

EILEEN GREGOR, ET AL.

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NO. 2001-CA-1233

VERSUS

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COURT OF APPEAL

**ARGENOT GREAT CENTRAL
INSURANCE COMPANY, ET
AL.**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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AN APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 97-4819, DIVISION "E"
Honorable Gerald P. Fedoroff, Judge

Judge Miriam G. Waltzer

(Court composed of Judge Miriam G. Waltzer, Judge Michael E. Kirby,
Judge David S. Gorbaty)

On Application for Rehearing

Scott LaBarre
GAUTHIER, DOWNING, LaBARRE, BEISER & DEAN
3500 North Hullen Street
Metairie, LA 70002

-and-

Leonard J. Cline, Jr.
3021 35th Street
Suite A
Metairie, LA 70001

COUNSEL FOR PLAINTIFF/APPELLEE

Craig R. Nelson

WARD NELSON, L.L.C.
1539 Jackson Avenue
6th Floor
New Orleans, LA 70130
COUNSEL FOR DEFENDANT/APPELLANT

**APPLICATION FOR REHEARING GRANTED, JUDGMENT
AMENDED**

We grant Gregor's application for rehearing to address an issue raised by his answer to the appeal. In his answer to the appeal, Gregor demanded that this court amend the trial court's judgment to award medical expenses. In his brief, Gregor argued only that the trial court erred by not awarding medical expenses, since the parties had stipulated to the amount of such expenses. However, he failed to address in his arguments to this court that he neglected to plead and demand special damages, including medical expenses, in his petition. However, on rehearing, he has addressed adequately the issue of concern to this court in his brief. Because we feel that the demand has merit, we grant the application for rehearing and amend the judgment to award medical expenses totaling \$70,176.21.

Items of special damages must be specially alleged. LSA-C.C.P. art. 861. Medical expenses are special damages, as they can be fixed to a pecuniary certainty. *Mistich v. Pipelines, Inc.*, 609 So.2d 921, 938 (La.App.4 Cir. 1992). Generally, a trial court may not award special

damages which the plaintiff did not specifically plead. However, LSA-C.C.P. art. 1154 provides the only exception to this general rule. *Id.*

LSA-C.C.P. art. 1154 provides in pertinent part, “When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised by the pleadings.” (Emphasis added.) If evidence was admissible for any purpose, such an admission could not serve to enlarge the pleadings without the express consent of the opposing party. *Laper v. Board of Commissioners of the Port of New Orleans*, 617 So.2d 505, 514.

DHH and Gregor agreed to certain stipulations, including “Dan Gregor incurred medical expenses in the amount of \$70,176.21 as a result of the contraction of vibrio vulnificus.” DHH stipulated to both the amount of Gregor’s medical expenses and the element of causation. We do not decide whether a stipulation regarding the amount of medical expenses alone would sufficiently curtail the pleading requirement of LSA-C.C.P. art. 861. By its stipulation, DHH expressly consented to the enlargement of the pleadings, allowing recovery for past medical expenses. For these reasons, we grant Gregor’s application for rehearing and amend the judgment to award \$70,126.21 in past medical expenses.

**APPLICATION FOR REHEARING GRANTED, JUDGMENT
AMENDED**