

NOS. ED113441, ED113443

**IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT**

██████, a minor by and through his Next Friend, ELIZABETH WHITFIELD,

Plaintiff/Respondent,

vs.

ABBOTT LABORATORIES, ABBOTT LABORATORIES, INC., MEAD JOHNSON
& COMPANY, LLC, and MEAD JOHNSON NUTRITION COMPANY,

Defendants/Appellants.

Appeal from the Circuit Court of the City of St. Louis

Honorable Michael W. Noble, Circuit Judge

Case No. 2222-CC06214

**BRIEF OF THE
CHAMBER OF COMMERCE OF THE UNITED
STATES OF AMERICA AS *AMICUS CURIAE*
IN SUPPORT OF DEFENDANTS/APPELLANTS**

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INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America (“the Chamber”) is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the state and federal courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation’s business community.

This case presents an issue of significant importance to the Chamber and its members: whether Missouri courts will employ the appropriate neutral standards when asked by a plaintiff to reverse a jury’s defense verdict in a personal injury case against a corporate defendant. That did not happen here. The Circuit Court acknowledged that it reversed the defense verdict in deference to the *plaintiff’s* arguments, not the *jury’s* findings. Everyone, including corporate defendants, has a vital interest in the fair, consistent application of rules and standards in litigation.

The civil justice system can be the keystone of America’s economic liberties only if it provides a neutral forum for individuals and businesses to redress wrongs and resolve disputes. By expressly favoring plaintiffs over corporate defendants, this case creates a systemic disadvantage for businesses—in Missouri and nationally—that find themselves in Missouri’s courts defending personal injury claims.

Further, a significant number of the Chamber's members are incorporated or headquartered in Missouri, and many more do business in Missouri and employ thousands of Missourians. The Chamber has a long history of challenging judicial decisions in Missouri that create unfairness for the business community and is uniquely positioned to speak to the errors committed by the Circuit Court in this case as well as the negative consequences such errors will have on the courts and the business community.

CONSENT OF PARTIES

Counsel for Defendants consented to this filing, but counsel for Plaintiff did not consent. Therefore, the Chamber files this brief in conjunction with a motion for leave to file the brief.

JURISDICTIONAL STATEMENT

Amicus curiae adopts Appellants' Jurisdictional Statement.

INTRODUCTION & SUMMARY OF ARGUMENT

This appeal is about basic fairness and ensuring courts apply the appropriate neutral standards when a plaintiff seeks to overturn a jury's defense verdict.

In this case, the plaintiff gave birth to her child prematurely at 28 weeks. The child weighed a little more than two pounds at birth and later developed necrotizing enterocolitis, or NEC, which is a gastrointestinal condition primarily affecting babies born prematurely. The plaintiff blamed this condition on the defendants, which manufactured a specialized formula used in hospitals to provide pre-term infants with critically needed nourishment, asserting the manufacturer failed to warn of this danger. These infants, though, already face a range of serious health risks by virtue of being born prematurely. The jury unanimously

returned a defense verdict. Rather than accept this outcome, the Circuit Court set the verdict aside and awarded plaintiff a new trial. In doing so, it applied the wrong legal standard to plaintiff's motion for a new trial.

Specifically, the Circuit Court held defense verdicts can be invalidated whenever the evidence presented at trial, viewed "in the light most favorable to the plaintiff," does not support the result, emphasizing its "unfettered discretion" to make such judgments. *See* Order & Judgment at 13 (Mar. 13, 2025) (hereinafter "Order"). And, in making its assessment, the court gave the plaintiff "the benefit of all reasonable inferences." *Id.* But this deference to the plaintiff's case and evidence was improper. The purpose of these standards, which are typically applied to rulings before or during trial, is to provide parties with potentially viable claims the opportunity to have their "day in court," *i.e.*, allow *juries* to decide the factual disputes between the parties. Once the jury determines the facts and returns its verdict, this deference to the plaintiff ends. Instead, under Rule 78.02, a court considering a motion for a new trial must apply a *neutral* standard when evaluating whether the verdict was against the weight of the evidence presented at trial. This standard applies equally—to either party seeking to overturn a verdict.

Amicus curiae respectfully requests that this Court reverse the Circuit Court's order granting a new trial. In doing so, it should clarify that, when evaluating a defense verdict, a court must apply the "weight of the evidence at trial" standard *neutrally*—not in a light most favorable to either party. Businesses in Missouri and around the country must be able to rely on Missouri courts to fairly administer justice, including when they involve products designed to serve individuals in high-risk populations.

ARGUMENT

I. THE CIRCUIT COURT FAILED TO APPLY THE PROPER, NEUTRAL STANDARD FOR A NEW TRIAL

The Circuit Court made a fundamental error when evaluating whether a new trial is warranted in this case. Although the Court stated it was applying Rule 78.02's "against the weight of the evidence" standard, it also acknowledged that it was doing so with a thumb on the scale for the plaintiff. *See* Order at 13. The Circuit Court explicitly stated that it was applying a preference for the plaintiff over the defendants, which is wholly improper when a court considers a motion for a new trial. Plaintiffs are not entitled to any advantage at this stage—both as a matter of law and sound public policy.

The source of this 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 certain evidence at trial—not *overturning* a jury's verdict. Misciting this decision, the court stated, "[w]hen conducting its review, the Court views the evidence in the light most favorable to the plaintiff, and the plaintiff is given the benefit of all reasonable inferences." Order at 13. After considering a string of what it deemed "prejudicial errors," including its own rulings to exclude or admit evidence, the Circuit Court misapplied this standard to find that "the only cure is to set aside the verdict and award a new trial on all issues." *Id.*

To be clear, *Dodson* did not authorize using the standard for directed verdicts in deciding post-trial motions. In *Dodson*, a medical negligence case, the plaintiffs contended that the trial court erred in granting a directed verdict for the defendants that did not allow

the plaintiff's claim for punitive damages to go to the jury. *See* 491 S.W.3d at 562-63. To obtain punitive damages, the plaintiffs had to show "aggravating circumstances," meaning the healthcare providers demonstrated "willful, wanton, or malicious conduct" that caused or contributed to the plaintiff's injuries. *See id.* However, the trial court found that the plaintiffs "failed to make a submissible case" that the doctor "acted with complete indifference to or conscious disregard for the plaintiff's safety." *Id.* Accordingly, it ruled that a directed verdict for the defendant precluding aggravated circumstances damages was appropriate. *Id.* at 564.

It was in this context—whether this claim should go to the jury—that this 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 Court explained that "[i]f the facts are such that reasonable minds could draw differing conclusions, the issue becomes a question for the jury, and a directed verdict is improper." *Id.* (citing *Lasky v. Union Elec. Co.*, 936 S.W.2d 797, 801 (Mo. banc 1997)). This standard, though, does not apply *after* a jury reaches its verdict; if anything, the inferences are in favor of the jury verdict—not either party.

To this end, the *Dodson* Court further clarified, "If a party moves for judgment notwithstanding the verdict after a trial court overrules a motion for directed verdict, the 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 applies equally to plaintiffs and defendants following a verdict. It places appropriate deference to the jury's verdict, and a clear burden on the moving party—whether that is the plaintiff or the

defendant—for the court to set aside the jury’s verdict. The Circuit Court was required to apply that standard in this case, and its failure to do so was reversible error.

Indeed, the reason for the *directed-verdict* standard in *Dodson* is consistent with the reason that nonmoving parties—often, but not always, plaintiffs—receive the benefit of the doubt in other dispositive pre-verdict rulings. When evaluating a motion to dismiss, the circuit court (as well as an appellate court reviewing *de novo*) accepts the factual allegations in the petition as true and in the light most favorable to the plaintiff. *See Metropolitan St. Louis Sewer Dist. v. City of Bellefontaine Neighbors*, 476 S.W.3d 913, 915 (Mo. banc 2016); *see also 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.”). And, even when courts grant motions to dismiss, they often allow plaintiffs to amend the petition to correct the deficiencies. *See* Mo. R. Civ. Pro. 55.33(a) (providing “leave shall be freely given when justice so requires”). Thus, to grant a motion to dismiss, the court must find the law does not support the plaintiff’s case, even if the allegations are true.

Similarly, when considering a motion for summary judgment, the circuit court will grant summary judgment only if the moving party shows there is “no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Rule 74.04(c)(6). This too is a difficult standard to meet because the moving party—whether the plaintiff or defendant—must show that there is no genuine issue of material fact for the jury to decide and that it has a right to judgment based solely on the undisputed facts in the record. When an appellate court reviews a trial court’s grant of summary judgment, it also

evaluates “the record in the light most favorable to the party against whom judgment was entered, and gives the non-movant the benefit of all reasonable inferences from the record.” *Estes as Next Friend for Doe v. Bd. of Trs. of Missouri Pub. Entity Risk Mgmt. Fund*, 623 S.W.3d 678, 686 (Mo. App. 2021) (quoting *Truman Med. Ctr., Inc. v. Progressive Cas. Ins. Co.*, 597 S.W.3d 362, 365-66 (Mo. App. 2020)).

At each of these pre-verdict junctures, the goal of Missouri law is to allow a case to reach the jury *if* there is a viable claim *and* a legitimate factual dispute related to that claim that only a jury can resolve. Once the jury has decided the factual issues in the case, however, the public policy reasons to view the evidence in the light most favorable to either party no longer governs. If either party seeks a new trial, the parties stand on equal footing and must meet a neutral standard to have the verdict overturned.

Specifically, the moving party must show that “trial error or misconduct of the prevailing party incited prejudice in the jury.” *Kansas City v. Keene Corp.*, 855 S.W.2d 360, 372 (Mo. banc 1993) (affirming trial court’s denial of defendant’s request for a new trial in product liability action based on inflammatory statements in plaintiff’s closing argument). To establish prejudice, improperly introduced evidence or argument must be “so plainly inflammatory as to have affected the result of the case.” *Hacker v. Quinn Concrete Co.*, 857 S.W.2d 402, 410 (Mo. App. 1993) (affirming trial court’s denial of defendant’s request for a new trial in an auto accident case after plaintiffs’ counsel requested an extraordinary sum for future medical expenses that was unsupported by evidence). The alleged claim of error must constitute “a grievous error where prejudice cannot otherwise be removed.” *Letz v. Turbomeca Engine Corp.*, 975 S.W.2d 155, 170

(Mo. App. 1997) (affirming trial court's refusal to grant defendant's request for mistrial in a product liability case after plaintiffs' counsel displayed a photograph of the decedent's gravestone even when the trial court found the photograph "not relevant," "introduced for an improper purpose, and "offered merely to inflame the jury").

The same standard applies to claims of error pertaining to argument by counsel. "The question becomes whether this term, or argument, was so reckless and unwarranted by proof that it deprived the appellants of a fair and impartial trial." *State ex rel. Missouri Highway & Transp. Comm'n v. Menley*, 792 S.W.2d 639, 640 (Mo. App. 1989).

The Circuit Court's failure to apply this neutral standard infects the rest of its analysis and reasoning for setting aside the jury verdict here. This Court should reverse the Circuit Court's ruling and remand it for re-consideration under the proper standard.

II. THE CIRCUIT COURT'S HINDSIGHT APPROACH UNDERMINES PREDICTABILITY IN LITIGATION AND THE ABILITY TO RELY ON COURT RULINGS

Of additional concern to the business community is the fact that the Circuit Court found that its own rulings were erroneous and prejudicial once they led to a defense verdict. *See* Order at 1-2. *Amicus* appreciates that trial courts do err, and sometimes with significant impacts on a trial, but any post-verdict evaluation of the trial court's own rulings must be based on neutral, sound legal principles. Otherwise, this "hindsight" approach, where a court reexamines its own pre-trial rulings after a verdict, undermines the predictability in civil litigation and the ability of parties to rely on court rulings.

For example, prior to trial, the Circuit Court ruled that it was permissible for the defendants to offer an alternative theory of causation for the plaintiff's health condition:

his mother's use of marijuana during her pregnancy. *See id.* at 5. The court rejected the plaintiff's characterization of this evidence as "wholly irrelevant and inadmissible character evidence." *Id.* at 6. It appropriately permitted testimony on the potential risks of marijuana use to a fetus during gestation. *Id.* at 7. This ruling was correct. As this Court has held, a defendant may introduce evidence of other parties' or nonparties' conduct to negate causation. *See Oldaker v. Peters*, 817 S.W.2d 245, 252-53 (Mo. banc 1991); *Mengwasser v. Anthony Kempker Trucking, Inc.*, 312 S.W.3d 368, 373 (Mo. App. 2010) ("Both as a matter of law and as a matter of logic, evidence that a third party caused the injury may be relevant and necessary to the jury's determination of the negligence and causation issues."). Proving causation is always the plaintiff's burden. By showing that another person or entity may have caused the plaintiff's injury, the defendant can negate an essential element of the claim. *Whisenand v. McCord*, 996 S.W.2d 528, 531 (Mo. App. 1999); *Mengwasser*, 312 S.W.3d at 376.

Here, though, the Circuit Court stated that, "[g]iven the benefit of hindsight . . . the probative value of the evidence was far outweighed by the inherently prejudicial effect of the extremely prejudicial evidence of smoking while pregnant." Order at 6. Indeed, the whole point of offering alternative causes of a plaintiff's injury is to allow juries to determine that the defendant did not proximately cause the harm alleged. As one court observed, "[r]elevant evidence . . . is inherently prejudicial." *United States v. McRae*, 593 F.2d 700, 707 (5th Cir. 1979). That is why only evidence that creates "unfair prejudice, substantially outweighing probative value" may be excluded. *Id.* (emphasis added). And here, the evidence had significant probative value because it addressed generally-accepted

science indicating that “smoking during pregnancy can harm your baby” (a warning that federal law requires including on cigarette packages).¹

In addition, the Circuit Court found that it improperly allowed the defendants to raise other matters that prejudiced the plaintiff or could have misled the jury, and that the cumulative effect of these errors denied the plaintiff a fair trial. *See id.* at 12. An example is the court permitting the defendants’ suggestion that the plaintiff and his counsel, by alleging these infant formulas were defective, were effectively asking for “all formula or all pre-term formula to be banned from the market.” *Id.* at 9. A jury finding the formula defective and awarding \$277 million in compensatory damages and \$5 billion and \$1 billion in punitive damages, respectively, against Abbott and Mead Johnson could have this effect. *See* Brendan Pierson, *Jury Asked to Award More Than \$6 Billion in Preterm Formula Case Against Abbott, Reckitt's Mead*, Reuters, Oct. 30, 2024. Liability has consequences. Such a verdict would have been one of the largest in history. *See id.* And there are a thousand cases pending nationally raising similar arguments. Yet, despite this context, the Circuit Court found that, in hindsight, its decision to allow this suggestion about the effect such a large damage award might have on the availability and cost of products, particularly those used with risky populations such as pre-term infants, constituted an improper “straw man” that confused and misled the jury “to the point of nullification of the Plaintiff’s claims for his damages.” *See* Order at 10.

¹ *See* 15 U.S.C. § 1333(a)(1).

A trial court's rulings in litigation need to be predictable and overturned only based on sound principles. Otherwise, courts could overturn jury verdicts, notwithstanding the weight of the evidence, by reversing its own rulings when they did not favor the losing party. The effect of this "hindsight" approach was compounded by the Circuit Court erroneously deciding the plaintiff's motion for a new trial by viewing the record—and these decisions—through a lens most favorable to the plaintiff.

III. THE CIRCUIT COURT'S APPLICATION OF A NON-NEUTRAL STANDARD FOR A NEW TRIAL UNDERMINES JUSTICE IN MISSOURI COURTS

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 in personal injury cases, just as it applies to plaintiffs. This case was a bellwether trial of a *novel* product liability claim in which the plaintiff sought over a *billion dollars* in damages. A defense verdict was completely understandable given the speculative nature and magnitude of these claims.

Reversing this ruling for the reasons stated would create a systemic disadvantage for businesses defending personal injury claims in this state. Increasingly, though, corporate defendants in such cases already have an uphill climb. Studies have shown that juries often view adverse outcomes, such as Plaintiff's development of necrotizing

enterocolitis here, as stemming from some tortious act—whether negligence or product defect—because they want to “find someone to blame” and provide compensation to a sympathetic plaintiff. David P. Sklar, *Changing the Medical Malpractice System to Align with What We Know About Patient Safety and Quality Improvement*, 92 Acad. Med. 891, 891 (2017). Indeed, the business community has seen an upward trend, not merely in plaintiff verdicts, but in unduly large verdicts like the one sought here.

In a ten-year study analyzing personal injury and wrongful-death cases from 2013 to 2022, Missouri ranked tenth highest in the country per capita for excessively large verdicts. See U.S. Chamber Inst. for Legal Reform, [Nuclear Verdicts: An Update on Trends, Causes, and Solutions](#) at 16-17 (May 2024). Of those verdicts, 36.7% arose from products liability trials, like this one, that often are based on strained legal and factual theories. *Id.* at 28. Some jury verdicts in Missouri included staggering awards. See, e.g., *Anderson v. Monsanto Co.*, 2025 WL 1497539, at *2 (Mo. App. W.D. May 27, 2025), as modified (June 24, 2025), transfer denied (Sept. 30, 2025) (\$611 million to four plaintiffs reduced from \$1.56 billion); *Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 724-25 (Mo. App. E.D. 2020) (\$625 million in compensatory damages and over \$1.6 billion in punitive damages); see also David Siegel, [\\$462M Verdict Returned in Trial Over Truck’s Rear Impact Guard Design](#), Courtroom View Network, Sept. 6, 2024 (reporting City of St. Louis verdict in *Perkins v. Wabash Nat’l Corp.*, No. 2022-CC00495).

Plaintiff’s request for hundreds of millions of dollars in compensatory damages and billions of dollars in punitive damages was likely driven by these cases. The fact that the jury arrived at a defense verdict is not a cause for a new trial, but likely an indication the

jurors assessed the facts neutrally and were not unduly swayed by Plaintiff's medical condition. If the Court affirms the Circuit Court's decision to retry the case—based on a plaintiff-leaning standard and reversal of its own rulings—it will undermine confidence that Missouri courts can help parties neutrally adjudicate their claims.

A state's litigation environment matters to the business community. Excessive verdicts and non-neutral decision-making can harm a state's economy. Research by the U.S. Chamber's Institute for Legal Reform reveals that Missouri's tort costs of \$3,387 per household (over \$8.3 billion in total) is already among the highest in the United States. *See* U.S. Chamber Inst. for Legal Reform, *Tort Costs in America: An Empirical Analysis of Costs and Compensation of the U.S. Tort System* (3d ed., Nov. 2024) at 21. This study finds that 2.1% of Missouri's gross domestic product went to tort costs in 2022, sixteenth highest in the nation. *Id.* And tort costs continue to rise, with the average growth rate of tort costs in Missouri from 2016 to 2022 reaching 6.5%. *See* U.S. Chamber of Commerce, *The Hidden Costs of Lawsuits Continue to Grow, Per-Household Costs of the U.S. Tort System: Missouri* (Nov. 20, 2024). All of these factors help inform corporate decision-making about where to locate, expand, or do business.

Missouri courts should respect jury verdicts that reject novel liability claims seeking extraordinary damages awards. The fair, neutral administration of justice is critical in this case and to the Missouri litigation environment as a whole.

CONCLUSION

For these reasons, *amicus curiae* respectfully requests that this Court reverse the Circuit Court's order granting the Plaintiff's motion for a new trial.

Respectfully submitted,

/s/ Jennifer J. Artman

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Dated: November 10, 2025

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Brief of *Amicus Curiae* (1) includes the information required by Rule 55.03; (2) complies with the requirements contained in Mo. R. Civ. P. 81.18 and 84.06; and (3) contains 3,746 words.

Respectfully submitted,

/s/ Jennifer J. Artman

Jennifer J. Artman, #63692

Dated: November 10, 2025

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served upon counsel of record on November 10, 2025, via the Court's electronic filing system.

/s/ Jennifer J. Artman

Jennifer J. Artman, #63692

Dated: November 10, 2025