IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ROSARIO TODD, and DENISE TODD, his wife Plaintiffs, v. DELMARVA POWER & LIGHT COMPANY, WILMINGTON HOUSING AUTHORITY, LNW & A CONSTRUCTION CORP., and, LEON N. WEINER & ASSOCIATES, INC. Defendants	))))))))))))))))	C.A. No. 06C-10-304

Submitted: January 9, 2009
Decided: January 14, 2009

MEMORANDUM OPINION

Lawrance S. Kimmel, Esquire, Kimmel Carter Roman & Peltz, P.A., Attorney for the Plaintiff

Lisa C. McLaughlin, Esquire, Phillips Goldman & Spence, P.A., Attorney for the Defendant Delmarva Power & Light Company

Tracy A. Burleigh, Esquire, Marshall Dennehey Warner Coleman & Goggin, Attorney for the Defendants Wilmington Housing Authority, LNW & A Construction Corp., and, Leon N. Weiner & Associates, Inc.

This case presents an example of what can occur when the parties treat the Court's scheduling order as a guideline rather than an order of the Court. The parties in this personal injury case have jointly moved for a continuance of the trial date and an extension of the discovery cut-off date. They have failed, however, to show good cause why they were unable to prepare for trial in accordance with the deadlines previously set by the Court. Accordingly, their motion is denied.

It is apparent from the docket[1] that the parties in this matter have done little to move this case forward and, once the Court entered a case scheduling order, they have largely ignored that order. The tortoise-like pace of the parties' preparation is illustrated by the following:

- Plaintiff waited ten months after filing the Complaint before serving written discovery requests upon the defendants
- Plaintiff waited another seven months before filing a motion to compel defendant Leon N. Weiner & Associates to answer those interrogatories.
- The last of the defendants entered an appearance two years ago. The defendants have yet to take the deposition of the plaintiff.
- By the same token, the plaintiff has yet to take the deposition of any of the individuals who were at the scene of the accident.
- Although there were Rule 30(b) (6) depositions early in the case to identify appropriate defendants, no fact depositions have taken place. The first of these depositions is scheduled for January, 2009 – one month after the discovery cut-off.

[1] At oral argument the Court indicated that the docket indicated that nothing had occurred since the Court entered a scheduling order in April, 2008. The parties protested that there was, in fact, activity. They are correct. The court was relying upon a docket sheet provided by the Judicial Information Center. The docket on LEXIS/NEXIS reveals some activity not reflected in the J.I.C. docket. The summary in the text is taken from the LEXIS/NEXIS docket sheet.

In April, 2008, this Court entered a scheduling order directing the parties to complete discovery by December 18, 2008 and setting trial for April 20, 2009. This did not seem to spur the parties on. The only discovery which has taken place since the entry of the scheduling order is the following:

- Defendant Weiner served written discovery requests which plaintiff did not answer for five months.
- Defendant Delmarva served its first written discovery requests in October, 2008, *nearly 22 months after it filed its answer.* According to the docket, plaintiff has not yet responded to those requests.
- Two days before the discovery cutoff, plaintiff served a Rule 30(b) (6) deposition notice and a Request for Production on defendant Wilmington Housing Authority. These requests seek basic information (such as photographs, written procedures and safety regulations) which diligent parties seek early in the case.
- At the same time, plaintiff served the notice of the deposition of three individuals, whose depositions were set for nearly a month after the discovery cutoff. These are the first depositions of witnesses other than the aforementioned 30(b) (6) witnesses to be taken in this case.

The parties waited until December 17, 2008 – the day before the discovery cutoff – in which to seek an extension of the discovery cutoff and a continuance at trial. They tell the Court that they need the extensions because several employees of defendants, whom one party or another wishes to depose, have left their jobs and are difficult to locate. This argument falls flat for many reasons. First, the parties do not identify these missing witnesses nor do they provide any information about the witnesses' potential knowledge and their importance to the

case. Second, they have provided no information to the Court about what efforts have been made to locate the witnesses. Third, they have given no explanation why, with reasonable diligence early in the case, these witnesses could not have been easily located and deposed. Fourth, they have provided no hint as to why the difficulty in locating witnesses was not brought to the Court's attention at the scheduling conference. Fifth, they have offered no explanation why they waited to the literal eve of the discovery cut-off to bring this problem to the attention of the Court.

It is well-settled in this state that "[p]arties must be mindful that scheduling orders are not mere guidelines but have full force and effect as any other order of the [Superior] Court."[2] Adherence to case scheduling orders is essential to the orderly administration of the Court's docket. If this Court were to allow parties to disregard these orders on the basis of the thin excuse offered by the instant parties, the Court would be hard pressed to deny almost any request to modify other scheduling orders. Scheduling orders would then become meaningless guidelines and the Court's docket would soon become chaotic. There is a second reason why the Court has chosen not to modify its scheduling order – the modification requested here would not be fair to litigants who have been diligent in preparation for trial and who would stand to have their trial date bumped if this case were rescheduled. The present matter is one of the oldest on the Court's docket. Because of that, any new trial

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[2] *Sammons v. Doctors for Emergency Services,* 913 A.2d 519, 528 (Del. 2006) *quoting Fletcher v. Doe,* 2005 WL 1370188 (Del. Super. May 11, 2005).

date for this case would likely cause this case to have priority over other cases already scheduled for trial on the same new date. Under the circumstances presented here the Court is unwilling to penalize those diligent parties in other cases to accommodate the parties in this one.[3]

For the foregoing reasons, the parties joint application for a continuance in **DENIED**

John A. Parkins, Jr.
Superior Court Judge

cc: Prothonotary

[3] As the Court mentioned at oral argument, if the parties wish to conduct informal discovery among themselves between now and the trial date, they are free to do so. However, because the discovery deadline has passed, the Court will not entertain any discovery motions which might arise from this informal discovery.