

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

PAULINE BARRIOS, INDIVIDUALLY)
AND AS REPRESENTATIVE OF THE)
ESTATE OF KENNETH BARRIOS,)
DECEASED, AND RANDY BARRIOS,)
CARRIE FAGER AND BECKY)
MCMANIS, AS SURVIVING CHILDREN)
)
-- VS --) C.A. No. 08C-11-196-BEN
)
E.I. DUPONT DE NEMOURS AND)
COMPANY)

ORDER

AND NOW TO WIT, this 4th day of February, 2011, the Court having heard and duly considered the Motion to Strike Plaintiff’s Expert Designations of E.I. DuPont de Nemours and Company (“DuPont”) and plaintiff’s opposition thereto, the Court finds that:

1. Plaintiff has failed to show “good cause” for her failure to produce “full and complete [expert] reports” and to provide deposition dates for each expert, before the Court ordered deadline of January 10, 2011.¹ Plaintiff did not seek an extension of the Court ordered deadline, she simply permitted the deadline to come and go without complying. When

¹ See Trial Scheduling Order, dated September 27, 2010, ¶ 6. (Trans. ID. 33461938).

questioned at oral argument as to why this happened, plaintiff's counsel responded that a reminder did not come up on the Outlook calendar.

2. Because of plaintiff's failure to timely produce full and complete expert reports and to provide deposition dates by the Court ordered deadline, DuPont is now unable to comply with its February 7, 2011 deadline for production of expert reports. DuPont claims it is "seriously prejudiced" by plaintiff's failure to make timely expert disclosures. Although the plaintiff has failed to establish good cause for her failure to provide expert reports and deposition dates before the deadline, and although the Court finds there is prejudice to DuPont, the Court does not find it is "serious prejudice" sufficient to warrant the relief sought by DuPont. However, plaintiff's violation of the Scheduling Order warrants a monetary sanction.² Plaintiff's counsel is responsible for reasonable attorney's fees and costs incurred by DuPont in having to prepare, file and present the instant motion. DuPont's counsel shall provide the Court with an affidavit setting forth those costs and fees within 30 days. In addition, plaintiff's counsel shall fully comply with their expert discovery obligations under the Scheduling Order by no later than February 28, 2011. The Court reminds and cautions plaintiff that the expert disclosure

² See *Drejka v. Hitchens Tire Serv., Inc.*, C.A. No. 07C-04-583 (Del. Dec. 28, 2010).

statements must comply in all respects with Super. Ct. Civ. R. 26. Failure to fully comply with Super. Ct. Civ. R. 26 and to meet this new deadline for expert disclosures may result in the Court striking the expert opinions, and other sanctions the Court deems appropriate under the circumstances. Plaintiff's failure to comply with the Scheduling Order has disrupted the schedule and possibly jeopardized the trial date which the Court takes very seriously. Trial dates are precious. The Court plans trials carefully and many, many months in advance.

3. Defendant's February 7, 2011 expert discovery deadline is extended until March 31, 2011.

IT IS SO ORDERED.

Jurden, J.

cc: Prothonotary – Original
Thomas C. Crumplar, Esquire
James W. Semple, Esquire