

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI DADE-COUNTY, FLORIDA**

CASE NO: 2021-015089-CA-01

SECTION: CA43

JUDGE: Michael Hanzman

In Re:

Champlain Towers South Collapse Litigation

**Miami-Dade County's Response to Subpoena Duces Tecum
and Motion for Protective Order**

Pursuant to Rule 1.280(c) of the Florida Rules of Civil Procedure as well as this Court's January 21, 2022 Order, Miami-Dade County, through the Miami-Dade Police Department (MDPD), responds to the Subpoena Duces Tecum served by the Receiver on January 25, 2022 and moves for a protective order, and in support states as follows:

1. Miami-Dade County and the MDPD, like this Court, are motivated first and foremost by a concern for the victims of this collapse. The County understands the Court may believe it serves the best interests of the victims to order MDPD to comply with the subpoena and permit all parties in interest to sample and test the materials before the MDPD investigation would otherwise allow. Nevertheless, because the MDPD's active death investigation cannot be reconciled with the Subpoena Duces Tecum, the County submits this Response and Motion for Protective Order so that the Court may make as informed a decision as possible.

2. The Receiver, on behalf of the Association, has issued a subpoena that requires the MDPD to permit the Receiver and all other parties in interest not just entry to a secure facility which houses materials of evidentiary significance, but also open access to "inspect, measure, survey, photograph, video, test, or sample the property and items removed" from the collapse site.

3. In other words, the Receiver's subpoena requests unfettered and destructive access to the materials of evidentiary significance currently being held and preserved by MDPD. These materials of evidentiary significance have been stored and guarded at Miami-Dade County's cost since the collapse.

4. MDPD is conducting an active death investigation into the collapse, and NIST, the National Institute of Standards and Technology, has launched a full technical investigation of the collapse under the authority of the National Construction Safety Team (NCST) Act to determine the technical cause of the collapse.

5. MDPD has preserved and protected this evidence so that it can conduct its active death investigation—which could potentially lead to a criminal investigation—properly, expeditiously, and comprehensively, without contamination or corruption.

6. Should this Court order MDPD to permit not only entry but also access to the materials for testing and sampling, the immediate and practical effect of such an order is that the active death investigation will be compromised.

7. MDPD and NIST worked extremely diligently over the holidays to create a schedule that would allow sampling and testing by interested parties on a compressed timeline that would not compromise MDPD and NIST's investigations. Despite these efforts at collaboration, the Receiver has served the subpoena at issue, requesting access for sampling and testing next week.

8. While Miami-Dade County appreciates this Court's desire for as expeditious as possible a resolution to the civil litigation stemming from the collapse, the Receiver's request to access, sample, and test materials in one week, before MDPD has concluded testing and sampling necessary to its investigation, cannot be squared with a continued active death investigation.

9. In short, in the absence of a protective order, MDPD will be obligated to comply with the Subpoena Duces Tecum, and its active death investigation—and any resultant criminal investigation or proceedings—will be compromised.

Dated: January 26, 2022

Respectfully submitted,

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