[2017] IEHC 212

**THE HIGH COURT**

**[2007 No. 2543 P]**

**BETWEEN**

**PAUL GALLAGHER**

**PLAINTIFF**

**AND**

**LETTERKENNY GENERAL HOSPITAL, HEALTH SERVICE EXECUTIVE NORTHWEST AREA, THE MINISTER FOR HEALTH, AND ALISTAIR MCFARLANE**

**DEFENDANTS**

**JUDGMENT of Ms. Justice Baker delivered on the 30th day of March, 2017.**

1. The plaintiff was born on 12th December, 1986. He suffered a catastrophic injury immediately before, or at, birth as a result of which he is profoundly physically disabled and suffers from cerebral palsy. He cannot speak or walk and is wholly dependent on his parents. He is said to be of average intelligence. His mother was a very young woman at the time of giving birth.

2. Proceedings by way of personal injury summons issued on 29th March, 2007, a day before the expiration of the statutory period provided for the commencement of such litigation under the Statute of Limitations Act, 1957 (as amended).

3. This judgment is given in a motion to dismiss the proceedings brought by the first and second defendants. The plaintiff served a notice of discontinuance in respect of the claim against the third defendant on 7th December, 2009. The notice incorrectly made reference to the first defendant.

4. The motion issued on 16th July, 2014 and concluded on 1st February, 2017. The delay in the hearing of the motion is a matter that will be explained and considered more fully below.

5. Some argument was made in the course of submissions that I should treat the present motion as one by the fourth named defendant to dismiss the action, but as no affidavit has been made on his behalf, I declined to do so.

6. The application to dismiss is made in the inherent jurisdiction of the court in reliance on the principles explained in *Primor plc v. Stokes Kennedy Crowley & Anor*. [1996] 2 I.R 459 ("*Primor*"), and the associated but different test explained in *O'Domhnaill v. Merrick* [1984] 1 I.R. 151.

**The course of the pleadings**

7. The personal injury summons issued on 29th March, 2007 and was served on the first and second defendants on 25th and 27th March, 2008 respectively, and on the fourth defendant at or near that time. It seems not to have been served on the third defendant against whom the action has been discontinued.

8. An appearance was entered more than twenty months later, on behalf of the first and second defendants, on 26th November, 2009, and on behalf of the fourth defendant on 11th December, 2009.

9. A notice for particulars was served by the first and second defendants on 5th October, 2010 and replies sent on 10th October, 2014, four years later. The motion to dismiss had already been issued and served at that time.

10. A notice for particulars of the fourth defendant was served on 10th June, 2010 and replies thereto on 4th February, 2011.

11. The fourth defendant served a defence on 17th August, 2012 in which he pleaded that the matter had not been prosecuted with due expedition and that this defendant was thereby compromised in his ability to defend the claim. The fourth defendant had retired from his professional practice by the date of the delivery of the defence.

12. The first and second defendants have not served a defence, but a draft defence containing objection that the plaintiff had been guilty of inordinate and unconscionable delay was delivered by them late in 2015 in the course of mediation, and by way of a statement of the grounds of defence on which those defendants would rely.

13. The motion the subject matter of the present application was first listed in the common law motion list on 13th October, 2014 and after a number of adjournments was transferred to the non jury list to fix dates on 12th October, 2015. It then appeared in two directions lists at which the plaintiff was not represented. The motion was listed for hearing on 11th October, 2016 and adjourned on a peremptory basis against the plaintiff to 26th January, 2017. It was heard by me on that date and adjourned then to enable further submissions by the plaintiff to 1st February, 2017 on which date it concluded.

14. In the context of the argument regarding delay, it should be noted that while the plaintiff was directed on 21st October, 2015 to file a replying affidavit to the motion within four weeks, that affidavit was not sworn until 24th January, 2017 just two days before the hearing date of 26th January, 2017, and fifteen months after the order.

15. On 13th October, 2014, and again on 13th April, 2015 the motion was adjourned to enable the parties to explore the possibility of mediation.

16. Mediation with the first and second defendants formally commenced on 25th September, 2015 and was adjourned on four occasions and finally abandoned by these defendants on 20th January, 2016.

17. It is agreed that the time during which the parties were engaged in, and exploring, mediation would not be taken into account in determining the period of delay. Therefore, in round terms the period between 13th October, 2014 and 20th January, 2016 may be ignored.

**The *Primor* test**

18. The relevant period of delay for the purpose of the Primor test is that between the issue of the summons on 29th March, 2007

and the agreement to enter mediation in October, 2014, a period of approximately seven years. The period in bringing the present motion on for hearing after mediation concluded in January, 2016 must to an extent also be reckoned, and that accounts for a further delay of one year.

19. The defendants proceeded at a relatively leisurely pace in the early days following the service of the personal injury summons. An unusual aspect of the present case is that a defence was filed by the fourth defendant on 17th August, 2012, but no defence was formally served by the first and second defendants at any time, and the plaintiff replied to a notice for particulars raised by the fourth defendant within a few months of receiving that notice.

20. A motion issued on 20th May, 2013 that the plaintiff do reply to the notice for particulars served almost three years before, and the replies were served on 10th October, 2014 far outside the six week period granted by Cross J. on 1st July, 2013. The first and second defendants served a warning letter on 3rd October, 2013 with regard to that failure but did not proceed to seek relief by motion thereafter.

21. Taken alone, and in conjunction with the periods of time that it took these defendants to serve pleadings and act on warning letters, the individual delays of the plaintiff while they are of some note, are not at a level where they could in a general way not be excused by reason of the complexity of the litigation. This is a claim in professional negligence in respect of the management of the birth of the plaintiff, and one which of its nature is complex and requires expert evidence and assessment. A long period in serving pleadings is often capable of being excused in complex litigation.

22. A professional negligence claim of complexity could readily take five to seven years to come on for hearing when one takes into account matters such as discovery, and in the case of a personal injuries claim, the furnishing of a schedule of witnesses, examination of a plaintiff by experts on behalf of the defendants, and in some cases the requirement to fully particularise special damages and further loss. But for reasons I now examine, the course of the present proceedings has been less than conventional.

**The form of the pleadings**
23. The personal injuries summons is short and somewhat formulaic and seeks damages for personal injuries, loss and damage arising from alleged negligence and lack of care in the management of the birth of the plaintiff. The first defendant is sued as the hospital in which the plaintiff was born and the second defendant as the proprietor or body in control or charge of that hospital.

24. The particulars of negligence and breach of duty are stated in the most general terms, and 26 particulars are given, one of which is a plea in reliance on the doctrine of *res ipsa loquitur*. The pleadings are a general assertion that one or other of the defendants failed to act upon, investigate, or properly deal with the fact that the plaintiff was deprived of oxygen shortly before or at birth. The particulars of negligence and breach of duty are stated in general terms as a failure to take any or any reasonable care for the health or welfare of the plaintiff and the failure to exercise the skill that would be expected in the circumstances. Some specific pleas are made, that an excessive amount of drugs was administered to the mother of the plaintiff to induce her labour, and that no doctor was present at birth. Taken as a whole the pleas contain nowhere near the level of specificity and concrete facts one would expect.

25. Of particular note is that there are no particulars of special damages, all of which are pleaded as "to be ascertained", albeit certain heads of special damages are identified. The replying affidavit of the solicitor for the plaintiff says he is in need of 24-hour care, will require such care for the rest of his life, and needs a wheelchair to mobilise. A claim is made for loss of earnings but no details have been furnished. The plaintiff lives in a house that is not adapted for wheelchair use. Hospital and medical expenses are not claimed as he has a medical card.

26. Sean Boner, the solicitor for the plaintiff, asserts in his affidavit that the claim ought to be dealt with in a modular fashion, and that "in due course" he will apply for an order that the trial be split and the matter of liability be dealt with before the plaintiff is required to particularise his loss. No agreement has even been sought that the proceedings will be processed this way, and the defendants have expressed a preliminary view in the course of argument that an application to split the trial would be opposed on account of extra costs that might thereby arise.

**Expert reports**
27. What is most significant however is that the plaintiff's solicitor admits that he does not yet have expert reports on which he might prosecute even that part of the claim relating to liability. He has obtained a report from a Mr. Roger Clements which has not been exhibited or furnished to the defendants but some of the contents of which are recited in the replying affidavit of Sean Boner sworn on 24th January, 2017. It seems that Mr. Clements has said in regard to the management of the plaintiff's birth that "resuscitation was incompetent", and that as he has no expertise in the area, a report be obtained by a paediatric neurologist on that specific question. Mr. Boner has not managed to obtain a report from a consultant paediatrician, and at the date of his affidavit he had not identified an expert who has indicated a willingness to give him such report. It seems clear however that the only expert medical report that the plaintiff now has is one from a person who does not have sufficient expertise in neonatal paediatric practice to give even a preliminary report on liability. I am not advised when that report was obtained, but do note reference to Mr. Clements in a letter as long ago as 2008.

28. Mr. Boner in his affidavit says "so I had to get another report and hopefully that will confirm that what Roger Clements said – that the resuscitation was 'incompetent'. I have no doubt that the report will do that".

29. It is clear therefore that the plaintiff does not even have an informal view from a suitable expert as to liability.

30. The stark fact is that some ten years after the plenary summons issued and in the face of a motion to strike out the proceedings for delay and abuse of process, the plaintiff does not have a medical report on which he can prosecute the claim, which as is now presented in the affidavit evidence of the solicitor for the plaintiff is based on an allegation of negligence arising from incompetent resuscitation in the minutes immediately after birth. The solicitor for the plaintiff has frankly admitted that his small one-man practice cannot carry the cost of further medical reports which he estimates at €15,000.00 at a minimum, and it is clear from the evidence that the plaintiff himself and his parents could not fund the obtaining of expert evidence.

31. This has the consequences that defendants as yet do not know the case being made against them. In the course of mediation, the first and second defendants furnished medical reports on a without prejudice basis and for the purposes of the mediation only. The plaintiff has not done this, and now the evidence of the plaintiff's solicitor is that he does not have a report which would give him a sufficient basis to continue the case, nor does he have the funds to obtain such report or reports.

32. Mr. Boner in his replying affidavit seeks to argue by reference to the factual nexus in a number of reported High Court cases, including the case of *Dunne v. Coombe Women & Infants University Hospital* [2013] IEHC 58, that he says are sufficiently similar to

warrant a similar finding on liability in the present case. His approach is misconceived, and there does not appear to be at present any evidence available to the plaintiff which would bear out a finding of negligence. A professional negligence case cannot be conducted on the basis that findings of fact in an earlier, albeit somewhat similar, case can deal with the question of liability in a later case. The question of causation and the factual nexus surrounding that question is a matter of fact to be determined by the trial judge at the hearing of the case before him or her, and while a court is required to determine the issue on the basis of legal principles established in earlier authorities, a finding of fact in an earlier and unrelated case cannot determine the question of liability.

33. For that reason I reject the suggestion by Mr. Boner in his replying affidavit that "I do not expect the reasoning of the *Eoin Dunne* case to come under serious challenge", and insofar as he argues that the conclusion of the court on liability in that case would bind a judge hearing the present case with regard to the question of causation, he is incorrect.

34. The solicitor for the plaintiff has suffered most unfortunate and catastrophic health difficulties in the last few years and he has been significantly impacted in his prosecution of this case as a result. Much of his health difficulties arose since January, 2014 when he contracted a serious and potentially life-threatening virus from which he has now recovered. Because that date is so close to the date at which the mediation was first mooted and later agreed, I consider that his illness does not offer a reasonable excuse for the delay in the preparation of this case, as the delay in respect of which this motion is properly brought is the delay up to October, 2014 when the matter was adjourned from time to time to enable mediation, and in the context of the hearing of the present motion.

35. The delay in this case can usefully be looked at through the prism of the pleadings. In *Farrell v. Arborlane Limited & Ors* [2016] IECA 224, the Court of Appeal dismissed a claim against the seventh defendant, inter alia, on the grounds of delay. The court noted the generic nature of the pleas in the statement of claim and at para. 32 said the following:

> "One matter however, that is of relevance relates to the statement of claim itself. Despite the length of time that these proceedings have been ongoing, no attempt is made in the statement of claim to distinguish the liability of any of the defendants from each other. The statement of claim delivered on the 23rd May, 2014 pleads generic particulars of the alleged negligence, breaches of duty and breach of contract concerning the failure of the defendants to exercise any or any reasonable care in and about the design and construction of the development and as has been noted ascribed to each of the defendants the same level of culpability and on the same pleaded grounds."

**Statutory requirement of specificity**

36. The approach of the Court of Appeal is to be seen in the statutory context that mandates specificity in pleadings in personal injury actions. Section 10 of the Civil Liability and Courts Act 2004 ("the Act of 2004") regulates the bringing of proceedings in respect of a claim for damages for personal injuries. A personal injury summons is required to contain an amount of detail including details in regard to the injuries to the plaintiff and all items of special damage. Section 10(2) provided:

> "A personal injuries summons shall specify—
>
> (a) the plaintiff's name, the address at which he or she ordinarily resides and his or her occupation,
>
> (b) the personal public service number allocated and issued to the plaintiff under section 223 (inserted by section 14 of the Act of 1998) of the Act of 1993,
>
> (c) the defendant's name, the address at which he or she ordinarily resides (if known to the plaintiff) and his or her occupation (if known to the plaintiff),
>
> (d) the injuries to the plaintiff alleged to have been occasioned by the wrong of the defendant,
>
> (e) full particulars of all items of special damage in respect of which the plaintiff is making a claim,
>
> (f) full particulars of the acts of the defendant constituting the said wrong and the circumstances relating to the commission of the said wrong,
>
> (g) full particulars of each instance of negligence by the defendant."

37. Full particulars of negligence are also required to be furnished in the summons, and the Act of 2004 creates a statutory imperative that in the case of an action for damages for personal injuries, a plaintiff shall particularise his or her claim to a significant degree, and generic types of pleadings are not appropriate in such claims.

38. Section 10(3)(a) of the Act of 2004 provides that where a plaintiff has failed to comply with the provisions of s. 10 that the court may:

> "(i) direct that the action shall not proceed any further until the plaintiff complies with such conditions as the court may specify, or
>
> (ii) where it considers that the interests of justice so require, dismiss the plaintiff's action."

39. The motion seeking to dismiss the claim makes specific reference to this section, as does the objection in the draft defence delivered by the first and second defendants in advance of the mediation.

**Discussion**

40. The personal injury summons is pleaded in the most general and generic way. It contains no specific details of the alleged negligence and no attempt is made to distinguish the elements of negligence pleaded against each of the defendants individually. There are no particulars of the current physical state of the plaintiff, save that it is pleaded that he was born suffering from cerebral palsy. There are no particulars of special damages, the plaintiff is stated to be a student and matters such as loss of earnings are pleaded to be then unascertained.

41. Mr. Boner in his affidavit denies that the statement of claim fails to specify the injuries, but while such a statement might be appropriate in a formal defence, it is not a suitable or adequate answer to the claim by the defendants that by reason, inter alia, of the failure of the plaintiff to furnish details of personal injuries and other aspects of the claim that it should be dismissed in the inherent jurisdiction of the court, or under the Act of 2004.

42. Irish Public Bodies Mutual Insurances Limited wrote to the solicitors for the plaintiff on 19th June, 2008 noting that no correspondence whatsoever had been received from the solicitor for the plaintiff since 2001 and stating that it was "under the impression that this claim was not being pursued". This letter helpfully identified a number of questions which remained unanswered, including the current state of the plaintiff's medical condition and his future prognosis. The plaintiff's solicitor was invited to share medical reports, to explain the delay and clarify issues to enable the defendants to fully investigate the claim and their attitude to it. The letter from the insurance company must have triggered in the mind of the solicitor for the plaintiff the urgent need to assemble the relevant details and evidence regarding the claim, and the fact that the defendants had already identified that they required further information to investigate the matter ought to have alerted the solicitor for the plaintiff to the matters needing attention if the claim was to proceed.

43. After the present motion was brought, mediation was agreed, and the solicitor for the plaintiff was made aware that the mediation would proceed on the basis that liability was not conceded.

44. Even in the face of the letter, the motion and the statutory requirements, the solicitor for the plaintiff as yet has not assembled any details of the claim for special damages, and apart from the contents of the replies to particulars dated 10th October, 2014 which identify that the plaintiff has attended primary and second school and has done two FAS courses in computing since he left secondary school, there is nothing in the documentation to clarify the present circumstances of the plaintiff. The replies to particulars dated 10th October, 2014, suggest that "changes" need to be made to the house where the plaintiff resides with his mother, and that "it would not be envisaged that this work would cost more than €10,000". It appears from these replies that the claim is being made for damages in the form of loss of earnings but no particulars whatsoever have been furnished in regard to these.

45. Further, at the present time, notwithstanding that it is now 10 years since the personal injury summons issued, and 30 years since the plaintiff was born, the plaintiff's solicitor has not obtained a medical report from an expert which could be used to substantiate a claim in negligence. Mr. Boner has admitted this in his affidavit, and also has admitted that his firm is not in a position to finance the obtaining of further reports. He offers no alternative suggestion as to how the matter can hope to proceed at all in the absence of such medical reports.

46. Clarke J. in *Greene v. Triangle Developments Limited & Anor*. [2008] IEHC 52 explained the importance of having expert evidence in advance of commencing proceedings in professional negligence:

> "It is, of course, the case that no party should issue proceedings (or join a third party to existing proceedings) without having a credible basis for so doing. That situation applies with particular force in cases where it may be considered appropriate to maintain a claim for professional negligence. It would be most inappropriate for any party to issue proceedings alleging professional negligence or join a third party against whom professional negligence was to be alleged, without having a sufficient expert opinion available that would allow an assessment to be made to the effect that there was a stateable case for the professional negligence intended to be asserted. In some types of litigation it may well be possible for solicitors or counsel to form a judgment as to the existence of a stateable case on the basis of evidence without the benefit of expert reports. However, it seems unlikely, at least in most cases, that any such judgment could responsibly be formed in relation to a claim in professional negligence without having an appropriate expert report which addressed the alleged failings on the part of the professional person concerned." (para. 4.3)

47. The plaintiff in the present case does not even at this stage have expert opinion to substantiate his claim.

48. I now turn to consider the argument that the plaintiff be granted indulgence in the light of his personal circumstances.

**Personal circumstances of the plaintiff**

49. In *Farrell v. Arborlane Limited & Ors.*, the Court of Appeal, while accepting thirteen of the fifteen propositions enunciated by Barrett J. in the High Court with regard to the jurisprudence in delay cases, rejected the broad proposition that the "courts must bring to their considerations a necessary sensitivity to the personal and social background of persons who present before them". Sheehan J., giving the judgment of the Court, while he accepted that the court could take into account personal circumstances of the litigant in an assessment of where the balance of justice lies, said at para. 24:

> "…it does not simply engage the process by testing the personal circumstances of the litigants, one against the other. Insofar as the trial judge appears to consider that the plaintiff's personal circumstances as a private citizen and the inconvenience that she suffered were to be given greater weight than that suffered by a professional person in the course of his employment, he incorrectly applied the principles established in the authorities."

50. Sheehan J. explained that a consideration of the balance of justice:

> " … is to be arrived at following consideration of all relevant factors including the length of the delay and the degree of actual prejudice shown to have been suffered by the parties. It is not to be confined to the weighing of personal circumstances, and prejudice suffered by one or other party is not to be considered as a standalone factor, but as one that informs the court in the exercise it engages."

51. In *Farrell v. Arborlane Limited & Ors*. the Court of Appeal noted that the trial judge did not have before him any evidence of the personal or financial circumstances of the plaintiff. In the present case, I do have such evidence and the plaintiff himself and his parents are of very modest means, and he suffers from a catastrophic injury which impacts gravely on his capacity to work, and as a result of which he has significant and profound needs in his daily life.

52. In *Forum Connemara Limited v. Galway County Local Community Development Committee* [2015] IEHC 369, Barrett J. noted his own decision the previous year in *Harrington v. EPA* [2014] IEHC 307:

> "The courts in applying the law must be sensitive to the personal and social background of persons who present before them. This is what makes our courts hallowed places in which, subject at all times to what the law requires, measured justice is dispensed and unmerited harshness avoided. The correctness of this approach has been confirmed by the Supreme Court in the recent past… in Comcast International Holdings Limited v. Minister for Public Enterprise and Others [2012] IESC 50."

53. In *Comcast International Holdings Incorporated & Ors. v. Minister for Public Enterprise & Ors.* [2012] IESC 50, McKechnie J. at para. 33 made the following observation which usefully expresses the dilemma in the present case:

> "My point is utterly simple. In the situation under discussion justice is best achieved by letting it react to given facts. The same period of delay, in different cases, may demand different treatment. Justice is not always referenced to the highest bar. If that were the case, the wealthy, powerful, and the influential would set it. That should not be allowed. Justice sets its own bar. A failure of the average man and his average lawyer to match the gold standard of their opposite in society and in practice must not be necessarily condemned."

54. Clarke J. at para. 3.10 of his judgment in that case agreed with that proposition and he said the following:

> "The circumstances of the parties and, in particular, any disparity in the resources available to the parties must always be a factor which the court takes into account. The degree of expedition and compliance with time limits which could properly be expected of large corporations involved in commercial disputes cannot reasonably be required of poorly resourced or otherwise disadvantaged litigants."

55. Clarke J. recognised a requirement that the court to take into account the circumstances of a plaintiff if they are disadvantaged and socially deprived as explained by Costello J. in *Guerin v. Guerin* [1992] 2 I.R. 287 at p. 293:

> "… an economically and socially deprived world from which the world so familiar to lawyers in which people sue and are sued… [is] remote and arcane."

56. The sensitivity that the court must engage to the personal and social circumstances of a litigant does not extend to an indulgence for poor or inadequate pleadings, and having regard to the case law in delay could not amount to an excusing factor, as it could not rationally be said that a complex professional negligence and especially a medical negligence claim, brought by an impecunious plaintiff is capable of being conducted outside the statutory requirements of the Act of 2004, and outside the requirements formulated through practice and procedure over a long number of years to the benefit of both plaintiff and defendant.

57. Further, while the financial and social circumstances of the plaintiff are a factor that might have explained some of the delay in preparing this case for trial, I am not confident that the solicitor for the plaintiff has dealt in any coherent way with the ongoing needs of preparing this case for trial, including what must be the costly exercise of assembling expert evidence, medical expert opinion and actuarial and other evidence with regard to the financial claim for future loss of earnings and other special damages.

58. The impecuniosity of the solicitor for the plaintiff is not a factor that could weigh in my consideration, even if the impecuniosity and poor social circumstances of the plaintiff himself might be. It is true that the plaintiff is entitled to his own choice of legal representation but if his solicitor cannot represent him, the plaintiff is entitled to know the extent to which the inability of the solicitor for the plaintiff to act is likely to damage his claim.

59. This plaintiff must, like any other plaintiff, prove his case and must comply with the Rules of court and the requirements of the Act of 2004, and the jurisprudence that has evolved with regard to the conduct of professional negligence claims. He must prove his claim on the evidence, and he must in advance of the trial furnish full particulars of the evidence to be called and the expert medical reports.

60. The plaintiff has no medical report that can advance his claim, and in stark terms, does not have evidence on which he can succeed at trial. He has no agreement with the defendants for the trial of a preliminary issue regarding liability, and accordingly, he is not in a position to run the trial in the absence of a court order, other than by assembling the evidence of liability and quantum and conducting the trial in a unitary way.

61. The circumstances point to a delay which taking all the facts into account is inexcusable, and where the balance of justice seems to favour the dismissal of the proceedings. However, I am mindful of the personal circumstances of the plaintiff and that this is a factor which the Court of Appeal accepts may weigh the balance in favour of a plaintiff.

62. In *Casserly v. O'Connell* [2013] IEHC 391, Hogan J. was dealing with an application to strike out proceedings on the grounds of delay. That was a case where there was a significant delay, albeit that the case had proceeded to a stage further than the stage the present case has reached and an order for discovery had been made.

63. Hogan J., albeit he expressed some hesitation in so doing, refused to strike out the proceedings:

"Judged by the particulars contained in the statement of claim, the plaintiff appears to have been seriously injured in the road accident. Moreover, the delay, while significant, has not appreciably compromised the defendant's ability to defend the proceedings on their merits or has otherwise impeded what I described in Adamson as the courts' ability to 'arrive at a fair determination of the case based on objective evidence which lends itself to independent scrutiny'." (para. 20)

64. Hogan J. dealt with the matter in a nuanced way by adjourning the motion to strike out the proceedings for two months to enable the plaintiff to put his preparations for trial in order. He also directed the plaintiff to offer the defendant the option of a separate hearing on liability and damages on the basis that the choice would be at the election of the defendant.

65. I am disposed to take a similar approach, because although the first and second defendants can show some prejudice, it seems much of the evidence is available in the documentary records showing the circumstances surrounding the birth and first minutes in the life of the plaintiff. These defendants did not engage the process with expedition after service of the summons, and did not move on foot of an inordinate delay in replying to particulars, and bear some blame for the slow pace of the proceedings. The delay might not seem excessive had the pleadings and evidence been assembled and were the case now close to being ready for trial.

66. In those circumstances, I am disposed to adjourning this motion for a period of three months to allow the plaintiff to assemble expert evidence and reports, and to furnish full and detailed particulars of the nature of the injury, and of the alleged negligence and, unless the solicitors for the first and second defendants formally agree to a modular trial, the particulars of loss.