

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 09-23411-CIV-UNGARO/SIMONTON**

**SEVEN SEAS CRUISES S. DE R. L.,  
f/k/a CLASSIC CRUISE HOLDINGS, S. DE  
R.L., LLC, d/b/a REGENT SEVEN SEAS  
CRUISES, INC., *et al.*,**

**Plaintiffs,**

**v.**

**V.SHIPS LEISURE SAM, *et al.*,  
Defendants.**

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**PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF  
REPORT OF KELLEY GORDON AND REQUEST FOR AN EXPEDITED RULING**

Plaintiffs SEVEN SEAS CRUISES S. DE R. L., f/k/a CLASSIC CRUISE HOLDINGS, S. DE R.L., LLC, d/b/a REGENT SEVEN SEAS CRUISES, INC., PRESTIGE CRUISE HOLDINGS, LTD., CELTIC PACIFIC (UK) LTD., CELTIC PACIFIC TWO (UK), LTD., SUPPLYSTILL LIMITED., and RADISSON SEVEN SEAS FRANCE SNC (“Plaintiffs”), moves to compel defendants V.SHIPS LEISURE SAM (“VSL”) and V.SHIPS LEISURE UK, LTD. (“VSLUK” and together with VSL, “Defendants”) to produce a certain key document relied upon by Defendants’ witness during a deposition, and as grounds therefore states as follows:

1. In their Second Supplemental Rule 26 Disclosures, Defendants listed Kelly Gordon, Safety Manager of VSL, as one of the individuals likely to have discoverable information and potentially necessary to their defenses. Specifically, the disclosure provided that “Mr. Gordon may have information relevant to allegations of environmental violation onboard the [M/V Seven Seas] Navigator.”

2. On November 3, 2010, the plaintiffs deposed Andrea Zito, the Chief Operating Officer of VLSL.<sup>1</sup> At his deposition, Mr. Zito testified about the existence of a report authored by Mr. Gordon relating to the “environmental situation” on the Navigator and referring to the actions of Aldo Casillo, formerly the Chief Engineer of the Navigator (the “Gordon Report”). Mr. Zito testified about the Gordon Report on his own volition, without prompting by counsel for the plaintiffs, and without any objection asserted by his own counsel. Notably, Mr. Zito testified about the actual contents of the Gordon report, the fact that it is twenty (20) pages in length, and the manner by which it was prepared. He also testified that the report was prepared by Mr. Gordon at the behest of Defendants’ management.

3. At the close of Mr. Zito’s deposition, counsel for the plaintiffs discussed the Gordon Report with counsel for Defendants and advised that the plaintiffs had never seen the report. Counsel for Defendants stated that he believed the report had in fact been produced in discovery, to which plaintiffs’ counsel replied that it was not. Defendants’ counsel stated that he would make certain that the Gordon Report was produced shortly thereafter.

4. On November 8, 2010, counsel for the plaintiffs wrote to counsel for Defendants asking that the Gordon Report be immediately produced or that a reference to bates numbers be provided if already produced. Counsel for Defendants failed to respond to this request.

5. On November 10, 2010, counsel for the plaintiffs again wrote to counsel for Defendants inquiring about the Gordon Report. The plaintiffs advised Defendants’ counsel that they would be prejudiced by not having the Gordon Report prior to the deposition of Carlo Paiella, Technical Director and Superintendent, Celtic Pacific, UK Ltd., scheduled to take place on November 11, 2010.

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<sup>1</sup> The deposition transcript, from Monaco, has not yet been received by the plaintiffs.

6. That same day, counsel for Defendants responded that the Gordon Report “is protected as work product from a consulting expert on *another* matter,” that “[i]t has nothing to do with this case and was not procured for this case,” and thus that “[i]t will therefore not be produced.”

7. Though not identified on VSLS’s privilege log dated October 1, 2010, the Gordon Report, according to Defendants’ counsel, “has nothing to do with this case” and is somehow protected by the work product doctrine.

8. To the extent that the Gordon Report is protected by the work product doctrine—which the plaintiffs vigorously contest—the Gordon Report is still discoverable by plaintiffs in that it constitutes fact work product rather than opinion work product. The document was not prepared by counsel or at counsel’s behest and thus any privilege that may apply is a qualified privilege and is overcome by the plaintiffs’ showing of good cause and substantial need. Fed. R. Civ. P. 26(b)(3); 2 Fed. Ev. § 204 (2003).

WHEREFORE, Plaintiffs move this Court to enter an order on an expedited basis compelling Defendants to produce the Gordon Report on or before November 12, 2010, the deadline to respond to discovery requests and produce documentation.

Dated: November 11, 2010

Respectfully submitted,

/s/ Daniel A. Casey

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### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that I electronically filed the foregoing with the Clerk of the Court this 11th day of November, 2010 by using the CM/ECF system, which will send a notice of electronic filing to the following:

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