No. SC101678

In the Supreme Court of Missouri

JAMES GRAHAM,
Respondent,

v.

GIVAUDAN FLAVORS CORP.,
Appellant

Appeal from the Circuit Court of Ralls County, Missouri
No. 20MM-CV00011
The Honorable Rachel Bringer Shepherd, Circuit Judge

Amici Curiae the Chamber of Commerce of the United States of America and Missouri Chamber of Commerce and Industry's Suggestions in Support of Appellant Givaudan Flavors Corp.'s Application for Transfer

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John M. Reeves
REEVES LAW LLC
7733 Forsyth Blvd., Suite 1100 – #1192
St. Louis, MO 63105
(314) 804-2586
reeves@appealsfirm.com
Counsel for Amici Curiae the Chamber of Commerce of the United States of America

Suggestions in Support of Transfer

I. Introduction

Givaudan raises three issues in its transfer application—(1) whether the common law recognized a products-liability cause of action in 1820, such that the statutory caps on punitive damages are inapplicable; (2) whether the punitive-to-actual damages ratio in this case violates due process; and (3) whether Missouri law requires clarification on the proof-of-causation requirements for products-liability actions. All three issues warrant transfer, but amici curiae the Chamber of Commerce of the United States of America and the Missouri Chamber of Commerce and Industry submit these suggestions to emphasize the particular importance of Issues 1 and 2.

II. The Eastern District's opinion holding the common law in 1820 recognized products-liability actions against a defendant not in privity with the plaintiff directly contradicts multiple out-of-state cases. (Issue 1).

The Missouri General Assembly may impose caps on punitive damages for causes of action that did not exist under the common law in 1820, when Missouri became a state. *See All Star Awards & Ad Specialties, Inc. v. HALO Branded Sols., Inc*., 642 S.W.3d 281, 287-88 (Mo. banc 2022). Plaintiffs' products-liability claim is one such cause of action, as a review of the history of tort law establishes that such claims did not exist in American jurisdictions at common law. Transfer is needed because the Eastern District rejected Givaudan's argument "that in 1820, a plaintiff like Graham would not have had a cause of action against a third-party supplier because there was no privity of contract between them." (Op.23).

The truth is the exact opposite of what the Eastern District held. It was not until 1842 that the first case on either side of the pond even arose where a plaintiff not in privity with a manufacturer brought an action sounding in negligence alleging some sort of defect—specifically, the English case of *Winterbottom v. Wright*, (1842) 152 E.R. 402 (Exch. Div.). *See* 1 Owen & Davis on Prod. Liab., § 1:0 (4th ed. 2026). The plaintiff—a postman injured on the job while driving a mail carriage—brought suit against the

designer of the carriage, alleging its defective design caused his injuries. *Winterbottom*, 152 E.R. at 402-03. The Court of Exchequer dismissed the case. "This is an action of first impression . . . . If there had been any ground for such an action, there certainly would have been some precedent of it; but with the exception of actions against innkeepers and some few other persons, no case of a similar nature has occurred in practice." *Id*. at 404 (Abinger, C.B., seriatim). The absence of any similar action in the past was "a strong circumstance, and is of itself a great authority against its maintenance." *Id*. The court held that the lack of privity between the plaintiff and the manufacturer barred the lawsuit.

So far as *amic*i are aware, every court outside Missouri that has examined this issue has concluded that, as of 1820, no products-liability action could exist between a plaintiff who lacked privity with the manufacturer. Most saliently, the Supreme Court of Connecticut scrutinized the nationwide development of products-liability law in *Potter v. Chicago Pneumatic Tool Co.*, 694 A.2d 1319, 1327-29 (Conn. 1997). "At common law" the court concluded, "a person injured by a product had no cause of action against the manufacturer of the product unless that person was in privity of contract with the manufacturer." *Id*. at 1327. This rule, first clarified in 1842 in *Winterbottom*, "made privity a condition precedent to actions against manufacturers grounded in negligence." *Id*. "American courts," in turn, "widely adopted this rule and, for the next one-half century, the privity requirement remained steadfast in American jurisprudence." *Id*.According to that court, "[t]he evolution of modern product liability law began with the landmark case of *MacPherson v. Buick Motor Co.*, 217 N.Y. 382 (N.Y. 1916)." There, the New York Court of Appeals "extended the manufacturer's duty to all persons in fact harmed by products that were reasonably certain to cause injury when negligently made." *Potter*, 694 A.2d at 1327.

Missouri, for its part, explicitly adopted *Winterbottom*'s requirement of privity through this Court's opinion in *Heizer v. Kingsland & Douglass Mfg. Co.*, 19 S.W. 630, 632 (Mo. 1892)—ironically, one of the primary cases the Eastern District relied on to support its erroneous conclusion that privity was *not* required in 1820. (Op. 23-24). "There being no privity of contract, the suit cannot be maintained." *Heizer*, 19 S.W. at

632. The only exception it carved out was for dangerous products that the manufacturer knew to be dangerous. *Id*. at 633. But absent any such dangerous products, "an action [against a manufacturer] based on [negligence] must be confined to the immediate parties to the contract by which the machine was sold. To hold otherwise is to throw upon the manufacturers . . . a liability which, in our opinion, the law will not justify." *Id*. Only in 1963—that is, 143 years after Missouri's founding in 1820—did this Court finally abolish the privity requirement altogether. *See Morrow v. Caloric Appliance Corp.*, 372 S.W.2d 41, 51-55 (Mo. 1963).

In light of *Heizer*, the Supreme Court of Connecticut's exhaustive analysis of the relevant history, and the absence of any Missouri cases recognizing such a cause of action, the Eastern District's conclusion that it existed in 1820 is simply wrong. This Court should grant transfer, examine the history of products liability, and clarify that, as of 1820, the common law did not recognize a products-liability cause of action by a plaintiff not in privity with the manufacturer. Accordingly, Missouri's statutory caps on damages apply to Plaintiff's claims, and the trial court had a nondiscretionary statutory obligation to reduce the jury's excessive 37:1 ratio of punitive to compensatory damages.

III. The 37:1 ratio of punitive–to compensatory damages flagrantly violates both the U.S. Constitution and Missouri's statutory damages cap, causing serious harm to Missouri businesses if left uncorrected. (Issue 2).

Independently of whether section 510.265 applies, the 37:1 ratio of punitive to compensatory damages cannot stand because it violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. This Court should grant transfer to correct the Eastern District's constitutional error.

As Givaudan notes in its opening brief (App.Br.65), a ratio greater than single digits is appropriate only in the most "exceptional" of cases. *See Exxon Shipping Co. v. Baker*, 554 U.S. 471, 502 (2008). No such exceptional circumstances exist here, and the record certainly contains no evidence of any. And where a jury's award of compensatory damages is "substantial," the U.S. Supreme Court has indicated that the maximum

appropriate ratio is 1:1. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425-26 (2008) (suggesting, in a case where $1 million in compensatory damages were awarded, that "a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee").

Transfer is needed because the harm from a flagrantly unconstitutional punitive damages award is never limited to the party-in-suit. Studies have demonstrated that excessive punitive damages awards have a crippling effect on the business community, and a state's business environment, at large. From 2013 to 2022, Missouri ranked within the top ten states that produced the most "nuclear" jury verdicts of $10 million or more. Silverman and Appel, *supra*., at 2, 3, 16. Of these nuclear verdicts, a plurality (36.7%) stemmed, like this one, from product-liability trials. *Id*. at 28. The consequences of such excessive verdicts for businesses are not academic—such a "perceived liability risk can influence where businesses choose to locate or do business." Daniel McKnight and Paul Hinton, *Tort Costs in America: An Empirical Analysis of Costs and Compensation of the U.S. Tort System* 6 (3d ed. 2024), available at bit.ly/4lQ43we. "Ultimately, excesses in the tort system have been linked to lower worker productivity and employment, and these effects can be severe in industries subject to widespread litigation." *Id*. "[A] state's litigation environment is likely to impact important business decisions, including where to locate or to do business." *Id*. at 52.

The trial court's punitive damages award is contrary to both the U.S. Constitution and Missouri law, not to mention fundamental fairness and common sense. If left in place, it will contribute to a climate causing businesses to flee from Missouri. This makes it all the more appropriate for this Court to grant transfer.

IV. Conclusion

Given the matters at issue here, this Court should grant transfer.

Respectfully submitted,

/s/ John M. Reeves
John M. Reeves, #59634

REEVES LAW LLC
7733 Forsyth Blvd., Suite 1100 – #1192
St. Louis, MO 63105
(314-804-2586
reeves@appealfirm.com
Counsel for Amici Curiae the Chamber of Commerce of the United States of America and the Missouri Chamber of Commerce and Industry.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing were filed with the Court's electronic filing system on **June 3, 2026**, with notice of case activity to be generated and sent electronically by the Clerk of the Court to all counsel of record.

/s/ John M. Reeves