

U.S.-Cuba Trade and Economic Council, Inc.

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**In the United States Court of Appeals
for the Eleventh Circuit**

HAVANA DOCKS CORPORATION, PLAINTIFF-APPELLEE

v.

ROYAL CARIBBEAN CRUISES, LTD., DEFENDANT-APPELLANT

HAVANA DOCKS CORPORATION,
PLAINTIFF-APPELLEE-CROSS-APPELLANT

v.

ROYAL CARIBBEAN CRUISES, LTD.;
NORWEGIAN CRUISE LINE HOLDINGS, LTD.;
CARNIVAL CORPORATION, A FOREIGN CORPORATION
DOING BUSINESS AS CARNIVAL CRUISE LINES;
MSC CRUISES S.A. CO.; MSC CRUISES (USA), INC., ET AL.,
DEFENDANTS-APPELLANTS-CROSS-APPELLEES

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA (CIV. NOS. 19-23590, 19-23591)
(THE HONORABLE BETH BLOOM, J.)*

**HAVANA DOCKS CORPORATION VS. CARNIVAL CORPORATION D/B/A/
CARNIVAL CRUISE LINES [Consolidated to 1:19-cv-23591; 1:19-cv-21724; Southern
Florida District]; Judgement Entered 12/30/22.**

Colson Hicks Eidson, P.A. (plaintiff)
Margol & Margol, P.A. (plaintiff)
Jones Walker (defendant)
Boies Schiller Flexner LLP (defendant)
Akerman (defendant)

**HAVANA DOCKS CORPORATION V. MSC CRUISES SA CO, AND MSC CRUISES
(USA) INC. [Consolidated to 1:19-cv-23591; 1:19-cv-23588; Southern Florida District];
Judgement Entered 12/30/22.**

Colson Hicks Eidson, P.A. (plaintiff)
Margol & Margol, P.A. (plaintiff)
Venable (defendant)

**HAVANA DOCKS CORPORATION V. NORWEGIAN CRUISE LINE HOLDINGS, LTD.
[Consolidated to 1:19-cv-23591; 1:19-cv-23591; Southern Florida District]; Judgement
Entered 12/30/22.**

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Colson Hicks Eidson, P.A. (plaintiff)
Margol & Margol, P.A. (plaintiff)
Hogan Lovells US LLP (defendant)

**HAVANA DOCKS CORPORATION VS. ROYAL CARIBBEAN CRUISES, LTD.
[Consolidated to 1:19-cv-23591; 1:19-cv-23590; Southern Florida District]; Judgement
Entered 12/30/22.**

Colson Hicks Eidson, P.A. (plaintiff)
Margol & Margol, P.A. (plaintiff)
Holland & Knight (defendant)

[LINK: Brief of Defendant-Appellant-Cross-Appellee Carnival Corporation \(6/30/23\)](#)

Excerpt: “Argument: Carnival did not use 'property' that was 'confiscated' from Havana Docks. Havana Docks' limited concession did not confer a right to conduct passenger operations. Havana Docks' concession would have expired in 2004. Carnival did not engage in trafficking because its conduct was 'incident' and 'necessary' to 'lawful travel'. Carnival's travel was 'lawful'- Carnival's use of the terminal was 'necessary to' the conduct of its lawful travel. Havana Docks is not a proper plaintiff because it is not a United States national. At a minimum, the damages award should be set aside. The 'one-satisfaction rule' prohibits duplicative awards for the value of the terminal. The damages award violates the Due Process Clause.”

[LINK: Joint Brief For Defendants-Appellants-Cross-Appellees Royal Caribbean Cruises, Ltd., Norwegian Cruise Line Holdings Ltd., MSC Cruises S.A., MSC Cruises S.A. Co., And MSC Cruises \(USA\), Inc. \(6/30/23\)](#)

[LINK: Brief Of The Chamber Of Commerce Of The United States Of America As Amicus Curiae In Support Of Defendants-Appellants/Cross-Appellees And Reversal \(7/7/23\)](#)

[LINK: Brief Of Amici Curiae U.S. Travel Association, United States Tour Operators Association, Inc., And American Society Of Travel Advisors, Inc., In Support Of Appellants/Cross-Appellees Brief Of Amici Curiae U.S. Travel Association, United States Tour Operators Association, Inc., And American Society Of Travel Advisors, Inc., In Support Of Appellants/Cross-Appellees \(7/7/23\)](#)

[LINK: Brief For Amicus Curiae Peter Kucik, Former OFAC Official, In Support Of Appellants And Reversal \(7/7/23\)](#)

Excerpt: “BY IGNORING OFAC'S VIEWS, THE DISTRICT COURT GAVE THE PEOPLE-TO-PEOPLE TRAVEL EXCEPTION AN UNDULY NARROW READING. OFAC manifestly meant for the people-to-people travel exception to apply broadly. By disregarding its views, the district court adopted an unnaturally crabbed reading of the provision and undermined the Executive's leading role to conduct foreign policy toward Cuba.”

[LINK: Motion For Leave To File Brief Of Cruise Lines International Association As Amicus Curiae In Support Of Defendants-Appellants And Reversal \(7/7/23\)](#)

[LINK: Opposition To Motion For Leave To File Amicus Brief Of Cruise Lines International Association \(7/11/23\)](#)

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Excerpt: Havana Docks has no problem with the four appellants in this case rounding up as many amici as they wish, as long as those amici are independent of appellants. Thus, Havana Docks did not object to any of the other three amicus briefs filed in support of appellants. 2. Proposed amicus CLIA, however, does not meet even this minimal standard, because CLIA is not independent of appellants. Rather, as CLIA itself recognizes, “Defendants-Appellants ... are four of the six voting members of [CLIA’s] Global Executive Committee, which voted to authorize and file the proposed brief.” CLIA Mot. 1 n.*. In other words, CLIA is not just a trade association that happens to include appellants among its members (as some of the other amici—the U.S. Chamber of Commerce and various travel-related associations—may be). Rather, CLIA is controlled by appellants, and (by CLIA’s own admission) appellants themselves “voted to authorize and file” the CLIA brief. Id. USCA11 Case: 23-10171 Document: 101 Date Filed: 07/11/2023 Page: 50 of 57 2 3. CLIA’s motion identifies no precedent in the history of American law where an entity controlled by a party has been allowed to file an amicus brief in support of that party. That omission is not surprising: an amicus brief filed by an entity controlled by a party provides no independent perspective, but instead simply allows that party to evade the court’s word limitations. If this brief is allowed, no logical stopping point would prevent amicus briefs filed by a party’s corporate subsidiaries, affiliates, or other controlled entities. 4. CLIA’s assertion that its “internal operations are not relevant to this motion,” id. at 5, can only be described as puzzling. No one is challenging CLIA’s “internal operations” per se. Rather, Havana Docks is simply pointing out that it would be an unprecedented abuse of the amicus process to allow an entity concededly controlled by certain litigants to file an amicus brief in support of those very same litigants. 5. Such abuse is particularly manifest here because the record developed below shows that appellants used CLIA as a joint defense group to coordinate their legal strategy in response to private lawsuits (like this one) filed under Title III of the LIBERTAD Act, Pub. L. No. 104- 114, 110 Stat. 785 (1996). As Bradley M. Rose, CLIA’s longtime outside USCA11 Case: 23-10171 Document: 101 Date Filed: 07/11/2023 Page: 51 of 57 3 General Counsel, explained in a declaration filed below, every CLIA member is required to sign an agreement known as the “CLIA Common Legal Interest Agreement” in an effort to bring their communications within the scope of the attorney-client privilege. See Carnival Dkt. (No. 19-21724) 318-40 at ECF pp. 3-4. As a joint defense group, CLIA “spearheaded” a “common legal strategy ... related to challenging Title III, defending potential Title III litigation, and resolving Title III claims on behalf of its members.”

[LINK: Cruise Lines International Association’s Reply In Support Of Motion For Leave To File Brief As Amicus Curiae Supporting Defendants-Appellants And Reversal \(7/18/23\)](#)

Excerpt: Plaintiff-Appellee Havana Docks opposes CLIA’s motion, but its arguments lack merit. First, Havana Docks contends that Defendants-Appellants seek to use CLIA’s proposed brief to “evade the court’s word limitations.” ECF No. 101, at 2 (Opp.). Basic math refutes that claim. Each of the four Defendants-Appellants was entitled to file a separate brief of up to 13,000 words, for a total of 52,000 words. See Fed. R. App. P. 32(a)(7)(B)(i). Even so, three of the Defendants-Appellants successfully sought leave to file a joint opening brief not to exceed 20,000 words—a reduction of 19,000 words as compared with the aggregate limit to which they were entitled. See ECF No. 76 (requesting leave); ECF No. 78 (granting leave). CLIA has its own arguments to make in the proposed amicus curiae brief—arguments the parties have not made and which do not reflect an attempt to exceed the aggregate word limits that Defendants-Appellants’ briefs don’t approach in the first place. Second, and relatedly, Havana Docks argues that the Court should deny leave to file because four of the six voting members of CLIA’s executive USCA11 Case: 23-10171 Document: 105 Date Filed: 07/18/2023 Page: 4 of 9 - 3 - committee are Defendants-Appellants in this case. Havana Docks thus argues that CLIA cannot provide an “independent perspective” on the issues in the case. Opp. 2. That objection is just another way of saying that CLIA shouldn’t be able to file an amicus brief because its and its members’ interests are aligned with Defendants-

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Appellants'. But that is often the case—as then-Judge Alito noted, “corporations, unions, trade and professional associations, and other parties with ‘pecuniary’ interests appear regularly as amici” before the courts of appeals and the Supreme Court. *Neonatology Assocs.*, 293 F.3d at 131-32; see also *Prairie Rivers Network*, 976 F.3d at 763 (“To be sure, the fiction that an amicus acts as a neutral information broker, and not an advocate, is long gone.”). Indeed, the Federal Rules of Appellate Procedure require proposed amici to declare their “interest” in the case. Fed. R. App. P. 29(a)(3)(A). As to the composition of CLIA’s executive board, the Court should not endorse Havana Docks’ attempt to use the fact that it has sued four of the six members of CLIA’s board as a reason to exclude the trade group that speaks for the entire industry. Third, Havana Docks incorrectly asserts that CLIA’s brief is duplicative of amicus curiae briefs filed by the U.S. Travel Association and a former official from the Office of Foreign Assets Control. Opp. 4. Neither of those USCA11 Case: 23-10171 Document: 105 Date Filed: 07/18/2023 Page: 5 of 9 - 4 - briefs provides the perspective of the cruise industry in particular—a focus of CLIA’s proposed brief. Nor do those briefs discuss the broader context of travel to Cuba between 2015 and 2017 to situate the cruise industry’s operations in the broader setting of the overall travel industry. CLIA’s brief highlights factual and historical nuance and explains the broader commercial context of this dispute. See *Prairie Rivers Network*, 976 F.3d at 763. Finally, Havana Docks relies on the district court’s denial of leave to file to urge the same result before this Court. Opp. 5. But the district court denied leave for reasons that do not apply here. For one thing, CLIA’s proposed brief before this Court discusses different issues than the brief CLIA proposed filing before the district court. CLIA’s proposed district court brief discussed the constitutional problems with Havana Docks’ interpretation of the LIBERTAD Act. See Dkt. No. 313-1, *Havana Docks Corp. v. Carnival Corp.*, No. 1:19-CV-21724-BB (S.D. Fla. Sept. 17, 2021). The district court denied leave on the grounds that the Defendants-Appellants had already addressed those constitutional issues in their summary judgment briefs. See Dkt. No. 358, at 2-3, *Havana Docks Corp.* (Oct. 15, 2021). Here, in contrast, CLIA’s proposed brief brings to the Court’s attention factual and historical context that no party or other amicus brief has raised. Moreover, CLIA’s interests in this USCA11 Case: 23-10171 Document: 105 Date Filed: 07/18/2023 Page: 6 of 9 - 5 - appeal are even stronger than its interests before the district court, because any decision from this Court will be binding on CLIA’s members throughout the Circuit. Given these stakes, there are good reasons for the Court to allow CLIA’s voice to be heard.