

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JEANES-KEMP, LLC

PLAINTIFF

VS.

CIVIL ACTION NO. 1:09-cv-723(DCB)(JMR)

JOHNSON CONTROLS, INC., ET AL.

DEFENDANT

ORDER

This cause is before the Court on defendant Johnson Controls, Inc. ("JCI")'s emergency motion for leave to take trial deposition of John Sposato, Sr., outside of the discovery period (**docket entry 291**). Having carefully considered the motion and the plaintiff Jeanes-Kemp, LLC's response, and being fully advised in the premises, the Court finds as follows:

JCI sets forth in its motion that it intends to call Mr. Sposato as a witness at trial. However, JCI also points out that the plaintiff, in its August 25, 2011, Letter Brief, expresses doubt that Mr. Sposato will be available for trial in Jackson, Mississippi. JCI seeks leave of Court to conduct a trial deposition of Mr. Sposato, wherever he may be found, with appropriate notice to opposing counsel.

The Court finds that, inasmuch as the credibility of this witness as to certain matters is at issue, it is preferable that Mr. Sposato testify live at trial. For this purpose, additional trial testimony will be taken in Gulfport, Mississippi, commencing at 9:00 a.m. on Monday, September 26, 2011. JCI is therefore

granted leave to subpoena Mr. Sposato for trial on that date. The parties are also directed to subpoena witness Stephen Planchard for that date in Gulfport. Accordingly,

IT IS HEREBY ORDERED that defendant JCI's emergency motion for leave to take trial deposition of John Sposato, Sr., outside of the discovery period (**docket entry 291**) is GRANTED IN PART, as set forth above. In addition, if for any reason Mr. Sposato is not available for trial on September 26, 2011, the record shall remain open for the taking of a trial deposition of Mr. Sposato at the nearest available time.

SO ORDERED, this the 31st day of August, 2011.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE