

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

December 23, 2013

Andrea G. Green, Esq.
Law Office of Andrea G. Green, LLC
28412 Dupont Blvd., Suite 104
Millsboro, DE 19966

Thomas J. Gerard, Esq.
1220 North Market Street, 5th Floor
P.O. Box 8888
Wilmington, DE 19899

RE: *Audrey E. Sweiger v. Delaware Park, L.L.C. & Delaware Racing
Association d/b/a Delaware Park,*
C.A. No. S11C-10-020 RFS

_____ Date submitted: October 8, 2013

Dear Counsel:

Before the Court is Plaintiff Audrey E. Sweiger's ("Plaintiff's") Motion *in Limine* to Preclude Testimony by or on behalf of Defendants Delaware Park, L.L.C. & Delaware Racing Association d/b/a Delaware Park ("Defendants") Regarding Safety Measures. Plaintiff's Motion is **DENIED**.

Facts

This Motion stems from an incident which occurred on the evening of January 13, 2010. On that date, Plaintiff, an eighty-one-year-old woman, visited Defendants' establishment, and was present in Defendants' casino at about 6:20 p.m. Plaintiff claims that she left the casino area and entered an adjacent glass-enclosed alcove,

which Plaintiff believed to be a smoking room. Plaintiff then attempted to re-enter the casino through a different entrance and in doing so, walked into an unmarked glass window and fell to the floor. She suffered bodily injuries as a result. Other glass windows within the wall contained decals, but the one causing Plaintiff's injury did not.

During discovery, Plaintiff requested, *inter alia*, the identification of “[t]he person charged with ensuring the safety of patrons while those patrons are visiting the premises of Delaware Racing Association commonly known as the casino at Delaware Park” in accordance with this Court’s Civil Rule 30(b)(6).¹ Defendants identified Sheryl Cartwright (“Cartwright”) to be deposed as their corporate designee. At her deposition, Cartwright stated that she was not the person charged with the safety of patrons, and that “[t]here [was] no one specific person.”² Rather, she stated that “[t]here [was] a variety of individuals or departments that [were] involved” including Defendants’ staff in general.³ Cartwright then went on to discuss Defendants’ generally Defendants’ safety measures.

¹ Pl.’s Mot. *in Limine* to Preclude Test. by or on behalf of Defs. Regarding Safety Measures at 2.

² Ex. A to Def.’s Resp. in Opp’n Pl.’s Mot. *in Limine* to Preclude Test. by or on behalf of Defs. Regarding Safety Measures at 3.

³ *Id.*

Analysis

Plaintiff asks the Court to preclude Defendants from presenting any testimony intended to establish that they took measures during the relevant time period to ensure the safety of their patrons. Defendants counter that they complied with Plaintiff's "bare bones" 30(b)(6) Notice by producing Cartwright who testified that no single individual was responsible for safety at Defendants' establishment.⁴ Additionally, they contend they went beyond what Plaintiff's 30(b)(6) Notice required in that Cartwright provided ample testimony regarding safety measures in general. Thus, they claim that precluding them from presenting evidence regarding safety measures would unfairly prejudice them. Plaintiff responds that Defendants, who merely posted Cartwright as their representative, never informed Plaintiff that no single person was indeed responsible for safety measures at Defendants' facility. Further, Plaintiff claims that Defendants did not, as they claim, allow Cartwright at her deposition to fully go into the matter of safety measures, but rather tailored her testimony through a series of objections.

The Court agrees that precluding Defendants from presenting evidence regarding the safety of patrons would unfairly prejudice them, although the Court does not agree with Defendants' argument that merely presenting an individual to testify that the person requested for a 30(b)(6) deposition does not exist satisfies a

⁴ Def.'s Resp. in Opp'n of Pl.'s Mot. *In Limine* to Preclude Test. By or on behalf of Defs. Regarding Safety Measures at 2.

party's discovery obligation under that rule. The Court finds, however, that Cartwright did provide adequate testimony regarding the information Plaintiff sought, or at least the information which this Court has deemed through prior rulings may be admissible at trial (*e.g.*, improper lighting and distractions regarding the glass window):

Q: Does Delaware Park conduct any specific training for any employees regarding the hazards or safety of glass panels?

A: Specifically glass panels?

Q: Yes.

A: No.

Q: Does Delaware park send any employees to outside training regarding the hazards or safety of glass panels?

A: No.⁵

Based on the above, Plaintiff's Motion is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

/s/ **Richard F. Stokes**

Richard F. Stokes

Cc: Prothonotary
Judicial Case Manager

⁵ Ex. A to Def.'s Resp. in Opp'n Pl.'s Mot. *in Limine* to Preclude Test. by or on behalf of Defs. Regarding Safety Measures at 49–50.