

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 19-24766-Civ-WILLIAMS/TORRES

JANE DOE,

Plaintiff,

v.

CARNIVAL CORPORATION
d/b/a CARNIVAL CRUISE LINE,

Defendant.

**ORDER ON
MOTIONS FOR SANCTIONS**

This matter is before the Court on pending pre- and post-trial motions for sanctions filed by Plaintiff Jane Doe. [D.E. 53, 91, 337]. Defendant, Carnival Corporation d/b/a Carnival Cruise Line (“Carnival”), responded to the motions. [D.E. 60, 61, 77, 80, 113, 350]. Doe replied. [D.E. 118, 351]. Upon initial review of the motions, the Court determined that fact issues precluded adjudication solely on the briefing and supporting materials filed by the parties. The Court thus held an evidentiary hearing on December 11, 2023. The Court then Ordered the parties to file supplemental memoranda following the hearing, which they timely submitted. [D.E. 375, 383, 389]. The Motions are thus ripe for disposition. After careful consideration of the Motions, Responses, Replies, relevant authority, and for the reasons discussed below, Doe’s Motions are due to be Granted in part.

I. BACKGROUND

This is a heavily-litigated personal injury case arising out of a sexual assault that occurred onboard the Carnival *Miracle* in the early hours of December 2, 2018. Carnival crewmember Fredy Anggara sexually assaulted her in a storage closet. The Defendant maintained that she had not been forcibly assaulted and, rather, engaged in a voluntary sexual encounter with Anggara while she was inebriated. The case went to trial and the jury found in favor of Carnival on the negligence claim but nevertheless strictly liable for the tortious actions of its employee. The verdict awarded Plaintiff \$10,243,000.00 in total damages.

Relevant to the pending motions, the lengthy procedural history of the case included disposition of Doe's motion for partial summary judgment [D.E. 92] on her false imprisonment claim. On June 25, 2021, the Undersigned issued a Report and Recommendation finding that no issue of fact existed in the record to rebut Doe's sworn assertion that Anggara held Doe against her will inside the storage closet. The Court thus recommended that Doe's motion for summary judgment be granted on her false imprisonment claim. [D.E. 151 at 5–6]. There was no admissible sworn testimony available from Anggara himself and the Court held it could not use inadmissible hearsay from FBI investigative reports to defeat summary judgment when that hearsay could not be reduced to an admissible form at trial. *Id.* at 6. Anggara's statements to the FBI were similarly rejected as hearsay-within-hearsay. *Id.* at 8. Therefore, the Court was "left with nothing tangible to find a genuine issues of fact." *Id.* at 10.

Carnival objected [D.E. 153] to the Report and Recommendation, arguing that it was not solely relying on the FBI Reports, but also on Doe's own recollection of the events, which was contradictory. *Id.* at 2. Part of Carnival's opposition to summary judgment and basis for objection was the investigating FBI agent's conclusion that the sexual encounter was consensual. Nevertheless the District Judge overruled Carnival's objections and affirmed and adopted the Report and Recommendation. [D.E. 197]. She then denied Carnival's motion for reconsideration that simply reargued the point. [D.E. 249].

Despite adamantly objecting to FBI evidence as hearsay prior to trial, Doe turned around and agreed to admit the FBI Notes into evidence through a joint exhibit [J.E. 26] admitted at trial. Not surprisingly, the FBI Notes then became a focal point of the Defendant's case, including the basis for a motion for reconsideration of the partial summary judgment order, but that was denied. The case proceeded to trial only on the direct and vicarious negligence claims and the jury reached its verdict on those claims.

Carnival filed post-trial motions, including a motion for new trial and a motion for remittitur. The Court denied the motion for new trial and motion for remittitur. [D.E. 360]. Plaintiff's motion for judgment, however, remains pending and no final judgment has yet been entered.

In the meantime, briefing and evidence with respect to the motions for sanctions have been submitted and this Order addresses those pending matters.

II. APPLICABLE STANDARDS

A. Inherent Power Sanctions

Federal courts possess an “inherent power,” not conferred by rule or statute, “to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Link v. Wabash R. Co.*, 370 U.S. 626, 630-631 (1962). That authority includes the ability to fashion an appropriate sanction for conduct that abuses the judicial process. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991). “The key to unlocking a court’s inherent power is a finding of bad faith.” *Barnes v. Dalton*, 158 F.3d 1212, 1214 (11th Cir. 1998).

One permissible sanction is an assessment of attorneys’ fees – an order instructing a party who has acted in bad faith to reimburse legal fees and costs incurred by the other side. *See Chambers*, 501 U.S. at 45. Such a sanction, when imposed pursuant to civil procedures, must be compensatory rather than punitive in nature. *See Mine Workers v. Bagwell*, 512 U.S. 821, 826-830 (1994) (distinguishing compensatory from punitive sanctions and specifying the procedures needed to impose each kind). In other words, the fee award may go no further than to redress the wronged party “for losses sustained”; it may not impose an additional amount as punishment for the sanctioned party’s misbehavior. *See id.* at 829 (*quoting United States v. Mine Workers*, 330 U.S. 258, 304 (1947)). The necessary causal connection is appropriately framed as a but-for test: the complaining party may therefore recover

only that portion of its fees that it would not have paid but for the misconduct. *See Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1187 (2017).

B. Vexatious Litigation Sanctions Under Section 1927

A federal court also has a statutory basis to impose sanctions for bad faith and vexatious conduct by counsel. The Court's authority to issue sanctions under 28 U.S.C. § 1927 is at least as broad as a court's authority to issue sanctions under its inherent powers. *See Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1178 n. 6 (11th Cir. 2005). Specifically, section 1927 provides that unreasonable or vexatious conduct may be sanctionable in certain circumstances:

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. § 1927.

There are three essential requirements for an award of sanctions under Section 1927:

First, the attorney must engage in unreasonable and vexatious conduct. Second, that unreasonable and vexatious conduct must be conduct that multiplies the proceedings. Finally, the dollar amount of the sanction must bear a financial nexus to the excess proceedings, *i.e.*, the sanction may not exceed the costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

Peterson v. BMI Refractories, 124 F.3d 1386, 1396 (11th Cir. 1997) (internal quotations omitted).

The first requirement is satisfied “only when the attorney’s conduct is so egregious that it is tantamount to bad faith.” *Hudson v. Int’l Computer Negotiations, Inc.*, 499 F.3d 1252, 1262 (11th Cir. 2007) (citation omitted). In fact, “an attorney’s conduct must be particularly egregious to warrant the imposition of sanctions” because the “attorney must knowingly or recklessly pursue a frivolous claim.” *Id.* (emphasis in original) (citation omitted). Negligent conduct, standing alone, will not suffice as “something more than a lack of merit is required.” *Id.* (citation omitted). The second requirement, relating to multiplying proceedings, is only satisfied when an attorney’s conduct “results in proceedings which would not have been conducted otherwise.” *Daniels v. Sodexo, Inc.*, 2013 WL 4008744, at *7 (M.D. Fla. Aug. 5, 2013) (citing *Peterson*, 124 F.3d at 1396). As for the final requirement, any sanction award must not be excessive in relation to the underlying misconduct. And, finally, “as an initial matter, the language of section 1927 makes clear that it only applies to unnecessary filings after the lawsuit has begun.” *Macort v. Prem, Inc.*, 208 F. App’x. 781, 786 (11th Cir. 2006) (citing *In re Matter of Yagman*, 796 F. 2d 1165, 1187 (9th Cir. 1986)).

C. Discovery Sanctions Under Rule 37

“The bandwidth of the District Court's power to impose Rule 37 sanctions is broad indeed.” *Marshall v. Segona*, 621 F.2d 763, 766 (5th Cir. 1980). That is necessary because “[a] judge's decision as to whether a party or lawyer's actions merit

imposition of sanctions is heavily dependent on the court's firsthand knowledge, experience, and observation.” *Harris v. Chapman*, 97 F.3d 499, 506 (11th Cir. 1996).

Rule 37(b) provides: “If a party or a party's officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(a)(4)—fails to obey an order to provide or permit discovery . . . the court where the action is pending may issue further just orders.” Fed. R. Civ. P. 37(b). “This rule gives district judges broad discretion to fashion appropriate sanctions for violation of discovery orders[.]” *Malautea v. Suzuki Motor Co., Ltd.*, 987 F.2d 1536, 1542 (11th Cir. 1993). “Sanctions . . . for violation of an order are only appropriate if ‘the order stated in specific and clear terms what acts were required or prohibited.’ ” *In re Se. Banking Corp.*, 204 F.3d 1322, 1332 (11th Cir. 2000) (quoting *E.E.O.C. v. Gen. Dynamics Corp.*, 999 F.2d 113, 116 (5th Cir. 1993)). But “Rule 37, on its face, does not require that a court formally issue an order compelling discovery before sanctions are authorized.” *United States v. Certain Real Prop. Located at Route 1, Bryant, Ala.*, 126 F.3d 1314, 1317 (11th Cir. 1997).

The purpose of such sanctions is “to prevent unfair prejudice to the litigants and insure the integrity of the discovery process.” *Gratton v. Great Am. Commc'ns*, 178 F.3d 1373, 1374 (11th Cir. 1999). Rule 37 sanctions “are intended to 1) compensate the court and other parties for the added expense caused by discovery abuses, 2) compel discovery, 3) deter others from engaging in similar conduct, and 4) penalize the offending party or attorney.” *Wouters v. Martin Cty.*, 9 F.3d 924, 933

(11th Cir. 1993). While the ultimate sanctions of dismissal or default require a finding of “willful or bad faith failure to obey a discovery order,” *Edward Lewis Tobinick, MD v. Novella*, 848 F.3d 935, 949 (11th Cir. 2017), lesser sanctions do not. See *Carlson v. Bosem*, 2007 WL 1841067, at *2 (11th Cir. Jun. 28, 2007); see, e.g., *Smith v. Atlanta Postal Credit Union*, 350 F. App'x 347, 350 (11th Cir. 2009) (“Rule 37 fee awards, unlike sanctions imposed pursuant to the court's inherent powers, do not require [a finding of bad faith]”); *Reddy v. Bisaria*, 2012 WL 13018360, at *3 (S.D. Fla. Feb. 10, 2012) (“A finding of bad faith is not required when the court imposes sanctions that are less than the most severe sanction of a dismissal or a default.”).

III. FINDINGS & ANALYSIS

A. Discovery Sanctions

There are essentially four separate sanctions issues pending before the Court. We will take them in chronological order. The first relates to discovery violations Carnival purportedly engaged in prior to trial. Throughout discovery in this case, the Undersigned considered and adjudicated discovery issues as they arose, most of which were resolved before trial and with finality. Certain issues, however, were raised in the pre-trial sanctions motions and deferred. Understanding that resolution of those issues would likely involve fact-finding proceedings, the Court chose to defer and incorporate the trial transcript as a predicate for the ruling. [D.E. 217 at 123–124].

Following the trial, Doe filed a supplemental sanctions motion after trial that raised similar discovery issues to the pre-trial sanctions motion. It also added new claims of discovery violations arising from the trial conduct of Carnival's counsel and the testimony of Carnival's corporate representative, Suzanne Vazquez. [D.E. 337].

Upon review of the supporting materials filed before and after trial, the Court concluded that further fact-finding was necessary in any event. Thus the Court scheduled a full-day evidentiary hearing on December 11, 2023, at which the Court heard testimony from the corporate representative, Ms. Vazquez, as well as lead counsel for Carnival, Mr. Mase.

In reviewing this matter, for context purposes these are the relevant discovery requests. After the suit was filed on November 18, 2020, Doe served her first request for production and interrogatories on January 24, 2020, shortly before the start of the pandemic. The case was stayed from March 30, 2020, to May 14, 2020, due to COVID-19 issues and the effect on the world, including the cruise lines and courts. [D.E. 32].¹

The relevant requests for production, interrogatories, and requests for admissions concern the topics of witness statements, videos, and Mr. Anggara's personnel file. Doe's relevant requests and Carnival's initial responses and supplements are as follows:

¹ Carnival requested an additional stay because of COVID-19's ongoing effect on the cruise line operations [D.E. 34]. The request was denied, and the stay was lifted on May 15, 2020. [D.E. 40].

Request for Production No. 28: Statements given by any witness with knowledge of this incident.

Response: Objection. The accident or incident report, including any statements, reports, and or photographs prepared or taken in connection with same was prepared at the direction of counsel and in anticipation of litigation and is therefore protected by the work product privilege. (*citations omitted*). See Carnival's Privilege Log.

Request for Production No. 30: Any video that captured the subject closet (inside and/or outside) of the attack beginning with two (2) hours before the incident until two (2) hours after the incident.

Response: Carnival is gathering the information needed to respond to this request and will supplement this response.

Request for Production No. 31: Any video that captured the Plaintiff beginning with two (2) hours before the incident until two (2) hours after the incident.

Response: Carnival is gathering the information needed to respond to this request and will supplement this response.

Request for Production No. 32: Photographs, slides, motion pictures, or videotapes, including any possible surveil-lance of Plaintiff taken at any time during the subject cruise which is in Defendant's possession or the possession of Defendant's agents, servants or employees.

Response: Carnival is gathering the information needed to respond to this request and will supplement this response.

Request for Production No. 56: Any and all written or recorded statements, including video statements, made by Plaintiff in reference to the subject incident or in reference to the injuries received as a result of the subject incident.

Response: Plaintiff's statement was previously produced to Plaintiff [*See* Bates CCL 20009-1 to 4].

Request for Production No. 61: The personnel file of Fredy Anggara.

Response: Objection. This request is overbroad in scope, irrelevant to Plaintiffs' claims, and is not proportional to the needs of the case. (*citations omitted*) Personnel files include personal information including copies of the crewmember's passports, licenses, medical records, and family contact information. Ultimately, this information has no bearing on the allegations of Plaintiffs' Complaint. This request is overbroad as phrased.

Request for Production No. 88: Written or recorded statements, including video statements, of the alleged assailant regarding the incident.

Response: Objection. The accident or incident report, including any statements, reports, and or photographs prepared or taken in connection with same are prepared at the direction of counsel and in anticipation of litigation. Therefore, they are protected from disclosure by the work product privilege. (*citations omitted*).
See Carnival's Privilege Log.

Request for Production No. 100: The personnel file of the alleged assailant.

Response: Objection. This request is overbroad in scope, irrelevant to Plaintiffs' claims, and is not proportional to the needs of the case. (*citations omitted*). Personnel files include personal information including copies of the crewmember's passports, licenses, medical records, and family contact information. Ultimately, this information has no bearing on the allegations of Plaintiffs' Complaint. This request is overbroad as phrased.

Interrogatory No. 3: As to all persons whose names are set forth in the answer to the preceding Interrogatory and the Plaintiff, have you, your agents, investigators or attorneys, or anyone acting on your behalf obtained statements of any kind, whether written, recorded, stenographically transcribed, oral or otherwise, from them and if so, please describe each statement and include the name, job title, employer, telephone number, and present address of each person; the type of statement which was taken (whether written, recorded, transcribed); the name of the present custodian of each statement so taken; and the date on which the statement was taken.

Answer: As part of Carnival's investigation, Carnival took witness statements from the following individuals: (1) Plaintiff, Jane Doe; (2) Amanda Powell; (3) Fredy Anggara; (4) Suarsana Imade; (5) Ahmad Zaenudin; and (6) Ariadl Nengah. These statements are part of Carnival's incident report. They were taken at the direction of counsel and in anticipation of litigation. Other than the Plaintiff's own statement, the

statements are protected from disclosure by the work product privilege. (*citations omitted*). See Carnival's Privilege Log.

Interrogatory No. 4: Identify each and every report or statement made by Defendant regarding the facts of this incident or events leading up to it, including but not limited to, reports to the United States Coast Guard; Federal Bureau of Investigation; Risk Management and/or Loss Prevention Departments; and/or hospitals or medical providers. As to each include the following: its date; the type of the report, or statement, whether written, oral, recorded, reported or otherwise; to whom it was made: the name, address and employer of the custodian of any permanent form of each statement.

Answer: An incident report and investigation report were prepared and witness statements were collected by Carnival at the direction of counsel and in anticipation of litigation. Therefore, they are protected by the work product privilege. (*citations omitted*). See Carnival's Privilege Log.

Request for Admission No. 32: Defendant preserved video showing Plaintiff from the last night of the subject cruise.

Answer: Objection. This request is ambiguous and an improper use of Rule 36 admissions. Rule 36 is to be used as a "time-saver, designed to expedite the trial and to relieve the parties of the cost of proving facts that will not be disputed at trial." (*citations omitted*). It is improper when a party uses Rule 36 to elicit admissions regarding issues that are at the crux of the dispute in the case. (*citations omitted*).

Rule 36 requests for admission are not meant to be a discovery device to inquire into generalities. Instead, the rule is “intended to weed out issues ‘which the requesting party will doubtless be able to prove.’” (*citations omitted*). In this manner, the request is outside the proper scope of discovery under Rule 26 and not authorized by Rule 36.

Request for Admission No. 45: Defendant has a video recorded statement of Plaintiff which was recorded within ten (10) hours of the subject incident.

Answer: Denied.

Request for Admission No. 47: Defendant has a video recorded statement of Plaintiff’s traveling companion Amanda which was recorded within ten (10) hours of the subject incident.

Answer: Denied.

Request for Admission No. 49: Defendant has a video recorded statement of Fredy Anggara which was recorded within ten (10) hours of the subject incident.

Answer: Denied.

1. Anggara's Missing Personnel File

Based on these requests, Carnival's responses, and the Court's Orders related to them, Doe first asserts that Carnival should be sanctioned for discovery issues concerning Mr. Anggara’s missing personnel file and the source from which Carnival ascertained Mr. Anggara’s height and weight. Carnival’s corporate representative, Ms. Vazquez, testified for the first time at trial about Mr. Anggara’s height and weight. [D.E. 337 at p. 11]. Doe, understandably, contends that Mr. Anggara’s height

and weight could have only come from his personnel file and should have been produced prior to trial.

Carnival responds that Mr. Anggara's height and weight was not previously provided because it was not requested in discovery and the database in which Carnival had Mr. Anggara's height and weight ("CPS") was not part of the personnel file. [D.E. 372 at 35:12–16].

This matter was not litigated before the trial. It only arose as a controversy after the trial when Doe claimed unfair surprise after Ms. Vasquez's testimony that logically related to a personnel file that Carnival maintained for Anggara. The evidentiary hearing, plus the relevant portions of the trial transcript, yield the following findings as to this controversy.

The critical witness on this topic, Ms. Vasquez, provided credible testimony at the hearing. Based on that credible testimony, the Court finds no bad faith violation with respect to the missing personnel file. Personnel files ordinarily contain the crew members' contracts, ship assignments, contact information, medical information, trainings, CVs, visas, and other personal information. In 2018 to 2020, crewmember personnel files were kept on the ship on which the crewmember worked. They generally travel with the crew members, but they were sent to Carnival's Miami home office during the COVID-19 pandemic once most of Carnival's ship employees were off contract and sent home. That means that for Anggara's file it would be expected to have been found in Carnival's home office after he was terminated. Ms. Vasquez

claimed, however, that Carnival attempted to search for it in 2020 for purposes of this case. The file was anticipated to be found along with the other thousands of crewmembers' files that were there, but Carnival was unable to locate Anggara's file among all the files they searched.

Ms. Vasquez, however, credibly explained that a personnel file is separate and distinct from Carnival's Crew Personnel System ("CPS"). As she originally explained in her deposition prior to trial, the CPS is the current crew personnel database that shows where different crew members are and whether they are on contract or off contract. It also includes biographical information (that would ordinarily also be maintained within a traditional personnel file) with respect to contact information, next of kin information, employment status, etc. Doe was certainly aware of the database given the number of questions asked at the deposition that focused on it. Doe asked, for instance, about Anggara's date of hire and Vasquez responded based on information yielded from the CPS. [D.E. 372 at 33:17–34:17, 132:25–133:1].

Ms. Vasquez also distinguished the CPS information from the personnel file, which she averred was the subject of a diligent search but never found. There is no record that any further information was requested as to the CPS information by name even though counsel was aware of its existence by January 2021. There is no question, however, that Doe continued to pursue her efforts at locating the personnel file itself. After receiving objections to the request for production requesting the file, Request No. 61, Doe moved to compel a better response. At the initial discovery hearing held

in the case, Carnival maintained that it did not possess the file, which also hampered Carnival's ability to produce contact information for Anggara. When challenged, Carnival's counsel stated, "I do not have a good answer for you on that. It just doesn't exist. Can't seem to be located." [D.E. 91-1 at 28-29]. No mention was made of relevant information being available on the CPS system at that time. Carnival negligently failed to point out for the Court that this type of information was in fact kept digitally in some form. Instead, counsel insisted that "that's all [they] have in the nature of a personnel file," despite being in possession of other sources of significant and relevant information. [D.E. 91-1, at 38-39]. Ultimately, the Court compelled the production of the Personnel File to be due two (2) weeks from the date of the Hearing (07-16-2020). [D.E. 91-1 at 40:10-12].

Despite being compelled to produce a personnel file for Anggara, no further production was made on the ground that the personnel file was never found. Only at trial, however, did Carnival reveal other biographical information it had about Anggara that was available to Carnival, not through a literal personnel "file" in paper form, but rather through a digital form—the CPS data.

A discovery violation thus clearly took place here because much of the information that would be deemed part of a personnel file was digitally available to Carnival. That information should have been printed out and downloaded long before the initial discovery hearing in 2020 and certainly after the Court ordered its production.

The issue that follows is what the remedy should be. Counsel's negligence is what is at issue here because counsel did not make the logical conclusion at the time that the CPS data was responsive to Request No. 61 and the Court's Order. On that score, it is hard to find that Plaintiff was seriously prejudiced because Carnival's corporate representative disclosed in January 2021 about the existence of the digital data. So, it is also clear that Doe's counsel had the ability to pursue that data before trial, which would have then revealed the missing biographical information that gave rise to this dispute. The absence of prejudice to Doe in this regard minimizes the need for heavy-handed sanctions with respect to Carnival's neglect.

Nevertheless, under Rule 37, Carnival violated the Court's Order by not producing the digital "file" in the form of the CPS data. Doe should, therefore, be awarded at minimum attorneys' fees incurred in her pursuit of the Carnival file. With respect to additional sanctions, however, the Court does not find that counsel's representations were any more than negligent. No bad faith has been shown in this regard based on the credible explanation of Carnival's corporate representative.

Therefore, only the fees incurred in the filing of the original motion for sanctions, the July and September 2021 discovery hearings, and the filing of the supplemental motion for sanctions will be awarded with respect to this discovery violation. This sanction shall be borne by Carnival for wasting the litigants and the Court's time with respect to this matter. *See, e.g., Reddy*, 2012 WL 13018360, at *3 ("while the record does not establish that Defendants acted in bad faith, it does

establish that Defendants' counsel caused delays in the discovery process and did not timely present the arguments that were available to the Defendants. Defendants' counsel's omissions multiplied the proceedings and caused the Court to resolve disputes that could have been resolved without judicial intervention.").

2. *Video Recorded Statements*

Doe next challenges the handling of Doe's request for video statements taken during the course of Carnival's investigation. For context, the record shows that use of body worn cameras to videorecord interviews or statements made during security investigations at Carnival was relatively new. Body-worn video began in 2018, at which point Carnival rolled out additional protocols for taping witness interviews using this recording equipment maintained by Carnival security personnel. Counsel for Carnival were certainly not used to the use and pursuit of body-worn video at that time. By 2020, however, the use of body-worn videos was certainly more prevalent but litigation counsel for Carnival may still have been inexperienced with respect to these types of investigative tools.

That said, Carnival was not so inexperienced. Carnival's security officials were utilizing body-worn cameras by this point and incorporating them by name in security incident reports being generated during this period. Take this case. In December 2018, Carnival required its security officials to prepare security incident reports memorializing their investigations. That report is claimed to be work product protected by Carnival policy as the reports are immediately forwarded to counsel for

Carnival. Indeed, it is part of Carnival's investigative file sent to outside counsel when retained. [D.E. 382 at 116:17–20, 117:7–8]. So at the time litigation counsel was retained in this case, counsel would have read this security report that revealed that witnesses were interviewed using "BWC." Specifically, the last line of this report states "Note: 'BWC G3579 was activated while interviewing the Victim & BWC G3551 while interviewing Suspect HS Anggara.'" [D.E. 383 at 131:11–20, 132:3–13].

Notably, this information was thus known to Carnival's in-house counsel and litigation counsel at the start of this case. Any confusion they may have had about what this report was referring to would have been clarified at the time as part of counsel's necessary due diligence in preparing Carnival's defenses and factual contentions from day one. Fed. R. Civ. P. 11(b).

In fairness, however, the Covid pandemic began shortly thereafter, which caused Carnival to lay off thousands of employees who ordinarily would have been available to counsel for further investigation. So when Doe served her written discovery in early 2020, and Carnival's counsel was told by Doe's counsel that there may be a video recording of Doe, Carnival's counsel subjectively believed she did not have this video statement and informed Doe of that. Carnival also advised Doe that Carnival was gathering documents, but Carnival's headquarters had shut down due to COVID-19, and certain departments were closed.

Claiming inexperience with body-worn video, Carnival's counsel insists that she inquired into Doe's video recorded statement but did not think to search for "BWC

footage" to find it. That is why Carnival represented in its initial and amended responses to the requests for production as to video statements that "none" existed.

We pause here to note that, even in the light most favorable to Carnival, such a representation in a discovery request cannot be made unless counsel and the client have assured themselves of its accuracy. To the extent litigation counsel did not know what "BWC" was signifying in the security report, litigation counsel had an obligation to verify his/her conclusions with the client. To the extent in-house counsel for the client did not know, he/she had an obligation to verify with somebody, anybody, within the corporate organization to make sure that the representation was accurate. And given the significance of this type of case, it is baffling that no one at Carnival corrected counsel's misimpression. But counsel emphasizes that these were not ordinary times because the ability to communicate with persons with knowledge within the organization was hampered severely by the Covid shutdowns.

In any event, that was the representation that Doe received early on in the process with the explanation that Covid was making it difficult for Carnival to respond to the discovery in the case. By June 2020, however, Carnival's counsel spoke to a security officer who assisted with the investigation. He was not on contract due to COVID-19. During this phone call, Carnival's counsel claims to have first discovered that a body worn camera "BWC" was used. Carnival's counsel had never heard of Carnival using body worn camera during an investigation. [D.E. 61-1 at ¶ 19; D.E. 382 at 132:10–13]. By June 30, 2020, Carnival's counsel finally received an

electronic file/folder that was supposed to contain the BWC videos. Yet, Carnival's counsel was unable to open the BWC video files sent. [D.E. 61-1 at ¶ 22; D.E. 382 at 128:16–25, 133:6–13]. Carnival and its counsel were trying to determine what the video files were and why they would not open.

On July 2, 2020, Carnival re-sent its counsel a link with the BWC video files. Counsel for Carnival was still unable to open them. [D.E. 60-1 at ¶ 23]. On July 8, 2020, a courier was sent to pick up a thumb-drive/USB with the videos. Counsel for Carnival was still unable to open them. [D.E. 60-1 at ¶ 24; D.E. 382 at 130:1–5]. It was not until July 14, 2020, with the assistance of an outside IT vendor, that counsel for Carnival was for the first time able to view the BWC video of Doe speaking with Carnival's security officers. Counsel was still unable to open the remaining videos so they did not know what the other videos were or if they were responsive to discovery.

On July 15, 2020, the day after first being able to view the BWC video of Doe, Carnival disclosed its existence to Doe. [D.E. 61-1, 133:12–17]. Carnival then supplemented its response to request for production stating it had a videotaped statement of Doe and objected to producing the statement before Doe's deposition. Carnival argued Doe should have to give her deposition based on an independent recollection.

Doe's counsel challenged Carnival's representations at the hearing on July 16, 2020. After hearing argument and Carnival's counsel's explanation for why they were ill-informed as to the significance of the body-worn video, the Court compelled

Carnival to produce the BWC video of Doe. [D.E. 50]. So, on July 17, 2020, Carnival produced one of the BWC videos of Doe in her cabin. [D.E. 388–2]. Carnival could not open or view a second BWC video. Carnival was later able to view a second BWC video, and realized it was a continuation of Doe in her cabin. Carnival then produced the second video of Doe in her cabin. [D.E. 60-1 at ¶ 31].

Notably, during this Hearing the defense counsel represented to the Court that the only responsive video relevant to the case that existed was of Plaintiff being recorded while completing her written statement and that they had received it only a week prior to that July 16, 2020 Hearing. The Court asked Carnival if there was a video statement of the assailant, similar to that of the Plaintiff. Carnival told the Court and counsel, without qualification, that there was *only* a written statement and no video. [D.E. 91-1 at 29:23 through 30:11]. At that same time, however, Carnival’s counsel was actually in possession of a total of seven (7) videos, including one of the assailant’s statement.

Carnival learned shortly after the hearing, however, that this representation was wrong. Counsel was finally able to review all the videos shortly thereafter, which revealed that a video statement of the assailant had in fact been captured on body-worn video. It was not until over thirty days after the Hearing that Carnival revealed that fact. That occurred when it served a privilege log on August 18, 2020, which stated: “Carnival video recorded portions of its investigation of the alleged incident. There are five videos. The videos are part of Carnival’s Incident Report and were

prepared in anticipation of litigation. Therefore, they are protected by the work product privilege.”

In response, Doe's counsel offered defense counsel the opportunity to remedy the issue of Carnival's misrepresentation and improper disclosure by proposing that Carnival either provide the additional footage, or amend the privilege log to state what the videos showed. [D.E. 53-12 at 2]. Carnival declined to do so.

This then led to, on September 15, 2020, Doe's filing of her first Motion for Sanctions. [D.E. 53]. The Court ordered expedited briefing and for Carnival to include sworn declarations “attesting to the manner and timing of the production of video referenced in the motion” in its response. [D.E. 55].

On September 23, 2020, in support of Carnival's response to Doe's First Motion for Sanctions, which outlined the timeline and issues surrounding the BWC video, Carnival provided the Court with the declarations of: (1) Lauren Levitt (Counsel for Carnival), (2) Rajesh Katakdhond (Carnival's Chief Security Officer (“CSO”) onboard the *Miracle*), and (3) Curtis Mase (Counsel for Carnival). [D.E. 60-1, 60-3 and 61]. Mr. Mase explained that in his thirty plus years of representing the company, he had no knowledge that Carnival used body worn cameras or had BWC video. [D.E. 60-3 at ¶ 7]. Mr. Mase credibly corroborated this during the December 2023 evidentiary hearing. [D.E. 382 at 128:16–21, 131:18–20].

Carnival also submitted the declaration of chief security officer Katakdhond, who was not a part of the original shipboard investigation but assisted in searching

for body worn camera videos and CCTV footage in this case. [D.E. 61 at ¶ 6]. CSO Katakdhond was familiar with the CCTV search process and immediately checked Carnival's system for the same. In his affidavit, Chief Katakdhond explains that CCTV and BWC are saved on two different systems. [D.E. 61 ¶ 12]. So, his search for one would not have resulted in the other. CSO Katakdhond explains that once he was requested to search a narrower request, i.e., specifically body worn camera videos, instead of "videos" or "surveillance" generally, he looked at the correct system and was able to locate the BWC footage. [D.E. 383 at 217]. CSO Katakdhond was not involved in Doe's investigation and was, therefore, personally unaware of body worn cameras being utilized in the investigation. He checked the SSIR and did not note the "BWC" referenced at the very end. [D.E. 61 ¶ 9].

Ms. Levitt, in her declaration, described the process and timeline of the requests and production. She explained that the SSIR said "BWC" but did not use language like "body-worn cameras," "body cameras," or "body-worn camera footage." Accordingly, although she knew what BWC meant at the time of her declaration, at the case's inception she was unaware that BWC was an acronym used by security officers or that it referenced video. [D.E. 382 at 202–204]. She further averred that, when Carnival first received the videos, counsel could not open them, but Carnival asserted work product objections based on what it believed was in the videos.

We can accept that on its face. But counsel added that, in reviewing the incident reports as part of her due diligence to discovery, she claimed that the

incident report did not "reference investigative videos, body cameras, or videotaped statements." [D.E. 60-1 ¶8]. That was supported by the Chief Security Officer's representation that "there is no indication of body-camera footage being used in the incident report." [D.E. 61]. These representations were *false* because, as we know now, the security report expressly identified BWC video with respect to Doe and Anggara's interviews. That fact was not known to the Court until the hearing held months later – in December 2020 – at which the Court was reviewing the very same incident report in camera. During that hearing, counsel disclosed for the first time to the Court that the incident report (known to counsel from the start of the case) actually did reveal that video footage was available of the client *and* the assailant (as claimed from the start by Doe's counsel).

Ultimately, during the September hearing held right after the motion for sanctions was filed the Court overruled Carnival's objections as to the remaining BWC videos on waiver grounds. On October 13, 2020, Carnival produced the five remaining BWC videos to Doe. [Notice of Production, D.E. 64].

In summary, the BWC videos were produced on the following days:

On July 17, 2020, Carnival produced the first video of Doe.

On July 22, 2020, Carnival produced the second video of Doe.

On October 13, 2020, Carnival produced the five remaining BWC videos, which include videos of Mr. Anggara in the security office and videos of

the HR director, FBI Agents, and security personnel in the security office.

All body-worn video was produced before any deposition was taken. So the net result was that Doe was not materially prejudiced by the delay. The issue, however, is whether the course of events evidences substantial justification for the errant discovery responses, including multiple representations to the Court that turned out to be false. I do not find that all of these representations were knowingly false when made, and accept that they were in part the product of honest mistakes that would not have ordinarily occurred but for the Covid shutdowns. In other words, counsel could have verified the information in the report with the security personnel themselves and obtained client assistance earlier on in reviewing the video. We do not find that counsel's explanations to be entirely incredible in this respect.

But Carnival's and counsel's explanations fall short ultimately because we find as a matter of fact that any review of the incident report (not known to Doe's counsel or the Court until December 2020) would have revealed immediately to counsel and the client that video was in fact available related to the statements of both the victim and the assailant. To ignore this unequivocal statement through the course of multiple hearings and declarations amounts, at minimum, to recklessness. So even if we credit Carnival and counsel's explanations as to how the process evolved over the course of the summer of 2020, before Doe's counsel filed the motion for sanctions any reasonable lawyer must have known that representations that were made to the

Court were indeed not correct. And any reasonable counsel would have immediately disclosed that fact to the Court by the time the August 2020 privilege log was filed. That did not happen. Only until the December 2020 hearing did counsel finally reveal what was known, or should have been known, long before. At a minimum, by August 2020 counsel should have disclosed to the Court that Doe's claims were indeed correct. Carnival and counsel failed to do so. The Court finds that Rule 37(b) violations followed because, even after bending over backwards for Carnival and counsel, there was no substantial justification for insisting that no video statements of the assailant existed by August 2020. Doe and her counsel are thus entitled to some compensation for the added expense caused by these reckless representations and to deter others from similar conduct. *See, e.g., Wouters*, 9 F.3d at 933; *Nationwide Life Ins. Co. v. Betzer*, No. 5:18-CV-39-OC-30PRL, 2019 WL 5700288, at *14 (M.D. Fla. Oct. 28, 2019) (finding that the moving party was entitled to reasonable attorney's fees and costs "for the filing of both the motion for sanctions and the motion to compel") (collecting cases); *Kipperman v. Onex Corp.*, 260 F.R.D. 682, 700 (N.D. Ga. 2009) (imposing monetary sanction for discovery misconduct and misrepresentations to counsel and the court); *see also Bernal v. All Am. Inv. Realty, Inc.*, 479 F. Supp. 2d 1291, 1333 (S.D. Fla. 2007) ("Rule 26(g) thus imposes upon attorneys the duty to make a reasonable investigation to assure that their clients have provided all available responsive information and documents. . . . The signing attorney is not required to

certify the truthfulness of the client's response, only that he made a reasonable effort to insure that his clients provided all responsive documents and information.”).

These false representations also evidence recklessness that is also sanctionable under section 1927 because counsel's recklessness contributed to repeated false and frivolous statements being presented to the Court. *See Purchasing Power, LLC v. Bluestem Brands, Inc.*, 851 F.3d 1218, 1228 (11th Cir. 2017) (section 1927 sanctions only available for recklessness if related to pursuit of frivolous claims).

The client (Carnival) is also responsible to make sure that its lawyers' representations were correct. By August 2020, Carnival was clearly on notice as to the Court's efforts to obtain a factually accurate record. Yet Carnival did not ensure that its lawyers were accurately representing facts and making proper arguments to the Court. Carnival thus must bear the responsibility of unnecessary fees incurred in the process under Rule 37(b).

Accordingly, the Court finds that section 1927 and Rule 37 sanctions are in order to compensate Doe and her counsel for fighting tooth and nail to obtain video that they were entitled to at a much earlier stage of the process. The time incurred in filing the motion for sanctions, plus the hearings conducted on September 25, 2020 and December 3, 2020 will be awarded as compensation for Doe's unnecessary expenses. Those expenses will be borne jointly and severally by Carnival and counsel.

The Court could impose further sanctions for the multiple false representations provided to the Court as well. But the entry of this Order finding

that counsel engaged in reckless representations to the Court will suffice. The Court could also award further fees such as the time incurred during the evidentiary hearing conducted in December 2023. The Court will not do so, however, because the Court must impose fees that were proximately related to the sanctionable conduct. This hearing was also necessary for sanctions sought by counsel for other conduct that the Court does not find to be merited. So rather than awarding a pro rata share of a hearing, the better approach is to award only those fees that are directly caused by the errant conduct.

B. Sanctions for Trial Conduct

The next topic to address is Doe's argument that trial counsel engaged in multiple acts of sanctionable conduct during the course of the trial. We interpret the District Judge's referral Order to include our review of these arguments. Doe argues Carnival should be sanctioned for the following trial-related actions: (1) Carnival violated an order *in limine* [D.E. 233] regarding the FBI Reports; (2) Carnival's counsel misled the Court in a side bar during the examination of Carnival corporate representative, John Butchko; (3) Carnival improperly argued that the order *in limine* should be vacated during trial because Carnival asserted that Doe's experts were provided with and relied on the FBI Reports; (4) Vazquez testified about conclusions that the sexual encounter was consensual; (5) Carnival's counsel violated the order *in limine* when it referenced FBI Special Agent Andreasen's trial testimony and credibility during closing argument; and (6) Carnival filed a motion for

reconsideration and requested during trial that the Court set aside the summary judgment order on false imprisonment.

1.

First, Doe claims that during opening arguments, Carnival's counsel, Mr. Mase, stated "[W]hat Mr. Anggara says and what was determined in the investigation by the FBI afterwards is much more credible and believable." [D.E. 337-1 at 128:2–4]. Review of the full record reveals that Mr. Mase's opening statement referenced the FBI Notes, which were a stipulated joint exhibit. The full quote of Carnival's opening is: "I'm going to suggest to you that what Mr. Anggara says and what was determined in the investigation by the FBI afterwards is much more credible and believable. You will have in evidence the notes from the FBI and the investigation they conducted." [D.E. 337 at 128: 1–6].

We cannot find that these statements are by themselves sanctionable. In the first place, no timely objection was raised so that the Court could address the argument at the time. Second, we cannot find that statement by itself as violating the Court's Order not to introduce the FBI's conclusions or statements because, in fairness, one could interpret the argument as addressing primarily the facts in the report. That likely explains why Doe's counsel did not immediately object in the moment. Looking at the transcript in isolation now, one could interpret it the way Doe's counsel does as well. But the ambiguity in this record does not lend itself to a finding of contumacious or bad faith conduct. The motion is Denied in this respect.

2.

On July 12, 2022, Doe examined one of Carnival's corporate representatives, John Butchko. During Doe's examination, her counsel asked what Carnival's counsel perceived to be an open-ended and vague question. Carnival's counsel, Mr. Seitz, objected and requested a sidebar. [D.E. 317 at 150]. Mr. Seitz raised a concern that the question could elicit hearsay testimony and testimony precluded by the order *in limine*. He stated that he thought Doe's counsel may be opening the door to the FBI's conclusions being mentioned. The Court disagreed and admonished Carnival to ensure that its witnesses did not violate the order *in limine*. [D.E. 316 at 42–44]. The Court also admonished Doe's counsel to make sure his questions did not elicit impermissible testimony and noted that Doe may potentially be opening the door. The Court stated "Mr. Courtney, I don't understand the purpose of this witness is. . . you are inviting him to bring hearsay evidence," "frankly, at this point, I have not [sic] idea what you all agreed to," and "you are potentially opening the door." [D.E. 316 at 43:7–17].

The FBI Reports and conclusions were not mentioned in front of the jury. The order *in limine* was not violated. No sanctionable conduct has been shown through this exchange.

3.

Mr. Butchko's testimony carried over to day 3 of the trial. During Carnival's cross-examination of Mr. Butchko, counsel for Carnival asked about Carnival's

conclusions in its investigation. Carnival's counsel prefaced the question to ask, "only Carnival's conclusions" and "without telling us anything the FBI said." [D.E. 317 at 25:5–6]. The Court directed Carnival's counsel to ask its question and no further issue arose here. *Id.* at 25:7–8. Mr. Butchko never discussed the FBI Reports or FBI conclusions.

Carnival next called its neuropsychologist, Dr. Kaia Calbeck, out of turn due to a scheduling conflict. During her direct examination, Doe's counsel requested a sidebar. [D.E. 317 at 120:13-14]. At the sidebar, Doe's counsel stated he never received a testimonial list from Dr. Calbeck. Carnival confirmed that was accurate. The Court "bounced" Dr. Calbeck from the witness stand and permitted Carnival to supplement all of Dr. Calbeck's prior testimony and transcripts. [*Id.* at 123:8-14]. Doe's counsel would then complete his cross-examination the next week. Doe asked for Dr. Calbeck's complete exclusion. The Court responded that he could file a memorandum with the appropriate citations. Dr. Calbeck was excused from the witness stand.

Later that day, Doe called her security expert, Lance Foster. Mr. Foster testified that his report included a list of documents that he reviewed and relied upon. [D.E. 317 at 135:19-22]. His expert report confirmed that he was provided with the FBI Reports. He testified that he reviewed and relied on the FBI Reports. [D.E. 317 at 153:3–157:12]. He also relied on the FBI Notes. [D.E. 317 at 148: 11-17]. *All this testimony was introduced during Doe's direct examination.* Mr. Foster then testified

to the jury that the sexual assault of Doe was foreseeable, and that part of his opinion was that Doe was in fact sexually assaulted. [D.E. 317 at 137:3-9].

Carnival did not ask Mr. Foster about the FBI conclusion or declination of prosecution. Carnival, instead, asked the Court for a side bar to request relief from the order *in limine* in order to do so. [D.E. 317 at 148-149]. The Court replied that it would consider sanctions if the order was violated and steered Carnival's counsel to wrap up the examination with a different line of questioning. The Court was clear, however, that counsel continued to try to get to the edge of violating the Court's Order. The Court cautioned counsel that he was deliberately ignoring the Order in this way and, plus, was doing so with apparent bad intent. [*Id.* at 152].

No sanctionable conduct is revealed through this exchange. Nor can the Court find that counsel's efforts to seek relief from the *in limine* Order at this stage were made in bad faith given the statements made by the witness during direct examination. The Court's sanction threat worked. Our review of the transcript reveals no further efforts to undermine the Court's Order and no other questions related to the FBI report were asked of the witness.

In sum, counsel was clearly trying to get around the Court's *in limine* Order, so much so that the Court had to directly admonish counsel and warn him that further efforts would be sanctioned. The appropriate remedy here was for the Court to take counsel to task for trying to walk over the line. That is a sanction of one form. We cannot, however, find that further sanctions are warranted. Had counsel asked

further questions from the witness to try to draw out the FBI's conclusions from the report, sanctions would have been appropriate. That did not happen, however.

4.

During the fourth day of trial Doe called Carnival's corporate representative, Ms. Vazquez, as her witness. Doe asked Ms. Vazquez questions that elicited responses only generally referencing the FBI's investigation while onboard the Carnival *Miracle*.

On cross-examination by Carnival's counsel, Ms. Vazquez was asked:

Based on Carnival's investigation into this matter that we've talked about, the various interviews that it did, the various things that it went and looked at, all the different things it did in its investigation, from the time when the chief security officer is made available, all the way through the morning of December 2, 2018, what did Carnival conclude happened with respect to plaintiff's alleged incident in the storage room?

[D.E. 318 at 51:22-25; 52:1-3].

Ms. Vazquez responded, “[w]ith the totality of the circumstances, all the statements made, and the investigations that were done, it was found that it was consensual between these two individuals.” [*Id.* at 52:4-6]. Doe's counsel did not object.

It was only later, after Doe finished her redirect examination of Ms. Vazquez, and the Court was discussing other outstanding issues, that Doe's counsel took issue with Ms. Vazquez's testimony. [*Id.* at 80:6-8]. Doe believed that Ms. Vazquez was

stating that the encounter being consensual was the conclusion of “both investigations,” – presumably the FBI and Carnival. [*Id.*]

The Court found Ms. Vazquez’s testimony to be within the bounds of the *in limine* order: “I took her comment or her phraseology to be one giving temporal boundaries and not suggesting; i.e., this decision was made by someone.” [D.E. 318 at 80:9–12]. Doe’s counsel then pivoted to his concerns about Carnival’s security expert, who was scheduled to testify the following morning.

The Court's review of this record does not evidence any sanctionable conduct.

5.

Towards the end of Day 5 of trial, the matter of FBI Agent Sara Andreasen was raised following a proffer submitted by Carnival. [D.E. 319 at 270-271]. The Court held that the agent could testify as to specific things, such as her experience as an FBI agent, what she did for this particular investigation, who she spoke to in terms of witnesses and any Carnival documents that she reviewed – like CCTV or RAINN. [*Id.* at 271:1- 13]. The parties could *not* illicit testimony regarding the FBI’s findings, conclusions, or confidence in their findings and conclusions. [*Id.* at 15-20 and 23-25]. FBI Agent Andreasen was expressly not permitted to testify about her assessment or impression of the credibility of the witnesses. [*Id.* at 372:11-16].

When the parties returned to trial the following Monday, July 18th, the Court took up Doe's motion for sanctions that was filed on the docket on July 14th where Doe demanded sanctions due to alleged purported misconduct by Carnival during

trial, including among other things Carnival's alleged violation of the Court's motion *in limine* order prohibiting any reference to the FBI Reports and conclusions. Doe asked the Court to strike Carnival's pleadings or, in the alternative, prevent FBI Special Agent Sara Andreasen from testifying on Day 6 of trial. The Court denied the motion during trial. [D.E. 310].

When FBI Agent Andreasen took the stand, the Court reviewed her evidentiary rulings with Agent Andreasen and described how they limited the things she could share with the jury. [D.E. 320 at 24:4-25]. Carnival's counsel, Mr. Mase, completed the agent's direct examination. Not once during Carnival's direct examination of Agent Andreasen did Doe's counsel object. Nor did Carnival's counsel elicit testimony that the Court found to have been in violation of her *in limine* Order.

In its closing, however, Carnival's counsel (referencing this testimony) asked the jury to weigh the Agent's testimony as favorable to the defense theory of a consensual encounter: "And you watched her today with you[r] own eyes, and you could see she believed she told the truth. And you could see that she didn't particularly believe that the plaintiff did." [D.E. 320 at 123]. Counsel added that the jury had the FBI notes in evidence which are "helpful and telling and you heard Agent Andreasen discuss those with you. But more important, really, is, as she was explaining to you, what came out in those interviews, you heard her say it." [*Id.*]. Notably, however, no objection was lodged to any of these comments.

Although, again, counsel was walking up against the line here, in fairness there was enough admissible evidence in the record to sustain the thrust of what counsel was arguing. Frankly, this may have merited an objection but the impact of the statements were likely deemed too innocuous and ambiguous to worry about. That was clearly a correct strategic call especially given the outcome of the jury's verdict. For sanctions purposes, however, even if the argument was improper it was still not sanctionable or made in bad faith. The fact is that the FBI notes were in evidence and the Agent testified in accordance with the Court's instructions. No bad faith sanctions can follow.

6.

Finally, the motion seeks sanctions for the filing of motions for reconsideration of the Court's Orders by Carnival during trial. Specifically, counsel should be sanctioned because he repeatedly tried to revisit the summary judgment Order on the false imprisonment claim as well as the FBI report findings as inadmissible. We need not delve too much further into the back and forth on this topic because they are largely redundant. Suffice it to say that counsel was very aggressive here and making arguments that were plainly wrong (in this Court's review). But just because they were wrong does not make them sanctionable. Counsel had an obligation to zealously advocate for his client and prevent a possible run-away verdict from that perspective. Given the seriousness of the allegations, it is hard to heavy-handedly sanction counsel for those efforts even if they at times crossed the line. I find that lead counsel's

testimony evidences subjective good faith at trying to walk that fine line. Even if we agree with Plaintiff's counsel that crossed over it long ago, a post-mortem sanction is still not warranted because we do not find that the heavy burden required by section 1927 or the Court's inherent power warrant further sanctions beyond what the Court undertook at trial.

III. CONCLUSION

For the foregoing reasons, the pending Motions for Sanctions are **GRANTED in part and DENIED in part:**

1. Plaintiff shall be compensated for fees incurred, payable by Carnival and counsel jointly and severally, for the filing of the original motion for discovery sanctions, the July 2020, September 2020, and December 2020 discovery hearings, and the filing of the supplemental motion for sanctions.

2. Plaintiff shall submit within thirty days an affidavit of fees and costs in support, together with all relevant billing records, for entry of a fixed award in accordance with this Order. The materials may be submitted in whole or in part under seal if necessary. Defendant shall have twenty-one days thereafter to file a response as to the calculation of the amount, only after counsel have conferred in the intervening period to arrive at an agreed-upon amount or otherwise a narrowing of the issues in dispute.

3. If an appeal is filed to the Court's findings and this Order, such appeal will stay the time period to comply with this Order until such time as the Order becomes final.

DONE AND ORDERED in Chambers at Miami, Florida, this 10th day of July, 2024.

/s/ Edwin G. Torres _____
EDWIN G. TORRES
Chief United States Magistrate Judge