UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 19-cv-23590-BLOOM/LOUIS

HAVANA DOCKS CORPORATION,

Plaintiff,

vs.

ROYAL CARIBBEAN CRUISES, LTD.

Defendant.
_____/

PLAINTIFF'S OPPOSITION TO DEFENDANT'S
MOTION FOR CERTIFICATION FOR INTERLOCUTORY APPEAL

Plaintiff Havana Docks Corporation ("Havana Docks") opposes the motion for certification for interlocutory appeal (the "Motion," ECF No. 47) filed by Defendant Royal Caribbean Cruises, Ltd. ("Royal") as it fails to satisfy its heavy burden to establish the statutory requirements under 28 U.S.C. § 1292(b).

INTRODUCTION[1]

In its Motion, Royal requests the Court to certify its Omnibus Order denying Royal's motion for judgment on the pleadings and granting Havana Docks leave to amend its complaint (the "Omnibus Order," ECF No. 45) for immediate interlocutory appeal on the following question:

> [Whether] the language of the [LIBERTAD] Act creates liability for trafficking in property that was confiscated without regard to whether the trafficking was in the plaintiff's particular interest in the property or when the trafficking took place.

[1] Havana Docks refers the Court to its prior orders in this case for a full description of the procedural history relevant to the Motion. (*See* ECF No. 45 at 1-3, 5-8.)

(Mot. at 6.)

The Motion should be denied. Royal has failed to meet its heavy burden of satisfying each of the requirements for certifying an interlocutory appeal under 28 U.S.C. § 1292(b). First, Royal does not propose a controlling question of law. Rather, it proffers a case-specific question, the relevance of which is entirely contingent on disputed facts that do not sit "neatly" and "cleanly" atop the record. Second, there is no substantial dispute about the correctness of this Court's holding in the Omnibus Order, which is securely anchored on binding precedent from the Eleventh Circuit in *Glen v. Club Mediterranee S.A.*, 450 F.3d 1251 (11th Cir. 2006) and the plain language of the LIBERTAD Act. In this respect, the Court correctly held that Title III creates liability for trafficking in confiscated property, not in a property interest that was necessarily extinguished by expropriation. And, third, the requested appeal would not materially advance (or advance at all) the ultimate termination of this litigation.

As such, Havana Docks respectfully requests that the Court deny the Motion.

LEGAL STANDARD

Requests for interlocutory appeals are disfavored in this Circuit. *Flying Cow Ranch HC, LLC v. McCarthy*, No. 19-cv-80230, 2019 WL 1258780, at *2 (S.D. Fla. Mar. 19, 2019) (Bloom, J.) ("Interlocutory review is generally disfavored for its piecemeal effect of cases."). A district court may only certify an order for interlocutory review if the moving party satisfies the requirements of 28 U.S.C. § 1292(b) "that: (1) the order presents a controlling question of law; (2) over which there is a substantial ground for difference of opinion among courts; and (3) the immediate resolution of the issue would materially advance the ultimate termination of the litigation." *Id.*; *see*

also Mamani v. Berzain, 825 F.3d 1304, 1312 (11th Cir. 2016) (further requiring that the proffered question present "a pure question of law" that "was specified by the district court in its order").

Indeed, "[t]here is a 'strong presumption against interlocutory appeals,'" and requests for such review "should be denied except in rare circumstances." *In re Checking Account Overdraft Litig.*, No. 09-MD-02036, 2010 WL 3377592, *2 (S.D. Fla. July 1, 2010) (quoting *Teblum v. Eckerd Corp. of Fla.*, No. 2:03-CV-495FTM33DNF, 2006 WL 1151816, at *4 (M.D. Fla. Apr. 28, 2006)). As a result, parties pursuing "interlocutory appeal" face "profound hurdles" to meet this "high threshold," and the Eleventh Circuit "admit[s] that '[m]ost interlocutory orders do not meet th[e] test.'" *Nat'l Union Fire Ins. Co. of Pittsburgh v. Tyco Integrated Sec. LLC*, No. 13-CIV-80371, 2015 WL 11251735, at *1 (S.D. Fla. July 8, 2015) (Bloom, J.) (quoting *OFS Fitel, LLC v. Epstein, Becker & Green, P.C.*, 549 F.3d 1344, 1359 (11th Cir. 2008)).

The reason for this heavy burden, as the Eleventh Circuit has explained, is that interlocutory appeals are "inherently disruptive, time-consuming, and expensive." *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1276 (11th Cir. 2000) (internal quotation marks omitted). Further, "[p]iecemeal appellate review has a deleterious effect on judicial administration. It increases the workload of the appellate courts, to the detriment of litigants and judges." *Id.* And "[b]ecause permitting piecemeal appeals is bad policy, permitting liberal use of § 1292(b) interlocutory appeals is bad policy." *McFarlin v. Conseco Servs., LLC*, 381 F.3d 1251, 1259 (11th Cir. 2004).

Only in the "exceptional case[]" may a district court certify a controlling question of law for interlocutory appellate review under 28 U.S.C. § 1292(b). *Id.* at 1256-57 (quoting Report of the Committee on Appeal from Interlocutory Orders of the District Courts, Sept. 23, 1953, reprinted in 1958 U.S.C.C.A.N. 5258, 5260-61). And while a district court's decision in this respect is "wholly discretionary," *OFS Fitel*, 549 F.3d at 1358, "[c]ertification is not an appropriate vehicle for early appellate review of hard cases." *Checking Account Overdraft Litig*, 2010 WL 3377592, at *2. Nor is the presence of a "question of first impression" generally "[]sufficient to yield a dispute ripe for interlocutory appeal." *Nat'l Union*, 2015 WL 11251735, at *3. Instead, the "Eleventh Circuit has made clear that the scope of interlocutory appeals is to be limited." *FXM, P.C. v. Gordon*, No. CIV.A.1:07CV1642, 2007 WL 3491274, at *2 (N.D. Ga. Nov. 6, 2007) (Carnes, J.).

Royal, as the party seeking certification, "bears the heavy burden" of establishing that each of the elements set forth in 28 U.S.C. § 1292(b) are satisfied, *Checking Account Overdraft Litig*, 2010 WL 3377592, at *2, and otherwise overcoming "[t]he strong presumption against interlocutory appeals," *Nat'l Union*, 2015 WL 11251735, at *2.

ARGUMENT

The Court should deny the Motion for three reasons. First, Royal does not propose a controlling question of law. Instead, the proffered question is inappropriately case-specific and rests on disputed facts that do not sit "neatly" and "cleanly" atop the record. Second, there is no substantial grounds for difference of opinion that the Court correctly held that Title III of the LIBERTAD Act creates

liability for trafficking in confiscated property, and not in a property interest that was necessarily extinguished by confiscation. And, third, an appeal would not materially advance the ultimate termination of this litigation.

Because Royal does not satisfy any of the requirements for section 1292(b) certification, its Motion should be denied.

I. Royal Does Not Propose a Controlling Question of Law.

Royal fails to identify a proper "controlling question of law," as it must to prevail on its Motion. 28 U.S.C. § 1292(b). In this Circuit, a "controlling question of law" is one which the Eleventh Circuit can decide "without having to delve beyond the surface of the record in order to determine the facts." *McFarlin*, 381 F.3d at 1258-59 ("what the framers of § 1292(b) had in mind is more of an abstract legal issue or what might be called one of 'pure' law, matters the court of appeals 'can decide quickly and cleanly without having to study the record.'"). Such a question must also have "general relevance to other cases in the same area of the law." *Id.* Royal's proffered question satisfies neither of these requirements.

Although Royal attempts to state an abstract question, in application, the proposed "controlling question of law" framed by Royal is not a proper one for interlocutory appeal. *See Drummond Co., Inc. v. Conrad & Scherer, LLP*, 885 F.3d 1324, 1336-37 (11th Cir. 2018) ("At first blush, the core issue" on appeal "appears to raise a purely legal question," but in actuality "the question posed here requires a fact-specific inquiry" that is inappropriate for interlocutory appeal, and declining review). Appellate courts do not answer questions of law in the dark. *Gagliardi v.*

TJCV Land Trust, 889 F.3d 728, 733 (11th Cir. 2018) ("We are not in the business of issuing advisory opinions that do not 'affect the rights of litigants in the case before' us or that merely opine on 'what the law would be upon a hypothetical state of facts.'"). Thus, even when a question is certified under section 1292(b), appellate courts are still obliged to ensure that the legal question is called for by the undisputed facts of a case to avoid issuing rulings that are impermissibly advisory. *Ray v. Edwards*, 725 F.2d 655, 658 (11th Cir. 1984) ("[F]or us to reach the legal question of whether Ray could prevail if that factual issue is resolved against him would be tantamount to issuing an advisory opinion. That, we cannot do," and denying section 1292(b) review). So, before addressing Royal's proposed question, the Eleventh Circuit would first have to assess whether that question is actually raised by the undisputed facts of this case. [2]

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[2] In *Ray*, the Eleventh Circuit illustrated why factual disputes are to be avoided on interlocutory appeal:

> We agree with the district court that the issue, as framed, presents a question of first impression in this circuit, over which there could be substantial ground for difference of opinion. We hold, however, that the district court erred in finding that its ruling amounted to a *controlling* question of law "in the sense," stated the district court, "that it is determinative of plaintiff's claim in this count of his complaint."
>
> The district court overlooked the possibility that even if the standard put forward by appellants is correct, Ray might still be able to produce evidence showing that appellants were directly responsible for the disclosure of false, derogatory information. Such evidence would respond to the more limited legal theory proposed by appellants, thereby creating a factual issue such that the district court would not need to rule on Ray's broader legal standard. . . .
>
> We believe that evidence that appellants made false, derogatory statements to reporters about Ray at or near the time he was fired, coupled with appellants' denials of making any such statements, raises a significant factual issue sufficient to defeat summary judgment on count two. Therefore, for us to reach the legal question of whether Ray could prevail if that factual issue is resolved

But, by any assessment of the facts of this case, it is clear that they are hotly disputed. For example, Royal's proposed question is only relevant to this case if Havana Docks' former interests in the Subject Property are found to have expired in 2004. In its Amended Complaint, Havana Docks alleges that the concession did not expire by its terms in 2004, that 44 years of concessionary rights remained at the time of confiscation in 1960, and that the certified claim consists of other property rights that have no time limitation, including an indemnity right for the value of the works constructed by Havana Docks on the Subject Property. (Am. Compl., ECF No. 46 at ¶ 12-21.)

Royal apparently disputes these factual allegations. (*Compare id.*, *with* Royal's Opp. to Mot. for Leave to Amend., ECF No. 39 at 6-13; *see also* ECF No. 43 at 8-11 (summarizing disputed allegations).) So, to find Royal's question has any relevance to this case, the Eleventh Circuit will first be required to disregard those well-pled facts at the pleading stage. And then it would have to "root[] through the record in search of facts" to assess the extent and nature of Havana Docks' confiscated interests in the Subject Property, and determine whether any of them expired in 2004.

> against him would be tantamount to issuing an advisory opinion. That, we cannot do.

Ray, 725 F.2d at 658 (emphasis in original); *see also Borskey v. Am. Pad & Textile Co.*, 296 F.2d 894, 895 (5th Cir. 1961) (on interlocutory appeal of separate, but related, cases arising from a helicopter crash, section 1292(b) petition denied where legal question rested on disputed facts, as appellate ruling "might call for an advisory academic opinion on facts that might never exist"); *Church of Scientology Flag Serv. Org., Inc. v. City of Clearwater*, 777 F.2d 598, 607-08 (11th Cir. 1985) (declining section 1292(b) review where proposed question was not "ripe" for appellate review and ruling "would be purely advisory").

McFarlin, 381 F.3d at 1258.[3] Otherwise, the appellate court would be in danger of rendering an advisory opinion that has no bearing on the issues in this case, which is reason alone to deny interlocutory review. *Ray*, 725 F.2d at 658; *Church of Scientology*, 777 F.2d at 608; *Borskey*, 296 F.2d at 895. Because the question framed by Royal does not rest on undisputed facts and cannot be "decide[d] quickly and cleanly without having to study the record," it is not a "pure" and "controlling question of law" suitable for interlocutory review. *McFarlin*, 381 F.3d at 1258-59.

Havana Docks also notes that Royal's argument that the Omnibus Order "is relevant to any case brought under the Act in which the plaintiff had a limited interest in real property, and the defendant's alleged trafficking was not in that particular interest," (Mot. at 8), is directly contrary to Defendants' representations to this Court at the March 9th hearing on Havana Docks' motions for reconsideration and for leave to amend:

> **Mr. Baldridge**: And what I would tell you is this is not a wide-sweeping decision. This is an unusual situation, as counsel points out. . . . It's unusual because this is very limited to a leasehold interest situation. This isn't a wide-sweeping view of what happens to property under the Libertad Act. It's what happened in this case.
> . . .
> **Mr. Ponce**: I adopt the arguments that were made by the counsel for the other Defendants.

[3] In reality, none of these interests expired in 2004 because they were confiscated in 1960. (ECF No. 41-8 (certifying that all of these interests were confiscated)); *see Howard v. City of Atlanta*, 2007 WL 3169707, at *3 (N.D. Ga. Oct. 25, 2007) ("'[T]he characteristic of the advisory opinion' is that the order is 'purely advisory when it is made and did not pass through the refining pressure of reality.'") (quoting *Castle v. Sangamo Weston, Inc.*, 837 F.2d 1550, 1560 (11th Cir. 1988)).

(ECF No. 44; *MSC* Case, 19-cv-23588, D.E. 54, Hr'g Tr. at 64:5-11, 84:10-13.) The issue Royal frames is, by its own admission, "case-specific," *Mamani*, 825 F.3d at 1312-13, and not "general[ly] relevan[t] to other cases in the same area of the law," *McFarlin*, 381 F.3d at 1259; *Flying Cow Ranch HC, LLC*, 2019 WL 1258780, at *3 ("A question of law is 'controlling' 'only if it may contribute to the determination, at an early stage, of a wide spectrum of cases.'" (citation omitted)). (*See also* "*Carnival* Op.," *Havana Docks Corp. v. Carnival Corp.*, 19-cv-21724, D.E. 56 at 4-5 (S.D. Fla. Oct. 8, 2019) (Bloom, J.) (denying Carnival's request for certification of this issue because it was "case-specific").)[4]

For these reasons, Royal has failed to propose a "neat," "clean," "pure" and "controlling question of law," and its Motion should be denied.

II. There are No Substantial Grounds for Difference of Opinion.

There are no substantial grounds for difference of opinion in the Court's holding that Title III creates liability for trafficking in <u>confiscated property</u>, not in a property interest that was necessarily extinguished by expropriation.

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[4] The question posed by Royal does not implicate the three Title III cases cited in the Motion. (Mot. at 8 n.1.) The *John S. Shepard Family Trust v. NH Hotels USA, Inc.* case was voluntarily dismissed on February 26, 2020, meaning any appeal of the Omnibus Order would not affect it. No. 19-cv-9026, D.E. 41 (S.D.N.Y. Feb. 26, 2020). In *Sucesores de Don Carlos Nunez y Dona Pura Galvez, Inc. v. Societe Generale, S.A.*, the property at issue is not real property and rather is confiscated equity in a bank. No. 20-cv-00851 (S.D.N.Y. Feb. 4, 2020). Whatever interest plaintiff had in that equity before confiscation did not have a temporal component. Moreover, *Sucesores* was transferred to the Southern District of New York, where *Shepard* was also pending, so an opinion of the Eleventh Circuit on Royal's proposed question would not be determinative of either of those cases, in any event. Finally, in *Glen v. American Airlines*, the plaintiff's former interest in the confiscated property was not temporally limited. No. 19-cv-23994 (S.D. Fla.) (Altonaga, J.).

The Eleventh Circuit has held that a "substantial ground for difference of opinion" does not exist where the appellate court is in "complete and unequivocal" agreement with the district court. *McFarlin*, 381 F.3d at 1258 (quoting *Burrell v. Bd. of Trustees of Ga. Military College*, 970 F.2d 785, 788-89 (11th Cir. 1992)). Moreover, questions of first impression or an absence of binding authority on an issue, without more, are insufficient to demonstrate a substantial ground for difference of opinion. *Nat'l Union*, 2015 WL 11251735, at **2-3 (citing *In re Flor*, 79 F.3d 281, 284 (2d Cir. 1996)); (*Carnival* Op., at 5 (denying Carnival's request for certification of this issue and holding "that the 'novelty' of this case, standing alone, does not warrant section 1292(b) certification")); *Garcia-Bengochea v. Carnival Corp.*, No. 19-cv-21725, 2019 WL 7945691, at *2 (S.D. Fla. Sept. 26, 2019) ("The Court also disagrees with Carnival's argument that an immediate appeal is warranted because this case involves issues of first impression under Helms-Burton.") (citing *Checking Account Overdraft Litig*, 2010 WL 3377592, at *3).

The Court correctly held that Title III creates liability for trafficking in <u>confiscated property</u>, not in a property interest that was necessarily extinguished by expropriation. (Omnibus Order at 12-21.)[5] The Court's interpretation of Title III in this respect fully comports with the plain language of the Act and the Eleventh Circuit's published opinion in *Glen*. (*Id.* at 14-22); *Glen v. Club Mediterranee S.A.*, 450 F.3d 1251 (11th Cir. 2006). In *Glen*, the Eleventh Circuit recognized that the LIBERTAD Act provides a "new statutory remedy available [] to United States

[5] Havana Docks will not recite to the Court its extensive and thoughtful analysis in the Omnibus Order, which is well known by it.

nationals who were victims of [Cuban Government] confiscations," and under the Act, the ownership of a claim by the former owners to such confiscated property is the "property interest that former owners of confiscated property now have." 450 F.3d at 1255.

Because this Court's holding is firmly grounded in the LIBERTAD Act's plain language and binding appellate precedent, there can be no "substantial dispute about the correctness" of it. *McFarlin*, 381 F.3d at 1258-59. By all accounts, on the question at issue here, the Eleventh Circuit is in "'complete and unequivocal' agreement with the district court." *Id.*; *compare* Omnibus Order at 13 ("[I]n lieu of its property interest in the remaining 44 years of the concession to the Subject Property, which the Cuban Government confiscated, Plaintiff now owns an interest only in the Certified Claim, which reflects the right to compensation for the value of loss Plaintiff sustained due to the expropriation."), *with Glen*, 450 F.3d at 1255 ("By paraphrasing and taking language from this section out of context, the Glens arrive at the conclusion that Congress has established that the expropriations committed by the Cuban government failed to extinguish the ownership rights of those who owned the properties prior to the takings. We disagree."); *see also Heat Techs., Inc. v. Papierfabrik August Koehler Se*, 2019 WL 3430477, at *2 (Fed. Cir. July 18, 2019) ("[W]hile this court has not directly addressed the issue," there was no substantial ground for difference of opinion because "our prior cases compel the conclusion reached by the district court.").

By contrast, the statutory interpretation advanced by Royal rests on the untenable premise that Castro's confiscation failed to extinguish former rights to expropriated property—a contention rejected by both the Eleventh Circuit in *Glen* and the Supreme Court in *Sabbatino*. *Glen*, 450 F.3d at 1255; *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 414-15 (1964). "Because [Royal] ha[s] presented no authority in support of th[e] premise" that Havana Docks' concession survived expropriation in 1960, continued to run for 44 years and then expired by its terms in 2004—"which is necessary to [Royal's] position on the question [it] proffer[s] as controlling"—Royal "ha[s] failed to carry [its] burden of establishing that as to this question 'there is substantial ground for difference of opinion.'" *McFarlin*, 381 F.3d at 1263.

As such, the Motion should be denied.

III. Certification Will Not Materially Advance the Ultimate Termination of the Litigation.

In its Motion, Royal argues that "[i]f there were anything to survive an appellate resolution in Royal Caribbean's favor, the time, effort, and expense that would be involved in litigating those issues are infinitesimal compared to litigating an action involving alleged trafficking of an ownership interest in waterfront real property at the Port of Havana." (Mot. at 10.) This argument is predicated entirely on Royal's belief that Havana Docks' former concession to the Subject Property expired in 2004. But Royal is incorrect, and, as a result, resolution of the question posed by Royal would not "materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). This requirement "means that resolution of a

controlling legal question would serve to avoid a trial or otherwise substantially shorten the litigation." *McFarlin,* 381 F.3d at 1259. Neither result would obtain here, even if an appeal was resolved in Royal's favor.

To begin, an appeal would not materially advance this litigation because Havana Docks' former concession to the Subject Property did not expire in 2004. It was confiscated in 1960. (Omnibus Order at 13-14; Am. Compl. at ¶ 15; ECF No. 31-8.) Reversal on appeal would not change that fact. *Sabbatino*, 376 U.S. at 414-15; *Glen*, 450 F.3d at 1255; (Omnibus Order at 12-14.) And, at a minimum, to the extent Royal disputes that the concession was confiscated, resolution of that critical factual issue would be inappropriate at this stage of the proceedings on interlocutory appeal. *See Nice v. L-2 Commc'ns Vertex Aerospace LLC*, 885 F.3d 1308, 1312-13 (11th Cir. 2018) (section 1292(b) review denied where facts underlying proposed question were disputed and the "issue [wa]s neither neat nor clean from any vantage point in the record."). Because Royal's legal argument is contingent on an incorrect premise that is contrary to both Eleventh Circuit precedent and the reality of confiscation (and a disputed issue of fact), the requested appeal would not materially advance the termination of this litigation.

Moreover, Havana Docks possessed a number of rights in the Subject Property that can support a claim under Royal's interpretation of Title III.[6] First, Havana Docks' concession granted a term of 99 years—not a fixed end date of 2004—and forty-

[6] These interests were described in detail in Havana Docks' briefing on its motion for leave to amend and in its response to Royal's motion for judgment on the pleadings. (ECF Nos. 32, 33, 43.) For the purposes of brevity, Havana Docks adopts and incorporates by reference those briefs here.

four years of concessionary rights remained in 1960, the date of confiscation. (Am. Compl. at ¶ 15; ECF No. 31-4 at 4.) Second, the concession granted Havana Docks the non-temporal right to indemnification for the value of the works constructed by it on the Subject Property in the event of expropriation. (ECF No. 31-4 at 5.) And, third, the certified claim recognizes a number of property rights beyond the concession that were not time limited. (Am. Compl. at ¶ 12.) None of these rights expired in 2004. And all of these rights were confiscated from Havana Docks, and certified and valued by the Foreign Claims Settlement Commission. Thus, even under Royal's interpretation, they are actionable under Title III. As a result, an appeal would not "materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b); *McFarlin,* 381 F.3d at 1259.

In fact, certification would not advance this litigation at all. Even if the question were resolved in Royal's favor on appeal, the case would still have to be remanded for discovery and trial on Havana Docks' confiscated property interests in the Subject Property. And, of course, if the question posed by Royal were resolved in Havana Docks' favor, the case would likewise be remanded for discovery and trial on the Certified Claim. So, either way, an appeal would not dispense with this case—or even a claim or a party to this case—and "would [not] serve to avoid a trial or otherwise substantially shorten the litigation." *McFarlin,* 381 F.3d at 1259 (citing *Ashmore v. N.E. Petrol. Div.*, 855 F. Supp. 438, 440 (D. Me. 1994) (§ 1292(b) appeal inappropriate where the same parties and issues would remain in district court regardless of resolution of issues on appeal)); *see also id.* at 1262 ("Resolution of one

claim out of seven would do too little, if anything, to 'materially advance the ultimate termination of the litigation.'").

Far from that, piecemeal appellate review here would serve only to encumber the Eleventh Circuit, increase litigation costs and needlessly delay the ultimate resolution of this case, without even the prospect of more efficiently administering this action on remand.[7] *Prado-Steiman*, 221 F.3d at 1276 (piecemeal appeals are "inherently disruptive, time-consuming, and expensive"); *McFarlin,* 381 F.3d at 1259 ("Because permitting piecemeal appeals is bad policy, permitting liberal use of § 1292(b) interlocutory appeals is bad policy."); *OFS Fitel*, 549 F.3d at 1358-59 ("§ 1292(b) sets a high threshold for certification to prevent piecemeal appeal. . . . Most interlocutory orders do not meet this test.").

Because certification would not materially advance the ultimate outcome of this litigation, Havana Docks respectfully submits that the Motion should be denied.[8]

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[7] "Piecemeal appellate review has a deleterious effect on judicial administration. It increases the workload of the appellate courts, to the detriment of litigants and judges. It requires the appellate courts to consider issues that may be rendered moot if the appealing party ultimately prevails in or settles the case. It undermines the district court's ability to manage the action. And it creates opportunities for abuse by litigants seeking to delay resolution of a case by raising with the appellate court objections to the scope of an order that should have been raised first with the district court itself." *Prado-Steiman*, 221 F.3d at 1276.

[8] The Supreme Court recognizes the importance of the "screening procedure" tasked to district courts under section 1292(b), which "serves the dual purpose of ensuring that [interlocutory] review will be confined to appropriate cases and avoiding time-consuming jurisdictional determinations in the court of appeals":

> We also recognize that such savings may be nullified in practice by indulgent extension of the amendment to inappropriate cases or by enforced consideration in Courts of Appeals of many ill-founded applications for review. The problem, therefore, is to provide a procedural screen through which only the desired cases may pass, and to avoid the wastage of a multitude of fruitless applications to invoke the amendment contrary to its purpose. . . .

CONCLUSION

Ultimately, certification under section 1292(b) is the "rare exception" to the general principle that appeals be conducted after final judgment. *McFarlin*, 381 F.3d at 1264. The operative question remains whether a defendant has overcome "[t]he strong presumption against interlocutory appeals." *Nat'l Union*, 2015 WL 11251735, at *2. Here, Royal has failed to meet that heavy burden: As set forth above, none of the section 1292(b) factors are met. Royal has not proposed a proper, controlling question of law. There is no substantial ground for difference of opinion that the Court correctly construed Title III in line with its plain language and the Eleventh Circuit's opinion in *Glen*. And resolution of the requested appeal would not materially advance (or advance at all) the ultimate termination of this litigation.

As a result, Havana Docks respectfully requests that the Court deny the Motion.

> . . . Requirement that the Trial Court certify the case as appropriate for appeal serves the double purpose of providing the Appellate Court with the best informed opinion that immediate review is of value, and at once protects appellate dockets against a flood of petitions in inappropriate cases. . . . [A]voidance of ill-founded applications in the Courts of Appeals for piecemeal review is of particular concern. If the consequence of change is to be crowded appellate dockets as well as any substantial number of unjustified delays in the Trial Court, the benefits to be expected from the amendment may well be outweighed by the lost motion of preparation, consideration, and rejection of unwarranted applications for its benefits.

Coopers & Lybrand v. Livesay, 437 U.S. 463, 474-75, n.25 (1978), *superseded by rule on other grounds* (quoting H.R. Rep. No. 1667, 85th Cong., 2d Sess., 5-6 (1958)).

Dated: May 11, 2020.

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 11th day of May, 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