

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

RHONDA HILTZ,)	
)	
Plaintiff,)	C.A. No. 11-302-M
)	
v.)	
)	
THE BLACK AND DECKER CORP.,)	
)	
Defendant.)	

ORDER

JOHN J. MCCONNELL, JR., United States District Judge.

Before the Court is Plaintiff Rhonda Hiltz’s Motion to Modify Trial Schedule To Extend Discovery Period (ECF No. 8) and Defendant The Black and Decker Corporation’s (“Black & Decker”) objection thereto. (ECF No. 9.) Apparently, Ms. Hiltz’s attorney failed to conduct any fact or expert discovery within the Court-ordered deadlines and failed to timely request an extension of those deadlines. Ms. Hiltz’s attorney offers several weak excuses for his failures, namely “researching the issues of product liability, continuing research regarding expert witnesses, and significant office personnel changes” as reasons for overlooking the deadlines. Meanwhile, Black & Decker has complied with all deadlines, serving discovery, taking depositions, and disclosing expert witnesses. In her motion, Ms. Hiltz requests “an order continuing the discovery period for a period of time sufficient to allow defendant to adequately respond to plaintiff’s interrogatories and request for production...” (ECF No. 8-1.) Presumably, Ms. Hiltz would also want some additional time to disclose expert witnesses of her own.

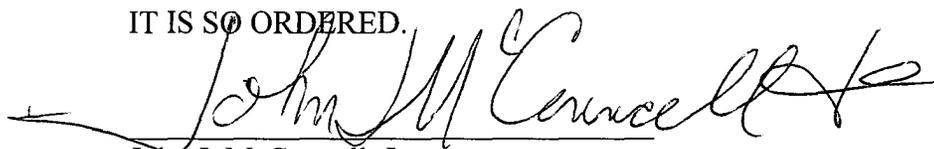
Black & Decker objects to Ms. Hiltz's request on the grounds that her failure to comply with the discovery order in place and failure to timely request an extension demonstrates her indifference to her case and a lack of good cause for receiving an extension of the discovery period. Ms. Hiltz's attorney's claim that he "overlooked" the discovery cut-off date is an understatement. In the face of receiving Black & Decker's discovery requests, defending Ms. Hiltz's deposition, and receiving Black & Decker's expert materials, Ms. Hiltz's attorney did nothing.

While the Court agrees that Ms. Hiltz's delay in every aspect of her case is inexcusable, the Court declines to punish the client for the failures of her attorney. There are two separate considerations with respect to Ms. Hiltz's request – fact discovery and expert discovery. The Court does not find that Black & Decker will be substantially prejudiced if it must answer the interrogatories and request for production that Ms. Hiltz propounded three months after discovery closed. As such, the Court orders Black & Decker to respond to the interrogatories and request for production by September 4, 2012. The matter of Ms. Hiltz's failure to retain an expert is a larger concern. Because of the certain prejudice Ms. Hiltz will suffer if the Court denies her counsel's request, the Court will permit her to name an expert witness and produce expert materials by October 4, 2012. Ms. Hiltz is on notice that the Court will deny any future requests to extend expert discovery beyond that date.

Ms. Hiltz's failure to disclose an expert within deadlines, on the other hand, does raise concerns regarding prejudice against Black & Decker, who has followed the rules, disclosed its expert, and completed discovery. Balancing this unfairness with the prejudice Ms. Hiltz will suffer, the Court will permit Black & Decker to submit an amended or new expert report after it receives Ms. Hiltz's expert materials, if it so desires, by November 5, 2012. Furthermore, as a

sanction for what the Court deems an egregious dereliction of advocacy, the Court orders Ms. Hiltz to pay Black & Decker's expenses incurred in preparing any new or updated expert report, including any attorney's fees.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "John J. McConnell, Jr.", written over a horizontal line. The signature is cursive and includes a long horizontal flourish extending to the left.

John J. McConnell, Jr.
United States District Judge
August 2, 2012