

IN THE SUPREME COURT OF MISSOURI

K.W., a minor by and through his,	)	
Next Friend, ELIZABETH WHITFIELD,	)	
	)	Supreme Court No. SC101835
Plaintiff/Respondent,	)	
	)	Transferred from the Missouri Court
v.	)	of Appeals, Eastern District
	)	Nos. ED1131441, ED113443
ABBOTT LABORATORIES, ABBOTT	)	
LABORATORIES, INC., MEAD JOHNSON	)	Appeal from Circuit Court of the
& COMPANY, LLC, and MEAD JOHNSON	)	City of St. Louis,
NUTRITION COMPANY,	)	No. 2222-CC06214
	)	
Defendants/Petitioners.	)	
	)	

SUGGESTIONS OF *AMICUS CURIAE*
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA
IN SUPPORT OF APPLICATION FOR TRANSFER

Defendant’s application for transfer raises critical questions that go to the heart of whether members of the business community can access justice in Missouri courts: can business defendants rely on the State’s courts to apply the law evenly and fairly, or can courts, as here, overturn a jury’s defense verdict by admittedly using a pro-plaintiff bias?

Here, the jury unanimously returned a defense verdict. Rather than accept this decision, the circuit court set it aside, applying the wrong standard to Plaintiff’s motion for a new trial. Instead of applying the “weight of the evidence” standard neutrally with respect to the parties, as required, it held defense verdicts can be invalidated whenever evidence at trial—viewed “in the light most favorable to the plaintiff” and giving Plaintiff “the benefit of all reasonable inferences”—allegedly does not support the result. *See* Order & Judgment at 13 (Mar. 13, 2025). These plaintiff-oriented standards are to be

used only before or during trial so plaintiffs with potentially viable claims are given the opportunity to have their “day in court,” *i.e.*, allow *juries* to decide the disputes. Once the jury determines the facts and returns its verdict, this deference to the plaintiff must end.

The court of appeals—despite agreeing that the trial court cited a standard of review “not applicable in deciding whether to grant a motion for new trial”—upheld the lower court’s ruling. *K.W. v. St. Louis Childrens Hospital*, -- S.W.3d --, 2026 WL 2300334, at *12 (Mo. Ct. App. Aug. 11, 2026). Instead of vacating the order and requiring the circuit court to apply the right standard, it inexplicably held that using the wrong standard was not reversible error, creating dangerous precedent for business defendants seeking fair outcomes in the State’s courts. *See id.* In addition, the court of appeals suggested it was unclear which standard the trial court should have applied. *Id.*

This Court should grant this Application to clarify that, when evaluating a defense verdict, a circuit court must apply the “weight of the evidence at trial” standard neutrally—not in a light most favorable to either party. This issue is of great importance to all litigants in Missouri who expect the courts to administer justice fairly and evenly.

Interest of *Amicus Curiae*

Amicus is the Chamber of Commerce of the United States of America (U.S. Chamber). The U.S. Chamber is the world’s largest business organization. As the nation’s leading advocate for business, the U.S. Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that

end, the U.S. Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation’s business community.

I. THE COURT SHOULD ENSURE MISSOURI COURTS USE NEUTRAL, NOT BIASED, STANDARDS OF REVIEW FOR OVERTURNING A JURY VERDICT

This Court should grant Defendant’s Application to ensure that the scales of justice will remain even-handed in Missouri courts. As discussed above, the circuit court fully acknowledged it applied Rule 78.02’s “against the weight of the evidence” standard with a thumb on the scale for the plaintiff. *See* Order at 13. Applying a preference for plaintiff over defendants is wholly improper in a motion for a new trial. Plaintiffs are not entitled to any advantage at this stage—as a matter of law and sound public policy.

The source of the error was the circuit court’s misplaced reliance on *Dodson v. Ferrara*, 491 S.W.3d 542, 551-52 (Mo. banc 2016), which addressed the standard for a court to grant a *directed verdict* on issues following the presentation of evidence at trial—not *overturning* a jury’s verdict. It was only in the context of whether the claim should go to the jury that the *Dodson* court considered whether the plaintiffs made a submissible case viewing the evidence “in the light most favorable to the plaintiff” and giving the plaintiff “the benefit of all reasonable inferences.” *Id.* at 551-52. The rationale for this rule is consistent with why nonmoving parties—often, but not always, plaintiffs—receive the benefit of the doubt in dispositive pre-verdict rulings, including with respect to motions to dismiss and for summary judgment. *See, e.g., Klemme v. Best*, 941 S.W.2d 493, 495 (Mo. banc 1997) (“In determining whether sufficient facts exist, the petition is broadly construed in the plaintiff’s favor, with all allegations and reasonable inferences

accepted as true.”). At pre-verdict junctures, Missouri law allows a case to reach the jury *if* there is a viable claim *and* a legitimate factual dispute for the jury to resolve.

However, once the jury has decided the factual issues, the law and public policy reasons to view the evidence in the light most favorable to either party no longer govern. If either party seeks a new trial, the parties stand on equal footing and must meet a neutral standard to have the verdict overturned. To this end, the *Dodson* Court clarified that a “jury’s verdict will be upheld unless there is a *complete absence of probative facts to support the jury’s conclusion.*” *Id.* at 552 (emphasis added). This standard places appropriate deference to the verdict and a burden on the moving party—whether that is the plaintiff or defendant—for the court to set aside the jury’s verdict. The circuit court was required to apply that standard here, and its failure to do so was reversible error.

In excusing this error, the Court of Appeals stated that the standard of review is not determinative so long as the court assessed the evidence. Evidence, though, is not viewed in the abstract, but against a legal standard. Because the circuit court invoked the wrong standard, the evidence could not have been properly assessed as a matter of law. The appellate court’s assertion otherwise creates new law that conflicts with this Court’s jurisprudence and every appellate court opinion in Missouri to have addressed the issue.

II. THE USE OF BIASED STANDARDS FOR POST-VERDICT NEW TRIAL MOTIONS WILL UNDERMINE JUSTICE IN MISSOURI COURTS

A state’s litigation environment matters to the business community. By expressly favoring plaintiffs over corporate defendants, this case runs afoul of the basic obligation of the civil justice system to provide a neutral forum for individuals and businesses to

redress wrongs and resolve disputes. Everyone, including corporate defendants, rely on courts to fairly and consistently apply judicial rules and legal standards. These tenets have been the hallmarks of the civil justice system, allowing it to be the keystone of economic liberties in this country. Access to justice must remain a neutral premise that applies to corporate defendants, just as to plaintiffs. This case was a bellwether trial of *novel* product liability claims in which the plaintiff sought more than a *billion dollars*. A defense verdict was completely understandable given the speculative nature and magnitude of these claims. The plaintiff had given birth prematurely at 28 weeks and blamed her child's gastrointestinal condition on the defendants, which manufactured specialized formula used to provide pre-term infants with critically needed nourishment.

If the Court does not grant the Application and overturn the ruling below it will create a systemic, improper disadvantage for businesses defending personal injury claims in this State. Increasingly, corporate defendants in such cases have an uphill climb. Studies have shown that juries often view adverse outcomes as stemming from some tortious act because they want to “find someone to blame” and provide compensation to a sympathetic plaintiff. Indeed, the business community has seen an upward trend in plaintiff verdicts, as well as unduly large verdicts like the one sought here. In a study of personal injury and wrongful-death cases from 2013 to 2022, Missouri ranked tenth highest in the country per capita for excessive verdicts. See U.S. Chamber Inst. for Legal Reform, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions* at 16-17 (May 2024). Excessive verdicts and non-neutral decision-making can harm a state's economy.

Here, the fact that the jury arrived at a defense verdict is not a cause for a new

trial, but an indication the jurors assessed the facts neutrally and were not unduly swayed by compassion for the plaintiff or prejudice against the corporate defendant. For these reasons, the Court should grant the Application and reverse the circuit court's ruling. Missouri courts should remain committed to resolving cases under fair, neutral standards.

Dated: September 10, 2026

Respectfully submitted,

By: /s/ Jennifer J. Artman

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served upon counsel of record on September 10, 2026, via the Court's electronic filing system.

/s/ Jennifer J. Artman

Jennifer J Artman