

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 1:12-CV-20477-DIMITROULEAS/SNOW

FRANCES FELICIA,

Plaintiff,

vs.

CELEBRITY CRUISES, INC.,

Defendant.

**DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO
COMPEL BETTER RESPONSES TO REQUEST FOR PRODUCTION
RE: INJURY INVESTIGATION POLICIES AND PROCEDURES**

The Defendant, CELEBRITY CRUISES, INC., by and through its undersigned counsel and pursuant to the Federal Rules of Civil Procedure, hereby files its Response in Opposition to Plaintiff's Motion to Compel Better Responses to Request for Production Re: Injury Investigation Policies and Procedures, stating as follows:

1. This matter involves a personal injury action in which Plaintiff, FRANCES FELICIA, claims to have sustained certain personal injuries while a passenger aboard *Celebrity Century* on April 25, 2011. Plaintiff claims that she slipped and fell in the starboard side aft portion of the Island Café on the last morning of the cruise. She claims that the floor was wet at the time of the incident, which caused her fall.

2. Plaintiff contends in her Motion to Compel Better Responses to Request for Production Re: Injury Investigation Policies and Procedures [DE 49], that the subject requests were propounded in order to determine the nature of the Defendant's efforts at investigating passenger injury incidents. (Plaintiff's Motion, p. 2.) As further rationale for propounding these requests, Plaintiff asserts that Defendant initially indicated in its responses to initial discovery

that a photograph of the area where Plaintiff's incident took place was taken as part of its investigation of the incident, but later advised Plaintiff that said photograph did not exist. (Plaintiff's Motion, p. 2.) Further, Plaintiff alleges Defendant failed to indicate whether any videotaped imaging of the incident exists. (Plaintiff's Motion, p. 2.)

3. However, both the basis for Plaintiff's request for production and her recitation of the pertinent facts involved are flawed.

4. First, as set forth in Defendant's objections, Defendant's investigation policies and investigation into Plaintiff's incident are irrelevant to the ultimate issues in the case, that is, whether Defendant exercised reasonable care under the circumstances and whether Defendant was on notice of the alleged dangerous condition for a sufficient interval of time to invite corrective action. *See, e.g., Doe v. Celebrity Cruises*, 145 F. Supp. 2d 1337, 1346 (S.D. Fla. 2001) (striking allegations pertaining to the defendant's alleged substandard investigation); *York v. Commodore Cruise Line, Ltd.*, 863 F. Supp. 159, 164 (S.D. N.Y. 1994) (finding no breach of the shipowner's duty of care in allegedly failing to properly investigate incident after it occurred); *Jaffess v. Home Lines, Inc.*, 1988 U.S. Dist. LEXIS 3481 (S.D.N.Y. 1988) (same).

5. Accordingly, Plaintiff's requests for investigation policies are not reasonably calculated to lead to the discovery of admissible evidence and are tantamount to a fishing expedition.

6. Additionally, although Plaintiff's Complaint contains not a single allegation with regard to the medical care Plaintiff received on the ship, Plaintiff nevertheless seeks medical manuals and policies.

7. Further, Plaintiff seeks a blank copy of Defendant's incident reporting form. This form was prepared by the company's attorneys to aid the company in anticipation of litigation.

In fact, the form is entitled “Personal Injury Illness Statement – Confidential Vessel Report Prepared in Anticipation of Litigation.” *See Alexander v. Carnival Corp.*, 238 F.R.D. 318, 318-319 (S.D. Fla. 2006) (citing *United States v. Davis*, 636 F.2d 1028, 1040 (5th Cir., Feb. 12, 1981); *Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1209 (11th Cir. 1981)). Defendant will supplement this response with an affidavit should this Court deem it necessary in ruling on Defendant’s objection.

8. Plaintiff’s requests are essentially tantamount to a fishing expedition and should not be permitted.

9. Plaintiff’s requests are also overboard in that there is no time frame provided within the request and the scope of the request is unlimited as it would apply to investigations of any and all accidents regardless of their substantial similarity to Plaintiff’s incident and regardless of when the procedures would have been in effect.

10. Plaintiff has had ample opportunity to conduct discovery on relevant issues in this matter. To wit, Defendant has produced several hundred of pages of documents in this case that relate to its installation and updating of the flooring in the area of the incident, as well as Plaintiff’s medical records from aboard the ship, her handwritten statement and the content of the statement Plaintiff made to Defendant’s Chief Safety Officer following the alleged incident. Moreover, Plaintiff has taken the deposition of the flooring manufacturer and has deposed Defendant’s Corporate Representative at length with regard to every pertinent aspect of the case. Accordingly, these discovery requests are beyond the scope of permissible discovery and are not reasonably calculated to lead to the discovery of admissible evidence.

11. Moreover, Plaintiff’s rationale for propounding the requests is equally unavailing. Although Defendant initially believed, during the early stages of discovery, that it was in

possession of a photograph of the area where the incident took place, subsequent investigation revealed that the photograph previously thought to be taken by its Chief Safety Officer and previously thought to depict the location of the incident, was in fact not taken by the Chief Safety Officer and does not depict the area of the alleged incident, or any other area within the Island Café or the *Celebrity Century*. Defendant advised Plaintiff's counsel of this fact in correspondence dated July 31, 2012, pursuant to a discovery agreement between the parties, wherein Defendant agreed to clarify whether or not the photograph actually depicted an area of the Island Café. [See Correspondence dated 7/31/12, attached hereto as **Exhibit "1"**.]

12. Defendant also amended its answers to Plaintiff's initial interrogatories to reflect that no picture or video¹ of the area of Plaintiff's accident exist. [See, Defendant's Amended Response to Interrogatories, **Exhibit "2"**.] To wit, Defendant advised Plaintiff that the photograph in question was obtained from the internet and depicts a FSC 2000 meter (a coefficient of friction meter machine). Defendant further advised that the date and photographer of the internet photograph are both unknown and that the photograph is wholly unrelated to this matter or any of the parties involved, including any employees of Defendant.

13. At no time did Defendant advise Plaintiff that "the photograph does not exist." Rather, it was not what Defendant initially thought it to be. Defendant has no photographs or video taken at the time of the incident or during its investigation aboard the ship following Plaintiff's report to ship's personnel.

14. Accordingly, the rationale underlying Plaintiff's purported need for the subject materials is flawed and based on an in has been rendered moot and, as the requests are not

¹ Defendant notes that it had previously advised Plaintiff by way of Responses to Plaintiff's Initial Request for Production that it had no video of the incident in its possession.

reasonably calculated to lead to the discovery of admissible evidence nor pertinent to any allegation in Plaintiff's Complaint, Defendant's objections should be sustained.

15. In sum, Plaintiff's requests regarding Defendant's injury investigation policies and procedures are not reasonably calculated to lead to the discovery of admissible evidence, nor are they related to any of the ultimate facts or requirements of proof to be decided by the trier of fact in this matter.

16. Each of Plaintiff's requests fall outside the scope of permissible discovery as defined in Rule 26(b) of the Federal Rules of Civil Procedure, which limits discovery to non-privileged material that is relevant to a party's claim or defense. To be relevant, Rule 26(b) provides that the discovery requested must be reasonably calculated to lead to the discovery of admissible evidence. Rule 401 of the Federal Rules of Evidence further provides that, to be relevant, evidence must have a tendency to make a fact that is of consequence in determining the action, more or less probable than it would be without the evidence.

17. Plaintiff's requests are not relevant to the operative allegations within Plaintiff's Complaint wherein Plaintiff alleges an unreasonably dangerous condition existed in the Island Café' which caused her to slip and fall and sustain injuries and that Defendant failed to warn her of the alleged dangerous condition.

18. For the reasons set forth herein, Defendant's objections to Plaintiff's requests regarding injury investigation policies and procedures should be sustained in their entirety.

WHEREFORE, the Defendant, CELEBRITY CRUISES, INC., respectfully seeks entry of an order denying Plaintiff's Motion for the reasons set forth herein.

Dated: October 15, 2012

Respectfully submitted,

/s/ Abigail Lewis-Fishkin
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on October 15, 2012, we electronically filed the foregoing document with the Clerk of the Court using CM/ECF. We also certify that the foregoing document is being served this day on all counsel of record or 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 received electronically Notices of Electronic Filing.

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