

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

LESLYN PRICE,)	
)	
Plaintiff,)	
)	
v.)	Case No. 07-1046-DWB
)	
DAVID A. BRIAN, M.D.,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

Before the Court is Plaintiff's Memorandum in Support of Plaintiff's Oral Motion to Amend the Amended Pretrial Order. (Doc. 132.)¹ Having reviewed the referenced memorandum and having heard argument of counsel on this motion, the Court is prepared to rule.

During the jury instruction conference held on March 11, 2010, during a recess in the trial, Plaintiff's counsel orally moved to again amend the pretrial order in this case, this time to modify the damage amounts being sought by Plaintiff to conform to the evidence presented during Plaintiff's case pursuant to Fed. R. Civ. P. 15(b)(2). The court heard the initial argument from Plaintiff during

¹ This is shown on the docket sheet as Supplemental Motion to Amend/Correct Pretrial Order by Plaintiff Leslyn Price.

the jury instruction conference, but deferred further consideration of the motion until March 12, 2010, in order to give Defendant time to research the matter and respond.

On the morning of March 12, 2010, before trial continued, the court heard arguments from all counsel on Plaintiff's oral motion to amend. After hearing argument, the court inquired if any party would be prejudiced if the court took the motion under advisement pending a verdict in the case, with the understanding that Plaintiff would be allowed to argue to the jury for an award of damages in the amounts sought in Plaintiff's oral motion and written memorandum. Defendant requested a slight modification to the proposed Verdict Form that would more accurately detail the elements of damage being allowed by the jury, if any. In the event the jury returned a verdict in favor of Plaintiff, this would allow the court and counsel to identify the specific amounts of the damage award that were in dispute as a result of the motion to modify the pretrial order. All counsel agreed to that procedure and the court then took Plaintiff's motion under advisement.

In the closing arguments to the jury, Plaintiff's counsel argued for an award of damages that conformed to the amounts set out in its oral motion to modify and accompanying written memorandum. After deliberation, the jury returned a verdict in favor of Defendant, finding that Defendant was not at fault. Therefore,

the jury did not reach the issue of the amount or nature of any damage award. As a result, Plaintiff's motion to amend the pretrial order concerning the amount of damages is now moot.

IT IS THEREFORE ORDERED that Plaintiff's Memorandum in Support of Plaintiff's Oral Motion to Amend the Amended Pretrial Order (Doc. 132) is found to be MOOT.

IT IS SO ORDERED.

Dated at Wichita, Kansas on this 12th day of March, 2010.

S/ DONALD W. BOSTWICK
DONALD W. BOSTWICK
United States Magistrate Judge