

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**JOHN A. PARKINS, JR.**  
*JUDGE*

**NEW CASTLE COUNTY COURTHOUSE  
500 NORTH KING STREET, SUITE 10400  
WILMINGTON, DELAWARE 19801-3733  
TELEPHONE: (302) 255-2584**

October 16, 2013

S. Harold Lankenau, Esquire  
Lundy Law  
1600 Pennsylvania Avenue, Suite C  
Wilmington, Delaware 19801

Matthew E. O'Byrne, Esquire  
Casarino Christman Shalk  
Ransom & Doss, P.A.  
405 North King Street, Suite 300  
P.O. Box 1276  
Wilmington, Delaware 19899

**Re: Christina Piatt and James Church  
v. State Farm Mutual Automobile  
Insurance Company  
Case No. N12C-10-105 JAP**

Dear Counsel:

Presently before the court is Plaintiffs' motion to amend the scheduling order so as to allow them time to identify an expert. Their motion reads in its entirety:

Plaintiff's Christina Piatt and James Church by and through counsel moves this court for an Order to Modify the Scheduling Order and Extend Plaintiff's Expert deadline.

1. Plaintiffs filed a complaint on October 10, 2012 for injuries sustained on December 13, 2010.
2. On February 27, 2013 the Court entered a scheduling Order setting Plaintiff's expert report deadline for June 27, 2013. (Exhibit A)
3. This matter is scheduled for trial on April 7, 2014.
4. Plaintiff's experts need additional time to complete their expert reports.

5. Plaintiffs respectfully request that Plaintiff's and Defendant's Expert Report Deadlines be extended by thirty days.
6. Plaintiff is not seeking to modify the trial and date and defendant will not be prejudiced by the modification.

This motion is notable in several respects.

- It provides no information on what type of expert Plaintiffs intend to call if the deadline is extended.
- It provides no information on what efforts Plaintiffs have already made to obtain an expert.
- It provides no explanation why Plaintiffs were unable to timely indentify an expert.
- It misstates the expert deadline as "June 27, 2013"—the deadline was July 23.

The most notable aspects of the motion, however, are that (1) Plaintiffs' counsel did not acknowledge he waited until two months after the deadline has passed before he sought leave to untimely identify an expert and (2) provided no explanation why he waited so long. The unexplained delay in obtaining an expert is not the only indication of delay in this case. The defendant entered its appearance on December 27, 2012. According to the docket sheet, Plaintiffs' counsel has not undertaken any discovery in the nearly 10 months which have passed since then.

The situation here is almost the same as that presented to the Supreme Court in *Drejka v. Hitchens Tire Service, Inc.*, 15 A.3d 1221 (Del.

2010) wherein that court held that in most instances it is an abuse of discretion to foreclose essential expert testimony as a discovery sanction when lesser sanctions are suitable. In most instances monetary sanctions, which serve as a deterrent, are preferred. The *Drejka* court observed

The Superior Court Rules recognize this problem and provide what is likely to be the most effective sanction—monetary penalties to be paid by the attorneys, not their clients. If monetary sanctions were imposed more frequently, attorneys would be far less likely to delay in obtaining (and thus having to pay) experts. Moreover, if monetary sanctions were imposed several times, and were not effective, the sanction of dismissal would be much more supportable.

*Id.* at 1224.

The instant defendant has taken no position on Plaintiffs' application. This does not mean that there are no repercussions to Plaintiffs' delay. In order to allow Plaintiffs additional time to identify an expert it will be necessary to adjust the deadline for Defendant to identify its expert. This in turn will reduce the time allowed the court to consider dispositive motions by two months.

Under the circumstances presented here—Plaintiffs' lack of activity, their failure to explain why they were not able to timely identify an expert, their delay of two months in advising the court of the need for additional time, the disruption of the court's calendar and the reduction of the time available to consider any dispositive motions—the court concludes that under *Drejka* monetary sanctions against counsel are appropriate. Therefore it is hereby **ORDERED:**

1. The deadline for identification of Plaintiffs' experts is extended until, and including, November 15, 2013.
2. Defendant shall identify its experts on or before December 31, 2013.
3. Any dispositive motions shall be filed on or before January 15, 2014.
4. Any response to a dispositive motion shall be filed no more than 14 days after service of the dispositive motion.
5. Plaintiffs' counsel shall pay a sanction to the court of \$400.00 on or before December 2, 2013. The payment shall be made to the Prothonotary and should be directed to the attention of Sandra Autman of that office.

Very truly yours,

John A. Parkins, Jr.

cc: Prothonotary