IN THE MISSOURI SUPREME COURT

SC 101091

CHRISTOPHER M. HANSHAW,

Plaintiff/Appellant,

v.

CROWN EQUIPMENT CORPORATION,

Defendant/Respondent.

Appeal from the Circuit Court of Jackson County, Missouri

Hon. Joel P. Fahnestock, No. 1816-CV21440

On Transfer From The Western District Court of Appeals, No. WD86389

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE MISSOURI CHAMBER OF COMMERCE & INDUSTRY AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT/RESPONDENT

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INTERESTS OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. 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. 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, including cases addressing expert testimony. The Chamber has participated as *amicus curiae* in cases around the United States addressing legal standards in tort law. *See*, *e.g.*, *Drammeh v. Uber Techs., Inc.*, 2024 WL 4003548 (9th Cir. Aug. 30, 2024), *petition for cert. docketed*, No. 24-1020 (U.S. Mar. 25, 2025); *Kuciemba v. Victory Woodworks, Inc.*, 531 P.3d 924 (Cal. 2023); *Helena Chem. Co. v. Cox*, 664 S.W.3d 66 (Tex. 2023) (expert); *Nemeth v. Brenntag N. Am.*, 194 N.E.3d 266 (N.Y. 2022) (expert). The Chamber has also participated as *amicus curiae* in several cases before this Court. *See*, *e.g.*, *Lange v. GMT Auto Sales,*

Inc., 708 S.W.3d 147 (Mo. banc 2025); *Templeton v. Orth*, 685 S.W.3d 371 (Mo. banc 2024); *Bridgecrest Acceptance Corp. v. Donaldson*, 648 S.W.3d 745 (Mo. banc 2022).

The Missouri Chamber of Commerce & Industry ("MCCI") is a Missouri not-for-profit company. It is the largest statewide general business organization in Missouri. Together with local chambers of commerce, it represents the interests of nearly 75,000 employers. MCCI promotes Missouri's economy by advancing policies that will attract and retain business and industry, as well as foster job growth.

SUMMARY OF THE ARGUMENT

Amici respectfully request that this Court affirm the trial court's decision and reestablish foundational principles that keep unreliable expert testimony out of Missouri courtrooms and ensure the integrity of jury verdicts. *Amici* also respectfully request that this Court explicitly endorse the Advisory Committee on the Federal Rules of Evidence's 2023 amendments as the proper understanding of Missouri's identical standard governing the admissibility of expert testimony.

Although Missouri in recent years has strived to attract businesses and spur economic growth, the State's unfavorable legal climate still impedes its economic success. Longstanding concerns persist about excessive litigation, high jury awards, and a perception that the legal system disfavors business. When Missouri courts—like the Western District here—deviate from well-established rules regarding the admissibility of expert testimony and thereby weaken protections against the admission of unreliable "junk science," they exacerbate these problems by expanding the potential scope of liability for all Missouri corporations. Decisions like the one below fuel fears of verdicts not rooted in evenhanded application of the law, further threatening the State's business climate. This appeal offers a valuable opportunity for this Court to clearly state Missouri's rule regarding expert testimony and, resultingly, neutralize some of these negative perceptions.

This Court has recognized the importance of the circuit court's gatekeeping role to exclude unreliable scientific evidence. By statute and in judicial decisions, Missouri courts have adopted the federal *Daubert* standard (and the underlying Federal Rule 702). Missouri courts likewise generally align their application of that standard with that of other sister state courts that have also adopted the federal standard. In this case, the circuit court dutifully adhered to those principles, carefully weighing—and rejecting—the admissibility of an expert's testimony that failed to satisfy the reliability standard. But on appeal, the Western District reversed the circuit court's ruling and held that the unreliable expert testimony should be admitted—despite the fact that the expert did no testing to support his defective-design theory, could not demonstrate that any peer-reviewed literature supported his conclusions, and did not explain how the data he used supports his opinions. Reversal of the circuit court's decision subjects manufacturers and distributors to potential liability based on unreliable expert testimony and places Missouri out of step with other *Daubert* jurisdictions (including the federal courts that sit within Missouri).

Amici, national and Missouri industry associations, write separately because of the importance of these issues to the Missouri and national business communities. Not only is consistency in the law important to deter forum shopping, but decisions on the admission of expert testimony in products-

liability cases significantly impact industry and ultimately consumers. This litigation exemplifies those concerns. Missouri's approach to the admission of expert testimony is particularly significant to them, given Missouri's history as a plaintiff-friendly magnet jurisdiction known for nuclear tort verdicts and recent strides towards reversing its negative reputation for business.

POINTS RELIED ON

I. THE CIRCUIT COURT PROPERLY PERFORMED ITS GATEKEEPING FUNCTION BY EXCLUDING PLAINTIFF/RESPONDENT'S EXPERT WITNESS WHERE PLAINTIFF/RESPONDENT FAILED TO CARRY HIS BURDEN OF ESTABLISHING THAT THE EXPERT'S OPINIONS WERE RELIABLE.

- *Gebhardt v. Am. Honda Motor Co.*, 627 S.W.3d 37 (Mo. App. W.D. 2021)
- *State Bd. of Registration for Healing Arts v. McDonagh*, 123 S.W.3d 146 (Mo. banc 2003)
- *State ex rel. Gardner v. Wright*, 562 S.W.3d 311 (Mo. App. E.D. 2018)
- Mo. Rev. Stat. § 490.065.2

II. ADMITTING UNRELIABLE EXPERT TESTIMONY IN PRODUCTS-LIABILITY CASES EXPOSES MANUFACTURERS AND DISTRIBUTORS TO UNFAIR AND UNPREDICTABLE LIABILITY.

- *Gebhardt v. Am. Honda Motor Co.*, 627 S.W.3d 37 (Mo. App. W.D. 2021)
- *State v. Antle*, 657 S.W.3d 221 (Mo. App. W.D. 2021)
- *State v. Schwarz*, 702 S.W.3d 129 (Mo. App. W.D. 2024)

III. ADOPTING THE WESTERN DISTRICT'S REASONING WOULD HAVE SIGNIFICANT ADVERSE POLICY IMPACTS, WEAKEN THE GATEKEEPING ROLE OF COURTS, PROMOTE FORUM SHOPPING, AND ADVERSELY AFFECT JUDICIAL ADMINISTRATION.

- *Natalini v. Little*, 185 S.W.3d 239 (Mo. App. S.D. 2006)
- *McCoy v. Hershewe L. Firm, P.C.*, 366 S.W.3d 586 (Mo. App. W.D. 2012)
- 28 U.S.C. § 1441(b)(2)

ARGUMENT

I. THE CIRCUIT COURT PROPERLY PERFORMED ITS GATEKEEPING FUNCTION BY EXCLUDING PLAINTIFF/RESPONDENT'S EXPERT WITNESS WHERE PLAINTIFF/RESPONDENT FAILED TO CARRY HIS BURDEN TO ESTABLISH THE EXPERT'S RELIABILITY.

A. By Statute, Missouri Courts Must Scrutinize Expert Testimony for Reliability Pursuant to the *Daubert* Standard.

Here, the circuit court properly excluded unreliable expert evidence in accordance with current Missouri evidentiary rules and standards. In 2017, Missouri changed its rules of evidence to match the federal standard on expert testimony, adopting verbatim the *Daubert* standard enacted in Federal Rule of Evidence 702. *See* Mo. Rev. Stat. § 490.065.2(1). This change was an intentional shift to mirror federal evidentiary requirements: Sections 490.065.2(1), (2), (3), and (4) were identical to the then-operative Federal Rules of Evidence 702, 703, 704, and 705.

Missouri courts have acknowledged and embraced that change. *See State v. Hancock*, 608 S.W.3d 757, 761 n.4 (Mo. App. S.D. 2020) ("In 2017, § 490.065.2 was amended to track Federal Rules of Evidence 702-705 and the seminal case of *Daubert*[.]"); *see also State v. Schwarz*, 702 S.W.3d 129, 139 (Mo. App. W.D. 2024) ("Section 490.065.2(1) mirrors Federal Rule of Evidence

702[.]"); *Revis v. Bassman*, 604 S.W.3d 644, 654 (Mo. App. E.D. 2020) (alterations and internal quotation marks omitted) ("The legislature amended Section 490.065 in 2017 and adopted an approach to the admissibility of expert opinions that is consistent with federal standards.").

As a result, under both federal and Missouri law, "trial courts must act as gatekeepers to ensure that [expert] testimony sought to be admitted . . . is 'not only relevant, but reliable.'" *Gebhardt v. Am. Honda Motor Co.*, 627 S.W.3d 37, 44 (Mo. App. W.D. 2021) (quoting *Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 700 (Mo. App. E.D. 2020)) (adopting the U.S. Supreme Court's holding in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993)); *see also Hancock*, 608 S.W.3d at 761; *State Bd. of Registration for Healing Arts v. McDonagh*, 123 S.W.3d 146, 155 n.12 (Mo. banc 2003). *Daubert* imposes a rigorous gatekeeping role on trial courts to ensure that juries are not unduly swayed by unreliable, unscientific opinions cloaked in the false authority of expertise. *See Daubert*, 509 U.S. at 589, 597.

Missouri and federal courts applying this standard have recognized the importance of the trial court as a gatekeeper to keep unreliable science out of the jury room. *See State ex rel. Gardner v. Wright*, 562 S.W.3d 311, 312 (Mo. App. E.D. 2018) ("At its core, the gatekeeping function of a trial court with respect to expert testimony is essentially to determine that the expert is qualified, the testimony is relevant and the opinions therein are reliable.").

Faithfully applying this standard enables lower courts to resolve cases "finally and quickly" and to prevent "[c]onjectures that are probably wrong" and "of little use . . . in the project of reaching a quick, final, and binding legal judgment—often of great consequence—about a particular set of events in the past." *Daubert*, 509 U.S. at 597. Despite the current state of Missouri law as set forth above, the Western District reversed the circuit court's decision, thus undermining both the well-established evidentiary principles as well as the consistent application of the law in Missouri courts.

B. Consistent Application of *Daubert* Promotes Efficiency and Fairness.

Missouri courts routinely look to federal law for guidance in determining the admissibility of expert testimony. They recognize that "'because the language of Section 490.065 . . . mirrors FRE 702 and 703, and because FRE 702 and 703 are interpreted under *Daubert* and its progeny, the cases interpreting those federal rules remain relevant and useful in guiding [their] interpretation of Section 490.065.'" *Ingham*, 608 S.W.3d at 700 (quoting *State v. Suttles*, 581 S.W.3d 137, 147 (Mo. App. E.D. 2019)); *Pyzyk v. Gateway Psychiatric Grp., LLC*, 694 S.W.3d 583, 594 n.4 (Mo. App. E.D. 2024); *State v. Marshall*, 596 S.W.3d 156, 159 (Mo. App. W.D. 2020); *State v. Addie*, 655 S.W.3d 456, 459 n.2 (Mo. App. W.D. 2022); *State v. Boss*, 577 S.W.3d 509, 517 (Mo. App. W.D. 2019); *see also State v. Carpenter*, 605 S.W.3d 355, 361 n.4

(Mo. banc 2020) ("[F]ederal cases applying those [federal evidentiary] rules are persuasive – though not binding – authority"). While decisions from other federal courts (and other states that have adopted *Daubert* and its progeny) are not binding authority in Missouri state courts, litigants benefit when jurisdictions that purport to have the same standard apply it in the same way. Missouri's interpretation of section 490.065.2 accords with *Daubert* jurisdictions nationwide, and *amici* and their members have long relied on the resulting predictability.

It is a benefit to litigants (and to the cause of justice) when Missouri courts faithfully apply section 490.065.2 consistently with *Daubert*. *Church v. CNH Indus. Am., LLC*, 671 S.W.3d 829, 844 (Mo. App. W.D. 2023) ("Missouri courts consider the factors set out in *Daubert*" in determining the reliability of expert opinion); *Gebhardt*, 627 S.W.3d at 44 (alteration and internal quotation marks omitted) ("Reliability, under section 490.065.2, is determined by many factors, including those set out in *Daubert*."); *see also McDonagh*, 123 S.W.3d at 155 (identifying *Daubert* four-factor test). Parties, like members of *amici*, that do business across state lines rely on uniform application of the rules of evidence.

Where a court incorrectly and inconsistently applies the *Daubert* standard, it invites plaintiff forum shopping and improperly gives plaintiffs a second bite at the apple. Said differently, a party that sees its proffered expert

testimony rejected in one jurisdiction may re-file suit in a second jurisdiction that applies a less rigorous form of gatekeeping. This Court should reject a more lenient misinterpretation of section 490.065.2 departing from that rigorous framework and reaffirm the circuit court's critical role in keeping unreliable junk science out of Missouri courtrooms.

II. ADMITTING UNRELIABLE EXPERT TESTIMONY IN PRODUCTS-LIABILITY CASES EXPOSES MANUFACTURERS AND DISTRIBUTORS TO UNFAIR AND UNPREDICTABLE LIABILITY.

The robust gatekeeping function prescribed by *Daubert* and Section 490.065.2—which the circuit court fulfilled below—is particularly important in products-liability cases. Plaintiffs in these actions often put forth unreliable, results-oriented expert reports, in which declarants cherry-pick data, treat research inconsistently, and apply lower scientific standards to their litigation work than they would in any other academic or professional setting. Courts across the country routinely exclude such expert opinions, including in cases, like this one, where the plaintiff alleges defective design. *See*, *e.g.*, *Zaremba v. Gen. Motors Corp.*, 360 F.3d 355, 359 (2d Cir. 2004) (upholding the exclusion of plaintiff's design expert and the granting of summary judgment for defendants where the expert "offer[ed] no tests, models, calculations, or drawings" to support his proposed alternative design); *Watkins v. Telsmith,*

Inc., 121 F.3d 984, 991–92 (5th Cir. 1997) (upholding the exclusion of an expert who "did not even make any drawings or perform any calculations" to support his alternative design); *Peitzmeier v. Hennessy Indus., Inc.*, 97 F.3d 293, 297 (8th Cir. 1996) (upholding the exclusion of an expert who only offered a "series of rough sketches" of an alternative design); *Brooks v. Outboard Marine Corp.*, 234 F.3d 89, 92 (2d Cir. 2000) (upholding the exclusion of an expert who, among other "shortcomings," "never attempted to reconstruct the accident and test his theory" of a safer alternative design). Indeed, the Seventh Circuit has excluded unreliable expert testimony offered by plaintiffs alleging a defectively designed forklift in a case brought against the very same Defendant/Respondent here. *Bourelle v. Crown Equip. Corp.*, 220 F.3d 532, 536–38 (7th Cir. 2000) (upholding the exclusion of plaintiff's design expert where he "had not done any scientific testing to support his alternative design theory" and had not prepared any drawings of his alternative forklift design).

Missouri courts recognize that the testing of an expert's theory is particularly important in cases alleging design defect to guard against the admission of speculative opinions. *See Gebhardt*, 627 S.W.3d at 46 (affirming the trial court's exclusion of the plaintiff's proffered design-defect expert where the expert's theory had "speculative foundation and lack[ed] . . . confirmatory testing, third-party validation or other facts and data buttressing the reliability of the methods applied or conclusions").

Other critical features of reliable expert testimony include support by peer-reviewed literature and general acceptance in the scientific community. *Addie*, 655 S.W.3d at 459 (affirming the circuit court's admission of expert testimony supported by "peer review journals and articles where the examination process has been shown to produce reliable and repeatable results"); *Boss*, 577 S.W.3d at 518 (affirming the circuit court's admission of expert testimony where "published peer-review studies ha[d] suggested" that his theory was "reliable"); *Suttles*, 581 S.W.3d at 151–52 (affirming the circuit court's admission of expert testimony concerning a theory that "scientists generally accept").

Indeed, the Advisory Committee on the Federal Rules of Evidence recently clarified Federal Rule 702 in response to similar mistakes made by some federal courts in applying the *Daubert* standard too leniently. The 2023 amendments made two clarifying changes to the rule. First, the Advisory Committee added language expressly providing that the *proponent* of expert testimony must carry the burden to "demonstrate[] to the court that it is more likely than not that" that the testimony satisfies the rule's requirements. *See* Fed. R. Evid. 702 Advisory Committee's Note to 2023 Amendment. That clarification corrected an erroneous view, held by some federal district courts, that "the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not

admissibility." *Id.* Accordingly, the federal Rule now states explicitly that trial judges must rigorously scrutinize the relevance and reliability of proposed expert testimony before it may be admitted and may not pass those questions along to the jury as merely issues of weight.

Second, the wording of the fourth factor of the test was changed to clarify that the "expert's opinion reflects a reliable application of" reliable principles and methods "to the facts of the case." Fed. R. Evid. 702(d). That amendment was intended "to emphasize that each expert opinion must stay within the bounds of what can be concluded from a reliable application of the expert's basis and methodology." Fed. R. Evid. 702 Advisory Committee's Note to 2023 Amendment; *see also* U.S. Chamber Inst. for Legal Reform, *Comments to the Advisory Committee on Evidence Rules and its Rule 702 Subcommittee* ("2020 ILR Comment") at 2-3 (Nov. 9, 2020).[1]

These amendments to Federal Rule 702 were intended not as substantive changes, but as clarifications of trial courts' existing obligations. *See Thomas v. State Farm Mut. Auto. Ins. Co.*, 712 F. Supp. 3d 1229, 1231 n.1 (E.D. Mo. 2024) (quoting and citing Fed. R. Evid. 702 Advisory Committee Note to 2023 Amendment) ("Rule 702 was amended April 24, 2023, effective December 1, 2023. The Advisory Committee Notes clarify that the 2023

[1] Available at https://instituteforlegalreform.com/letters-comments-petitions/ilr-comments-to-the-advisory-committee-on-evidence-rules/

amendment does not 'impose any new, specific procedures,' but instead the amendment was made to clarify the preponderance standard for the admissibility requirements set forth in the Rule and to emphasize that an expert 'must stay within the bounds of what can be concluded from a reliable application of the expert's basis and methodology."); *see also Sprafka v. Med. Device Bus. Servs., Inc.*, 139 F.4th 656, 660–61 (8th Cir. 2025). As the Advisory Committee's notes explain, they address the problem of some courts screening expert testimony less rigorously than Rule 702 and the *Daubert* standard require.

Missouri courts interpret section 490.065.2 harmoniously with the 2023 amendments. Missouri courts recognize that *the proponent* of expert testimony bears the burden of establishing that the expert's opinion is reliable. *Schwarz*, 702 S.W.3d at 149 (internal quotation marks omitted) ("[T]he proponent of the testimony[] bears the burden of establishing that the expert testimony satisfies the foundational requirements of Section 490.065.2(1) and[], . . . that the expert's testimony is based on reliable principles and methods which were reliably applied."); *State v. Antle*, 657 S.W.3d 221, 234 (Mo. App. W.D. 2021) ("Because he was the proponent of [the expert's] testimony, [the defendant] bore the burden of establishing that her expert testimony satisfied the foundational requirements of § 490.065.2(1).").

Missouri courts further recognize that experts must demonstrate not

only that their model is based on reliable science, but further, that they reliably used the data they selected to support the opinions they reach in a particular case. *Gebhardt*, 627 S.W.3d at 45 (affirming the circuit court's finding "that there was an analytical gap between the limited data provided and [the expert's] opinions"); *see also id.* at 46 (stating that the trial court is not required "to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered.") (quoting *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)).

The Western District's reasoning in this case suffers from the same misreading of the rules regarding expert admissibility that the Advisory Committee corrected with the 2023 amendments. Consistent with existing Missouri law, this Court should explicitly endorse the Advisory Committee's 2023 amendments to the Federal Rules of Evidence as the proper understanding of Missouri's identical standard governing the admissibility of expert testimony. This Court should make clear that the Western District's reasoning is inconsistent with Missouri law and the trial court's rigorous gatekeeping role.

III. ADOPTING THE WESTERN DISTRICT'S REASONING WOULD HAVE SIGNIFICANT ADVERSE POLICY IMPACTS, WEAKEN THE GATEKEEPING ROLE OF COURTS, PROMOTE FORUM SHOPPING, AND ADVERSELY AFFECT JUDICIAL ADMINISTRATION.

A. Weakening the Gatekeeping Role of Trial Courts Will Adversely Affect Missouri Corporations.

When Missouri changed its law to adopt *Daubert* and mirror the federal evidentiary rules, it did so, in part, to "ma[k]e clear that Missouri is open for business." *See* Marshall Griffin, *With Gov. Greitens' Signature, Missouri Set to Tighten Expert-Witness Rules*, St. Louis Public Radio (Mar. 28, 2017);[2] *see also* Tim McCurdy, *Missouri Adopts Daubert: Sea Change or Ripple on the Pond?*, 73 J. Mo. B. 304 n.3 (2017).

The business community has a longstanding negative perception of Missouri's legal climate. The poor perception of Missouri's litigation environment for fairness and predictability directly impacts corporate decision making about whether to locate, expand, or do business in Missouri. These decisions, in turn, directly impact Missouri's economy.

[2] Available at http://news.stlpublicradio.org/post/gov-greitens-signature-missouri-set-tighten-expert-witness-rules#stream/0

Missouri's unfavorable legal climate for business is evidenced by the upward trend in its "nuclear verdicts"—defined as verdicts of $10 million or more—in products-liability cases. 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 nuclear verdicts. *See* U.S. Chamber Inst. for Legal Reform, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions* at 16-17 (May 2024).[3] Of those verdicts, 36.7% arose from products-liability trials, which often involve the admission of expert testimony. *Id.* at 28. "Consequently, when expert evidence is not based on sound science or is otherwise unreliable, it can mislead jurors into awarding a nuclear verdict." *Id.* at 57. Some of Missouri's nuclear verdicts include truly staggering damages awards. *See, e.g.*, *Ingham*, 608 S.W.3d at 724–25 (entering judgment in 2020 for plaintiffs in a products-liability case of $625 million in compensatory damages and over $1.6 billion in punitive damages); *Anderson v. Monsanto Co.*, 2025 WL 1497539, at *2 (Mo. App. W.D. May 27), *as modified* (June 24, 2025) (affirming awards to plaintiffs in a products-liability case of approximately $61.2 million in compensatory damages and $550 million in punitive damages).

Missouri's spike in massive products-liability verdicts carries harmful consequences for the state economy. For example, a recent study reveals that

[3] Available at https://instituteforlegalreform.com/wp-content/uploads/2024/05/ILR-May-2024-Nuclear-Verdicts-Study.pdf

Missouri's tort costs of $3,387 per household (over $8.3 billion in total) is among the highest in America. *See* U.S. Chamber Inst. for Legal Reform, *Tort Costs in America (3d ed.): An Empirical Analysis of Costs and Compensation of the U.S. Tort System* (Nov. 2024) at 21;[4] *see also* U.S. Chamber of Commerce, *The Hidden Costs of Lawsuits Continue to Grow, Per-Household Costs of the U.S. Tort System* (Nov. 20, 2024).[5] The latest research by the U.S. Chamber's Institute for Legal Reform shows 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%. *Id.*

Amici include both national and Missouri industry organizations. The business community they represent, including their Missouri-incorporated members, is greatly impacted by decisions on admissibility of expert testimony, particularly in the context of products-liability actions that have the potential to affect significant numbers of other litigants. Decisions in the courtroom about the admissibility of scientific evidence have real-world effects, often to the detriment of businesses and consumers. *See*, *e.g.*, U.S. Chamber Inst. for

[4] Available at Tort Costs in America: An Empirical Analysis of Costs and Compensation of the U.S. Tort System - Third Edition - ILR

[5] Available at Hidden Costs of Lawsuits on U.S. Households Continue to Grow | U.S. Chamber of Commerce

Legal Reform, *Fact or Fiction: Ensuring the Integrity of Expert Testimony* at 5 (Feb. 2021)[6] (describing effect of adverse products-liability verdicts, which were eventually reversed, on consumer product availability).

B. Reversing the Circuit Court's Decision Will Promote Forum Shopping.

Plaintiffs' counsel give significant weight to the law governing expert testimony when deciding where to file suit. As one example, Missouri became a hotbed for national talc lawsuits in part because of its reputation for having a "relatively 'flexible' standard for admitting expert testimony." Malerie Ma Roddy, *Consumer Protection: Forum Shopping in Talc Cases*, Nat'l L. Rev. Prod. Liab. & Mass Torts Blog (Dec. 7, 2016).[7]

Missouri courts regularly seek to reduce plaintiff forum shopping. *See*, *e.g.*, *Natalini v. Little*, 185 S.W.3d 239, 252 (Mo. App. S.D. 2006) (noting "[t]his state's policy of protecting its residents from forum-shopping plaintiffs"); *McCoy v. Hershewe L. Firm, P.C.*, 366 S.W.3d 586, 592 (Mo. App. W.D. 2012) ("The passage of Missouri's 2005 Tort Reform Act significantly restricted venue options so as to reduce forum-shopping by plaintiffs"). Forum-shopping concerns are particularly salient in the tort context because litigation

[6] Available at https://instituteforlegalreform.com/research/fact-or-fiction-ensuring-the-integrity-of-expert-testimony/

[7] Available at https://natlawreview.com/article/consumer-protection-forum-shopping-talc-cases

concerning the same product often proceeds simultaneously in numerous jurisdictions. The fact that numerous claims are proceeding in one forum can have significant effects on the commencement and settlement of claims across the country involving the same product. Following *Daubert*, the senior counsel of the Association of Trial Lawyers of America recommended that "because it's difficult to see light at the end of the *Daubert* tunnel, plaintiffs must take another tunnel," suggesting that expert admissibility standards may be more favorable in state courts that do not consistently apply the *Daubert* factors. Victor E. Schwartz and Cary Silverman, *The Draining of Daubert and the Recidivism of Junk Science in Federal and State Courts*, 35 Hofstra L. Rev. 217, 269 (2006) (emphasis added) (quoting Ned Miltenberg, *Out of the Fire and Into the Fryeing Pan or Back to the Future*, Trial, Mar. 2001, at 24). If this Court affirms the Western District's departure from the *Daubert* standard, future plaintiffs will continue to flock to Missouri to take advantage of its more lenient standard on the admissibility of expert testimony.

As the Missouri Legislature made clear when it passed reforms to the rules of evidence to codify *Daubert* in this state, Missouri has a public-policy interest in consistency between the standards applied in its courts and in the federal courts. The congruence between section 490.065.2 and Federal Rule of Evidence 702—and Missouri courts' adoption of *Daubert*—should discourage plaintiffs from selecting Missouri state court when they are forum-shopping

states with a higher likelihood that shaky expert testimony will be admitted. Should this Court adopt the Western District's approach—and reverse the trial court's careful judgment—it would create a gap between Missouri evidence law and federal evidence law, and no plaintiff litigating against a Missouri-incorporated defendant would rationally prefer litigating in federal court, where their expert evidence would be subject to more rigorous application of Federal Rule of Evidence 702. It runs against the interests of both judicial economy and fairness for the Missouri courts to fashion a more lenient expert admissibility standard that effectively offers a second bite at the apple to parties who pressed claims unsuccessfully in other fora, applying the same substantive standards of evidence law.

C. If It Is Not Repudiated, the Western District's Opinion Will Adversely Affect Judicial Administration.

Plaintiffs' forum-selection decisions have consequences beyond the litigants in any individual case. They also affect judicial administration. At least some defendants in any mass-tort case heard in Missouri's courts are likely to be Missouri corporations. Under the forum-defendant rule, the presence of only a single Missouri-incorporated defendant may prevent removal to federal court. *See* 28 U.S.C. § 1441(b)(2). That encourages plaintiffs to file in Missouri state court—an option they will likely choose if some Missouri venues depart from this State's

settled standards for evaluating expert testimony, given the significant and often dispositive effect of such a decision.

Most problematically, a departure from federal evidentiary standards would open state courthouses' doors to plaintiffs who *lost* evidentiary rulings in federal courts. Far from a hypothetical, the Delaware Supreme Court recently rejected plaintiffs' attempts at such a "second bite" at the apple. After a federal multi-district litigation panel applied *Daubert* and excluded plaintiffs' expert testimony, plaintiffs sued the same defendants in the Delaware Superior Court. The Delaware Superior Court admitted the expert testimony, but the Delaware Supreme Court correctly reversed, emphasizing that Delaware courts apply the *Daubert* factors in gatekeeping expert testimony. *See In re Zantac (Ranitidine) Litig.*, -- A.3d --, 2025 WL 1903760, at *10-14 (Del. July 10, 2025).

If this Court adopts (or even signals a shift toward) an evidentiary standard more lenient than settled Missouri law and the federal Rule 702 *Daubert* standard, the reputation of Missouri's legal climate would further deteriorate, and the Missouri courts would become even more of a magnet for peak products-liability and mass-tort claims, which have been on the increase nationwide. Mass-tort litigation "has exploded" in the years following *Daubert*. 2020 ILR Comment at 1. MDLs comprise nearly one-half of the entire federal civil docket (excluding most prisoner and social-security cases). *Id.* From 2000 to 2020, the number of

pending cases in MDLs has increased by 650%, and about 90% of cases in MDLs are products-liability claims. *Id.* at 1–2. Class-action litigation in federal courts has also significantly increased since 2000. *Id.* at 2.

A significant increase in new filings threatens to overburden Missouri's courts. During 2024, plaintiffs filed a staggering 17,074 more civil lawsuits in Missouri circuit courts than the previous year. *Compare* Table 25, Circuit Court FY 2023, Civil, Juvenile & Probate Cases Filed, Disposed, and Pending at 3 (noting 37,129 civil cases filed in the state of Missouri in 2023)[8] *with* Table 25, Circuit Court FY 2024, Civil, Juvenile & Probate Cases Filed, Disposed and Pending at 3 (noting 54,203 civil cases filed in the state of Missouri in 2024).[9] Accordingly, any potential changes to Missouri's established standard governing the admission of expert testimony in products-liability and other cases would affect not only the litigants in those cases, but the entire court system.

[8] Available at FY2023 Table 25 Civil, Juvenile, Probate Cases

[9] Available at FY2024 Table 25 Civil Juvenile Probate Cases

CONCLUSION

For the reasons above, this Court should affirm the circuit court's order excluding Plaintiff/Appellant's expert from testifying and granting summary judgment for Defendant/Respondent.

Respectfully submitted,

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CERTIFICATE OF CONSENT

I hereby certify that *Amici Curiae* has received written consent from Defendant/Respondent Crown Equipment Corporation and Plaintiff/Appellant Christopher Hanshaw to file this Brief.

/s/ Barbara A. Smith
Barbara A. Smith

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. The Brief of *Amici Curiae* includes the information required by Rule 55.03, complies with the limitations contained in Supreme Court Rule 84.06(b),

2. The Brief of *Amici Curiae* contains 4,888 words, exclusive of the cover, certificate of service, certificate required by Rule 84.06(c), signature block, Table of Contents, and Table of Authorities as determined by Microsoft Word software;

3. The Brief of *Amici Curiae* has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Century Schoolbook; and

4. A true and correct copy of Brief of *Amici Curiae* was served on the opposing party by the Court's electronic filing system on this 11th day of August, 2025.

/s/ Barbara A. Smith
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