

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

DANA BRUBAKER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 08-1270-MLB-DWB
	)	
MR. HEATER CORPORATION,	)	
an Ohio Corporation, and	)	
ENERCO GROUP, INC.,	)	
An Ohio Corporation,	)	
& SALOON, INC.,	)	
	)	
Defendants.	)	
_____	)	

**MEMORANDUM AND ORDER**

Now before the Court is Plaintiff's Motion for Leave to Meet and Confer (Doc. 74), Defendants' Response (Doc. 77), and Plaintiff's Reply. (Doc. 78.) Also before the Court is Defendants' Motion for New Scheduling Order (Doc. 75), and Plaintiff's Response (Doc. 79.)

Since the filing of the above motions, the Court allowed Plaintiff to file an amended complaint (Doc. 80), Plaintiff has filed her Amended Complaint (Doc. 81), and Defendants have filed their answers to this amended pleading. (Doc's 82, 83.) The parties have also participated in a *Daubert* hearing before the District Judge concerning testimony of Plaintiff's expert, Carl Martin. (Doc. 71.) Because

of the pendency of the *Daubert* motion, the Court canceled the scheduled pretrial conference in the case. (Doc. 61.) As a result, the February 26, 2010 deadline for filing dispositive motions which was set in the Revised Scheduling Order of June 24, 2009 (Doc. 32) passed without the ability of the parties to submit dispositive motions if they so desired.

Because of the above developments, the Court has determined that another scheduling conference should be held in order to address any remaining pretrial issues which must be resolved prior to a pretrial conference before the District Judge. Accordingly, a continued scheduling conference is hereby set for **August 16, 2010 at 10:00 a.m. by telephone**. At that time, the parties should be prepared to set all final deadlines in the case including a new date for the pretrial conference and a deadline for filing dispositive motions.

In connection with the upcoming scheduling conference, the parties are also directed to meet and confer about the discovery issues previously raised by Plaintiff in her previous Motion to Compel (Doc. 52), which was denied by the Court by Order of April 5, 2010. (Doc. 72.) As the parties acknowledge, the Court's ruling on the motion to compel was basically a procedural ruling denying the motion because Plaintiff failed to meet and confer about the discovery issues prior to filing the motion. If the parties are unable to resolve the substantive issues

concerning the discovery previously sought by Plaintiff in the prior motion, they should be prepared to address this issue at the upcoming scheduling conference. At that time, the Court will determine if Plaintiff should be allowed to renew its motion to compel concerning those issues.

**IT IS THEREFORE ORDERED** that Defendants' Motion for New Scheduling Order (Doc. 76) is GRANTED and a scheduling conference is set for **August 16, 2010 at 10:00 a.m. by telephone.**

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Leave to Meet and Confer (Doc. 74) is GRANTED and the parties are to meet and confer about the discovery issues raised in Plaintiff's prior Motion to Compel (Doc. 52) not later than **August 9, 2010.** Any remaining issue concerning this requested discovery will be taken up at the scheduling conference.

Dated at Wichita, Kansas, this 21<sup>st</sup> day of July, 2010.

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