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

| JEFFREY GRICOL, and | _          |                            |
|---------------------|------------|----------------------------|
| GRETA GRICOL,       |            | )                          |
| Plaintiffs,         |            | )                          |
|                     |            | )                          |
| V.                  |            | ) C.A. No. N11C-09-186 PLA |
|                     |            | )                          |
| LINDA SIPPLE,       |            | )                          |
| Defendant.          |            | )                          |
|                     |            |                            |
|                     | Submitted: | October 22, 2012           |

## UPON PLAINTIFFS' MOTION TO EXTEND TIME **DENIED**UPON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

DENIED

October 22, 2012

On this 22nd day of October, 2012, it appears to the Court that:

Decided:

- 1. Plaintiffs filed this negligence action alleging personal injuries as a result of an automobile accident caused by defendant Linda Sipple. The Court issued a Trial Scheduling Order on February 13, 2012 requiring plaintiffs to produce their expert reports on or before July 9, 2012. Discovery was to be completed by September 7, 2012, dispositive motions were due before September 24, 2012, and trial is scheduled for four days beginning on March 11, 2013.
- 2. Plaintiffs did not provide an expert report by the deadline of July 9,2012. Defendant's counsel contacted plaintiffs' counsel numerous times in

July and August of 2012 inquiring about the status of the overdue expert report. Those contacts proved futile and as the dispositive motions deadline approached, plaintiffs' counsel still had not produced the report.

- 3. As a result, defendant filed a motion for summary judgment on September 18, 2012, just prior to the dispositive motions deadline, based upon plaintiffs' failure to provide an expert report causally connecting injuries to the accident. Plaintiffs responded in opposition to the motion for summary judgment and additionally moved for an extension of time to produce the expert report and to conclude discovery. The Court held a hearing on plaintiffs' motion to extend time on October 22, 2012. Just prior to the hearing, plaintiffs produced the expert report and responded to defendant's outstanding discovery requests.
- 4. For the reasons stated on the record at the hearing on October 22, 2012, and for the reasons that follow, plaintiffs' motion to extend time and defendant's motion for summary judgment are DENIED. In addition, plaintiffs' counsel is directed to reimburse defendant for the additional expense associated with the delay in providing the expert report. Plaintiffs' counsel is also ordered to pay a fine to the Court for its unnecessary efforts in addressing the present motions.

5. The Court's decision to allow the late production of plaintiffs' expert report is based on the holding in *Drejka v. Hitchens Tire Service Inc.*<sup>1</sup> In that case, the Delaware Supreme Court reversed a decision of this Court that dismissed a plaintiff's claims as a sanction for discovery deadlines. Although trial courts have discretion in choosing the appropriate sanction for discovery violations, the sanction of dismissal is severe and is only to be used as a last resort.<sup>2</sup> The Superior Court has been directed to enforce its Orders by imposing monetary penalties to be paid by dilatory attorneys, and not their clients, as a consequence of discovery violations.<sup>3</sup>

6. The discovery violations in this case are similar to those that occurred in *Drejka*. It would be inappropriate to grant defendant's motion for summary judgment dismissing most of plaintiffs' claims without first imposing a less severe remedy. Instead of dismissal, the Court will allow the late production of plaintiffs' expert report so long as plaintiffs' counsel compensates defendant and the Court for the inconvenience associated with his discovery violation.

7. Defense counsel stated at the hearing that he spent one and a half hours preparing his response to the motion for an extension of time. The

<sup>&</sup>lt;sup>1</sup> 15 A.3d 1221 (2010). <sup>2</sup> *Id.* at 1224.

Court believes \$500.00 is an appropriate amount to reimburse defendant for

having to prepare the motion for summary judgment and respond to

plaintiffs' motion to extend time, all which resulted from plaintiffs'

dilatoriness.

8. The Court has also been required to expend considerable resources

to address the unnecessary motions in this case. In an effort to deter

plaintiffs' counsel and other attorneys from similar conduct, the Court

believes it is necessary to fine plaintiffs' counsel \$500.00, payable to the

Office of the Prothonotary.

9. For the abovementioned reasons, Plaintiffs' motion to extend time

is DENIED, Defendant's motion for summary judgment is DENIED,

Plaintiffs' counsel is directed to reimburse defendant \$500.00 for the

expenses associated with the delay in producing an expert report, and to pay

a fine of \$500.00 to the Prothonotary.

IT IS SO ORDERED.

/s/ Peggy L. Ableman

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary

cc: Counsel via File & Serve

4