THE HIGH COURT

[2023] IEHC 684

Record No. 2009/10191P

Between:

CATHERINE PATRICIA ALLEN

Plaintiff

AND

HELSINN BIREX PHARMACEUTICALS LIMITED, HELSINN BIREX THERAPEUTICS LIMITED, ERGHA HEALTHCARE LIMITED, PCO MANUFACTURING LIMITED, GOWRIE LIMITED trading as B & S HEALTHCARE, PINEWOOD LABORATORIES LIMITED, IREISH MEDICINES BOARD and THE MINISTER FOR HEALTH AND CHILDREN

Defendants

THE HIGH COURT

Record No. 2009/10437P

Between:

BREDA THOMAS

Plaintiff

AND

HELSINN BIREX PHARMACEUTICALS LIMITED, HELSINN BIREX THERAPEUTICS LIMITED, ERGHA HEALTHCARE LIMITED, PCO MANUFACTURING LIMITED, GOWRIE LIMITED trading as B & S HEALTHCARE, PINEWOOD LABORATORIES LIMITED, IRISH MEDICINES BOARD and THE MINISTER FOR HEALTH AND CHILDREN

Defendants

JUDGMENT of Ms. Justice Jackson delivered on the 30th day of November, 2023

1. The applications before the Court consist of two motions brought by the First, Second and Third named Defendants ('the Applicants') in each of the above-entitled proceedings seeking identical reliefs. These are two different proceedings in which there are different Plaintiffs but the same Defendants. The facts in the two cases, while similar, are not identical and the differences will be set out below.

2. The reliefs being sought are as follows:

1. An Order pursuant to the provisions of Order 122 of the Rules of the Superior Courts 1986 dismissing the Plaintiffs' claims against the First, Second and Third Named Defendants (the Applicants herein) for want of prosecution;
2. Furthermore and/or in the alternative, an Order dismissing the Plaintiffs' claims against the First, Second and Third named Defendants (the Applicants herein) on the grounds of inordinate and inexcusable delay.

3. A further substantive relief sought in both motions being "if necessary, a consequential Order dismissing the Eight Defendant's claim for an indemnity/contribution from these Defendants" has been the subject of a Notice of Discontinuance on the part of the First, Second and Third named Defendants.

Background

4. In both sets of proceedings, the Plaintiffs allege that the Applicants acted negligently and/or in breach of duty in or about the manufacture of a drug, Aulin/Nimesulide in consequence of which, it is alleged, the Plaintiffs suffered personal injuries.

5. In the case of the Plaintiff, CA, it is alleged that she used the drug concerned in or about 2003 (paragraph 36 of the Personal Injuries Summons herein), that "prior to and in or around the time of" such usage she suffered from severe onset jaundice for which she attended her General Practitioner and that she became aware of a potential claim in or about 2008. Proceedings were issued on 12th November 2009. It should be noted that in the submissions of the applicant Defendants, there is reference to usage of the drug in question by CA considerably prior to 2003 in 1999/2000 as recorded at Reply 1.1 in the Plaintiff's Replies to Notice for Particulars in that case of 28th August 2013.

6. In the case of the Plaintiff, BT, it is alleged that she used the drug concerned in or about 2006 and that she was hospitalised with jaundice and severe acute hepatitis in July 2006. BT asserts that she became aware of a potential claim in or about 2008. Proceedings in this case were issued on 19th November 2009. It was conceded by the applicant Defendants that pre-proceedings delay was not a major issue in the case of the Plaintiff, BT.

7. In terms of the factual backgrounds to the two cases, there is at least one significant difference. In the case of CA, it is alleged that the medication when taken by her was unprescribed but rather was supplied to her by "pharmaceutical company representatives" who, it is alleged, gave samples to her and other nursing staff members in the hospital in which she worked. While it would appear that the representative in question has been identified by CA in Replies to Particulars dated 28th August 2013 (Reply 1.5), there is no specific reference to this person, her evidence or her availability as a witness in the affidavits filed by either party in the context of the motion in this case. In the case of BT, it is alleged (and would not appear to be substantially disputed) that the medication was taken by the Plaintiff in that case following the prescription of same by her General Practitioner.

8. The post-proceedings trajectory of these two cases is largely similar. As stated, the proceedings were instituted in November 2009. Defences were served in August 2011 together with Notices for Particulars. These Particulars were replied to in August 2013 in the CA case and in June 2013 in the BT case. Subsequent to this, there were Notices of Intention to Proceed served, there was correspondence between the parties and there was a without prejudice telephone conversation. The significance of these latter events will be referenced hereinafter. Chronologies in both cases are set out in the Appendices to this judgment.

The Law

9. Order 122 rule 11 of the Rules of the Superior Courts provides:

> *"In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. In any cause or matter in which there has been no proceeding for two years from the last proceeding had, the defendant may apply to the Court to dismiss the same for want of prosecution, and on the hearing of such application the Court may order the cause or matter to be dismissed accordingly or may make such order and on such terms as to the Court may seem just. A motion or summons on which no order has been made shall not, but notice of trial although countermanded shall, be deemed a proceeding within this rule."*

10. Two issues arise in this case in the context of this rule:

1. Has there been two years since the last "proceeding" in these matters?
2. If the answer to 1. is affirmative, what are the applicable tests in relation to dismissing a claim for want of prosecution?

11. The Applicants herein contend that the last "proceeding" in these cases dates back to 2013 being the Replies to Particulars of 28th August 2013 in the CA case and of 18th June 2013 in the BT case.

12. If there is no "proceeding" within two years, Order 122, rule 11 vests this Court with jurisdiction to dismiss proceedings or to make such order and on such terms as seem just to the Court. The meaning of "proceeding" was defined by Gibson J. i*n Allen v Redland Tile Co (Northern Ireland) Limited [1973] NI 75*:

> *"… a proceeding is an act which has some degree of formality and significance and which is done in furtherance of an action … something in the nature of a formal step being either an application to the court or at least a step which is required by the rules."*

13. In *Bannon v Craigavon Development Commission [1984] NI 387*, the Queen's Bench Division of the High Court of Northern Ireland held that neither a notice of intention to proceed nor notice of change of solicitor constitutes a proceeding for the purposes of this rule. Affirming the decision of the court below, the Supreme Court held likewise in *Anglo Irish Beef Processors Limited v Montgomery [2002] 3 IR 510*. Fennelly J. stated at p. 517:

> *"The learned trial judge correctly rejected the submission of the respondent that either a Notice of Intention to Proceed or a [notice] of change of solicitor constituted a proceeding for the purposes of the Rules of the Superior Courts. He followed the decision of the Northern Ireland High Court in Bannon v Craigavon Development Commission [1984] N. I. 387. Put simply, the respondents allowed a period of six and a half years to run without taking any action at all except to say, twice that they intended to proceed but without doing so."*

14. There having been no proceeding herein since 2013, I find that it has been well in excess of the two-year period referenced in the Rules since the last such.

15. In these circumstances, the issue at 2. above must be considered. The considerations for the Court in this context are similar to those which apply in the exercise of the inherent jurisdiction to strike out proceedings for inordinate and inexcusable delay, the second relief sought herein.

16. Delay must be considered in the context of pre- and post- commencement delay. As the Court of Appeal explained in *Connolly's Red Mills v. Torc Grain and Feed Limited [2015] IECA 280*:

> *"29. The reason that the court must take into account pre-commencement delay in assessing whether or not post commencement delay is inordinate and inexcusable is that it cannot be disputed but that the longer the period that is allowed to elapse between the events the subject matter of the claim and the trial date, the greater the risk that justice will be put to the hazard. In these proceedings, the late start by the plaintiff in issuing its plenary summons and the delay in delivering the statement of claim meant that eight years were permitted to elapse between the date of the contract at issue and the date upon which the claim was fully particularised."*

17. The *Primor* principles ([*1996] 2 IR 463 at p. 475*) which apply in these circumstances are well known. Hamilton CJ stated:

> *"(a) the courts have an inherent jurisdiction to control their own procedure and*
>
> *(b) it must, in the first instance, be established by the party seeking a dismissal of proceedings for want of prosecution on a ground of delay in the prosecution thereof, that the delay was inordinate and inexcusable;*
>
> *(c) even where the delay has been both inordinate and inexcusable the court must exercise a judgment on whether in its discretion, on the facts the balance of justice is in favour of or against the proceeding of the case;*

(d) in considering this latter obligation the court is entitled to take into consideration and have regard to:

(i) the implied constitutional principles of basic fairness of procedures,

(ii) whether the delay and consequent prejudice in the special facts of the case are such as to make it unfair to the defendant to allow the action to proceed and to make it just to strike out the plaintiff's action

(iii) any delay on the part of the defendant - because litigation is a two-party operation, the conduct of both parties should be looked at

(iv) whether any delay or conduct of the defendant amounts to acquiescence on the part of the defendant in the plaintiff's delay,

(v*) the fact that conduct by the defendant which induces the plaintiff to incur further expense in pursuing the action does not, in law, constitute an absolute bar preventing the defendant from obtaining a striking out order but is a relevant factor to be taken into account by the judge in exercising his discretion whether or not to strike out the claim, the weight to be attached to such conduct depending upon all the circumstances of the particular case,*

(vi) whether the delay gives rise to a substantial risk that it is not possible to have a fair trial or is likely to cause or have caused serious prejudice to the defendant,

(vii) the fact that the prejudice to the defendant referred to in (vi) may arise in many ways and be other than that merely caused by the delay, including damage to a defendant's reputation and business."

18. The Applicants have referenced the decision of *Nahj Company for Services v. Royal College of Surgeons Ireland [2023] IEHC 453* which decision sets out the three questions to be considered:

> *"(1) has there been inordinate delay; (2) has the delay been inexcusable and (3) if the answer to the first two questions is in the affirmative, it then becomes necessary to consider whether the balance of justice lies in favour of or against allowing the case to proceed."*

19. While there is no universal benchmark to determine if a delay has been inordinate (per Barrett J. in *Tesco Ireland Ltd v. McNeill [2014] IEHC 367*, a number of cases have been referenced by the parties in this regard. I am of the opinion that the judgment of Simons J. in *Ahearne v. O'Sullivan and Others [2020] IEHC 46* is particularly helpful given that it also concerned product liability in a medical context. It must be remarked that the delay since the last proceeding in that case was considerably less than in this present case although the overall delay (including pre-proceedings delay) was considerably longer. The dictum of Simons J. at para. 17 is particularly applicable in the present instance:

> *"17. .... The progress of the proceedings themselves has been dilatory. Nine years have elapsed since the proceedings were instituted, and even now same are not ready to be set down for trial. Prior to the events associated with the motion to dismiss the proceedings, the last substantive step taken on behalf of the injured party had been the delivery on the 7 July 2017 of a reply to a notice for particulars raised by the HSE."*

20. The decision of this Court was affirmed on appeal by the Court of Appeal ([2023] IECA 134).

21. Having regard to the length of time which has elapsed since there was a proceeding in these cases (the motions herein were issued on 21st March 2022 at which time there had been no proceeding since 2013), I am of the view that there has clearly been an inordinate delay.

22. It is now necessary to consider if this delay is inexcusable. *Primor* states that it must be established by the party seeking the dismissal that the delay was not only inordinate but also inexcusable. In the present instance, the Applicants' motions were grounded upon the Affidavits of Kate O'Donohoe sworn on 21st March 2022. Relevant to the excusability of the delay, the Deponent at Paragraph 12 in the CA case and at Paragraph 10 in the BT case referenced the lack of any progress from 2013. There was reference to correspondence between the solicitors for the parties between 2020 and 2021, in which a series of letters was exhibited by the Applicants in the BT proceedings. This correspondence will be considered further below. There were Replying Affidavits sworn in respect of both motions these being the Affidavits of Esther Morrissey, both sworn on 11th November 2022 (notably almost seven months after service of the motions herein).

23. In terms of excuses for the delays which have undoubtedly occurred, the following issues arise:

1. There was delay due to the desire of the Plaintiffs to progress a third action involving similar factual circumstances in advance of the two sets of proceedings concerned herein by way of a "test case" (per correspondence referenced in the Affidavits of Esther Morrissey). A letter in this regard had been sent by the Plaintiffs' solicitors to the Applicants' solicitors on the 28th February 2020 (the letter was sent only in the BT case but I do not believe that much turns on this in the present circumstances). Thereafter, the Plaintiffs' assert, the third action was delayed due to the Covid pandemic in circumstances

in which the Plaintiff in those proceedings was a vulnerable person and necessary expert assessments were in consequence delayed. It is amply clear from the responding letter from the Applicants' solicitors that there was no agreement in this regard. Indeed, there is a consistency in the correspondence from the Applicants' solicitors, both prior to and subsequent to the letter of 28th February 2020, indicating that they wish the proceedings to progress and that they will take steps if this does not occur.

2. There was a suggestion of mediation in the letter of 28th February 2020 with the said letter (sent only in the BT case) stating "It should be noted that contemporaneously, we have delivered a letter inviting your clients, the above-mentioned Defendants, to consider Mediation in relation to a resolution of these Court proceedings at a time that is mutually convenient for all concerned." It was common case that no such letter was ever sent by the Plaintiffs' solicitors. Indeed, the Applicants' solicitors confirmed this in their replying letter of 4th March 2020.
3. Ms. Morrissey in her replying Affidavits also referenced the fact that a without prejudice conversation had taken place between the parties' solicitors on 27th July 2021.

In relation to these potential excuses, I would first of all comment as follows:

25. Re. 1 – it is common case that the Applicants did not agree to the progress of these proceedings and other proceedings in a particular order or in a particular manner. No court directions were sought or made in this regard. In these circumstances, I am being asked to hold a delay to be excusable due to the fact that one of the parties unilaterally decided to advance one set of proceedings in advance of others. There is no relationship between these proceedings save that they involve the same product.

26. I find that this is not a basis upon which I can hold a delay to be excusable.

27. Re 2 – mediation of disputes is obviously to be supported and encouraged. On the facts of this case where the relevant letter was not received (and it was conceded at the hearing of these motions that no such letter was sent), I find that this is not a basis upon which I can hold a delay to be excusable.

28. Re 3 – an issue arose at hearing as to whether I was entitled to be told anything of a without prejudice event, to include whether I was entitled to be told that such event had even occurred. It was common case as between the Applicants and the Plaintiffs that I had no entitlement to hear the substance of such without prejudice correspondence in the current circumstances and this is undoubtedly correct. The Applicants contended, however, that the privilege attaching to without prejudice communications extended further to include the fact that such communications had occurred. I am of the view that it was perfectly appropriate that the Plaintiffs would refer to the fact of without prejudice discussions having occurred provided the substance of same was not disclosed. As stated by Cross and Tapper on Evidence, 3rd Ed (2018) at p. 481:

> *"In civil proceedings, in an attempt to settle a dispute, parties frequently make statements 'without prejudice'. The contents of the statement then cannot be put in evidence without the consent of both parties, …"*

29. I find that settlement discussions as a general rule (absent legislative *imprimatur* or court direction) do not render a delay excusable. Certain instances where an acquiescence argument might arise can be envisaged (*Primor* at Paragraph (e)(iv)) but this is not the position in this instance. The inexcusable nature of the delay in this case, and indeed the incomprehensibility of such, is heightened by the fact that the Plaintiffs received warning letters in respect of an application such as that which is now before me on two separate occasions, first in 2018 and then in 2021.

30. I therefore conclude that the delay in these cases was both inordinate and inexcusable.

31. It is only where inordinate and inexcusable delay has been found that consideration must move on to the balance of justice test, as set out in Paragraph (e) of *Primor*. As stated by McKechnie J. in *Mangan v Dockeray and Another [2020] IESC 67*:

> *"128. In order for this Court to be satisfied that a dismissal of the proceedings is warranted on delay/prejudice grounds, it must first be established that the delay is both inordinate and inexcusable. If it is not so established, that is an end to the matter. If however it is so satisfied, then it must embark on the balance of justice test."*

32. The jurisdiction under consideration herein has been comprehensively considered by the Court of Appeal (Collins J.) in *Cave Projects Limited v Kelly [2022] IECA 245* and I have extracted therefrom dicta setting out some of the applicable principles which are particularly pertinent herein:

> *"…, there are a number of points arising from the jurisprudence which, in my view, warrant emphasis:*
>
> *• The onus is on the defendant to establish all three limbs of the Primor test ….*
>
> *• An order dismissing a claim is on any view a far-reaching one .. ..*
>
> *• The court's assessment of the balance of justice does not involve a freefloating inquiry divorced from the delay that has been established. The nature and extent of the delay is a critical consideration in the balance of justice. Where inordinate and inexcusable delay is demonstrated, there has to be a causal connection between that delay and the matters relied on for the purpose of establishing that the balance of justice warrants the dismissal of the claim….*
>
> *• Each case will turn on its own facts and circumstances: "[e]very case is different....*

• …

• The issue of prejudice is a complex and evolving one. There are many statements in the authorities to the effect that, in the exercise of the Primor jurisdiction, the question of prejudice is central. In Primor itself, Hamilton CJ identified as one of the factors to which regard was to be had in assessing the balance of justice "whether the delay and consequent prejudice in the special facts of the case are such as to make it unfair to the defendant to allow the action to proceed and to make it just to strike out the plaintiff's action" (at 475)….

• Prejudice is not, however, confined to "fair trial" prejudice. It may include damage to a defendant's reputation and business:….

• In many (if not most) applications to dismiss based on the Primor principles, the defendant will assert that some specific prejudice has arisen from the delay of the plaintiff. As McKechnie J observed in Mangan v Dockeray, "the existence of significant and irremediable prejudice to a defendant", such as by reason of the unavailability of witnesses, the fallibility of memory recall, loss of documentary records such as medical records (Mangan involved a claim for medical negligence) "usually feature strongly" (at para 109 (iv)). The absence of any specific prejudice (or, as it is often referred to in the caselaw, "concrete prejudice") may be a material factor in the court's assessment. However, it is clear from the authorities that absence of evidence of specific/concrete prejudice does not in itself necessarily exclude a finding that the balance of justice warrants dismissal in any given case. General prejudice may suffice. The caselaw suggests that the form of general prejudice most commonly relied on in this context is

the difficulty that witnesses may have in giving evidence – and the difficulty that courts may have in resolving conflicts of evidence – relating to events that may have taken place many years before an action gets to trial. That such difficulties may arise cannot be gainsaid. But it is important that assertions of general prejudice are carefully and fairly assessed and that they have a sufficient evidential basis…. Nevertheless, the observations of Cross J in Calvert v Stollznow provide a salutary warning against the application of unduly elevated and unrealistic standards of justice in this context, such that, in effect, an immediate presumption of prejudice arises whenever there is any material default on the part of a plaintiff in prosecuting a claim. Prejudice is not to be presumed: AIG Europe Limited v Fitzpatrick [2020] IECA 99, per Whelan J (Donnelly and Power JJ agreeing).

• As to the threshold of prejudice that applies, the authorities suggest that even "moderate prejudice" may suffice: "even moderate prejudice against a backdrop of inordinate and inexcusable delay may be deemed sufficient to tip the scales of justice in favour of dismissing the proceedings" (per Irvine J in in Cassidy v The Provincialate, at para 60 (emphasis added), citing Stephens v John Paul Limited [2008] 4 IR 31)….

• ….

• …. The suggestion that a defendant might succeed in having a claim against them dismissed in the absence of evidence of prejudice is a far-reaching one which raises significant issues that are perhaps best explored in a case where the point is actually pressed in argument. However, it would appear to represent a significant development of (or,

perhaps more correctly, departure from) existing jurisprudence, in which, as already discussed, the issue of prejudice has been acknowledged to be central. In addition, any suggestion that proceedings might be dismissed in the absence of prejudice to the defendant would appear difficult to reconcile with the consistent emphasis in the authorities that the jurisdiction is not punitive or disciplinary in character: the "jurisdiction does not exist so that form of punishment can be inflicted upon a dilatory plaintiff as a mark of the Court's displeasure" (per Peart J in Bank of Ireland v Kelly, at para 52).

37. It is entirely appropriate that the culture of "endless indulgence" of delay on the part of plaintiffs has passed, with there now being far greater emphasis on the need for the appropriate management and expeditious determination of civil litigation. Article 6 ECHR has played a significant role in this context.... All of this suggests that courts must be astute to ensure that proceedings are not dismissed unless, on a careful assessment of all the relevant facts and circumstances, it is clear that permitting the claim to proceed would result in some real and tangible injustice to the defendant."

33. In terms of the balance of justice, it is clear that granting the relief sought will fundamentally impact upon the position of the Plaintiffs as their claims will be struck out and at an end. As against this most fundamental impact must be balanced whether a real and tangible injustice will result to the Applicants. In the Affidavits filed by the Applicants, the prejudice deposed to was general and non-specific in nature. In the first Affidavits of Kate

O'Donohoe of 21st March 2022, there are also identical averments in this regard (Paragraph 13 in CA and Paragraph 10 in BT):

> *"I [also] say and believe that it is unfair, prejudicial and oppressive upon my clients to have litigation hanging over them for such a lengthy and protracted period of time and I therefore say and believe that the balance of justice now favours having these proceedings dismissed both for want of prosecution and/or on the grounds of delay."*

34. Additional averments as to prejudice were included in the Replying Affirmations of Aaron Cullen both sworn on 25th November 2022. Under the heading "Prejudice", Mr. Cullen references:

(i) The delay since drug usage being twenty and sixteen years respectively and the delay of thirteen years since the institution of proceedings;

(ii) The impact of the delays upon evidence collection and preservation (the Plaintiffs sought to link such preservation to the delivery of Defences in both proceedings in 2011). This is expressed in a general, non-specific manner;

(iii) The impact of the passage of time on witness recollection which impact, it is asserted, is heightened by the highly technical and complex nature of the dispute. Again, this is expressed in a general, non-specific manner. In this regard, the dictum of Edwards J. in *Ahearne v. O'Sullivan* [2023] IECA 134 at Paragraph 80 seems apposite:

> *"I significantly doubt that in the development, manufacture and trialling of a product of this type in the context in which it occurred, that the product developers, manufacturers and testers would solely entrust important proprietary information, including scientific and technical knowledge gained in the process, to individual or institutional memory. Again, it seems to me, there must be a strong likelihood that*

documentary records still exist. It therefore seems to me that having regard to published scientific research and literature in the public domain, and peculiar knowledge comprising proprietary information which likely exists in the records of the second to fifth named defendants and which could be briefed to any modern day expert retained by them, the degree of likely prejudice that would potentially enure to the second to fifth named defendants by virtue of being unable to secure the testimony of witnesses (with an adequate residual memory of events) who were involved at the time would be marginal to (at most) moderate."

(iv) The impact of witnesses who are no longer in the employment of the Applicants and/or no longer resident in the jurisdiction. Once again, there is no reference to any specific witness in respect of whom these issues arise.

35. In oral submissions, reference was also made to general reputational damage and the general negativity attributable to prolonged exposure to litigation. There is no reference to any specific evidential difficulty in terms of particular witnesses or real evidence. In this context, it must also be borne in mind that it was accepted by both sides that there was a case involving similar product liability allegations (relating to the same product) proceeding in respect of which no application such as the present was being pursued although the Applicants asserted (by way of submission) that the relevant production periods differed in the various cases. I am of the view that this similar case must have a bearing on the extent of reputational damage and on issues of evidence collection and preservation which can be exclusively attributable to the two cases under consideration.

36. It is clear from the authorities that general prejudice may suffice to tilt the balance of justice in favour of litigants such as the Applicants but as stated by Collins J., prejudice is not to be presumed. Having considered the evidence of prejudice to the Applicants which has been

presented to me and balancing this against the undeniable prejudice to the Plaintiffs arising from a striking out of their claims, I am unable to conclude that allowing the claims of the Plaintiffs to proceed would result in a real and tangible injustice to the Applicants.

37. I am therefore refusing the reliefs sought by the Applicants herein.

38. There has been inordinate and inexcusable delay in this matter. The Plaintiffs have not progressed their proceedings with reasonable expedition, and this cannot be permitted to continue. I will list this matter for Case Management, at which time both sides may address the manner in which these proceedings may expeditiously proceed to hearing.

39. As to costs, while the Plaintiffs have been successful in resisting the application of the Applicants to have the cases dismissed, in view of my determination in relation to inordinate and inexcusable delay, I have reservations as to the appropriateness of costs following the event in accordance with the default position under Section 169 of the Legal Services Regulation Act, 2015. I will therefore hear submissions on the issue of costs at the same time as hearing the Case Management hearing herein. For these purposes, I would propose listing this matter before me on the 15th December 2023 at 10.30 a.m..

<u>The Chronologies</u>

Appendix 1 CA Case

Date	**Event**
12 November 2009	Personal Injuries Summons issues
8 November 2010	The Personal Injuries Summons in served on the Applicants
15 November 2010	The Applicants enter an Appearance
18 August 2011	The Applicants deliver a Defence

18 August 2011	Service of the Applicants' Notice for Particulars
28 August 2013	Plaintiff's Replies to Notice for Particulars
29 August 2013	Plaintiff Serves Notice of Discontinuance on the Fifth Defendant
29 January 2015	Notice of Intention to Proceed filed by the Solicitors for the Plaintiff
20 November 2018 27 July 2020	Applicants serve warning letter for motion to dismiss claim on the Plaintiff Without prejudice telephone communication
13 July 2021	Applicants serve second warning letter for motion to dismiss claim on the Plaintiff
21 March 2022	The Applicants issue this motion to dismiss proceedings for want of prosecution against CA.

Appendix 2: BT Case

Date	**Event**
19 November 2009	Personal Injuries Summons issues
8 November 2010	The Personal Injuries Summons is served on the Applicants
15 November 2010	The Applicants enter an Appearance
18 August 2011	The Applicants deliver a Defence

18 August 2011	Service of the Applicants Notice for Particulars
18 June 2013	Plaintiff's Replies to Notice for Particulars
29 August 2013	Plaintiff files Notice of Intention to Proceed
19 September 2019	Fourth Defendant applies to dismiss the Plaintiff's claim for want of prosecution
28 February 2020 4 March 2020 27 July 2020 23 September 2020	Plaintiff wrote to Defendant referencing a separate product liability case involving the same drug and suggesting communality of issues and that this separate case might be determined first. Defendant rejects the proposal that the related MM case be treated as a "test case" Without prejudice telephone communication Plaintiff serves Notice of Discontinuance against the Fourth Defendant
13 July 2021	Applicants serve warning letter for motion to dismiss on the Plaintiff
21 March 2022	The Applicants issue this motion to dismiss proceedings for want of prosecution against BT