

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 14-23850-CIV-ALTONAGA/O’SULLIVAN**

YOURY TUNDIDOR,  
Plaintiff,

v.

MIAMI-DADE COUNTY,  
Defendant.

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**PLAINTIFF’S RESPONSE TO MIAMI-DADE COUNTY’S MOTION TO DISMISS**

Plaintiff, Youry Tundidor, by and through undersigned counsel, files his response in opposition to Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint [D.E. 34]. In support thereof, the Plaintiff alleges as follows:

**I. Factual Background.**

On or about July 6, 2013, Plaintiff, Youry Tundidor, was a passenger aboard a vessel in navigable canal waterways located in Miami-Dade County, Florida. [D.E. 21, ¶20].<sup>1</sup> During the course of the voyage the vessel travelled from the Tamiami Canal (C4)<sup>2</sup> to Coral Park Canal. Coral Park Canal is a tributary<sup>3</sup> of the Tamiami Canal. The Coral Park Canal waterway connects to the Tamiami Canal, which connects to the Miami River, which leads out to Biscayne Bay and the Atlantic Ocean. [D.E. 21, ¶10].

While the vessel was on the Coral Park Canal, it navigated under the Coral Park Canal Bridge from the north side. Unknown to the Plaintiff, a six inch water pipe was horizontally mounted and running parallel to the south side of the Coral Park Canal Bridge. [D.E. 21, ¶21]. The color of pipe created an optical illusion to the effect that the water line blended with its

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<sup>1</sup> Docket entry 21 refers to the Amended Complaint.

<sup>2</sup> The Tamiami Canal (a Portion which is designated C-4), is one of the major drainage canals in the Greater Miami area. The canal was originally built both for drainage and to obtain landfill for a highway across the lower Florida peninsula, and extends from its junction with the Miami Canal (a portion of which is designated as C-6) at the head of the Miami River more than 50 miles westward into the Everglades. *See* Exhibit “4,” p. 4-42, “(a) Canal 4 (Tamiami Canal).

<sup>3</sup> A tributary or affluent is a stream or river that flows into a main stem (or parent) river. Tributaries and the main stem river serve to drain the surrounding draining basin of its surface and groundwater, leading the water out into an ocean. In this case, the Coral Park Canal is a tributary that flows directly into the Tamiami Canal (C4), the main stem (or parent) river, leading the water out into the Atlantic Ocean.

surroundings so as to not be readily apparent or visible, thereby creating a hazardous trap. [D.E. 21, ¶15].

As the vessel exited the south side of the Coral Park Canal Bridge, the Plaintiff was struck, without warning, on his forehead and face by the water pipe. The collision ejected the Plaintiff off the vessel and into the canal waterway. Upon arrival, Paramedics found the Plaintiff unresponsive at the scene of the incident with traumatic injuries to his face and forehead area. [D.E. 21, ¶22].

Upon his arrival at Kendal Regional Medical Center, the Plaintiff was immediately evaluated and diagnosed with suffering severe trauma to the head, face and body including, but not limited to, the following injuries: (1) skull fracture, (2) extensive comminuted fractures involving the bilateral orbits and paranasal sinuses, (3) loss of vision, (4) extensive comminuted depressed fracture of the outer and inner wall of bilateral frontal sinuses; (5) multiple mandible fractures; (6) blunt chest trauma; (7) acute lung injury; (8) acute respiratory failure; and (9) hemorrhagic shock.

**II. THIS COURT HAS ADMIRALTY SUBJECT MATTER JURISDICTION OVER THIS MATTER. CORAL PARK CANAL AND THE TAMAMI CANAL ARE NAVIGABLE WATERWAYS OF THE UNITED STATES, CONTINUOUSLY FLOWING THROUGH THE MIAMI RIVER TO THE ATLANTIC OCEAN. HISTORICALLY THESE CANALS HAVE BEEN (AND CURRENTLY ARE SUSCEPTIBLE TO BE) USED AS HIGHWAYS OF INTERSTATE COMMERCE. AS A MATTER OF LAW, NAVIGABILITY FOR JURISDICTIONAL PURPOSES IS NOT DESTROYED BY MINOR OBSTRUCTIONS OR PORTAGES.**

In the Motion to Dismiss (hereinafter “the Motion”), Miami-Dade County alleges that this Court does not have admiralty subject matter jurisdiction over this incident. At issue is whether the Tamiami Canal (and its tributary, the Coral Park Canal) are “navigable waterways of the United States.” If this Court finds that the tort occurred on navigable waters, it has admiralty jurisdiction, and Miami-Dade County’s motion should be denied.

The Constitution delegates jurisdiction over admiralty cases to the federal courts. U.S. Const. art. III, §2. Congress, under the Judiciary Act of 1789, gave the district courts exclusive jurisdiction over admiralty and maritime cases, now codified in 28 U.S.C. §1333. Section 1333(1), empowers article III courts with “original jurisdiction ... of ... [a]ny civil case of admiralty or maritime jurisdiction.” Federal jurisdiction extends to all navigable waters. *Aqua Log, Inc., v. Lost and Abandoned Pre-Cut Logs*, 709 F. 3d 1055 (11th Cir. 2013). For admiralty jurisdiction to exist

in a tort case, two requirements must be met: (1) there must be a significant relationship between the alleged wrong and traditional maritime activity (the nexus requirement) and (2) the tort must have occurred on navigable waters (the location requirement). *Aqua Log, Inc.*, at 1059, citing *Richardson v. Foremost Ins. Co.*, 641 F. 2d at 316 (5th Cir. 1981).

In the Motion, Miami-Dade County does not appear to dispute the “nexus requirement” of admiralty jurisdiction. That is, Miami-Dade County does not dispute that there is a significant relationship to the alleged wrong and traditional maritime activity.<sup>4</sup> Instead, Miami-Dade County’s entire argument is premised on the location requirement -- whether the tort occurred on navigable waters.

**A. Under the seminal Supreme Court case, *The Daniel Ball*, the test of navigability calls for a factual investigation into the history of the waterway, in its natural and ordinary condition, as a highway of commerce.**

The test for navigability for the purpose of making a determination of admiralty jurisdiction, is the test laid out in the seminal Supreme Court case *The Daniel Ball*, 77 U.S. 557 (1871). This early Supreme Court case discussed the navigability of the Grand River in Michigan. There, the Court discarded the British test for navigability concerning the “ebb and flow of the tide.” In its place, the Court created a test decidedly better suited for a nation with larger bodies of water –

Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, ***or are susceptible of being used***, in their ***ordinary condition***, as highways for commerce, over which trade and travel are or ***may be conducted*** in the customary modes of trade and travel on water. And they constitute navigable waters ... when they form in their ***ordinary condition***, by themselves, or by uniting with other waters, a continued highway over which commerce is ***or may be carried*** on with other States or foreign countries in the customary modes in which such commerce is conducted by water.

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<sup>4</sup> Indeed, Miami-Dade County could not challenge the “nexus requirement” test. As a matter of law, the nexus requirement is met in the event of a collision during navigation. Vessels are engaged in a traditional maritime activity when a collision occurs on navigable waters. See *Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs*, 709 F. 3d 1055, 1060 (11th Cir. 2013), quoting *Richardson v. Foremost Ins. Co.*, 641 F. 2d at 316 (5th Cir. 1981) (“In *Richardson* ... [t]he court determined that the nexus requirement had been met because boats ‘are engaged in traditional maritime activity when a collision between them occurs on navigable waters.’”). Here, the motorized vessel Plaintiff was travelling on, engaged in traditional maritime activity (navigating through the Tamiami Canal and Coral Park Canal waterways) when the collision occurred.

Id. at 563 (emphasis added). The use of the term “ordinary condition” is clearly a call for analysis of the waterway notwithstanding unnatural encumbrances; and an actual investigation into the history of the waterway in question. The *Daniel Ball* test, therefore, is one of historical navigability, to show that the subject waterways are “*susceptible of being used, in their ordinary condition, as highways for commerce.*” See *Hohn v. United States*, 524 U.S. 236, 252-53 (1998) (Supreme Court decisions “remain binding precedent until [the Court] see[s] fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality.”).

Another seminal Supreme Court case is *The Montello*, 87 U.S. 430 (1874), decided after the *The Daniel Ball*. In *The Montello*, the Supreme Court emphasized that the test of navigability depends on the waterway’s “*natural state.*” See Id., at 440-42 (emphasis added):

[T]he true test of the navigability of a stream does not depend on the mode by which commerce is, or may be, conducted, ***nor the difficulties attending navigation.*** If this were so, the public would be deprived of the use of many of the large rivers of the country over which rafts of lumber of great value are constantly taken to market. It would be a narrow rule to hold that in this country, unless a river was capable of being navigated by steam or sail vessels, it could not be treated as a public highway. The ***capability of use*** by the public for purposes of transportation and commerce affords the true criterion of the navigability of a river, rather than the extent and manner of that use. ***If it be capable in its natural state of being used for purposes of commerce, no matter in what mode the commerce may be conducted, it is navigable in fact, and becomes in law a public river or highway.***

Like *The Daniel Ball*, *The Montello*’s use of the term “natural state” also calls for a factual investigation into the history of the waterway in question. Indeed, applying the test for historical navigability, “the Supreme Court found navigability could be established on the basis of historical records of commercial navigation going as far back as 1673.” *Meche v. Richard*, 2007 WL 634154, at \*5 (W.D. La. 2007) (quoting and analyzing the Supreme Court’s holding in *The Montello*): “Ultimately, the Supreme Court based its finding of navigability relying on evidence that the Fox River was traveled by explorers in the seventeenth century, used by fur trappers in the eighteenth century, and used as an artery of commerce by animal-drawn Durham boats in the nineteenth century.” Id. See also *United States v. Holt State Bank*, 2070 U.S. 49, 56 (1926) (emphasis added):

The rule long since approved by this court in applying the Constitution and laws of the United States is that streams or lakes which are navigable in fact must be regarded as navigable in law; that they are navigable in fact when they are used, **or are susceptible of being used, in their natural and ordinary condition**, as highways of commerce, over which trade and travel are **or may be** conducted in the customary modes of trade and travel on water; and further that navigability does not depend on

the particular mode in which such use is or may be had – whether by steamboats, sailing vessels or flatboats - **nor on the absence of occasional difficulties in navigation**, but on fact, if it be fact, that the stream, **in its natural and ordinary condition affords a channel for useful commerce.**

The Supreme Court test for historical navigability (under *The Daniel Ball*, *The Montello*, and *Holt State Bank*) has been applied by courts for over one hundred years. For instance, in *Miami Valley Conservancy District v. Alexander*, 692 F. 2d 447 (6th Cir. 1982), the Sixth Circuit held that **a river is navigable as a matter of law if it has ever been navigable.** See Id. at 450 (emphasis added):

The earliest and most frequently cited definition of navigability appeared in *The Daniel Ball*, 77 U.S. 557 (1871) ... Subsequent cases have refined the definition of navigability. **A river is navigable if it can be made useful through reasonable improvements.** *United States v. Appalachian Electric Power Co.*, 311 U.S. 377, 409 (1940). ... **Moreover, a river is still navigable despite occasional natural obstructions or portages ... Under the historical test of navigability a river is “indelibly navigable.”** *State of Oklahoma ex rel. Phillips v. Guy F. Atkins*, 313 U.S. 508 (1941). **That is, a river is navigable as a matter of law if it has ever been navigable. For a river to be considered a navigable water of the United States, it is sufficient that the river has been used as a commercial highway even though it no longer is or can be used as such.**

The test for navigability has been stated and restated by the federal courts for the last one hundred years. Navigability has been defined in countless ways but its essential elements have remained constant. The District Court here properly identified these elements: **A navigable waterway of the United States must (1) be or have been (2) used or susceptible of use (3) in the customary modes of trade and travel on water (4) as a highway for interstate commerce.**

Similarly, in *Consolidated Hydro, Inc. v. F.E.R.C.*, 968 F. 2d 1258 (D.C. Cir. 1992), the D.C. Circuit agreed with the Sixth’s Circuit’s determination in *Alexander* that “a river is navigable as a matter of law if it has ever been navigable.” Also applying the Supreme Court’s ‘test for historical navigability’ under *The Daniel Ball*, the D.C. Circuit held that **“once found to be navigable, a waterway remains so.”** After examining the history of the Damariscotta Lake and River Region, in Lincoln Maine, *Consolidated Hydro* held that the waterways were navigable, subject to federal jurisdiction under the Federal Power Act. See *Consolidated Hydro* at 1259-60 (emphasis added):

The Supreme Court has held that waterways are “navigable” if they form “in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or foreign

countries in the customary modes in which such commerce is conducted by water.” *The Daniel Ball*, 77 U.S. (10 Wall) 557, 563, 19 L.Ed. 999 (1870). **Moreover, “once found to be navigable, a waterway remains so.”** *United States v. Appalachian Elec. Power Co.*, 311 U.S. 377, 408, 61 S.Ct. 291, 299, 85 L.Ed. 243 (1940) (footnote omitted). Finally, “[t]here has never been doubt that the navigability referred to in [past] cases was navigability *despite* the obstruction of falls, rapids, sand bars, carries or shifting currents.” *Id.* at 408-09, 61 S.Ct. at 299-300 (emphasis added and footnote omitted).

Finally, in *Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs*, 709 F. 3d 1055 (11th Cir. 2013), the Eleventh Circuit held that the Flint River and Spring Creek in rural Georgia were navigable waterways, subject to the Court’s admiralty jurisdiction. Consistent with the Supreme Court’s *Daniel Ball* ‘test for historical navigability,’ the Eleventh Circuit analyzed the history of Flint River and Spring Creek, during the late nineteenth and early twentieth centuries. In doing so, *Aqua Log* found that: 1) “Historically, commercial vessels used both the Flint River and Spring Creek for transportation” and 2) “[a]lthough currently, there is no commercial activity on these waterways,” they are “capable of supporting commercial activity.” *Aqua Log*, at 1057 – 1062. On remand, the district court held that that “the fact that boats or ships were not used to transport goods for commercial sale” on these waterways “is of no import for purposes of establishing admiralty jurisdiction.” Applying the test, the Court concluded that Flint River and Spring Creek were navigable waters because, in their present state, they are capable of supporting commercial activity. *See Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs*, 2015 WL 1456141 (M.D. Ga. 2015).

As shown below, under *The Daniel Ball* (Supreme Court), *The Montello* (Supreme Court), *Alexander* (Sixth Circuit), *Consolidated Hydro* (D.C. Circuit) and *Aqua Log* (Eleventh Circuit), the Tamiami Canal and the Coral Park Canal “are navigable waterways of the United States.” A factual review into the history of these waterways, shows that they are *susceptible to be used*, in their *ordinary condition*, as highways of commerce.

**B. As the affidavit of Miami historian and professor, Paul S. George, Ph. D. shows, the C-4/Tamiami Canal is a navigable commercial highway. Historically, the canal served as a navigable waterway supporting commercial vessel activity between Floridians and Native Americans, and led out to the Atlantic Ocean. The Tamiami Canal waterway in its ordinary condition continues its natural flow out into the Atlantic Ocean. As such, it is capable of presently supporting commercial vessel navigation.**



As noted above, the *Daniel Ball* test is one of historical navigability. Its purpose is to show that the subject waterways are “susceptible of being used, in their ordinary condition, as highways for commerce.” *Id.*, 563.

Exhibit “1,” is the affidavit of Paul S. George, Ph.D. Professor George, a native Miamian, has spent the past 40 years teaching history at the college level at many of Florida’s colleges and universities. He also serves as historian to the Historical Association of South Florida. He holds Masters and Doctorate degrees from Florida State University. Exhibit “1,” ¶1.<sup>5</sup>

Professor George is the leading academic concerning the history of Miami’s waterways. In addition to his duties as a history professor, Professor George regularly conducts many different historical tours of Miami and Southeast Florida, including a boat tour of the Miami River and adjacent waterways, including the Tamiami Canal; and has done so, since 1986. Exhibit “1,” ¶2. He has authored 15 books and over 200 articles concerning the subject. His book, *Along the Miami River*, recounts the commercial activity on the Miami River and adjacent waterways. Exhibit “1,” ¶¶2,3. See copy of the front and back cover of *Along the Miami River*, attached to the affidavit.

Professor George’s decades of research concerning Miami’s waterways, and personal navigational experience on Miami’s waterways (including the Tamiami Canal), allows him to authoritatively opine that the Tamiami Canal waterway is capable of supporting commercial vessel navigation. See Exhibit “1,” ¶16:

In summary, the C-4/Tamiami Canal is a navigable commercial waterway. The canal has historically served as a navigable waterway supporting commercial vessel activity between Florida, Native Americans, and out to the Atlantic Ocean. Since that time, the waterway has not been physically altered and continues its flow through Miami-Dade County east to the Miami Canal and out to Biscayne Bay and the Atlantic Ocean. While the S25B Spillway was erected and is operated in a manner, which temporarily interrupts vessel traffic continuing through the natural flow of water out to the Ocean, there exists no impediment to navigation subject to minor portage of vessels around the Spillway. Future removal of the Spillway or construction of adjacent lock facilities in the future would provide for unfettered navigation from the canal to the Ocean. As such, the C-4/Tamiami Canal is capable of supporting commercial vessel navigation.

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<sup>5</sup> Professor George has also served as president of the Florida Historical Society, vice chairman of the City of Miami’s Heritage, Conservation Board, director of the Historic Broward County Preservation Board, a member of Metro Dade County’s Preservation board, president of the Louis Wolfson II Florida Moving Image Archive, editor of the scholarly journal of the Historical Association of Southern Florida. Exhibit “1,” ¶4. Other distinctions include being twice recognized as Miami’s Outstanding Historian by the Miami New Times, and serving as the narrator and principal in a historical documentary on the Miami News/Freedom Tower Produced by WLRN Television. *Id.*, ¶6.

In support of this conclusion, Professor George's affidavit explains as follows:

The Tamiami Canal (designated as C-4 within Miami-Dade County by the South Florida Water Management District) is a body of water that flows across most of the lower part of the Florida peninsula. The State of Florida created the canal partly to provide the roadbed, comprised of rocks and sand, for the adjacent roadway, known as the Tamiami Trail, which runs parallel to the canal for much of its watery route. Another purpose for the canal was its service in the ambitious effort to drain the Everglades, which began in the early 1900s with the goal of creating new, rich farmland. The canal was excavated from swampland as well as terrain situated at higher, and thus drier, levels in the second and third decades of the twentieth century. Additions to it in the Greater Miami area are of more recent vintage. *Id.*, ¶8.

Minutes of the Dade County Commission for 1915 indicate that the body passed a resolution for the creation of the canal's construction. The resolution called for the construction of the canal to be fifteen feet in depth in its Dade County proportions. The resolution noted that the construction of the canal "would constitute a waterway of value" and would "enhance" the value of adjacent lands to the state. *Id.*, ¶9.

The Tamiami canal historically hosted vessel based commerce. Lawrence Will in *A Pioneer Boatman Tells of Okeechobee Boats and Skippers* observed that a boat operator with the surname Fitzhugh operated a boat service on a portion of the Tamiami Canal east of Fort Myers. It is notable that the boat service would commercially service areas which included both Florida State land and Native American Reservations.<sup>6</sup> Further, Barron Collier, the wealthy journalist and land baron for whom Collier County is named, operated a fleet of five vessels between Tampa, Fort Myers, and Everglades before the completed Tamiami Trail had the effect of connecting by land these communities. Collier's boat service was another example of vessel based commerce between Florida Territory and Native American Territory. **Trade and commerce continues to this day on the canal.** *Id.*, ¶10 (emphasis added).

A 1926 photograph found in the Gleason Waite Romer Photographic Collection in the Florida Room of the Miami-Dade Public Library in downtown Miami shows Seminoles or

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<sup>6</sup> Historically, Congress has held plenary authority to regulate Indian affairs. *U.S. v. Lomayaoma*, 86 F. 3d 142, 145 (9th Cir. 1996). This federal power "to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself." *Id.*



Miccosukee Indians in a dugout canoe. Next to it is another vessel seemingly holding cargo. The Tamiami Canal and many other south Florida waterways were the “expressways” enabling these groups of Native Americans to bring their trade items from their Everglade redoubts to “Indian Traders,” namely white businessmen, in a profitable product exchange accompanied by purchases in cash in the early decades of the twentieth century. Attached are photographs evidencing the use of the Tamiami Canal by Native Americans for trade with Floridians; as well as historic commercial vessels utilizing the Tamiami Canal. *Id.*, ¶11.

In Miami-Dade County, the waters of the C-4/Tamiami Canal flow continuously east to the Miami Canal and out to Biscayne Bay and the Atlantic Ocean. The canal is of a sufficient depth and width throughout and has sufficient overhead clearance of bridges to allow small vessel commercial activity. A Spillway (S25B) erected to control the salinity of the waters west of the Spillway now lies East of the Miami International Airport and south of Northwest Twentieth Street, which, in the manner operated, provides a brief artificial impediment to vessel traffic continuing through the natural flow of water out to the Ocean. However, there exists no impediment to minor portage of vessels around the S25B Spillway to allow vessels traveling eastward on the C-4/Tamiami Canal to continue ultimately to the Ocean. *Id.*, ¶12.<sup>7</sup>

The C-4/Tamiami Canal also flows into the C-2/Snapper Creek Canal, which flows east to Biscayne Bay and the Atlantic Ocean. A Spillway (S22) lies just west of the C-2/Snapper Creek Canal’s flow into Biscayne Bay. ¶13. Professor George reviewed a report from the Army Corps of Engineers concerning the S22 Spillway, dated May 13, 1955 which states:

When a canal is provided that is capable of supporting justified navigation, either commercial or recreational, it is believed that it would be shortsighted to build structures in connection therewith that would prevent navigational use. The structures that are erected should be so designed that they will either permit appropriate and justified navigation or facilitate the addition of navigational facilities later ... The salinity control structure should be so located that future lock facilities can be constructed by local interests if they so desire.

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<sup>7</sup> The water control structure, designated as S-25B, is just downstream of Northwest 42<sup>nd</sup> Avenue (LeJeune Road) and just south of Northwest 21<sup>st</sup> Street. As described by the Department of the Army (Exhibit 4), it “is a two-bay reinforced concrete, U-shaped, gated trapezoidal-weir spillway with automatically – controlled vertical-lift gates.” *Id.*, 4-42 – 4-43. “The purpose of S-25B is to release flood runoff and serve as a salinity control structure to prevent overdrainage and saltwater intrusion upstream of S-25B in C-4 [The Tamiami Canal].” *Id.*

Just east of the location of the S25B Spillway is by far the most commercialized portion of the C-4/Tamiami Canal which extends from Douglas Road east for a half-mile to its confluence with the Miami Canal. Since the middle decades of the twentieth century that portion of the waterway has seen a beehive of commercial activity hosting boatyards, marinas, and vessels carrying trade goods east to the Miami Canal and to waters and ports beyond. The most important commercial activity along that portion of the C-4 Canal was that of Bertram Yacht, an internationally acclaimed boat builder that began operating in the early 1960's from a uniquely designed complex, which straddled the waterway just east of Douglas Road. Bertram Yacht carried a cachet for the quality of their construction and for their striking appearances. Bertram Yacht operated from this venue for more than forty years. *Id.*, ¶14.<sup>8</sup>

The Florida Fish and Wildlife Conservation Commission publishes Angler's Guides for the Southeast Florida Canals which promote fishing on the canals. Fishing is both a historic and a contemporary maritime commercial endeavor in South Florida. *Id.*, ¶15.

All in all, as Professor George declares, the C-4/Tamiami Canal is a navigable commercial highway. Historically, the canal served as a navigable waterway supporting commercial vessel activity between Florida, Native Americans, and out to the Atlantic Ocean. The Tamiami Canal waterway continues its natural flow into the Atlantic Ocean. As such, it is capable of supporting commercial vessel navigation. *See Id.*, ¶15.

Because under the *Daniel Ball* 'test for historical navigability,' these waterways are "susceptible of being used, in their ordinary condition, as highways for commerce;" this Court has admiralty subject matter jurisdiction.

**C. Coral Park Canal is a navigable waterway, connected to Tamiami Canal.**

Miami-Dade County argues that the Coral Park Canal (the place where the incident happened) is not a navigable waterway, because in order to get from the Coral Park Canal to the

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<sup>8</sup> It is important to note that this area of the Tamiami Canal lies just east of the subject spillway and provides, even today, unfettered access to Biscayne Bay and the Atlantic Ocean. Thus, even considering Defendant's arguments in the light most favorable to Defendant, there is, in fact, unfettered large ship access to the ocean from the Tamiami Canal. This raises an interesting hypothetical that illustrates why Defendant's argument is wrong: if a vessel traveling west on the Tamiami Canal allides into the east side of the S25B Spillway, according to the Defendant's arguments, this Court would have admiralty jurisdiction to adjudicate said allision; however, if the same vessel was traveling east on the Tamiami Canal and allides with the west side of the same S25B Spillway, the Defendant argues this Court would not have admiralty jurisdiction to adjudicate the allision.

Tamiami Canal, vessels have to navigate under “a low bridge that is not intended or designed for use by vessels.” [D.E. 34, p. 1]. *See* D.E. 34, p. 4: “The Coral Park Canal connects to the Tamiami (or C4) Canal underneath S.W. 8th Street through a low lying bridge at the intersection of SW 94<sup>th</sup> Avenue and S.W. 8<sup>th</sup> Street ... By virtue of its low clearance, the connection between the Coral Park Canal and the Tamiami Canal is not designed or intended for the passage of vessels.” *Id.*, p. 4. The Motion, however, does not include or cite to any factual evidence to support counsel’s statements that the purportedly “low lying bridge” “is not designed or indented for passage of vessels.”

To the contrary, as the declaration of Alejandro Suarez (Exhibit “2”) shows, at present, a vessel can navigate freely, and without restrictions, under the bridge at SW 94<sup>th</sup> Avenue and SW 8<sup>th</sup> street, to get from the Coral Park Canal to the Tamiami Canal. *See* Exhibit “2,” ¶7 (“[On March 2, 2015] [w]e continued navigating north through the Coral Park Canal, crossing under the 12<sup>th</sup> Street bridge. After navigating north for approximately .45 miles, we reached the Tamiami Canal (C-4). We were able to sail freely between Coral Park Canal and Tamiami Canal, by comfortably navigating the vessel under the S.W. 8<sup>th</sup> Street Bridge.”). Additionally, at the time of the incident, the Plaintiff’s motorized vessel traveled freely under the same bridge in the opposite direction, to get from Tamiami Canal to Coral Park Canal. *See* Florida Wild Life Conservation Commission Boating Accident Report, Exhibit “3” (“Pena [operator] travelled back east and made a right turn on the canal between SW 94<sup>th</sup> Ave & 93 Pl. ***Pena travelled under one bridge and headed south down the canal...***”).(Emphasis added).

Accordingly, there is a navigable connection, in fact, between the Coral Park Canal and the Tamiami Canal.

**D. Coral Park Canal has a navigable connection to Tamiami Canal, which has a navigable connection to the Miami River, Biscayne Bay, and the Atlantic Ocean. During the voyage, Suarez was able to easily circumvent the water control structure (S-25B) at the Tamiami Canal through minor portage.**

Miami-Dade County argues that “neither the Coral Park Canal waterway nor the Tamiami Canal is capable in its present state of supporting interstate commercial activity.” [D.E. 34, P. 3].<sup>9</sup>

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<sup>9</sup> In the Motion, Miami-Dade County does not dispute that the Miami River (the waterway connected to the Tamiami Canal), is a navigable waterway. In fact, the Eleventh Circuit has already taken judicial notice that, for purposes of admiralty jurisdiction, the Miami River is a navigable waterway. *See In re the Complaint of the Sea Vessel, Inc., v. Reyes*, 23 F. 3d 345, 346, n. 1 (11th Cir. 1994) (“Miami Shipyards is

The County's argument is incorrect. Coral Park Canal and Tamiami Canal are navigable waterways, susceptible and capable of supporting commercial activity. As the Declaration of Alejandro Suarez<sup>10</sup> explains, **on March 2, 2015** he "navigated a vessel continuously from the Coral Park Canal to the Tamiami Canal. Thereafter, [he] navigated the vessel continuously through Tamiami Canal, turning east along the canal where it joins the Miami River, which leads out to Biscayne Bay and the Atlantic Ocean." Exhibit "2," ¶4. Throughout the course of the journey, Mr. Suarez observed numerous motorized vessels navigating freely through the Tamiami Canal. Id.

Mr. Suarez's affidavit, attached as Exhibit "2," includes 14 satellite photographs, labelled Maps 1 through 14. Each photograph depicts the trajectory of his vessel through the subject canals, from the Coral Park Canal (at the location of the subject incident) through the Tamiami Canal. Ultimately, turning east along the canal to where it joins the Miami River, which leads out to Biscayne Bay and the Atlantic Ocean:

**Map 1:** Mr. Suarez's journey began by launching his vessel on a lot located at 9431 S.W. 16<sup>th</sup> Street, Miami, Florida 33165. The vessel sailed east for approximately .1 mile until it reached and turned north onto an intersecting canal, the Coral Park Canal.

**Map 2:** The vessel continued navigating north through the Coral Park Canal, crossing under the S.W. 12<sup>th</sup> Street Bridge (**the same bridge where Plaintiff, Mr. Tundidor, was injured**). After navigating north for approximately .45 miles, Mr. Suarez reached the Tamiami Canal (C-4). The vessel was able to sail freely between the Coral Park Canal and the Tamiami Canal, by comfortably navigating under the S.W. 8<sup>th</sup> Street Bridge.

**Maps 3-8:** Once on the Tamiami Canal, the vessel navigated east for approximately 1.85 miles, until it reached a segment of the canal which curves north and then gradually curves to the northeast, until it flows into Lake Mahar. During the course of navigating east along the Tamiami Canal, Mr. Suarez was able to comfortably sail under all bridges along the route, including: under the S.W. 92<sup>nd</sup> Avenue Bridge (Map 3), under the S.W. 87<sup>th</sup> Avenue Bridge (Map 4), under a utility pass on S.W. 82<sup>nd</sup> Avenue and 8<sup>th</sup> Street (Map 5), under the Palmetto Expressway SR 826 Bridges (Maps 6 and 7), under the West Flagler Street Bridge (Map 8), under the S.W. 72<sup>nd</sup> Avenue Bridge (Map 8), and under the Railroad Bridge shortly before Lake Mahar (Map 8).

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located on the Miami River. At oral argument Reyes's counsel conceded that the Miami River is a navigable waterway. **Regardless, we take judicial notice of that fact.**") (Emphasis added).

<sup>10</sup> Mr. Suarez is a native Miamian and an experienced boater.

**Maps 9:** Mr. Suarez navigated along Lake Mahar in an east northeast direction for approximately 1.35 miles where the vessel reached Blue Lagoon Lake. During this part of the route, the vessel was able to comfortably sail under the N.W. 7th Street Canal Bridge, and under a canal bridge crossing shortly thereafter.

**Maps 10 - 11:** Mr. Suarez navigated east for approximately .6 miles and then navigated in a northeast direction under a bridge segment of the 836 Expressway.

**Map 12:** Mr. Suarez navigated the vessel under the bridge segment of the 836 Expressway and continued navigating under the N.W. 15<sup>th</sup> Street Bridge, which at this point flowed nearest and alongside Miami International Airport.

**Maps 13:** Mr. Suarez navigated along the canal for 1.7 miles, including under bridges on State Road 953, until the vessel reached a water control structure spanning the entire width of the canal. To get around the water control structure (known as the “S25B” Spillway), Mr. Suarez landed the vessel on a grass embankment located on the south side of the structure. Once he landed the vessel on the embankment, Mr. Suarez disembarked the vessel, picked up and carried the vessel along the east side of the structure for a distance of a few hundred feet, and then launched the vessel back into the Tamiami Canal on the east side of the structure.

**Map 14:** The vessel continued navigating east to where the Tamiami Canal joins the Miami River, which leads to Biscayne Bay and the Atlantic Ocean.

**E. As a matter of law, a waterway is “navigable” despite obstructions or portages.**

In the Motion to Dismiss, Miami-Dade County’s primary argument in support of the proposition that Tamiami Canal (C-4) is not a navigable waterway is as follows: “[E]ven if this Court finds that the connection between the Coral Park Canal and the Tamiami capable in its present state of supporting commercial maritime activity, subject matter jurisdiction is still lacking because the Tamiami Canal does not have a navigable connection to the Miami River.” [D.E. 34, p. 7]. In support of this statement, Miami-Dade County argues that the “water control structure” [S25B Spillway], prevents any further navigation.” Id.

First, Professor George’s research and expertise supports Mr. Suarez’s successful minor portage around the Spillway (S-25B), to continue navigating east along the Tamiami Canal and ultimately into the Miami River. As Professor George concluded, and as Mr. Suarez demonstrated, the Spillway (S-25B) does not prevent navigation. The natural flow of water continues along the Tamiami Canal, through the Spillway (S-25B), into the Miami River, into Biscayne Bay, and

ultimately into the Atlantic Ocean. Eastward navigation from west of the Spillway (S-25B) continues simply by doing as Mr. Suarez did: engaging in minor portage around the Spillway. *See* Exhibit “1,” ¶16: ... “While the S25B Spillway was erected and is operated in a manner which temporarily interrupts vessel traffic continuing through the natural flow of water out to the Ocean, there exists no impediment to navigation subject to minor portage of vessels around the Spillway. Future removal of the Spillway or construction of adjacent lock facilities in the future would provide for unfettered navigation from the canal to the Ocean.”

More importantly, as a matter of law, **a waterway is “navigable” despite occasional obstructions or portages.** *See Miami Valley Conservancy District v. Alexander*, 692 F. 2d 447 (6th Cir. 1982) (“Moreover, a river is still navigable despite ‘occasional natural obstructions or portages.’”). As explained by the Supreme Court in *Economy Light & Power Co.*, 256 U.S. 113, 122 (1921), “[n]avigability, in the sense of the law, is not destroyed because the water course is interrupted by occasional natural obstructions or portages; nor need navigation be open at all seasons of the year, or at all stages of the water.”

The case of *Consolidated Hydro, Inc. v. F.E.R.C.*, 968 F. 2d 1258, is instructive. In *Consolidated Hydro*, the D.C. Circuit, quoting the Supreme Court, held that “[t]here has never been doubt that the navigability referred to in [past] cases was navigability *despite the obstruction of falls, rapids, sand bars, carries or shifting currents.*” *Id.* 1259-60 (emphasis in originals and added). At issue in that case was the navigability of the Damariscotta Lake and its connected waterways, including a series of streams flowing out of the lake. In particular, along the waterways was a hydroelectric project, consisting of a dam, powerhouse and penstock. *See Id.* at 1260:

... Damariscotta Lake is located in the northwest corner of the first map. After flowing onto a small pond, the water divides into three streams as it moves past two small islands. **The Damariscotta Mills hydroelectric project (“Project”) is located on the Old Stream, the largest, westernmost of these.** The three streams merge into the Damariscotta River, which flows into the Great Salt Bay and the south from the bay to the Atlantic Ocean ... **The Project was constructed prior to 1923 on the site of a former sawmill. It consists primarily of a dam, powerhouse, and penstock, and rates 500 kilowatts of power [...].**

*Consolidated Hydro* noted, however, **that the presence of the “dam, powerhouse, and penstock,” presented no impediment to navigation.** Vessels could simply engage in minor portage around the hydroelectric project. *See Id.* at 1260:



...[t]he Navigability Report records a canoe race sponsored in 1973 ... The race spanned the length of the Damariscotta Lake and continued south through the Great Salt Bay to a point on the river between two communities. **A portage of one hundred yards around the [hydroelectric] Project site itself was all that was required to complete the journey.**

Ultimately, the Court explained that “[t]here has never been doubt that the navigability referred to in [past] cases was navigability *despite* the obstruction of falls, rapids, sand bars, carries or shifting currents.” Id. 1259-60 (emphasis in originals). *See also* Id. at 1262 (emphasis added):

We held that the Missouri River was navigable in the area of Fort Benton, Montana, **despite the presence of the Great Falls of Missouri** “a series of rapids and falls which descend about 520 feet in 17 miles, and which have always presented a natural barrier to through navigation[,] because “gold miners in considerable number [had] travelled downstream with the aid of a **portage or ‘land carriage’ around the falls.**” Id. at 493-94.

Accordingly, as *Consolidated Hydro* explained, if the Missouri River is navigable, despite the presence of the Great Falls of Missouri descending 520 feet in 17 miles (natural obstruction), there is no question that the Spillway (S-25B) here does not defeat navigability of the Tamiami Canal. Similarly, if Damariscotta Lake is navigable, despite the presence of a hydroelectric dam (artificial obstruction), there is no question that the Spillway (S-25B) here does not defeat navigability of the Tamiami Canal.

Indeed, like the canoe racers in Damariscotta Lake and the gold miners in the Great Falls of Missouri, here, Mr. Suarez (Exhibit “2”) successfully navigated through the Spillway (S-25B) with the aid of minor portage. *See also Swaczyk v. U.S. Coast Guard*, 499 F. Supp. 1034, 1040 (W.D.N.Y. 1980) (Finding Niagara River navigable, despite the presence of Niagara Falls, because “with care, the whole stretch of the lower Niagara is navigable except the area near the Whirlpool. That a portion of a river is difficult to navigate, however, or even that it is interrupted by occasional natural obstructions does not preclude a finding of navigability in a legal sense.”).

**F. Contrary to Miami-Dade County’s assertions, a vessel can navigate freely, and without restrictions, under all of the bridges between Coral Park Canal and the Tamiami Canal.**

Miami-Dade argues that the Tamiami Canal is not a navigable waterway because of the presence of “bridges, water pipes, and railroad tracks ... the only option for any vessel intent on travelling east along the Tamiami Canal is to, if possible travel underneath these areas of significantly low height clearance, such as the bridges at S.W. 92<sup>nd</sup> Avenue, S.W. 87<sup>th</sup> Avenue, SR

826 North Bound, Flagler Street, N.W. 7<sup>th</sup> Street, N.W. 42<sup>nd</sup> Court and LeJeune Road.” [D.E. 34, p. 6]. Other than photographs of some of the aforementioned bridges, however, the Motion does not include any factual evidence to support counsel’s statements that these are “areas of significantly low height clearance.”

In contrast, as the declaration of Alejandro Suarez (Exhibit “2”) shows, at present, a vessel can navigate freely, and without restrictions, under all of the bridges between Coral Park Canal, the Tamiami Canal, and beyond. On March 2, 2015, Mr. Suarez comfortably navigated his vessel under the bridges at: 12<sup>th</sup> Street, 8<sup>th</sup> Street, S.W. 92<sup>nd</sup> Avenue, S.W. 87<sup>th</sup> Avenue, the Palmetto Expressway (SR 826) bridges, West Flagler Street, S.W. 72<sup>nd</sup> Avenue, N.W. 7<sup>th</sup> Street, the 836 Expressway, N.W. 15<sup>th</sup> Street, and Le Jeune Road (SR 953). *See* Exhibit 2, paragraphs 7-14 and Maps 1 – 13.

Additionally, during jurisdictional discovery, South Florida Water Management District produced video of motorized vessels (Tug Boats) easily navigating through Tamiami Canal. Notably, the videos show these Tug Boats comfortably navigating under the aforementioned bridges.<sup>11</sup>

**G. As a matter of law, the *size and type* of vessels that are currently navigating a waterway are irrelevant for purposes of determining navigability. Indeed, in order to preserve uniformity and predictability of the admiralty laws, the rule is that a waterway is navigable for admiralty jurisdiction purposes, even if there is no *present* commercial activity.**

Referring only to the Coral Park Canal, Miami-Dade County argues that “even if vessels were able to navigate under the SW 8<sup>th</sup> Street Bridge, the only vessels that could successfully do so would be limited to small, recreational vessels, not commercial shipping vessels engaged in interstate commerce.” [D.E. 34, P. 5].

As a preliminary matter, other than showing photographs of the aforementioned bridges [D.E. 34, Ex. 5], the Motion does not include or cite to any factual evidence to support counsel’s statements that, “the only vessels” that can navigate under these bridges “are small, recreational vessels, not commercial shipping vessels engaged in interstate commerce.” *Id.* Further, as noted earlier, on March 2, 2015, Mr. Suarez’s vessel navigated freely, and without restrictions, under all of the bridges between Coral Park Canal and the Tamiami Canal, including under the S.W. 8<sup>th</sup> Street Bridge.

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<sup>11</sup> These videos will be filed conventionally with the Court.

In any event, as a matter of law, the size and type of vessels (whether recreational or commercial) presently navigating a waterway, is irrelevant for purposes of determining, whether under *The Daniel Ball*, such waterway is *susceptible* to be used, in its *ordinary condition*, as a highway of interstate commerce.

**First**, there is no legal requirement of “commercial shipping vessel” traffic, to find waterways navigable for admiralty jurisdiction purposes. *Briggs v. Jupiter Hills Lighthouse Marina*, 9 So. 3d 29 (4th DCA 2009) (“We find no support for plaintiff’s position that a waterway is navigable for purposes of admiralty jurisdiction only if the waterway can support ‘ocean going vessels.’”).

The Supreme Court has held that “size” and “type” of vessels is irrelevant, for purposes of determining *susceptibility of commercial navigation*. In *The Montelo*, 87 U.S. 430 (1874), the Supreme Court held that **fur-trading canoes sufficiently showed that the Fox River was a navigable water of the United States**. *See Id.*, at 441-42 (emphasis added):

It would be a narrow rule to hold that in this country, unless a river was capable of being navigated by steam or sail vessels, it could not be treated as a public highway. The capability of use by the public for purposes of transportation and commerce affords the true criterion of the navigability of a river, rather than the extent and manner of that use. If it be capable in its natural state of being used for purposes of commerce, **no matter in what mode the commerce may be conducted**, it is navigable in fact, and becomes in law a public river or highway. **Vessels of any kind that can float upon the water, whether propelled by animal power, by the wind, or by the agency of steam, are, or may become, the mode by which a vast commerce can be conducted, and it would be a mischievous rule that would exclude either in determining the navigability of a river.**

The Supreme Court reaffirmed that rule, decades later in *United States v. Holt State Bank*, 2070 U.S. 49, 56 (1926) (emphasis added):

[N]avigability does not depend on the particular mode in which such use is or may be had – whether by steamboats, sailing vessels or flatboats - nor on the absence of occasional difficulties in navigation, but on fact, if it be fact, that the stream, in its natural and ordinary condition affords a channel for useful commerce.

**Second**, there is no legal requirement that vessels *presently* navigating the waterways must be engaged in “commercial shipping.” In fact, the test does not require an actual showing of current commercial activity at it all. Instead, it only requires a showing of *susceptibility/captability* to conduct commerce. This is a critical distinction.

In *Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs*, 709 F. 3d 1055 (11th Cir. 2013), the Eleventh Circuit held that the Flint River and Spring Creek in rural Georgia were navigable waterways, subject to the Court’s admiralty jurisdiction. Even though “currently, there is no commercial activity on these waterways,” they are “capable of supporting commercial activity.” *Aqua Log*, at 1057 – 1062. On remand, the district court held that that “the fact that boats or ships were not used to transport goods for commercial sale” on these waterways “is of no import” for purposes of establishing admiralty jurisdiction. *See Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs*, 2015 WL 1456141 \*5 (M.D. Ga. 2015).

In *Price v. Price*, 929 F. 2d 131 (4th Cir. 1991), the Fourth Circuit held that a lake was a navigable waterway, despite the fact that it was currently being used almost exclusively for recreational purposes. *See Id.* at 134: “The parties have pointed to one professional fishing guide who makes his living chartering boats and services on the lake. All other commercial activity supports the recreational use.” The Fourth Circuit reversed the district court’s “finding that the Kerr Reservoir was not navigable,” because it had incorrectly “directed its focus solely on whether the Kerr reservoir was ‘currently being used’ for commercial navigation.” *Id.* at 135. Rejecting the district’s court’s test, and quoting the Supreme Court in *The Montelo*, the Fourth Circuit held:

... Evidence that a body of water is currently being used for commercial navigation may support the conclusion that *it is* navigable. However, **merely because a body of water is not currently being used for commercial navigation does not require the opposite conclusion that it is not navigable.** Even in the ordinary meaning of the word, navigable is significantly broader and encompasses the notion that a body of water is capable of being navigated.

... Although the Kerr Reservoir may not currently be used for commercial navigation, **because it is capable of being used for purposes of transportation and commerce by customary modes of trade and travel on water, it is a navigable waterway for purposes of determining admiralty jurisdiction.**

*Id.* (emphasis added). Notably in *Price*, the party arguing against admiralty jurisdiction, “contend[ed] that admiralty jurisdiction should be limited ‘to those bodies of water where genuine commercial activity occurs.’” Here, Miami-Dade County appears to be making the same argument. The Fourth Circuit rejected this narrow understanding and pointed out the devastating consequences that would occur if this interpretation held sway. *See Price* at 133:

The Law of Admiralty developed to accommodate problems of commercial shipping on the high seas and navigable waters to provide uniform codes of conduct. Because

of the potential adverse effect on the law of admiralty that might be caused by a different set of rules for pleasure craft, and indeed the direct disruptive impact on maritime activity itself by having noncommercial craft operate under rules different from those governing commercial craft, all activities on navigable waters that might have a significant relationship to traditional maritime activity are subject to the jurisdiction of the admiralty courts.

In reaching this conclusion, the Fourth Circuit reasoned that “[r]ules governing conduct on navigable waters cannot remain uniform or have any certainty, if their applicability is dependent on whether, on any given day, commercial maritime activity is being conducted on the waters. The resolution of every routine dispute would be burdened by the impracticable requirement of surveying the body of water before the threshold issue of jurisdiction could be determined.” *Id.* at 134. As such, the Court reiterated the correct test for navigability established under *The Daniel Ball*:

Thus, the test for navigability is based on a broader and more stable factor than whether the body of water is currently being used for commercial navigation. It must include a consideration of whether the body of water is *capable* of bearing commercial navigation.

The United States Supreme Court emphasized the same point in *Foremost Ins. Co. v. Richardson*, 457 U.S. 668, 674 (1982) (“We also agree that there is no requirement that ‘the maritime activity be an exclusively commercial one’). *See also* *Id.* at 674 (emphasis in originals):

Although the primary focus of admiralty jurisdiction is unquestionably the protection of maritime commerce, petitioners take too narrow a view of the federal interest sought to be protected. The federal interest in protecting maritime commerce cannot be adequately served if admiralty jurisdiction is restricted to those individuals *actually* engaged in commercial maritime activity. This interest can be fully vindicated only if *all* operators of vessels on navigable waters are subject to uniform rules of conduct.

Any other interpretation would have disastrous consequences on rivers and lakes across the United States. *See Id.* at 675: “The failure to recognize the breadth of this federal interest ignores the potential effect of noncommercial maritime activity on maritime commerce. For example, if these two boats collided at the mouth of the St. Lawrence Seaway, there would be a substantial effect on maritime commerce, without regard to whether either boat was conducting, or had had been previously engaged in commercial activity.”

**H. The U.S. Environmental Protection Agency (EPA), has declared the Tamiami Canal a “navigable waterway of the United States.” Moreover, the Miami-Dade Expressway Authority, has described the Tamiami Canal “an important transportation corridor.”**

Although a government entity's determination on "navigability" is not determinative of the Court's admiralty jurisdiction, it is from an evidentiary standpoint, significant, and the Court should find it relevant (as a factor) to its jurisdictional inquiry. *Smith v. The Abandoned Vessel*, 610 F. Supp. 2d 739, 751 (S.D. Tx. 2009), citing *Sanders v. Placid*, 861 F. 2d 1374, 1378 (5th Cir. 1988).

**U.S. Environmental Protection Agency (EPA).** Exhibit "5" is an excerpt of an EPA 'Consent and Final Order,' involving the EPA's prosecution of a company who was accused of discharging oil and pollutants on the Tamiami Canal. Notably, on paragraph 6 of the description of the alleged violation, the EPA states: "6. **The Tamiami Canal, which flows into the Atlantic Ocean is a "navigable water of the United States," as defined in Section 502(7) of the Act**, 33 U.S.C. 1362(7), and 40 C.F.R. 110.1, and is subject to the jurisdiction of Section 311 of the Act."

Accordingly, as Exhibit "5" shows, Congress has given the EPA *federal power* to prosecute entities polluting certain waterways in the United States. The EPA was exercised that power and declared that the Tamiami Canal (the waterway at issue in this case) is in fact a "navigable water of the United States." *See Consolidated Hydro, Inc. v. F.E.R.C.*, 968 F. 2d 1258 (D.C. Cir. 1992) ("once found to be navigable, a waterway remains so.").

**The Miami-Dade Expressway Authority.** Exhibit "6" is a Cultural Resource Assessment Survey Report, regarding improvements on the SR 836 Dolphin Expressway. The report, authored by the Miami-Dade Expressway Authority, provides a lengthy description of the Tamiami Canal. At page 119, the report states (emphasis added):

[T]he Tamiami Canal is significant under Criterion C due to its importance as an extraordinary engineering structure that is inextricably linked to the construction and development of the Tamiami Trail from 1916 to 1928, **and continues to remain significant in its roles as an important water management system, transportation corridor** and recreational facility.

### III. CONCLUSION

Miami-Dade County's Motion should be denied. This Court has admiralty subject matter jurisdiction over this matter. Coral Park Canal and the Tamiami Canal are navigable waterways of the United States, continuously flowing through the Miami River to the Atlantic Ocean. Historically these canals have been (and currently are susceptible to be) used, in their ordinary condition, as highways of interstate commerce.



**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY**, that on May 7, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record pro se parties identified on the attached service list in the manner specified, 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.

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