conclusion on what that argument will be. The third email in the thread is from Dr. Garcia who responds to Mr. Cardenas and provides his opinion and legal theory about what our counter argument could be with respect to companies that have a license but are trafficking in stolen property. In the fourth email, Mr. Cardenas responds with a counter to the counter-argument that cruise lines may raise. In the fifth email, Mr. Behn responds to Mr. Cardenas with his opinion on the legality of the cruise lines' licenses and operating on confiscated property. The redacted portion of the sixth email is Dr. Garcia providing his theory and opinion regarding the viability of a government reliance argument by the cruise lines. The primary motivating purpose behind the redacted portions of this email thread was to strategize and plan for future litigation under Title III of the LIBERTAD Act by assessing strengths and weaknesses of a potential lawsuit against cruise lines under that law. The redacted portions of this email thread containing mental impressions, opinions, conclusions and legal theories concerning the defenses and counter arguments to a Title III cause of action would not have been created absent the prospect of litigation under Title III of the LIBERTAD Act.

g. HDC_0213434ddp (D.E. 231-12). This is an email from April 29, 2019, three days before this lawsuit was filed. The email was sent by Dr. Garcia to Mr. Reich, Mr. Behn, Mr. Cardenas, Mr. Slade and myself. The redacted portion of the email concerns a request for assistance in litigation with the cruise lines under

Title III of the LIBERTAD Act. The primary motivating purpose behind the redacted portions of this email was to strategize and plan for future litigation under Title III of the LIBERTAD Act. The redacted portions of this email thread requesting assistance in litigation against cruise lines under Title III would not have been created absent the prospect of litigation under Title III of the LIBERTAD Act.

h. HDC_021459ddp (D.E. 231-4), HDC_021512ddp (D.E. 231-7), HDC_021494ddp (D.E. 231-8). I have reviewed these documents, and Havana Docks has determined to withdraw its work product assertion over these records. HDC_021459ddp, HDC_021512ddp and HDC_021494ddp will be produced to Carnival in unredacted form.

I declare under the penalty of perjury under the law of the United States of America that the foregoing is true and correct.

Executed April 2, 2021.

Jerry M. Johnson

Jerry Johnson
Lexington, Kentucky, USA

Exhibit 1

Message

From: JGB Home [jgb@bellsouth.net]
Sent: 5/10/2016 4:34:55 PM
To: Jerry Johnson [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=302f3ed959214dd5b5a435d77a9fc8d1-jjohnson]
CC: Magda Perez [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6417dfeae9664ed8882d58e9ec722578-mperez]
Subject: Re: Notice to Carnival

Very, very interesting, Jerry. Thank you very much for sending this to me.

I've been to Cuba 3 times, each to deal with the property issue. I've been by Havana Docks several times and as someone with interest in the ports, I've always wondered who the owners were and what happened to them. Given the circumstances, I'm glad it was an American.

In person it is a very impressive and attractive structure, despite is poor maintenance. It really looks "historic" and perfect near old Havana.

In a series of emails as I said yesterday I'm going to get the conversation going about the law, what I'm doing and the strategy going forward. Hopefully, this can inform you sufficiently to feel comfortable moving forward together.

Ironically, after 57 years of nothing happening, I believe the time and the timing is actually critical. There are a number of things happening now working in our favor.

Thanks,

Javier

On May 10, 2016, at 10:23 AM, Jerry Johnson <jjohnson@bankofthebluegrass.com> wrote:

> Good morning Javier! Great to speak with you yesterday, and I enjoyed our conversation very much.
>
> Thank you for sending me the letter this morning from the Covington & Burling law firm that they had written to the Carnival Corporation to enforce your rights for the shipping port and related interests in Santiago (I like Covington & Burling already!).
>
> I've attached for you all of my contact information here at the bank, and I hope you will feel free to contact me if you think I may be of help as we pursue our respective interests for the Cuban claims (yours personally, and mine on behalf of my client, Havana Docks).
>
> As I mentioned in our telephone conversation, I wanted to send to you a brief write up regarding the life of Mr. William Behn that I did for our staff newsletter here at the bank and that I thought you might also find of interest. Please find that story attached, and I hope you enjoy reading.
>
> Very best regards,
>
> Jerry
>
> ***Jerry M. Johnson***
> ***Senior Vice President, Director of Wealth Management***
> <image003.png>
> *Direct Telephone: (859) 233-8903*
> *Fax: (859) 252-0304*
> *215 Southland Drive, Lexington, Kentucky 40503*

-----Original Message-----
From: JGB Home [mailto:jgb@bellsouth.net]
Sent: Tuesday, May 10, 2016 9:37 AM
To: Jerry Johnson <jjohnson@bankofthebluegrass.com>
Subject: Notice to Carnival

This email and any attached files are confidential and intended solely for the intended recipient(s). If you are not the named recipient you should not read, distribute, copy or alter this email. Any views or opinions expressed in this email are those of the author and do not represent those of Bank of the Bluegrass. Warning: Although precautions have been taken to make sure no viruses are present in this email, Bank of the Bluegrass cannot accept responsibility for any loss or damage that arise from the use of this email or attachments. Investments offered by Wealth Management Division at Bank of the Bluegrass & Trust Co.: Are not FDIC Insured * Are not Bank Guaranteed * May Lose Value. Please do not transmit trading orders or instructions regarding a Bank of the Bluegrass account by e-mail. For your protection, Bank of the Bluegrass does not accept and act on such instructions. Similarly, Bank of the Bluegrass does not accept trading instructions via voicemail, text messages, instant messaging, or facsimile. Please speak directly with your Wealth Management Advisor if you need to give instructions related to your account. The information presented in this email is general in nature. It is not intended to provide, and should not be relied upon for accounting, investment, legal or tax advice. Investors should consider their individual financial circumstances and the inherent risks of investing prior to making any investment decision. This email and any attached files are confidential and intended solely for the intended recipient(s). If you are not the named recipient you should not read, distribute, copy or alter this email. Any views or opinions expressed in this email are those of the author and do not represent those of Bank of the Bluegrass. Warning: Although precautions have been taken to make sure no viruses are present in this email, Bank of the Bluegrass cannot accept responsibility for any loss or damage that arise from the use of this email or attachments.

<Behn Family History for Employee News Letter (2).pdf>

<Jerry M- Johnson.vcf>