

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

LARRY TREASTER,

Plaintiff,

v.

Case No. 05-2061-JWL

**HEALTHSOUTH CORPORATION d/b/a
MID-AMERICA REHABILITATION
HOSPITAL and DANIEL R. WILSON, M.D.,**

Defendants.

ORDER

This matter is currently before the court on Plaintiff's Motion to Strike Defendant Mid-America Rehabilitation Hospital's *Daubert* Motion to Exclude Certain Opinions of Plaintiff's Experts (doc. #112). In this motion, plaintiff asks the court to strike the hospital's *Daubert* motion on the grounds that it was not filed by April 28, 2006, which was the deadline set forth in the court's scheduling order. *See* Scheduling Order (doc. #27), at 2. Importantly, however, because the pretrial order has been entered in this case it supersedes the pleadings and controls the subsequent course of this case. *See* Pretrial Order (doc. #90), at 1. The pretrial order sets a new deadline for *Daubert* motions, stating that all such motions "shall be filed by 28 days before trial [but, if such a motion as a practical matter will be case-dispositive, or if an evidentiary hearing on the motion is reasonably anticipated, then this deadline shall be set in accordance with the dispositive motion deadline stated above]." *Id.*

§ XV(c), at 16. The hospital filed its *Daubert* motion on August 15, 2006. At that time, the trial date was anticipated to be September 19, 2006.¹ Thus, the hospital filed this motion before the applicable twenty-eight-day deadline. Moreover, it does not appear to the court (and plaintiff does not contend) that the motion as a practical matter will be case dispositive or that an evidentiary hearing on the motion was reasonably anticipated. Accordingly, plaintiff has not shown that the hospital's *Daubert* motion is the type of motion for which the deadline should have been in accordance with the dispositive motion deadline. Because the hospital's *Daubert* motion was filed by the twenty-eight-day deadline, then, the court will summarily deny plaintiff's motion to strike.

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff's Motion to Strike Defendant Mid-America Rehabilitation Hospital's *Daubert* Motion to Exclude Certain Opinions of Plaintiff's Experts (doc. #112) is **summarily denied**.

IT IS FURTHER ORDERED that the deadline for plaintiff to file its response to the hospital's *Daubert* motion is extended to **12:00 noon on Wednesday, August 30, 2006**.

¹ The court later granted the parties' joint motion to continue the trial setting and set this case for trial on September 26, 2006. *See* Minute Entry (doc. #109).

IT IS SO ORDERED this 25th day of August, 2006.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge