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### SEDGWICK CO. JUDGE OPENS DOOR TO LARGE DAMAGE AWARD

*RON SYLVESTER, The Wichita Eagle*

Saying the former St. Francis Hospital acted with the "arrogance of a despot," Judge Paul Clark ruled Thursday that a paralyzed Hutchinson woman can seek punitive damages of up to \$5 million in her suit accusing health care staff of doctoring records.

A jury could decide, Clark said Thursday, "that what all this evidence shows is a pride that blocks prudence and wisdom."

Speaking in Sedgwick County District Court, he said that the allegations, if proved, could be viewed as "an arrogance of a despot, wicked behavior - called malice in law - and lying that goes to the very foundation that supports the system upon which we administer law."

The case is scheduled to go to trial June 3.

The trial would mark the final leg of a case that has been in the courts for most of the past 10 years. It stems from a surgical mishap in October 1987 at St. Francis that left 4-year-old Maria Brower paralyzed from the waist down. St. Francis became a part of the Via Christi Regional Medical Center in 1996.

Brower is now 18 and attends college in Florida, but she has needed years of physical therapy and moves around in leg braces and a wheelchair.

**Larry Wall**, Brower's lead trial lawyer, said after the hearing that Clark's ruling could now allow the jury to award more than \$9 million.

Wall said he planned to ask for more than \$4 million to cover Brower's lifelong medical expenses, lost income, and pain and suffering.

Now, Wall can add another \$5 million to punish the hospital for its alleged fraud. That fraud

complaint centers around a safety technique meant to protect her during surgical removal of a fat growth from her spinal cord.

Technician Lisa Gould is also named in the suit. Her job was to keep track of electronic monitoring that would warn of impending mistakes that could injure Brower.

After Brower left surgery paralyzed, her family sued the surgeon.

During a jury trial in 1996, Brower's lawyers, Brad Prochaska and Gerard Scott, discovered - in testimony by the doctor they were suing - a discrepancy in the paper generated by the surgical monitor.

The doctor won the malpractice case, but controversy over the monitoring set off a search for the original test strips. They turned up altered with correction fluid and containing the results of another patient's surgery.

Via Christi has argued that Gould made an error in filing the records. That's negligence, not fraud, said the hospital's lawyer, Steve Day.

"We believe our employee that she didn't act with any intent to deceive," Day said.

Wall, however, has argued that hospital risk managers delayed releasing documents and other paperwork for years and says memorandums have been destroyed.

The current suit was filed in 1998. In Kansas, the average length of a civil suit is 180 days, according to the office of judicial administration.