

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

JEANETTE CHRISTINA DREJKA	)	
and JOSEPH DREJKA, w/h,	)	
	)	
Plaintiffs,	)	
	)	C.A. No. 07C-04-583 PLA
v.	)	
	)	
HITCHENS TIRE SERVICE, INC.,	)	
DAVID WOOD, and	)	
ATLANTIC CONCRETE, INC.,	)	
	)	
Defendants.	)	

**ON DEFENDANTS' MOTION FOR A PROTECTIVE ORDER  
GRANTED**

Submitted: July 13, 2009  
Decided: July 13, 2009

This 13th day of July, 2009, it appears to the Court that:

1. Defendants have moved for a protective order to bar Plaintiffs from taking the video trial deposition of Dr. Jeffrey S. Meyers, MD. Whether an examining expert may be compelled to testify regarding his expert report at the behest the opposing party is a discretionary decision, to be determined "in the interests of fairness."<sup>1</sup> Upon consideration of the defendants' motion, it is clear that the interests of fairness do not merit

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<sup>1</sup> *Pinkett v. Brittingham*, 567 A.2d 858, 860 (Del. 1989).

permitting the plaintiffs to call Dr. Meyers as an expert on their behalf. Dr. Meyers was retained as a defense medical expert and objects to testifying on behalf of Plaintiffs. Plaintiffs did not rely upon Dr. Meyers's medical report in preparing for trial, as indicated by their failure to serve him with expert interrogatories, to take a discovery deposition, or to pursue a trial deposition until after Defendants sought the exclusion of Plaintiffs' medical expert.

2. For the foregoing reasons, Defendants' Motion for a Protective Order precluding Plaintiffs from taking the video trial deposition of Dr. Meyers is hereby **GRANTED**.

**IT IS SO ORDERED.**

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**Peggy L. Ableman, Judge**

Original to Prothonotary

cc: Andrea C. Panico, Esq.  
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Thomas F. Sacchetta, Esq.  
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