# EXHIBIT "11"

# MSC's Homeporting of Its Ships at the Havana Port Terminal

# August 27, 2020 Order on Discovery Disputes
# ECF No. 93

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

**Case No. 19-23588-CIV-BLOOM/Louis**

HAVANA DOCKS CORPORATION,

Plaintiff,

v.

MSC CRUISES SA CO., and
MSC CRUISES (USA) INC.,

Defendants.
_____/

**ORDER ON DISCOVERY DISPUTES**

Pursuant to this Court's procedures on discovery disputes (ECF No. 29), the Parties have noticed discovery disputes for hearing. A hearing was conducted on August 25, 2020 on Plaintiff Havana Docks Corporation's ("Havana Docks") Notice of Hearing (ECF No. 87). At the hearing, the Parties represented that they had reached an agreement on some of the noticed disputes prior to the hearing. The Court heard arguments on the remaining noticed disputes. This Order succinctly memorializes but does not modify the rulings made in open court.

For the reasons stated on the record at the hearing, it is **ORDERED AND ADJUDGED** as follows:

1. Defendants' objection to the relevance of events related to travel other than that between Cuba and the United States was overruled, in part. Defendants have represented, in response to Plaintiffs' interrogatories, that the Subject Property was designated by Cuban officials for use in disembarking in Havana, Cuba. Defendants further represent that this designation was communicated by Cuban officials before and not in relation to Defendants' commercial travel to Cuba from the United States, beginning in late 2019. Plaintiffs now seek to discover

witnesses likely to have knowledge about the communications on which Defendants will rely for their defense that their use of the Subject Property was pursuant to lawful travel and "necessary," specifically, that they were following the designation made by Cuban officials. Plaintiffs have demonstrated the relevance of communications between Defendants' employees and representatives of the Cuban Government pertaining to Defendants' use of the Subject Property and related to Defendant MSC Cruises SA Co.'s ("MSC SA") travel to Cuba. Defendants were accordingly ordered to amend their answers to Interrogatories Nos. 10, 11 and 16, to identify the MSC SA employees who have communicated Cuban Government, and the employees of the Cuban Government who have communicated with employees of MSC SA, regarding MSC SA related to travel to Cuba and concerning the Subject Property, including employees under the "Swiss Parent Company."

2. Defendants were not ordered to amend their answer to Interrogatory No. 13, to which Defendants also objected to answering beyond the scope relevant to travel between U.S. and Cuba. Counsel represents that the answer described Defendants' use of the Subject Property since December 2018, which is the time period of trafficking alleged in the complaint, without distinction between travel between the United States and Cuba and non-U.S. based travel. Defendants were not compelled to investigate whether or what other uses of the property were made before the time alleged in the complaint.

3. Plaintiff noticed dispute on Request For Production Numbers 8 and 9 related to Plaintiff's request for documents evidencing payments made by MSC SA to any person in Cuba. This dispute was previously raised but not argued at a prior hearing, on defense counsel's representation that Defendants agreed to produce the documents in dispute. Following that representation, however, the Parties appreciated that the offer to produce did not mirror

Plaintiffs' request. Though noticed again for resolution at today's hearing, Plaintiffs' counsel sought additional time to confer in effort to resolve the Parties' dispute. Defendants did not object and the Parties are afforded leave to further confer and narrow the disputes the require Court intervention.

4. Defendants shall provide amended answers, including production of responsive documents, by September 8, 2020.

5. A further discovery status conference is scheduled for **September 8, 2020 at 1:30 PM**. Zoom instructions to follow in a separate correspondence from the Court.

**DONE AND ORDERED** in Miami, Florida on this 27th day of August 2020.

LAUREN F. LOUIS
**UNITED STATES MAGISTRATE JUDGE**

**September 1, 2020**

# HAVANA DOCKS CORPORATION'S ANSWERS AND OBJECTIONS TO DEFENDANTS' FIRST SET OF INTERROGATORIES

**ECF No. 278-1**

**UNITED STATES DISRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**Case No. 1:19-cv-23588-BLOOM/Louis**

HAVANA DOCKS CORPORATION,

Plaintiff,

vs.

MSC CRUISES SA CO., and
MSC CRUISES (USA) INC.,

Defendants.
_____/

**HAVANA DOCKS CORPORATION'S ANSWERS AND OBJECTIONS TO DEFENDANTS' FIRST SET OF INTERROGATORIES**

Plaintiff Havana Docks Corporation ("Havana Docks," "HDC," or "Plaintiff") by and through undersigned counsel, and pursuant to the Federal Rules of Civil Procedure 26 and 33 and Local Rule 26.1, serves its Answers and Objections to Defendants MSC Cruises (USA) Inc. and MSC Cruises SA Co.'s (collectively "Defendants") First Set of Interrogatories dated July 30, 2020.

**GENERAL OBJECTION**

Defendants have not specified a time period for these Interrogatories. Plaintiff has limited its Answers to the time period from the beginning of time through August 27, 2019, which is the date the litigation commenced.

**OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

A. Plaintiff objects to Definition No. 8 as it mischaracterizes the term "Concession." HDC will apply the following definition: "Concession" means the

property interest certified and listed in Certified Claim # CU-2492 made by the Foreign Claims Settlement Commission ("FCSC"), (ECF No. 56-1, p. 3) ("Certified Claim"), which granted HDC a "term of 99 years for the use of, improvement, construction upon, operation and management of the Subject Property," as alleged at ¶15 of the First Amended Complaint ("FAC").

B. There appears to be a typographical error in Definition No. 9. HDC will apply the definition of "Property" codified at 22 U.S.C. § 6023(12).

C. Plaintiff objects to Instruction No. 4 to the extent it imposes obligations beyond those required by the Federal Rule of Civil Procedure 33(b)(4).

D. Plaintiff objects to Instruction No. 5 to the extent it imposes obligations beyond those required by the Federal Rule of Civil Procedure 26(e).

**ANSWERS AND OBJECTIONS TO INTERROGATORIES**

**INTERROGATORY NO. 1.** Identify and list the names, addresses, and email addresses of all persons or entities known to HDC (including its own shareholders) that have facts related to any of the claims or defenses in the case. In so answering, describe in detail what information HDC believes each individual or entity has.

**Answer to No. 1:**

- Mickael Sosthenes Behn; c/o Colson Hicks Eidson; possesses knowledge of Havana Docks Corporation, the Certified Claim, the Subject Property, the notice letter sent to Defendants regarding their trafficking on the Subject Property, Defendants' failure to obtain authorization from Plaintiff to use the Subject Property, and money damages allowable under 22 U.S.C. § 6082(a).


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- Jerry M. Johnson; c/o Colson Hicks Eidson; possesses knowledge of Havana Docks Corporation, the Certified Claim, the Subject Property, the notice letter sent to Defendants regarding their trafficking on the Subject Property, Defendants' failure to obtain authorization from Plaintiff to use the Subject Property, and money damages allowable under 22 U.S.C. § 6082(a).

Upon information and belief, discovery will reveal that Defendants' employees and representatives, including those identified in the Rule 26 Disclosures, have knowledge of the following matters: Defendants' cruises to Cuba; Defendants' use of the Subject Property; alternatives to the Subject Property available to Defendants for use in their Cuba cruises; Defendants' reasons for using the Subject Property; Defendants' knowledge of the Certified Claim; Defendants' knowledge that the Subject Property was confiscated by the communist Cuban Government; Defendants' notice of their trafficking on the Subject Property; Defendants' failure to obtain authorization from Plaintiff to use the Subject Property; Defendants' failure to compensate Plaintiff for using the Subject Property; Defendants' profits and financial gain from its cruises to Cuba and use of the Subject Property; and Defendants' notice of their liability, and the extent of that liability, under Title III of the LIBERTAD Act for trafficking in the Subject Property.

**INTERROGATORY NO. 2.** Identify with specificity each and every piece of real or tangible property (including fixtures or improvements) or real property interest that HDC contends it holds a claim to and (ii) that MSC Cruises trafficked in. For each piece of property you identify:


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a. State what interest you held in that property before it was confiscated by the Cuban Government;

b. State whether that property is included in the Certified Claim and what value you believe the FCSC attributed to that property;

c. Explain precisely how and when MSC Cruises trafficked in that property; and

d. State what you contend to be the fair market value of the property.

**Answer to No. 2:**

As to subparts "a" and "b," and "d," pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, the answer may be ascertained from reviewing document Bates # HDC 000524-535. With respect to subpart "d," Havana Docks will amend this answer if or when additional information is made known to it. As to subpart "c," HDC states that Defendants and/or their affiliates, without the authorization of Havana Docks, used the Subject Property: to disembark and embark passengers from their ships; to base their Cuban operations, including through the use of the Subject Property as a homeport for their ships; engaged in commercial activity using and benefitting from the Subject Property; and profited from their trafficking of the Subject Property, directly, and by participating in, or profiting from, trafficking by or through another person from at least as early as 2015 to 2019. Havana Docks will amend this answer to subpart "c" upon learning the full extent of Defendants' use of the Subject Property.

**INTERROGATORY NO. 3.** Does HDC seek to hold MSC Cruises liable for trafficking in other "property" not expressly identified and/or valued in Certified Claim No. CU-2492? If so, please describe in detail the scope of the property, how HDC



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came to own the property, how MSC Cruises trafficked in the property (including by specifying which specific entity trafficked in such property), and the amount of damages that HDC contends it is owed as a result of alleged trafficking in this confiscated property.

**Answer to No. 3:**

Havana Docks seeks to hold Defendants liable for trafficking in property subject to the Certified Claim.

**INTERROGATORY NO. 4.** Does HDC contend that it still owns or possesses a valid, reversionary interest in the Subject Property in which HDC could, at some future time, regain an interest to manage or operate the Subject Property, as alleged in Paragraph 15 of the FAC? If so, please describe the factual and legal bases for this contention.

**Answer to No. 4:**

The Concession granted HDC a term of 99 years for the use of, improvement, construction upon, operation and management of the Subject Property. HDC and its predecessor in interest constructed, used, operated, managed and made significant improvements on the Subject Property from 1905 until 1960, when it was confiscated by the communist Cuban Government. The Concession never expired by its term. It was confiscated by the Cuban Government in 1960. Thus, when the Subject Property was confiscated in 1960, HDC still had a balance of 44 years of concessionary rights remaining; those 44 years of concessionary rights still remain in balance, and HDC has never been indemnified by the Cuban Government or anyone for the loss of that


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property interest. As a result, under the terms of the Concession as certified by the FCSC and recognized by the LIBERTAD Act, and Cuban law in force at the time, Havana Docks still retains, to this day, a reversionary interest of 44 years remaining in the Subject Property. *See* 1899 Codigo Civil, Book Second, Title II, Chapter 1, Article 349; *see also* 22 U.S.C. §§ 2370(a)(2), 6023(4)(A)(i), 6065(b)(2)(D), 6066(6), 6081(7), 6091(b)(1)(A)(i).

**INTERROGATORY NO. 5.** Does HDC contend that the indemnity right contained in the Concession, as alleged in Paragraph 16 of the FAC, can be enforced against MSC Cruises? If so, please describe in detail the factual and legal basis for that contention.

**Answer to No. 5:**

The Certified Claim can be enforced against Defendants as set forth in the LIBERTAD Act. The indemnity right is a term of the Concession, which was certified by the FCSC. Under the LIBERTAD Act, certification by the FCSC is "conclusive proof of ownership of an interest in property" taken by the Cuban Government. 22 U.S.C. § 6083(a)(1). The indemnity right entitled HDC to the value of the work constructed by it and its predecessor-in-interest. This included the value of the San Francisco, Machina and Santa Clara Piers, as reflected in the Certified Claim. The Certified Claim remains unsatisfied, and Havana Docks has not been repossessed of the Subject Property. Under the LIBERTAD Act, the Certified Claim is a property interest entitling HDC to sue whomever traffics in the property subject to it, such as Defendants.


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**INTERROGATORY NO. 6.** Does HDC contend that Concession was "expropriated by virtue of Article 50 of the Law of the Ports?" If so, please describe in detail the factual and legal basis for that contention.

**Answer to No. 6:**

In the Certified Claim, the FCSC certified that the communist Cuban Government unlawfully confiscated the Subject Property, including the Concession, on October 24, 1960. Under the LIBERTAD Act, certification by the FCSC is "conclusive proof of ownership of an interest in property" taken by the Cuban Government. 22 U.S.C. § 6083(a)(1).

**INTERROGATORY NO. 7.** Identify the date or year HDC contends the Concession was set to expire, and the date the terms of the Concession would have expired if the Cuban Government did not confiscate this interest. If HDC contends that there is no date (or year) certain, please describe in detail the factual and legal bases for that contention.

**Answer to No. 7:**

Plaintiff objects to this Interrogatory to the extent it seeks information that is irrelevant, and calls for speculation as to what might have occurred had the communist Cuban Government not confiscated the Subject Property. Notwithstanding this objection, the Court explained in its April 17, 2020 Order (ECF No. 55, at 15-16), that:

> Plaintiff [] rightfully notes that the Court's conclusion that the concession expired in 2004 is inconsistent with the actual text of the Certified Claim. After a close reading of the Certified Claim, the



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> Court agrees with Havana Docks that the Certified Claim did not place a temporal limitation on Plaintiff's claim that expired in 2004. Instead, the FCSC noted that "[t]he terms of the concession granted by the Cuban Government *were* to expire in the year 2004, at which time the corporation had to deliver the piers to the government in good state of preservation." ECF No. [41-8] at 9 (emphasis added). The distinction between the language in the Certified Claim that the concession terms *were* to expire and the Court's incorrect factual finding that the property interests at issue *actually did* expire in 2004 is critical and this misrepresentation of the text of the Certified Claim served as the foundation for the Court's resulting analysis in the *MSC* order.

Havana Docks further responds that the Concession was extended once before, and Havana Docks had engaged in discussion about another extension prior to the Cuban Government's confiscation of the Subject Property in 1960.

**INTERROGATORY NO. 8.** Does HDC contend MSC Cruises' use of the Subject Property was not necessary for travel to Cuba? If so:

a. State each fact on which this contention is based;

b. Identify each person having knowledge of each fact;

c. Identify each document containing information of each fact.

**Answer to No. 8:**

Defendants' use of the Subject Property was not necessary for travel to Cuba. Defendants' ships could have anchored offshore of Havana or used other property in the area near Havana or in Cuba besides the Subject Property.

Discovery is ongoing. Plaintiff will supplement this answer as additional information is made known during the discovery process, to the extent it may do so without waiving the privileges protected by the attorney-client privilege and work



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product doctrine.

**INTERROGATORY NO. 9.** Does HDC contend that it was possible for an MSC Cruise vessel to anchor offshore from Havana, Cuba and deploy tenders to transport passengers from the cruise vessel to either (a) the Subject Property or (b) a different port facility other than the Subject Property? If so, describe in detail the factual basis for this contention.

**Answer to No. 9:**

Defendants' ships, in their travel to Cuba, could have anchored offshore and tendered their passengers to the mainland without using the Subject Property or used other property besides the Subject Property to dock their ships. It is well-known that cruise ships docked at other port facilities in Cuba or anchored offshore.

Discovery is ongoing. Plaintiff will supplement this answer as additional information is made known during the discovery process, to the extent it may do so without waiving the privileges protected by the attorney-client privilege and work product doctrine.

**INTERROGATORY NO. 10.** Identify all shareholders in HDC as of the date of filing the Complaint and identify the date(s) on which each shareholder obtained any interest in HDC. For the avoidance of doubt, this Interrogatory seeks each and every date on which any shareholder in HDC acquired any interest in HDC, including but not limited to any instance in which a shareholder who had an interest acquired any additional interest.

**Answer to No. 10:** Havana Docks objects to this Interrogatory as it seeks



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information that is not relevant to the claim or defense and is not subject to discovery under FRCP 26(b) for the reasons set forth below.

Under 22 U.S.C. § 6082(4)(B), "In the case of property confiscated before March 12, 1996, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before March 12, 1996." The term "United States national" is defined in 22 U.S.C. § 6023(15) as:

> (A) any United States citizen; or
> (B) any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

Havana Docks is a United States national. It is a corporation organized under the laws of the State of Delaware with its principal place of business in Kentucky. Moreover, as set forth in the Certified Claim, the property identified in the Certified Claim was confiscated in 1960, and Havana Docks acquired ownership of the Certified Claim before March 12, 1996. The FCSC certified in the Certified Claim that:

> The record shows that in 1917 claimant corporation was organized under the laws of the State of Delaware. Claimant's Vice-President and Assistant Comptroller stated that at all times between August 14, 1917 and the presentation of the [**April 21, 1971]** more than 50 percent of the outstanding capital stock of all classes has been owned by persons who were United States nationals, and that at the time of filing the claim, of 35,505 outstanding shares of stock of HAVANA DOCKS CORPORATION only 1,003 or approximately 3% of the total outstanding shares were held by persons who were not nationals of the United States. The Commission therefore holds that claimant is a


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> national of the United States within the meaning of Section 502(1)(B) of the Act.

(ECF No. 56-1, at p. 6). Under 22 U.S.C. § 6083(a)( 1): "In any action brought under this subchapter, the court shall accept as conclusive proof of ownership of an interest in property a certification of a claim to ownership of that interest that has been made by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 (22 U.S.C. § 1643 and following)."

Therefore, Havana Docks is a United States national that acquired its ownership of the claim before March 12, 1996, and, thus, the identity of its shareholders, including the number of shares owned and citizenship of each shareholder and the date each person or entity became a shareholder, from 1960 to the present is irrelevant.

**INTERROGATORY NO. 11.** Identify, describe and compute the amount of monetary damages that HDC contends it is owed from MSC Cruises.

**Answer to No. 11:**

Plaintiff is entitled to all money damages allowable under the LIBERTAD Act. Damages are calculated pursuant to the formula set forth at 22 U.S.C. § 6082. Monetary damages allowable under 22 U.S.C. § 6082(a)(1)(A)(i) are three times the amount which is the greater of the amounts set forth in 22 U.S.C. § 6082 (a)(1)(A)(i)(I)-(III) plus court costs and reasonable attorney's fees.

The amount set forth in 22 U.S.C. § 6082(a)(1)(A)(i)(I) is derived from the amount certified by the FCSC, plus interest. That amount is calculated as follows:

**Number of Years Elapsed Between the Confiscation of the Property**



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**and the Filing of the Complaint:**

| | |
|---|---|
| Date of the Confiscation | 10/24/1960 |
| Date of the Filing of the Complaint | 8/27/2019 |
| Total Years Elapsed | 58.88 |
| **Calculation Based on 22 U.S.C. §6082 (a)(1)(A)(i)(I)** | |
| Present Value of the Claim on 10/24/1960 | $9,179,701 |
| Total Years Elapsed | 58.88 |
| Interest Rate | 5.08% |
| Payments Received Over the 58.88 Year Period | 0 |
| Amount | $169,792,350 |
| Damages = 3 x Amount per 22 U.S.C. §6082 (a)(1)(A)(i)(I) | $509,377,050 |

The value of the claim on October 24, 1960 is the value of the Subject Property ($9,179,701) as determined by the FCSC in the Certified Claim. The rates are available on the website of the Federal Reserve Bank of St. Louis ("The Fed"), https://fred.stlouisfed.org/series/GS1. The Fed provides the data of the weekly average of the 1-year constant maturity Treasury yield from the present going back to January 5, 1962 and the monthly average from the present going back to April 1, 1953. From the date of the confiscation of the property, on October 24, 1960, to the date of filing the action, on August 27, 2019, the applicable interest rate is computed as the average of the weekly average of the 1-year constant maturity Treasury yield going back to January 5, 1962, and the monthly average from October 24, 1960 to January 5, 1962. That results in an interest rate of 5.08%.


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The amount set forth in 22 U.S.C. § 6082(a)(1)(A)(i)(II) relates to the portion of the claim that is not certified, and is determined by a special master, including the FCSC, pursuant to 22 U.S.C. § 6083(a)(2), should the Court make that appointment.

The amount set forth in 22 U.S.C. § 6082(a)(1)(A)(i)(III) relates to the fair market value of the property, calculated as being either the current value of the property, or the value of the property when confiscated plus interest, whichever is greater. No determination has yet been made as to that amount except as set forth in the Certified Claim.


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**VERIFICATION**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, or belief.

Executed on this 1st day of September, 2020.

Lexington, Kentucky

Jerry M. Johnson
Secretary-Treasurer
Havana Docks Corporation

DATED: September 1, 2020.

Respectfully submitted,

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**Certificate of Electronic Service List**

I HEREBY CERTIFY that on September 1, 2020, I served the foregoing document via electronic mail on the following counsel for the Defendants:

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*/s/ Roberto Martínez*
Roberto Martínez

October 8, 2020
Second Amended Complaint
ECF No. 104

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

HAVANA DOCKS CORPORATION,

Case No.: 19-cv-23588-BLOOM/LOUIS

Plaintiff,

vs.

MSC CRUISES SA,
MSC CRUISES SA CO, and
MSC CRUISES (USA) INC.

Defendants.
_____/

**SECOND AMENDED COMPLAINT**

Plaintiff Havana Docks Corporation ("Plaintiff") hereby sues MSC Cruises SA, MSC Cruises SA CO, and MSC Cruises (USA) Inc. ("MSC Cruises USA") (collectively "Defendants" or "MSC Cruises"), pursuant to the Cuban Liberty and Democratic Solidarity Act ("LIBERTAD Act"), for trafficking in Plaintiff's confiscated property located in Cuba.

**INTRODUCTION**

The LIBERTAD Act was enacted to assist the Cuban people in regaining their freedom and prosperity, strengthen international sanctions against the communist Cuban Government, and to deter the exploitation of wrongfully confiscated property in Cuba belonging to United States nationals. Although every U.S. President has suspended the right to bring an action under the LIBERTAD Act since its enactment in 1996, the Defendants have been on notice since 1996 that trafficking in property

confiscated by the communist Cuban Government without the authorization of the owner of a certified claim to such property would subject them to liability under the LIBERTAD Act. As of the date of filing this Complaint, the United States Government has ceased suspending the right to bring an action under the LIBERTAD Act, which therefore permits Plaintiff to seek damages for the Defendants' conduct in exploiting Plaintiff's wrongly confiscated property.

## PARTIES

1. Plaintiff, Havana Docks Corporation, 215 Southland Drive, Lexington, Kentucky, 40503, is a Delaware corporation and a U.S. National under 22 U.S.C. § 6023(15)(B).

2. MSC Cruises SA is a corporation chartered and located in Switzerland with its registered address at Avenue Eugène-Pittard 40, 1206 Geneva, Switzerland. MSC Cruises SA owns and operates cruise ships which, after November 1, 1996 traveled to Cuba, including the cruises to Cuba from Miami that used the Subject Property to embark and disembark passengers in Havana. MSC Cruises SA also operates through its subsidiaries and joint ventures, including the subsidiaries owning or leasing the ships of its fleet that have provided cruises to Cuba from Miami. MSC Cruises SA controls and decides the destinations and itineraries of its cruise ships.

3. MSC Cruises SA CO is a Florida corporation doing business and maintaining its principal place of business at 6750 N. Andrews Ave., Suite 100, Ft. Lauderdale, Florida 33309. MSC Cruises SA CO is a wholly owned subsidiary of MSC Cruises SA. MSC Cruises SA operates and conducts its business in Florida through



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MSC Cruises SA CO. MSC Cruises SA and MSC Cruises SA CO operated the Defendants' cruises from Florida to Cuba that embarked and disembarked passengers on the Subject Property.

4. MSC Cruises USA is a Delaware Corporation doing business and maintaining its principal place of business at 6750 N. Andrews Ave., Suite 100, Ft. Lauderdale, Florida 33309. MSC Cruises (USA), Inc. is a wholly owned subsidiary of MSC Cruises SA. MSC Cruises USA sold and marketed Defendants' cruises from Miami to Cuba.

## JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), because Plaintiff's claim arises under 22 U.S.C. § 6021, *et seq*., and the amount in controversy exceeds the sum or value of $50,000, exclusive of interest, costs, and attorneys' fees.

6. This Court has personal jurisdiction over MSC Cruises SA pursuant to Florida Statute § 48.193(1)(a)(1) because the cause of action arises from operating, conducting, engaging in, or carrying on a business or business venture in the state of Florida. MSC Cruises SA is also subject to personal jurisdiction under Florida Statute § 48.193(2) as MSC Cruises SA is engaged in substantial and not isolated activity within the State of Florida, including by using the State of Florida as the homeport for ships that provided cruises to Cuba from Florida. Further, the standard ticket contract for all United States-based cruises operated by MSC Cruises SA contains a forum selection clause requiring "any dispute of any kind or nature whatsoever . . .



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between Passenger and" MSC Cruises SA "be resolved exclusively by the United States District Court for the Southern District of Florida." MSC Cruises SA is a named defendant to approximately 50 lawsuits filed in the Southern District of Florida in the past three years.

7. Venue is proper in the Southern District of Florida under 28 U.S.C. § 1391(b)(1), because the Defendants reside in the Southern District of Florida, and under 28 U.S.C. §§ 1391(b)(2) and 1391(d), because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in the Southern District of Florida.

## THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY ACT

8. The LIBERTAD Act was enacted on March 12, 1996. One of the LIBERTAD Act's purposes is to "protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro Regime." 22 U.S.C. § 6022(6). Title III of the LIBERTAD Act ("Title III") establishes a private right of action for money damages against any person who "traffics" in such property as defined by 22 U.S.C. § 6023(13). *See* 22 U.S.C. § 6082. Title III's effective date, August 1, 1996, was never suspended. Liability for trafficking under Title III therefore attached irreversibly beginning November 1, 1996.

## FACTUAL ALLEGATIONS

9. Plaintiff, a U.S. national as defined by 22 U.S.C. § 6023(15), is the rightful owner of an interest in and certified claim to certain commercial waterfront



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real property in the Port of Havana, Cuba identified specifically by the Republic of Cuba ("Cuba") as the Havana Cruise Port Terminal (the "Subject Property").

10. Plaintiff and its predecessor in interest constructed and managed the Subject Property. The Subject Property was continuously, owned, possessed, used, and managed in Cuba by Plaintiff from 1917 until the communist Cuban Government confiscated it in 1960.

Cuba's Confiscation of the Subject Property

11. The communist Cuban Government confiscated the Subject Property on October 24, 1960. The communist Cuban Government maintains possession and control of the Subject Property and has not paid any compensation to Plaintiff for its seizure.

12. More specifically, the communist Cuban Government nationalized, expropriated, and seized ownership and control of the Subject Property. The Subject Property has not been returned and adequate and effective compensation has not been provided. Further, the claim to the Subject Property has not been settled pursuant to an international claims settlement agreement or other settlement procedure.

13. Plaintiff never abandoned its legitimate interest in and claim to the Subject Property.

The Certified Claim

14. Plaintiff's ownership interest in and claim to the Subject Property has been certified by The Foreign Claims Settlement Commission of the United States



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("FCSC"). A copy of the FCSC's Certified Claim ("Claim No.CU-2492") is attached hereto as **Exhibit A**. Claim No. CU-2492, which has no time limit and has not expired, provides an itemized listing of the property interests certified by the FCSC, as follows:

> Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the Balance Sheet for the year ended 1959, supported by the Trial Balance for December 31, 1958. These financial statements reflect the following book values adopted by claimant corporation:

| | |
|---|---|
| Land and Concession . . . . . | $ 2,000,000.00 |
| San Francisco and Machina Piers . . . . . | 4,758,829.00 |
| Santa Clara Pier . . . . . | 2,110,845.00 |
| Equipment . . . . . | 419,056.00 |
| Office Furniture and Fixtures . . . . . | 90,616.00 |
| Railroad Tracks . . . . . | 22,883.00 |
| Total | $ 9,402,229.00 |

15. After taking into account amortization, depreciation, accrued interest, and other adjustments, the FCSC's final decision certified the loss at "Nine Million One Hundred Seventy-nine Thousand Seven Hundred Dollars and Eighty-eight Cents ($9,179,700.88) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement." (**Exhibit A** at 3.)

16. The largest portion of the loss certified in Claim No. CU-2492 consisted of the structures on the San Francisco, Machina, and Santa Clara Piers. (**Exhibit A** at 9.)



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17. A concession was one of the several property interests certified. The concession granted the Plaintiff a term of 99 years for the use of, improvement, construction upon, operation and management of the Subject Property. The Plaintiff used, operated, managed and made significant improvements on the Subject Property from 1905 until 1960, when it was confiscated by the communist Cuban Government. The concession never expired by its term. It was confiscated by the Cuban Government in 1960. Thus, when the Subject Property was confiscated in 1960, Havana Docks still had a balance of 44 years of concessionary rights remaining; those 44 years of concessionary rights still remain in balance, and Havana Docks has never been indemnified by the Cuban Government or anyone for the loss of that property interest. As a result, under the terms of the concession and Cuban law in force at the time, Havana Docks still retains, to this day, a reversionary interest of 44 years remaining in the Subject Property (i.e., a future or contingent possessory right).

18. Further, the concession granted to the Plaintiff the contractual right to be indemnified for the value of the work constructed by it on the Subject Property in the event of expropriation, as follows:

> *Seventh:* If during the continuance of the concession the works may be expropriated by virtue of Article 50 of the Law of Ports, the government or its departments will indemnify the concessionary to the value of the work constructed by it, including the Custom House Inspectors Department and the wharf on the north side of the pier, but not the value of the machinery, rolling stock, equipment and apparatus referred to in the preceding clause, in case the concessionary may decide to remove them.

(See **Exhibit B**)

19. This indemnity right gave the Plaintiff an interest in the Subject



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Property that was not time-limited. As an express term of the concession, the indemnity right—which by the terms of the concession was not time limited—was certified by the FCSC. The "value of the work constructed by" Havana Docks and its predecessor-in-interest include the value of the San Francisco, Machina and Santa Clara Piers, as reflected in the certified claim. This claim to indemnity remains unpaid. The LIBERTAD Act expressly contemplates this type of property interest and recognizes such an unpaid debt as an obligation that attaches to the confiscated property, as would a mechanic's lien: the LIBERTAD Act defines the term "confiscated" to include "the failure of the Cuban Government to pay, on or after January 1, 1959-- . . . a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government." 22 U.S.C. § 6023(4)(B)(ii) (emphasis added); *see also* 22 U.S.C. § 6023(12)(A) (defining "property" to include "any property. . . whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest" (emphases added)).

20. Plaintiff has never received any compensation nor been indemnified for the expropriation of the Subject Property, including for the concession or any other property interests.

21. Under the LIBERTAD Act, Plaintiff's ownership of Claim No. CU-2492 is a property interest in the Subject Property entitling the Plaintiff to sue under Title III against whomever traffics in the Subject Property. 22 U.S.C. § 6082(a)(1)(A).

22. The terms of Claim No. CU-2492 expressly state that the claim does not



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expire until "the date of settlement." (ECF No. 24-1, at 4, 13.) That date has not yet come. The certified claim is still actionable. Claim No. CU-2492 has not time limit.

MSC Cruises' Trafficking in the Confiscated Subject Property

23. On information and belief, after November 1, 1996, the Defendants knowingly and intentionally commenced, conducted, and promoted their commercial cruise line business from Miami to Cuba using the Subject Property by regularly embarking and disembarking their passengers on the Subject Property without the authorization of Plaintiff or any U.S. national who holds a claim to the Subject Property.

24. On information and belief, after November 1, 1996, the Defendants also knowingly and intentionally participated in and profited from the communist Cuban Government's possession of the Subject Property without the authorization of Plaintiff or any U.S. national who holds a claim to the Subject Property.

25. Defendants have had constructive knowledge of Plaintiff's publicly available certified claim to the Subject Property, Claim CU-2492, since the FCSC completed the Cuban Claims Program on July 6, 1972.

26. Defendants had actual knowledge of Plaintiff's certified claim to the Subject Property, Claim CU-2492, since at least February 11, 2019, due to a notice letter sent by Plaintiff to them pursuant to 22 U.S.C. § 6082(a)(3)(D).

27. On information and belief, Defendants trafficked in the Subject Property until at least June 2019.



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28. The Defendants' knowing and intentional conduct with regard to the confiscated Subject Property is trafficking as defined in 22 U.S.C. § 6023(13)(A).

29. As a result of the Defendants' trafficking in the Subject Property, the Defendants are liable to Plaintiff for all money damages allowable under 22 U.S.C. § 6082(a).

## CLAIM FOR DAMAGES

## TITLE III OF THE LIBERTAD ACT

30. Plaintiff incorporates by reference paragraphs 1 through 29 as if fully stated herein.

31. This claim is brought pursuant to Title III of the LIBERTAD Act, 22 U.S.C. § 6082.

32. As set forth in Title III and alleged above, after November 1, 1996, the Defendants did traffic, as that term is defined in 22 U.S.C. § 6023(13)(A), in the Subject Property which was confiscated by the communist Cuban Government on or after January 1, 1959 and are therefore liable to Plaintiff, who owns the claim to the Subject Property for money damages.

33. Plaintiff is entitled to all money damages allowable under 22 U.S.C. § 6082(a), including, but not limited to, those equal to the sum of:

a. The amount greater of: (i) the amount certified by the Foreign Claims Settlement Commission, plus interest; (ii) the amount determined by a special master pursuant to 22 U.S.C. § 6083(a)(2); or (iii) the "fair market value" of the Subject Property, plus interest;



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b. Three times the amount determined above (treble damages); and

c. Court costs and reasonable attorneys' fees.

34. As of the date of filing this Complaint, the United States Government has ceased suspending the right to bring an action under Title III, 22 U.S.C. § 6085, which therefore permits Plaintiff to seek the relief requested herein.

## REQUEST FOR RELIEF

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

A. Ordering the Defendants to pay damages (including treble damages);

B. Ordering the Defendants to pay pre- and post-judgment interest on any amounts awarded;

C. Order the Defendants to pay attorneys' fees, costs, and expenses; and

D. Ordering such other relief as may be just and proper.

## DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable, and a trial pursuant to Rule 39(c), Federal Rules of Civil Procedure, as to all matters not triable as of right by a jury.

Dated: October 8, 2020.

Respectfully submitted,

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*Attorneys for Plaintiff Havana Docks Corporation*

## 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 October 8, 2020, 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



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