

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

CIVIL ACTION NO. 3:11-CV-00450-H

BRIAN and MICHELLE SADLER  
Individually and on behalf of their  
minor child, B.S.

PLAINTIFFS

V.

ADVANCED BIONICS, LLC

DEFENDANT

**MEMORANDUM OPINION AND ORDER**

Advanced Bionics moves for leave to file a renewed motion for summary judgment on Plaintiffs' emotional distress claims. In their original motion, Advanced Bionics argued that Brian and Michelle Sadler personally could not recover noneconomic damages as a result of Breanna's injuries under Kentucky's physical impact rule. However, on December 20, 2012, after the parties had fully briefed the Motion for Summary Judgment, the Kentucky Supreme Court issued a decision abrogating the physical impact rule, which had existed for much of Kentucky's jurisprudential history. Instead, the Kentucky Supreme Court adopted a less stringent rule allowing for recovery for noneconomic damages where the plaintiffs at issue suffered serious or severe emotional damages regardless of their physical contact with the source of the injury. *Osborne v. Keeney*, -- S.W.3d ----, 2012 WL 6634129 (Ky. Dec. 20, 2012). The change in intervening law deprived both parties of the opportunity to argue for or against Brian and Michelle Sadler's emotional distress damages.

According to Federal Rule of Civil Procedure 16(b)(4), the Court may consent to a modification of the dispositive motion scheduling order for good cause. The Court finds that

Advanced Bionics has produced good cause sufficient to grant the motion for leave to file a renewed motion for summary judgment on Plaintiffs' emotional distress claim because of the important change in intervening law that effectively rendered the arguments in Plaintiffs' and Advanced Bionics' briefs supporting or contesting the Motion for Summary Judgment moot.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Leave to file a renewed Motion for Summary Judgment on Plaintiffs' emotional distress claim is SUSTAINED.

The Court, having allowed the filing of a renewed motion for summary judgment on the emotional distress claim, will give Defendant an opportunity to file an expedited response and Plaintiffs an expedited reply.

**IT IS FURTHER ORDERED** that the motion for summary judgment on the emotional distress claim shall have any responses filed **on or before March 21, 2013**. **Any replies shall be filed on or before MARCH 27, 2013**. **Then the matter will be submitted for ruling.**

March 15, 2013

Handwritten signature of John G. Heyburn II in black ink, written over the official seal of the United States District Court for the District of Columbia.

**John G. Heyburn II, Judge  
United States District Court**

cc: Counsel of Record