

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 19-CV-25100-DLG

ALAN WIEGAND, et al.,

Plaintiffs,

v.

ROYAL CARIBBEAN CRUISES LTD.,

Defendant.

**PLAINTIFFS' MOTION TO COMPEL DEFENDANT TO
PRODUCE ALL VIDEO FOOTAGE AND UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE RESPONSE TO DEFENDANT'S
MOTION TO DISMISS UPON PRODUCTION OF VIDEO FOOTAGE**

The Plaintiffs, ALAN WIEGAND and KIMBERLY SCHULTZ-WIEGAND, individually and as personal representatives of the Estate of Chloe Wiegand, by and through undersigned counsel, hereby respectfully request this Honorable Court to compel Defendant, ROYAL CARIBBEAN CRUISES LTD. ("Royal Caribbean"), to produce all video footage from all of the cameras at or around the area and time of the subject incident in light of Royal Caribbean's reference and reliance on the video footage in its Motion to Dismiss [D.E. 7]. The Plaintiffs also respectfully request, *unopposed*, an extension of time to file their response in opposition to Royal Caribbean's Motion to Dismiss [D.E. 7] upon 14 days from the date Royal Caribbean produces all video footage. In support thereof, Plaintiffs state as follows:

Introduction

The instant matter arises out of the death of 18-month-old Chloe Wiegand after she fell down approximately 150 feet through an open glass pane aboard Royal Caribbean's vessel. The incident occurred on July 7, 2019. Two days after the incident, on July 9, 2019, Plaintiffs' counsel

sent Royal Caribbean a letter advising Royal Caribbean of the claim and demanding that Royal Caribbean preserve any and all evidence related to the incident, including: “Any and all video depicting the incident; and [a]ny and all video depicting the area of the incident for 12 hours prior to the incident.” (A copy of the letter is attached as Exhibit 1.)

On December 11, 2019, Plaintiffs initiated this matter against Royal Caribbean. [D.E. 1]. As summarized in the Complaint [*id.* at ¶¶11-20], shortly after boarding the vessel, Chloe was being supervised by her grandfather, Salvatore Anello (at times “Sam” or “Mr. Anello”), in the kids’ water park aboard the vessel (i.e., the H2O Zone). Chloe walked over to a nearby wall of glass (comprised of many adjacent columns of three panels of glass, floor to ceiling, with a wooden rail between the middle and bottom rows) and was followed by Sam. Sam was unaware that the middle panel of glass on every other column could slide and remain open, as windows. The column of glass that Chloe went to, in fact, had its middle panel of glass slid completely open, unbeknownst to Sam. Sam lifted Chloe up and stood her on the wooden rail to enable her to lean forward and bang on the glass he thought was directly in front of Chloe, which is an activity that she often did while at her older brother’s hockey games. Tragically, however, as Chloe leaned forward, she fell out the open window and down approximately 150 feet below onto the Pier in San Juan, resulting in her death. The Complaint alleges that there are numerous existing codes, standards, guidelines, and recommendations designed to prevent young children from falling through open windows, which were not followed by Royal Caribbean. [*Id.* at ¶¶23-33].

On January 8, 2020, Royal Caribbean filed a Motion to Dismiss, wherein over five pages are dedicated to (inaccurately) describing the contents of the video footage depicting the incident. [D.E. 7, pp. 1-7]. Specifically, Royal Caribbean claims “[w]hen [Mr. Anello] arrives at the open window, and while Chloe is on the floor, Mr. Anello leans his upper-torso over the wooden railing and out of the window frame for approximately eight seconds[.] Because Mr. Anello had himself leaned out the window, he was well aware that the window was open.... The only reasonable

conclusion from the video is that Mr. Anello knew the window was open before picking up Chloe.” [D.E. 7, pp. 4-6, ¶¶2-3, 7] (emphasis added). In short, Royal Caribbean makes these bold statements as if they are facts, when in reality, they are far from it. They are actually just Royal Caribbean’s arguments based on only two videos from only two cameras, and they are arguments that are easily disproven.

To that end, Plaintiffs conducted a vessel inspection on January 10, 2020, wherein Plaintiffs identified at least thirteen cameras at or near the area of the incident. Royal Caribbean’s purported facts are, again, based only two cameras showing a distorted view and deceptive angle, which begs the question: what do the rest of the cameras show? This question is imperative considering that in reenacting the incident, Plaintiffs’ counsel (who is nearly identical in height and torso to Sam Anello) could not lean “out of the window frame” due to the distance between the railing and the window frame. In fact, it was physically impossible for Sam to have had his head out of the window frame with his feet on the deck, as demonstrated in the photos below.



This photo was taken directly under the CCTV camera and shows the perspective of the video submitted by Royal Caribbean.



This photo was taken in the same location, but two steps to the right of the CCTV camera.



As evidenced above, Plaintiffs' counsel, who, again, is the same height as Mr. Anello, could not even reach the window when he was leaning on the railing, let alone be "out of the window frame," as Royal Caribbean falsely claims. In fact, in order to even touch the window with the very top of his head, Plaintiffs' counsel's feet had to be seven inches off the ground, which is depicted on the top right photo above. But again, Royal Caribbean is claiming Mr. Anello was beyond touching the window; Royal Caribbean is claiming Mr. Anello was "out of the window frame." [D.E. 7, pp. 4-6]. Yet, as Plaintiffs' counsel demonstrates, it is physically impossible for Royal Caribbean's argument to be true.

It is therefore quite ironic that Royal Caribbean chastises Plaintiffs' counsel for allegedly making "false and inaccurate accusations" through the press [D.E. 7, p. 1], when Royal Caribbean has been demonstrably false, inaccurate, and deceptive to this Court in describing the video footage of the incident.

Notwithstanding Royal Caribbean's blatant misrepresentations, its assertions should not be taken lightly, as they are the crux of this case and Royal Caribbean's motion. Indeed, Royal Caribbean's entire defense in this case rests on its deceptive misrepresentations of what the surveillance footage shows. As Royal Caribbean itself states: "this is a case about an adult man, Chloe's step grandfather who, *as surveillance footage unquestionably confirms*: (1) walked up to a window *he was aware was open*; (2) leaned his upper body *out the window* for several seconds;... and (4) then held [Chloe] by and *out of the open window* for thirty four seconds before he lost his grip and dropped Chloe out of the window." [D.E. 7, pp. 1-2] (emphasis added). None of these statements are possible, as demonstrated in the photos above! Nevertheless, Royal Caribbean's Motion to Dismiss is premised on these false allegations and reliance on two deceptive camera angles selected from at least thirteen CCTV video cameras in the area.

Therefore, Plaintiffs respectfully move to compel Royal Caribbean to produce all video footage from all of the cameras at or around the area and time of the incident. (The cameras

identified during Plaintiffs' vessel inspection are attached as Exhibit 2.) The Plaintiffs also move for an extension of time to file their response in opposition to the Motion to Dismiss upon 14 days from the date Royal Caribbean produces all video footage.

Motion to Compel All Video Footage

Pursuant to Federal Rule of Civil Procedure 26, "a party must, without awaiting a discovery request, provide to the other parties... a copy... of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses[.]" Fed. R. Civ. P. 26(a)(1)(A)(ii). Rule 26(e) adds that "[a] party who has made a disclosure under Rule 26(a)... must supplement or correct its disclosure... in a timely manner if the party learns that in some material respect the disclosure... is incomplete or incorrect...." Fed. R. Civ. P. 26(e).

Further, the Advisory Committee Note to Rule 26 emphasizes the breadth of the disclosure obligation. As it explains, the Rule mandates:

... identification of witnesses and documents that the disclosing party may use to support its claims or defenses. "Use" includes any use at a pretrial conference, to support a motion, or at trial. The disclosure obligation is also triggered by intended use in discovery, apart from use to respond to a discovery request.... The disclosure obligation attaches both to witnesses and documents a party intends to use and also to witnesses and to documents the party intends to use if... the need arises.

Fed. R. Civ. P. 26(a) Advisory Committee's Note to 2000 Amendment (internal quotation marks omitted).

As to timing, the Rule goes on to provide that "[a] party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference **unless a different time is set by stipulation or court order.**" Fed. R. Civ. P. 26(a)(1)(C) (emphasis added).

Herein, there is no question that Royal Caribbean will be using the video footage, as it has already started using it in its Motion to Dismiss. There is also no question that Royal Caribbean must provide the "complete" footage, as that is what Rule 26 mandates and it is only equitable.

Further to that point, “[a] district court has broad discretion under Rule 26 of the Federal Rules of Civil Procedure to compel or deny discovery,” *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1306 (11th Cir.2011), and “[t]he Federal Rules of Civil Procedure strongly favor full discovery whenever possible.” *Farnsworth v. Procter & Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir.1985).

Accordingly, Plaintiffs respectfully request that this Honorable Court compel production of all footage from all of the cameras at or around the area and time of the subject incident, consistent with the list contained in Exhibit 2.

Motion for Extension of Time

The Plaintiffs also respectfully request, *unopposed*, an extension of time to file their response in opposition to Royal Caribbean’s Motion to Dismiss. Specifically, Plaintiffs’ request an extension of 14 days from the date Royal Caribbean produces all of the footage.

This Honorable Court enjoys broad discretion in managing their cases. *Chrysler Intern. Corp. v. Chemaly*, 280 F.3d 1358, 1360 (11th Cir. 2002) (citing *Johnson v. Bd. of Regents of Univ. of Georgia*, 263 F.3d 1234, 1269 (11th Cir.2001) (“[W]e accord district courts broad discretion over the management of pre-trial activities, including discovery and scheduling.”)).

Herein, there is good cause for the requested extension, as Plaintiffs should have the benefit of all the video footage in order to meaningfully respond to the assertions Royal Caribbean makes regarding such footage in its motion. This is especially the case when, as demonstrated by the material gathered from Plaintiffs’ vessel inspection, there is reason to believe that other cameras captured footage that directly refutes Royal Caribbean’s version of the so-called “unquestionabl[e]” facts, as Royal Caribbean represented to this Honorable Court in its motion. [D.E. 7, pp. 1-2].

WHEREFORE, based on the foregoing, Plaintiffs respectfully request this Honorable Court grant the instant motion in its entirety, as well as any further relief this Court deems just and proper.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Undersigned counsel hereby certifies that they have conferred with counsel for Royal Caribbean regarding this motion, and they were unable to resolve the issues raised herein. Whereas Plaintiffs seek all footage from all of the cameras in the area (consistent with their request for Royal Caribbean to preserve such footage), Royal Caribbean only agrees to provide Plaintiffs with any additional footage, to the extent it exists. As to Plaintiffs' request for an extension of time to respond to their motion, Royal Caribbean does not object to the requested extension.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 17, 2020, 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 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 electronically receive Notices of Electronic Filing.

By: /s/ Michael A. Winkleman
MICHAEL A. WINKLEMAN

SERVICE LIST

Wiegand v. Royal Caribbean Cruises Ltd.
Case No. 19-cv-25100-DLG

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July 9, 2019

VIA EMAIL AND MAIL (phehir@rccl.com)

Paul Hehir, Esq.
Royal Caribbean Cruises, Ltd.
1080 Caribbean Way
Miami, FL 33132

RE: Passenger: Chloe Rae Margaret Wiegand
DOI: July 7, 2018
Vessel: Freedom of the Seas

Dear Mr. Hehir:

Our firm represents Alan and Kimberly Wiegand, the parents of 18 month old Chloe Rae Margaret Wiegand, who died of injuries as a result of a fall from deck 11 on the Freedom of the Seas on July 7, 2019 while it was docked in San Juan, Puerto Rico.

Demand is made for the preservation of any and all evidence related to the incident; including but not limited to:

1. Any and all video depicting the incident;
2. Any and all video depicting the area of the incident for 12 hours prior to the incident;
3. Any and all logs and records concerning the subject window;
4. Any and all policies and procedures concerning the windows on Deck 11 of the Freedom of the Seas; and
5. Any and all records of onboard investigations (including identification of witnesses and statements taken) concerning the subject incident.

In order to investigate the subject incident, request is made for you to provide the undersigned with a complete copy of (or access to) any documents and/or video that is in your possession, custody, or control which would be responsive to any of the foregoing. Further, request is made for access to potential witnesses, including crew members who were either eyewitnesses or had any involvement with the onboard investigation.

Thank you for your immediate attention to this matter. Should you have any questions, please do not hesitate to contact me. I look forward to your prompt response.

Very truly yours,

/s/ Jason R. Margulies

JASON R. MARGULIES

For the Firm

CCTV CAMERAS IN AREA



353



353



353



BRIDGE
WING
CAMERA



346



NO
NUMBER



???



004

353



339

NO
NUMBER









UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 19-CV-25100-DLG

ALAN WIEGAND, et al.,

Plaintiffs,

v.

ROYAL CARIBBEAN CRUISES LTD.,

Defendant.

**ORDER ON PLAINTIFFS' MOTION TO COMPEL DEFENDANT TO
PRODUCE ALL VIDEO FOOTAGE AND UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE RESPONSE TO DEFENDANT'S
MOTION TO DISMISS UPON PRODUCTION OF VIDEO FOOTAGE**

THIS CAUSE is before the Court upon the Plaintiffs' Motion to Compel Defendant to Produce all Video Footage and *Unopposed* Motion for Extension of Time to File Response to Defendant's Motion to Dismiss upon Production of Video Footage. Having reviewed the file, and being otherwise duly advised in the premises, it is hereby

ORDERED AND ADJUDGED that the Plaintiffs' motion is **GRANTED**, as follows:

1. Defendant shall produce all footage from all of the cameras at or around the area and time of the subject incident, consistent with the list contained in Exhibit 2 to Plaintiffs' motion, by this date _____; and
2. Plaintiffs shall file their response to Defendant's Motion to Dismiss [D.E. 7] within 14 days from the date Defendant produces all of the footage.

DONE AND ORDERED in chambers in Miami, Florida, on this ____ day of _____, 2020.

Honorable Donald L. Graham
Senior United States District Judge

Copies furnished to:
All counsel of record