SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

July 27, 2011

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Re: ***Long v. Food Lion, LLC***
C.A. No. S09C-05-034 RFS

Dear Counsel:

The Plaintiff, Judith Long, fell at Defendant's Food Lion store in Milton, Delaware on July 5, 2008. A complaint was filed on May 29, 2009. The parties conducted discovery. On June 11, 2010, the Scheduling Order was amended by mutual agreement with Court approval. At that time, the minute order indicated that a scheduling conference would be scheduled to establish revised dates. Later, new trial and pretrial conference dates were established. However, another discovery schedule was not

established through inadvertence.

Therefore, the discovery period would remain open for a reasonable period of time. Before January 7, 2011, the Plaintiff initiated and completed depositions. On January 7, 2011, Plaintiff presented a motion to compel discovery which was granted. The motion required Defendant to reveal names of employees who may have knowledge at the time of the fall. Thereafter, names were provided. Plaintiff made appropriate efforts to contact them. There was difficulty in the process because some had changed jobs.

One of these persons, Ashley Callaway, claims surveillance was made of the area of the fall. On behalf of Food Lion, Cheryl Kraft, testified that no surveillance was made of the scene. The store did have surveillance equipment, however.

Plaintiff filed a second set of interrogatories and request for production of documents on June 14, 2011. Plaintiff attempted to resolve the question with Defendant beforehand. The discovery focuses on the subject of the surveillance of the area. The defense filed a Motion for a Protective Order and to Quash, arguing the recent discovery should be barred and would subject Food Lion to undue expense and unfair prejudice. On July 1, 2011, argument was presented. The decision was reserved because mediation was scheduled for July 12, 2011. That effort was not successful.

After review, the Motion for a Protective Order and to Quash is denied with one exception.

A decision cannot be made now whether Callaway or Kraft is correct. A threshold

showing has been made to support an argument for a spoilation instruction. Further, other witnesses may be revealed and information shed on the existence of wet water signs. Plaintiff's effort is reasonably calculated to lead to the discovery of admissible trial evidence. Plaintiff acted within a reasonable period of time.

Additionally, there is good cause to permit this discovery. If Food Lion desired a cutoff date, it should have brought the matter to the Court's attention. Further, Food Lion is responsible for some delay. Plaintiff had to file and argue the motion to compel last January.

Moreover, Plaintiff has acted diligently in the prosecution of this case. The Defendant is not unduly prejudiced because the possible claim of spoilation was in play when Callaway's evidence was revealed. The October trial date should remain, because there is sufficient time to respond.

Food Lion is not subject to oppression, undue burden, or expense. Its policies, handbooks, and practices should be readily available. The discovery is largely focused on July 5, 2008. However, request for production number 4, requesting new hire materials from June 2007 forward is too broad. The time period will be limited to June 1, 2007 to December 31, 2008. The probative value of any materials in calendar years 2009, 2010 and 2011 would be too slight against Food Lion's expenses to respond.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv
cc: Prothonotary