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Subject: Activity in Case 1:11-cv-23148-JAL Pavon v. Carnival Corporation Order on Motion to Remand
Date: Friday, September 16, 2011 2:24:18 PM

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U.S. District Court

Southern District of Florida

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Case Name: Pavon v. Carnival Corporation

Case Number: [1:11-cv-23148-JAL](#)

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Docket Text:

ORDER GRANTING Plaintiff Hector Pavon's Emergency Motion for Remand [5], filed on September 6, 2011. Defendant Carnival Corporation removed this case for a second time on August 31, 2011, pursuant to 9 U.S.C. § 205 and citing an intervening change in the law of the Eleventh Circuit as the underlying cause for this successive removal. (See Notice of Removal at 1, 4.) Plaintiff subsequently moved for remand, indicating that this matter was set for trial on October 17, 2011 and that time is of the essence in this case. The Court has once before remanded Plaintiff's Jones Act claims in this case to state court for disposition. See *Pavon v. Carnival Corporation*, 09-cv-22935-LENARD, Order Granting Defendants Motion for Reconsideration and Amending Order Remanding Case to State Court, D.E. 56. That Order was supported, in part, by the Eleventh Circuit's opinion in *Thomas v. Carnival Corp.*, 573 F.3d 1113 (11th Cir. 2009). Defendant claims that the Eleventh Circuit's recent opinion, *Lindo v. NCL (Bahamas), Ltd.*, 2011 WL 3795234 (11th Cir. Aug. 29, 2011), overrules *Thomas* and controls this case. Defendant's argument is premature as the Eleventh Circuit has not yet issued its mandate in *Lindo*. Consequently, this Court finds that Defendant lacks basis for re-removal of this action and therefore remand is proper. The Court further notes that as a panel opinion,

***Lindo* cannot overrule *Thomas* as the law of this Circuit; that may only be done by the Eleventh Circuit *en banc*. The Court also entertains serious doubt whether 9 U.S.C. § 205 allows for successive removals predicated upon the same arbitration clause, but declines to address this issue at present. Regarding Plaintiff's claim for attorney's fees and costs accrued in his Motion for Remand [5], the Court finds that Defendant did not lack an objectively reasonable basis for removal. Plaintiff's request for attorney's fees and costs is therefore denied. Accordingly, it is ORDERED AND ADJUDGED that Plaintiff's Emergency Motion for Remand [5] is GRANTED, Plaintiff's Motion for Attorney's Fees and Costs [5] is DENIED; all pending motions are DENIED as moot; the Clerk of this Court shall REMAND this action to the Clerk of the Circuit Court of the Eleventh Judicial District in and for Miami-Dade County, Florida; and this Case is now CLOSED. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 9/16/2011. (dpv)**

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