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I. INTRODUCTION

This Article summarizes significant appellate decisions rendered in 1996 and 1997 that concern issues involving Missouri civil practice and procedure. Determining which of the many appellate decisions regarding civil practice and procedure are "significant" is an admittedly subjective exercise. What a practitioner considers significant often depends upon the issues presented in the cases currently in that practitioner's filing cabinet. Nonetheless, the Author acknowledges reliance upon what other attorneys have considered to be the significant cases of the last two years, most notably those discussed by Dale Doerhoff in his column, "The Flag," appearing in the *Journal of the Missouri Bar* throughout the time period addressed, as well as those cases identified by Jeffrey A. Burns in his article, "Civil Procedure—Annual Update" in *Civil Practice and Procedure News*, November 1997.

The cases are categorized by their primary impact upon Missouri civil procedure rules,[1] Missouri statutes affecting civil procedure, and common law civil practice issues that do not readily fall into either of the previous categories.

II. SIGNIFICANT CASES INTERPRETING MISSOURI RULES OF CIVIL PROCEDURE

A. Rule 55.27(d)[2]

State ex rel. Harvey v. Wells[3] confirmed the rule that a general plea of contributory negligence is subject to a timely motion to make more definite and certain. In *Harvey*, the defendant in a personal injury action alleged contributory

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1. More properly, the Missouri Rules of Court.

2. Missouri Supreme Court Rule 55.27(d) provides, in pertinent part:
A party may move for a more definite statement of any matter contained in a pleading that is not averred with sufficient definiteness or particularity to enable the party properly to prepare responsive pleadings or to prepare generally for trial when a responsive pleading is not required . . . .

3. 955 S.W.2d 546 (Mo. 1997).

negligence as an affirmative defense, stating only that the plaintiffs' damages "were caused or contributed to be caused by plaintiff Louisa Harvey's own negligence or fault . . . ."[4] The plaintiff moved to make the allegations of negligence more definite and certain under Rule 55.27(d), arguing that the pleading was not sufficient to allow the plaintiff to prepare for trial, thus violating Rule 55.08. The trial court overruled the motion, but stated that the plaintiff could renew the motion if, after conducting the relevant discovery, she was unable to "ascertain the bases for the defenses asserted by Defendant. . . "[5]

The Missouri Supreme Court observed that fact pleading is required to identify, narrow, and define the issues so that the trial court and the parties know what issues are to be tried, what discovery is necessary, and what evidence may be admitted at trial. Those purposes would not be served without requiring the defendant to plead specific facts in support of the affirmative defense before discovery on the issues was completed. The court also found that the trial court had impermissibly shifted the burden from the defendant to the plaintiff with respect to the adequacy of the defendant's pleading.

The court recognized that a party may not know all of the facts necessary to frame pleadings for trial in the early stages of a lawsuit, and suggested that in such situations a party make allegations based upon the party's "reasonable 'knowledge, information and belief.'"[6] In addition, while a trial court has discretion to allow a party sufficient time to discover facts to support the general allegations pursuant to Rule 55.27(d), the exercise of that discretion is limited to the confines of the stated purposes of fact pleading and to the furtherance of those purposes. The court thus read into the rule a requirement that a party be given a "reasonable amount of time" to make an indefinite pleading more definite and certain, in keeping with the purposes of fact pleading.[7]

B. Rule 56.01 Medical Authorizations

While not expressly dealing with Rule 56.01, *State ex rel. Dixon v. Darnold*[8] and *State ex rel. Jones v. Syler*[9] involve discovery issues important to civil practice.

In *Dixon,* the underlying plaintiff in a medical malpractice action sought a myriad of documents that defendant Cox Medical Centers (Cox) claimed to be protected from discovery pursuant to the Missouri Peer Review Statute.[10] The

4. *Id.* at 547.
5. *Id.*
6. *Id.* at 548 (citing MO. SUP. CT. R. 55.03(b)).
7. *Id.*
8. 939 S.W.2d 66 (Mo. Ct. App. 1997).
9. 936 S.W.2d 805 (Mo. 1997).
10. MO. REV. STAT. § 537.035 (1994).

trial court agreed, and sustained Cox's objections to the requests for production of those documents.

The Southern District Court of Appeals' opinion focused on the record before the trial court when sustaining the objections to the requests for production. There were no transcripts of hearings and no evidence presented upon the issue. Consequently, no reasonable basis existed in the record for the trial court's exercise of discretion in ruling on the objections.[11] The appellate court found that the trial court had made its ruling on the basis of arguments of counsel at the hearing on the objections and in the briefs submitted in support of and in opposition to the objections, which were inadequate bases to support the court's ruling on the objections.[12]

Because no evidence was presented to explain the terms used in the requests for production or to show how those terms could relate to the provisions of the Peer Review Statute, there was no competent evidence before the trial court to support its exercise of discretion.[13] The burden was upon Cox to establish that the material sought by the requests was protected by privilege and not discoverable. Thus, Cox could not prevail upon its objections absent sufficient information to allow the trial court to determine whether privilege applied. The Southern District concluded that, due to the absence of evidence before the trial court to support its ruling on the objections, the court abused its discretion in sustaining the objections.[14]

The *Jones* court examined again[15] the scope of permissible medical authorizations in personal injury litigation. In an apparent effort to avoid limitations to proof of damages at trial, the plaintiff pleaded nearly limitless injuries sustained as a result of the defendant's alleged negligence.[16] Although

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11. State *ex rel.* Dixon v. Darnold, 939 S.W.2d 66, 71 (Mo. Ct. App. 1997).

12. *Id.* at 69.

13. *Id.* at 70.

14. *Id.* at 71.

15. *See, e.g.*, State *ex rel.* Stecher v. Dowd, 912 S.W.2d 462 (Mo. 1995); Brandt v. Pelican, 856 S.W.2d 658 (Mo. 1993); State *ex rel.* McNutt v. Keet, 432 S.W.2d 597 (Mo. 1968); State *ex rel.* Pierson v. Griffin, 838 S.W.2d 490 (Mo. Ct. App. 1992); State *ex rel.* DeGraffenreid v. Keet, 619 S.W.2d 873 (Mo. Ct. App. 1981).

16. These injuries included:

> [a] fracture of the distal head of the radius of the left wrist together with a severe wrench, sprain, strain of her upper chest, left arm, and wrist, with distinct bruises on the upper left arm, both inside and out, and a large hematoma or lump on the dorsal surface of the left wrist, together with a bruise on her back and a bruising and contusing of the left side of her head, bruises and contusions on the upper back and the middle of the back towards the right side, and a bruise and knot on the upper right arm in the area of the deltoid, and the plaintiff's head, chest, both arms, left wrist and hand, and back, and the bones, joints, muscles, tendons, tissues, nerves, ligaments, vessels, cartilages, and skin thereof, were fractured, wrenched, sprained, strained, bruised, contused, swollen, inflamed, and made painful, and the

the medical authorization that the plaintiff was ordered to execute was extremely broad in terms of the plaintiff's physical condition, the supreme court did not conclude that the trial court abused its discretion based solely on the overbreadth of the plaintiff's pleadings. In the words of the court, "[S]auce for the goose is sauce for the gander."[17] The *Jones* court admonished against the use of boilerplate language such as that employed in *Jones*.[18]

Nonetheless, the supreme court concluded that the authorization involved was not limited as to time, was not addressed to specific health care providers, and, thus, was overly broad.[19] The court reiterated the requirement set forth in *Stecher*, that time limits serve to prevent the risk of release of irrelevant and privileged information.[20] Since the authorization bore no time limitation for the records sought, it was overbroad in that respect.[21] Further, since the authorization was addressed to "any hospital, physician or other person who has attended me or examined me," it was overbroad under the holdings of *State ex rel. Pierson v. Griffin* and *State ex rel. DeGraffenreid v. Keet.*

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plaintiff suffered, suffers, and will suffer severe pain of body and mind, including dizziness and nausea and has pain and weakness when lifting objects with her left hand; that said injuries and effects are serious and permanent, and functions and use of all the aforesaid parts and organs have been seriously and permanently impaired . . . .

Jones, 936 S.W.2d at 806.

17. *Id.* at 808.

18. *Id.*

19. *Id.*

20. *Id.*

21. The *Jones* court expressed no opinion as to an appropriate time limitation for the medical authorization in question. The opinion quotes from *State ex rel. Stecher v. Dowd*, that the time limits should "'tie the authorizations to [the] particular case and the injuries pleaded'" without comment as to how the pleadings described in footnote 16 herein affect the time limitation to be imposed. *Jones*, 936 S.W.2d at 808.

C. Rule 69.01[22]

In *Malan Realty Investors, Inc. v. Harris*,[23] the supreme court determined that the right to trial by jury may be contractually waived. In *Malan*, the defendant was sued by the plaintiff landlord for possession and for breach of a commercial lease. The defendant asserted a counterclaim for breach of the lease as well, with specific reference to and reliance upon the lease.

One of the provisions of the lease was that both parties to the lease waived their right to trial by jury in "any action, proceeding or counterclaim brought by either of the parties" arising out of the lease. Nonetheless, the defendant's sole assignment of error after a bench trial resulting in judgment against the defendant was that the waiver was ineffective. The defendant argued that Rule 69.01(b) provides only four ways a party can waive the right to a jury trial, and that the lease provision did not fall into any of the recognized categories for waiver of the right.[24]

After examining existing cases involving waiver of jury trials and concluding that none had addressed whether contractual waivers of jury trials were valid, the supreme court held that the right to a jury trial may be waived by contract.[25] In reaching its holding, the court pointed out that other fundamental rights and due process considerations could be contractually surrendered through arbitration agreements and exculpatory clauses for future negligent acts. So long as the right to trial by jury has been knowingly and voluntarily relinquished, the court concluded, the waiver would be enforced.[26]

The *Malan* court then examined the waiver provision in the lease at issue and determined that the waiver was made by "clear, unambiguous, unmistakable, and conspicuous language."[27] Finally, the court considered the "negotiability of the contract terms, [the] disparity in bargaining power between the parties, the

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22. Missouri Supreme Court Rule 69.01 provides, in pertinent part:
(a) Right of Trial by Jury Inviolate. The right of trial by jury as declared by the Constitution or as given by a statute shall be preserved to the parties inviolate. In particular, any issue as to whether a release, composition or discharge of the plaintiff's original claim was fraudulently or otherwise wrongfully procured shall be tried by jury unless waived.
(b) Jury Trial—How Waived. Parties shall be deemed to have waived trial by jury:
(1) by failing to appear at the trial;
(2) by filing with the clerk written consent in person or by attorney;
(3) by oral consent in court, entered on the minutes;
(4) by entering into trial before the court without objection

23. 953 S.W.2d 624 (Mo. 1997).
24. *Id.* at 625.
25. *Id.*
26. *Id.*
27. *Id.* at 627.

business acumen of the party opposing the waiver, and the conspicuousness of the jury waiver provision."[28] After applying these tests to the facts presented by the case, the court concluded that the jury trial waiver was effective.

D. Rule 74.01(a)[29]

Numerous decisions have addressed the finality of judgments in light of the January 1, 1995 amendment to Rule 74.01(a).[30] Representative of this group of decisions is *City of St. Louis v. Hughes*.[31] The defendant in *Hughes* sought to appeal four trial court rulings denominated "Memorandum for Clerk." None of the documents bore the word "judgment" in their titles, and none appeared to have been intended by the trial court to be a final determination of the issues presented. The defendant further conceded in his brief that the orders he sought to appeal were "judgments" as the term is defined by Rule 74.01(a). The supreme court dismissed the appeal for lack of jurisdiction.

In discussing the requirement of Rule 74.01(a) that the trial court denominate its final ruling as a "judgment," the supreme court stated:

> The requirement that a trial court must "denominate" its final ruling as a "judgment" is not a mere formality. It establishes a "bright line" test as to when a writing is a judgment. The rule is an attempt to assist the litigants and the appellate courts by clearly distinguishing between when orders and rulings of the trial court are intended to be final and appealable and when the trial court seeks to retain jurisdiction over the issue.[32]

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28. *Id.* (citing National Equip. Rental, Ltd. v. Hendrix, 565 F.2d 255, 258 (2d Cir. 1977)).

29. Rule 74.01(a), as amended and effective until July 1, 1988 reads:

(a) Included Matters. "Judgment" as used in these rules includes a decree and an order from which an appeal lies. A judgment is rendered when entered. A judgment is entered when a writing signed by the judge and denominated "judgment" is filed. The judgment may be a separate document or included on the docket sheet of the case.

Effective July 1, 1998, Missouri Supreme Court Rule 74.01(a) reads:

(a) Included Matters. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment is rendered when entered. A judgment is entered when a writing signed by the judge and denominated "judgment" or "decree" is filed. A judgment may be a separate document or included in the docket sheet of the case.

30. *See, e.g.*, Linzenni v. Hoffman, 937 S.W.2d 723 (Mo. 1997); Beckham Creek Cave, Inc. v. Medley, 949 S.W.2d 285 (Mo. Ct. App. 1997); Chambers v. Easter Fence Co., 943 S.W.2d 863 (Mo. Ct. App. 1997); Kessinger v. Kessinger, 935 S.W.2d 347 (Mo. Ct. App. 1996); Berger v. Berger, 931 S.W.2d 216 (Mo. Ct. App. 1996).

31. 950 S.W.2d 850 (Mo. 1997).

32. *Id.* at 853.

The court hedged to some extent with respect to whether the word "judgment" must appear on the title of the document, stating:

> Whether the designation "judgment" appears as a heading at the top of the writing, within the body of the writing in some other manner, or in the entry on the docket sheet, it must be clear from the writing that the document or entry is being "called" a "judgment" by the trial court. Depending upon the text, mere use of the word "judgment" in the body of the writing or docket entry may not suffice.[33]

When this passage from *Hughes* is read in conjunction with other recent appellate decisions interpreting Rule 74.01,[34] it becomes apparent that, to ensure finality of a ruling, courts should include the term "judgment" in the heading of the document intended to serve as the final disposition of the case.

III. SIGNIFICANT CASES INTERPRETING MISSOURI CIVIL PROCEDURE STATUTES

A. Venue

Two notable, recent decisions addressing venue issues are *State ex rel. Breckenridge v. Sweeney*[35] and *State ex rel. Domino's Pizza, Inc. v. Dowd.*[36] *Breckenridge* concerned a claim of pretensive joinder to enable the plaintiffs to appear in a more favorable forum; *Domino's Pizza* involved the question of whether a franchisee is the agent of the franchisor for the purposes of venue.

The plaintiffs in *Breckenridge* originally filed their medical malpractice action in Butler County against the hospital in which the plaintiff mother gave birth to her daughter. The plaintiffs alleged negligence resulting from a delay in delivery which caused deprivation of oxygen and led to the child's cerebral palsy. The plaintiffs dismissed their original cause and refiled in Greene County, adding a nurse anesthetist and a physician as defendants. The nurse anesthetist was a resident of Greene County, and no party challenged that fact either before the trial court or during the proceeding in mandamus.

The defendant nurse anesthetist filed a "Motion to Dismiss and/or Transfer Venue," which was sustained by the trial court. The trial court ruled that the nurse was pretensively joined and ordered the cause transferred to Butler County.[37]

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33. *Id.*
34. *See supra* note 28.
35. 920 S.W.2d 901 (Mo. 1996).
36. 941 S.W.2d 663 (Mo. Ct. App. 1997).
37. *Breckenridge*, 920 S.W.2d at 902.

The supreme court initially noted that under the general venue statute,[38] venue was proper because the nurse was a resident of Greene County at the time of the filing of the petition. Then the court set forth the test for determining whether a party has been joined pretensively:

> Venue is pretensive if (1) the petition on its face fails to state a cause of action against the resident defendant; or (2) the petition does state a cause of action against the resident defendant, but the record, pleadings and facts presented in support of a motion asserting pretensive joinder establish that there is, in fact, no cause of action against the resident defendant and that the information available at the time the petition was filed would not support a reasonable legal opinion that a case could be made against the resident defendant. The standard is an objective one, appropriately denominated as a realistic belief that under the law and the evidence a [valid] claim exists.[39]

The respondent[40] challenged venue on both of these bases. As to the first prong of the test, the court examined the sufficiency of the second amended petition filed in Greene County, rather than the original petition. The court held that a challenge to pretensive venue based upon defective pleadings should be determined when the challenge is adjudicated and that the trial court should consider the current state of the pleadings rather than the sufficiency of the originally filed petition.[41] The court found that the second amended petition "indisputably" contained factually specific averments that were sufficient to state a claim upon which relief could be granted.[42]

Next, the court applied the second prong of the test to determine whether the information available to the plaintiffs objectively gave rise to a cause of action against the nurse. The analysis under the second part of the test focused upon information available to the plaintiffs at the time the original petition was filed in Greene County, rather than upon information acquired during the course of discovery. The plaintiffs had obtained a "confidential medical statement" from their expert witness prior to the filing of the Greene County case which concluded that the nurse deviated from the applicable standard of care in

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38. *Id.* (citing MO. REV. STAT. § 508.010 (1986)).

39. *Id.* at 902 (citing State *ex rel.* Malone v. Mummert, 889 S.W.2d 822, 824 (Mo. 1994). The supreme court also stated that the burden of proof and the burden of persuasion is upon the party claiming that a defendant has been joined under a pretense. *Id.* (citing State *ex rel.* Malone v. Mummert, 889 S.W.2d 882 (Mo. 1991)). However, the opinion does not discuss the burden of persuasion or how the nurse failed to meet her burden.

40. *Id.* at 904. The supreme court also determined that, because the respondent had ordered the cause transferred to Butler County, the respondent no longer had jurisdiction over the matter, and that the presiding judge of Butler County was to be substituted as the respondent for the court's writ of mandamus. *Id.*

41. *Id.* at 903.

42. *Id.*

delaying the delivery. Although evidence developed during discovery qualified the expert's previous statement and brought into question the conclusion that the nurse's actions indeed deviated from the standard of care, the information was not found to be available to the plaintiffs at the time of the filing of the Greene County petition. The court thus concluded that the information which was available when the Greene County petition was filed "supported a reasonable legal opinion that a case could be made" against the nurse.[43] Because the nurse failed to establish either part of the test for pretensive joinder, the court concluded that the transfer of venue was improper.[44]

State ex rel. Domino's Pizza, Inc. v. Dowd involved mandamus actions[45] seeking to compel the circuit court for the City of St. Louis to transfer cases to appropriate venues. One case involved a plaintiff who sought to recover for personal injuries sustained in an automobile accident in Scott County; the second involved a plaintiff who sought to recover for personal injuries sustained in an automobile accident in Jefferson County. In the first case, the alleged tortfeasor was an employee of Domino's Pizza, Inc. (Domino's) franchisee D & D Pizza, Inc., a Missouri corporation located in Cape Girardeau and doing business in Cape Girardeau and Scott Counties. In the second case, the alleged tortfeasor was an employee of Domino's franchisee Lynn Enterprises, Inc., a Missouri corporation also located in Cape Girardeau and doing business in Cape Girardeau and Jefferson Counties. Domino's is a Michigan corporation authorized to do business in Missouri, but with no office in the City of St. Louis.

In both cases, the plaintiffs claimed that venue in the City of St. Louis was proper due to the presence of another franchisee in the City of St. Louis, One Way Pizza, Inc. (One Way), which was not a party to either suit. The plaintiffs asserted that One Way was Domino's "agent" for the transaction of its usual and customary business, and that venue in the City of St. Louis was proper under Missouri Revised Statutes § 408.040. Domino's moved to transfer both cases to counties where venue would be proper, and the trial court denied both motions.

The Eastern District of the Court of Appeals[46] defined the essential characteristics of an agency relationship as set forth in section 1, *Restatement (Second) of Agency:*

> that an agent holds a power to alter legal relations between the principal and a third party; . . .

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43. *Id.*

44. *Id.* at 904.

45. State *ex rel.* Domino's Pizza v. Dowd, 941 S.W. 2d 663 (Mo. Ct. App. 1997). The opinion deals with two cases where the respondent denied relator Domino's motions to transfer to different venues involving two different franchisee corporations.

46. *Id.* The cases were transferred on certification of the dissent of Judge Pudlowski and retransferred without opinion by the Missouri Supreme Court. *Id.*

> that an agent is a fiduciary with respect to matters within the scope of the agency; . . . and
>
> that a principal has the right to control the conduct of the agent with respect to the matters entrusted to the agent. . . .[47]

The court examined the relationship between One Way and Domino's in light of these characteristics to see if any agency relationship existed that would support venue in the City of St. Louis.[48] The respondent argued that One Way had the power to alter legal relationships based upon its authority to change the price of pizzas through promotions and based upon its ability to subject Domino's to tort liability. The appellate court, however, finding crucial the fact that Domino's did not sell pizzas in Missouri,[49] concluded Domino's had no legal relationship with customers in Missouri. Thus, One Way's use of coupons, discounts, refunds and free pizzas did not alter any relationship between Domino's and Missouri customers.[50] As to the relator's argument that One Way could subject Domino's to tort liability, the appellate court observed that the argument presumed that One Way was Domino's agent, which was the issue to be determined initially. Absent an agency relationship, the court could not find a basis for One Way to subject Domino's to tort liability. Consequently, the Eastern District concluded that One Way could not alter the legal relations between Domino's and third parties.[51]

The court next considered the respondent's argument that One Way served as a fiduciary of Domino's. The court noted that it was in the mutual interests of Domino's and its franchisees to maintain the reputation and quality of Domino's at a high level. The court concluded, however, that the franchisees were independent businesses conducted for the benefit and profit of the franchisees through the sale of the franchisee's own product. Domino's franchisees were not collecting moneys for the benefit of Domino's, in contrast to the facts of *State ex rel. Elson v. Koehr*,[52] relied upon by the respondent.

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47. *Id.* at 665 (citing State *ex rel.* Elson v. Koehr, 856 S.W.2d 57 (Mo. 1993).

48. *Id.* at 667. Actually, the court examined the first two characteristics and determined that both were absent, thus rendering an analysis of the third characteristic unnecessary. *Id.*

49. Domino's Pizza, Inc. owned and operated facilities, which sold and delivered pizzas in other states, but not in the state of Missouri. *Id.* at 665.

50. *Domino's*, 941 S.W.2d at 665.

51. *Id.* at 666.

52. 856 S.W.2d 57 (Mo.1993). In *Koehr*, a permanent writ of mandamus was issued, commanding the trial court to reinstate a petition dismissed for lack of proper venue. *Id.* at 59. The plaintiff had sued Southwest Airlines after she fell at a ticket counter at Lambert-St. Louis International Airport. *Id.* The plaintiff's basis for venue in the City of St. Louis rather than in St. Louis County (where the airport was located) was that independent travel agents sold tickets in the city for Southwest's flights. *Id.*

The supreme court applied the test for agency cited by the court in *Domino's Pizza* and concluded that the independent ticket agents selling tickets in the city of St. Louis

Although a percentage of gross income was paid to Domino's by franchisees, the payments were contractual obligations that did not rise to the level of a fiduciary relationship. Having found two of the essential characteristics of an agency relationship between Domino's and One Way to be absent, the court concluded that no agency relationship existed and that venue in the City of St. Louis was improper.[53]

B. Statutes of Limitation

In *Batek v. Curators of University of Missouri*,[54] the plaintiff challenged the validity of the exclusion of medical malpractice claims from the general tolling provision of Missouri Revised Statutes § 516.170.[55] She sought damages for medical malpractice she alleged had occurred between February 15 and March 9, 1993. The plaintiff claimed that the negligence occurred on February 28, 1993. Her suit was filed on June 14, 1995. The defendants filed motions to dismiss, averring that, by the face of her petition, the plaintiff's action was barred by the two- year statute of limitations for medical malpractice. The plaintiff was more than twenty years of age when the alleged malpractice occurred.

The plaintiff amended her petition in response to the motions to dismiss, further alleging fraudulent concealment and "constitutional infirmities." The trial court sustained the motions to dismiss without setting forth the basis for its decision. On appeal, the plaintiff argued that Section 516.170 tolled the statute of limitations for her claims despite the express language: "Except as provided in section 516.105. . . ." The supreme court dismissed this argument, stating that a person eighteen years old or older may bring a cause of action in his own name. The plaintiff was not incapacitated by any legal disability at the time of the alleged negligent acts, and was more than twenty years old. Thus, she was capable of bringing an action in her own name within the two year period.[56] The court cited with approval *Miguel v. Lehman*,[57] which similarly held that an action for medical malpractice brought more than two years following the alleged negligent act was not tolled by the express language of § 516.170.

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were "agents," which allowed the plaintiff to maintain her action in the city. *Id.*

53. *Domino's*, 941 S.W.2d at 667.

54. 920 S.W.2d 895 (Mo. 1996).

55. MO. REV. STAT. § 516.170 provides:

> Except as provided in Section 516.105, if any person entitled to bring an action in Sections 516.100 to 516.370 specified, at the time the cause of action accrued be either within the age of twenty-one years, or mentally incapacitated, such person shall be at liberty to bring such actions within the respective times in Sections 516.100 to 516.370 limited after such disability is removed.

56. *Batek*, 920 S.W.2d at 898.

57. 902 S.W.2d 327 (Mo. Ct. App. 1995).

The court then addressed the plaintiff's constitutional challenges to the express exemption of medical malpractice from the tolling provisions of Section 516.105. The plaintiff asserted an equal protection claim under the federal and state constitutions,[58] as well as a state constitutional claim that the statute was a prohibited special law limiting civil actions.[59]

As to the first argument, the supreme court determined that there was no burden upon either a "suspect class" or a "fundamental right." The court explained that fundamental rights include only "basic liberties explicitly or implicitly guaranteed by" the federal Constitution. Thus, the supreme court was limited to an examination of whether the statute was rationally related to a legitimate state interest. The court concluded that the exclusion of medical malpractice claims from the general tolling statute was not without a reasonable basis, and held that the statute did not violate the Equal Protection Clause of the Constitution.[60]

Likewise, the court upheld the exclusion of the statute against the challenge that it was violative of the prohibition against special laws enacted for the limitation of civil actions. The court found that the exclusion applies "to all of a given class alike and the classification [was] made on a reasonable basis," satisfying the test set forth in *Blaske v. Smith & Entzeroth, Inc.*[61]

In *Wheeler v. Briggs*,[62] the supreme court addressed another constitutional challenge to Section 516.170. *Briggs* involved allegations of medical malpractice which were claimed to have resulted in the mental incapacitation of the conservator's ward. The ward suffered a stroke on June 9, 1988, which was not diagnosed until June 13, 1988, when he suffered four additional strokes. He was declared mentally incompetent on August 6, 1991, and his wife was appointed his conservator. The conservator filed a medical malpractice action on May 11, 1992, voluntarily dismissed it in May of 1995, and refiled against two defendants in August of 1995. Two more defendants were added in January of 1996.

Two defendants filed motions to dismiss, while the other two filed motions for summary judgment. The conservator asserted that the statute of limitations was tolled by § 516.170 due to her ward's mental disability. Nonetheless, all of the defendants' motions were sustained. On appeal, the conservator argued the same two constitutional issues raised by the plaintiff in *Batek*, and additionally challenged the constitutionality of the statute as violative of the open courts provision of the Missouri Constitution.

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58. *Batek*, 920 S.W.2d at 898. *See* CONST. amend XIV; MO. CONST. art I, § 2.

59. *Batek*, 920 S.W.2d at 898; MO. CONST. art III, § 40(6).

60. *Batek*, 920 S.W.2d at 899.

61. 821 S.W.2d 822, 831 (Mo. 1991) (quoting Ross v. Kansas City Gen. Hosp. & Med. Ctr., 608 S.W.2d 397, 400 (Mo. 1980).

62. 941 S.W.2d 512 (Mo. 1997).

The supreme court, citing *Batek*, summarily disposed of the two constitutional challenges already decided by the court.[63] The court then examined the constitutional challenge based upon the open courts provision. The majority opinion of the 4-3 decision noted, "The constitutional right of access means simply the 'right to pursue in the courts the causes of action the substantive law recognizes,'"[64] and stated that "[u]nder the open courts provision, only those statutes that impose procedural bars to access of the courts are unconstitutional."[65] Concluding that "[m]entally incapacitated persons, unlike minors, are not legally prohibited from filing suit," the court found that § 516.170 "does not procedurally bar access to the mentally incapacitated."[66]

Chief Justice Holstein, joined by Judges Price and White, dissented in part. He argued that the court was inconsistent in concluding that it is "wholly unreasonable and arbitrary to bar an action by one who lacks capacity due to minority, particularly when the minor is both mentally and physically capable of applying for his or her own appointment of a next friend," as the court did in *Strahler v. St. Luke's Hospital*,[67] without finding it "equally arbitrary and unreasonable to bar a recognized legal action due to mental incompetency."[68] The dissent would have held that the exception to the tolling of the statute of limitations for medical malpractice was unconstitutional where no conservator or guardian had been appointed for the mentally incapacitated the plaintiff.

In *Hughes Development Co. v. Omega Realty, Co.*,[69] the court declared the law with respect to the applicability of the ten- year statute of limitations for actions upon writings for the payment of money or property[70] versus the applicability of the five-year limitation for actions upon contracts.[71]

The plaintiff and the defendant in *Hughes* entered a written management service agreement in May of 1988. The plaintiff agreed to assist the defendant in the management of apartments; the defendant agreed to pay the plaintiff a percentage of the management fees collected by the defendant from apartment owners obligated to the defendant. In May of 1995, the plaintiff filed suit for breach of contract against the defendant, seeking moneys he believed the defendant owed him under the written contract. The defendant filed a motion for summary judgment, asserting the five-year bar to actions upon contracts of Section 516.120(1). The trial court granted summary judgment to the defendant.

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63. *Id.* at 514.

64. *Id.* (citing Adams v. Children's Mercy Hosp., 832 S.W.2d 898, 906 (Mo.), *cert. denied*, 506 U.S. 991 (1992); Harrell v. Total Health Care, Inc., 781 S.W.2d 58, 62 (Mo. 1989).

65. *Wheeler*, 941 S.W.2d at 516 (citing *Adams*, 832 S.W.2d at 905).

66. *Id.* at 515.

67. 706 S.W.2d 7 (Mo. 1986).

68. *Wheeler*, 941 S.W.2d at 517.

69. 951 S.W.2d 615 (Mo. 1997).

70. *See* MO. REV. STAT. § 516.110(1) (1994).

71. *See* MO. REV. STAT. § 516.120(1) (1994).

Citing cases covering a span of approximately ninety years, the supreme court concluded that no clear precedent had evolved to interpret the two statutes in harmony. Choosing to ignore the previous, inconsistent decisions in favor of the plain language of the statute, the court declared that "the ten-year statute of limitations applies to every breach of contract action in which the plaintiff seeks a judgment from the defendant for the payment of money the defendant agreed to pay in a written contract."[72]

C. Personal Jurisdiction

Chromalloy American Corp. v. Elyria Foundry, Inc.[73] centered upon the issue of whether visits to Missouri by the president of the defendant corporation to present an offer to purchase a foundry owned by the plaintiff corporation constituted sufficient minimum contacts with Missouri to subject the defendant to personal jurisdiction in Missouri.

The plaintiff corporation sued the Ohio-based defendant corporation, claiming breach of contract for failing to make payments on the purchase of an Ohio foundry from the plaintiff. The defendant corporation moved to dismiss for lack of personal jurisdiction. The trial court sustained the motion.

Initially, the court examined whether it had jurisdiction over the appeal, since, generally, a dismissal for lack of personal jurisdiction without prejudice is not a final judgment and, therefore, not appealable. Noting that "an appeal from such a dismissal can be taken where the dismissal has the practical effect of terminating the litigation in the form cast or in the plaintiff's chosen forum,"[74] and further finding that the dismissal had the effect of terminating the litigation in the plaintiff corporation's chosen forum, the court concluded that the appeal was proper.[75]

Next, the court considered whether the defendant corporation transacted business in Missouri within the meaning of Section 506.500. The affidavits presented to the trial court by the defendant corporation demonstrated that its president traveled to Missouri to offer to purchase the foundry, that the offer was rejected, that negotiations later resumed in Ohio, and that after the negotiations were complete the president traveled again to Missouri to review the contracts. The president then returned to Ohio with the contracts, and reviewed and executed the contracts there.

The court analyzed the facts with respect to the elements set forth in *Dillaplain v. Lite Industries, Inc.*[76]: "First, the suit must arise out of the activities

72. *Hughes Development Co.*, 951 S.W.2d at 617.

73. 955 S.W.2d 1 (Mo. 1997).

74. *Id.* at 3 (citing City of Chesterfield v. Deshetler Homes, 938 S.W.2d 671, 673 (Mo. Ct. App. 1997).

75. *Id.*

76. 788 S.W.2d 530, 533 (Mo. Ct. App. 1990).

enumerated in the long arm statute; second, the defendant must have sufficient minimum contacts with Missouri to satisfy due process requirements."[77] Apparently, that the first element was satisfied was undisputed. The supreme court focused upon the second element and determined that the defendant corporation did have sufficient minimum contacts with Missouri.[78]

The court found that both trips made by the president of the defendant corporation constituted "the transaction of business." Both of the trips made by the president were found to be part of an ongoing process that resulted in the sale of the foundry by the plaintiff corporation to the defendant corporation. The trips also were purposeful visits, "made with the intention of initiating or furthering the purchase of the foundry from a Missouri corporation."[79] As such, principles of due process were satisfied, and the dismissal was reversed.[80]

D. Missouri Revised Statutes § 537.065[81]

Gulf Insurance Co. v. Noble Broadcast[82] adds a requirement to settlements between a claimant and an insured whose insurer unjustly refuses to defend on the ground that the claim is not covered by the policy. A settlement pursuant to Missouri Revised Statutes § 537.065 must be free from fraud and collusion to be enforceable.[83] The supreme court in *Gulf* determined that "a reasonableness standard is appropriate in determining the enforceability of section 537.065 settlements."[84]

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77. *Chromalloy*, 955 S.W.2d at 4.

78. *Id.* at 5.

79. *Id.*

80. *Id.*

81. MO. REV. STAT. § 537.065 (1994) provides, in pertinent part:
Any person having an unliquidated claim for damages against a tort-feasor, on account of bodily injuries or death, may enter into a contract with such tort-feasor or any insurer in his behalf or both, whereby, in consideration of the payment of a specified amount, the person asserting the claim agrees that in the event of a judgment against the tort-feasor, neither he nor any person, firm or corporation claiming by or through him will levy execution, by garnishment or otherwise provided by law, except against the specific assets listed in the contract and except against any insurer which insures the legal liability of the tort-feasor for such damage and which insurer is not excepted from execution, garnishment or other legal procedure by such contract. Execution or garnishment proceedings in aid thereof shall lie only as to assets of the tort-feasor specifically mentioned in the contract or the insurer or insurers not excluded in such contract . . . .

82. 936 S.W.2d 810 (Mo. 1997).

83. Cologna v. Farmers & Merchants Ins. Co., 785 S.W.2d 691, 701 (Mo. Ct. App. 1990).

84. *Gulf Ins. Co.*, 936 S.W.2d at 815.

The claimant in *Gulf* filed suit against Noble Broadcast (Noble) and an employee for negligence after she was injured by a mobile studio driven by the employee in a parade sponsored by Noble. Noble's insurer, Gulf Insurance Company (Gulf), denied coverage and refused to defend the claim based upon an exclusion in the business policy for "autos." As a result, Noble entered into a settlement agreement with the claimant under Section 537.065, and consented to a judgment of $1 million, the limits of its policy with Gulf.

Gulf then filed a declaratory judgment action, seeking a declaration of no coverage for the same reasons that it denied coverage for the occurrence. Gulf further sought a declaration that the settlement was unenforceable because it was unreasonable, collusive, and obtained by fraud, although Gulf later dropped the fraud claim. The trial court found that Gulf's policy did cover the occurrence and that the settlement unenforceable because it was unreasonable. Both the claimant and Gulf appealed.[85]

A majority of the supreme court affirmed the trial court's determination of coverage. The court then examined the claimant's appeal of the finding that the settlement was unreasonable and therefore unenforceable. The court acknowledged the requirements of *Cologna v. Farmers & Merchants Insurance Co.*[86] and found that no state appellate court had determined whether a reasonableness requirement existed for Section 537.065 settlements.[87] The *Gulf* court concluded that a requirement of reasonableness

> strikes an appropriate balance between the interests of the insured and the insurer. In cases such as the present case, the insurer has refused to defend, leaving the insured to fend for itself. The insured, however, although not engaging in collusive conduct for fraudulent or deceitful purpose, may act in a self-interested way in an attempt to protect himself from personal liability.[88]

The court also set forth the test as to whether a settlement was reasonable: "what a reasonably prudent person in the position of the defendant would have settled for on the merits of the plaintiff's claim."[89] Applying this test requires

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85. *Id.* at 812.

86. In *Cologna*, the Southern District Court of Appeals stated that "to bind the insurer the settlement must be reasonable and entered into in good faith." The *Cologna* court then addressed a claim by the defendant that the underlying wrongful death judgment was collusive or fraudulent by noting that "the trial court made extensive findings of fact in connection with [the plaintiff's] claim for damages because of [decedent's] death and concluded that the plaintiff had sustained total damages in the amount of $450,000. Farmers' characterization of the proceeding as a species of confession of judgment is unwarranted." As noted in *Gulf*, however, *Cologna* was decided on the ground that the claim was barred by *res judicata*, and the discussion of "reasonableness" thus relegated to mere *dicta*. *Cologna*, 785 S.W.2d at 701.

87. *Gulf*, 936 S.W.2d at 815.

88. *Id.* at 816.

89. *Id.* (citing Miller v. Shugart, 316 N.W.2d 729, 735 (Minn. 1982)).

that factors such as the liability and damage aspects of the claim and the risks of proceeding to trial be considered. The burden of proving reasonableness of the settlement rests upon "the insurer who has elected not to participate in the underlying case."[90] The court remanded the matter for a determination of "a reasonable amount for which the insurer should be held liable,"[91] and concluded that the trial court did not abuse its discretion in finding the settlement to be unreasonable.[92]

E. Missouri Revised Statutes § 537.080[93]

Call v. Heard[94] addressed several issues pertaining to civil practice. *Call* was a wrongful death action brought by a mother and daughter against a driver who was involved in a collision which killed the father and two siblings of the daughter. The defendant driver pleaded guilty to three counts of involuntary manslaughter and was imprisoned throughout the pendency of the litigation. A bench trial resulted in total compensatory damages of $9.5 million and total punitive damages of $9.5 million, plus prejudgment interest on the claims.

The direct appeal to the supreme court resulted from constitutional challenges to Missouri Revised Statutes § 491.230.2, which prevented the defendant from attending the trial in person. The court noted that while a prisoner is entitled to meaningful access to the courts, he is not entitled to perfect

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90. *Id.* The court apparently intended to place the burden of proving *unreasonableness* of the settlement agreement upon the insurer who elected not to participate. In the following paragraph to the one quoted, the supreme court found that Gulf had "met its burden of proving that the settlement amount was *unreasonable.*" *Id.* (emphasis added).

91. *Id.*

92. The minority opinion would have found no coverage based upon the unambiguous language of the exclusion of the business policy, and thus would not have reached the issue of reasonableness. There is no indication in the dissent that the minority disagreed with the court's analysis on the issue of reasonableness of settlement agreements except for its necessity. *Id.* at 817-18 (Robertson, J., dissenting).

93. MO. REV. STAT. § 537.080 (1994) provides, in pertinent part:

> 1. Whenever the death of a person results from any act, conduct, occurrence, transaction, or circumstance which, if the death had not ensued, would have entitled such person to recover damages in respect thereof, the person or party who, or the corporation which, would have been liable if death had not ensued shall be liable in an action for damages, notwithstanding the death of the person injured, which damages may be sued for:
>
> (1) By the spouse or children or the surviving lineal descendants of any deceased children, natural or adopted, legitimate or illegitimate, or by the father or mother of the deceased, natural or adoptive;
>
> (2) If there be no persons in class (1) entitled to bring the action, then by the brother or sister of the deceased, ...

94. 925 S.W.2d 840 (Mo. 1996).

access.[95] Because the defendant could have testified at trial either by conventional or videotaped deposition and because the trial court, in its discretion, could have conducted a bench trial within the prison in which the defendant was incarcerated, the challenged statute did not deprive the defendant of meaningful access.[96] The court similarly found that the statute was not violative of constitutional equal protection or due process rights.[97]

The defendant also raised constitutional challenges to Missouri's procedures for award and review of punitive damages. The supreme court reviewed Missouri's common law procedures, standards and safeguards against the procedures and safeguards found adequate by the United States Supreme Court in *Pacific Mutual Life Insurance Co. v. Haslip*,[98] and concluded that Missouri's system of standards and controls was adequate to satisfy due process.[99]

The trial court's judgment for damages on claims asserted against the defendant by the plaintiff daughter for the death of her siblings, however, was reversed. The surviving daughter failed to state a claim for which relief could be granted because she was not a member of the class entitled to recover under Missouri Revised Statutes § 537.080. Because the mother, the sole class member pursuant to Section 537.080(1), brought the action for the deaths of her two children, the daughter could not, as a matter of law, establish her entitlement to share in the recovery for those deaths.[100] Further, finding that the trial court awarded compensatory and punitive damages to the daughter based upon damages suffered by the daughter personally, the court concluded that the damages were erroneously awarded, and reduced the judgment accordingly.[101]

Another issue of significance was the award of prejudgment interest upon a joint demand by the plaintiffs of $10 million for damages when no specific pleadings supported the award for prejudgment interest and the demand was combined into a single sum. The court found no error on either basis. Because

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95. *Id.* at 846.

96. *Id.*

97. *Id.*

98. 499 U.S. 1 (1991). The standards noted by the Missouri Supreme Court, as approved in *Haslip*, were that: (1) "the jury was instructed that the purpose of punitives is to punish the defendant and to deter the defendant and others from similar conduct in the future;" (2) "the trial judge, in reviewing the award, then considered the culpability of the defendant, the desirability of discouraging others from similar conduct, the impact upon the parties, and 'other factors, such as the impact on innocent third parties;'" and (3) "an appellate court reviewed the award to make sure that it 'does not exceed an amount that will accomplish society's goals of punishment and deterrence.'" *Call*, 925 S.W.2d at 848.

99. *Call*, 925 S.W.2d at 850.

100. *Id.*

101. *Id.*

the statute for prejudgment interest on tort actions[102] contained no pleading requirements, the court determined that a general, open-ended prayer for relief[103] sufficed. The court likewise found no bar in the statute preventing demands for multiple claimants to be combined into one demand.[104]

IV. ADMISSIBILITY OF EVIDENCE OF CONSUMPTION OF ALCOHOL AND STANDARD FOR IMPOSITION OF PUNITIVE DAMAGES

In *Rodriguez v. Suzuki Motor Corp.*,[105] the supreme court established significant law as to two important issues: the admissibility of evidence of the consumption of alcohol and the burden to be met for imposition of punitive damages.

The plaintiff sustained serious permanent injury when a vehicle in which she was a passenger rolled over off a roadway. A jury awarded the plaintiff compensatory damages of $30 million and punitive damages of $60 million against the defendant manufacturer. The trial court reduced both awards to $20 million each on remittitur.[106] The parties cross-appealed.

At trial, the defendant unsuccessfully sought to introduce evidence of the consumption of alcohol by non-party witnesses, the plaintiff, and the driver of the vehicle. The supreme court ruled that the exclusion of the proffered evidence in each instance was improper.

The supreme court first addressed the evidence of alcohol consumption of non-party witnesses. Because evidence of the consumption of alcohol by those witnesses was "relevant and material to the witness's ability to see, hear, perceive and observe," and because possible impairment of a witness's ability to recall is relevant to the witness' credibility, the court ruled that the trial court erred in excluding the evidence.[107]

The court next turned to an analysis of the admissibility of the evidence of consumption of alcohol by the parties. After a thorough review of the existing precedent on the issue, centering upon *Doisy v. Edwards*[108] and its progeny, and in light of the adoption of comparative fault in Missouri,[109] the court announced

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102. MO. REV. STAT. § 408.040.2 (1994).

103. In this case, "and for such other relief as the court deems just and proper under the circumstances." *Call*, 925 S.W.2d at 854.

104. *Id.*

105. 936 S.W.2d 104 (Mo. 1996). For a more thorough discussion of *Rodriguez*, see Heather L. Reinsch, Note, *A New Standard for Admissibility of Alcohol Consumption by a Party and a Higher Standard of Proof for Punitive Damages*, 63 Mo. L. Rev. 225 (1998).

106. *Rodriguez*, 936 S.W.2d at 106.

107. *Rodriguez*, 936 S.W.2d at 106 (citing Johnson v. Conger, 854 S.W.2d 480, 483 (Mo. Ct. App. 1993)).

108. 398 S.W.2d 846, 849-50 (Mo. 1966).

109. Gustafson v. Benda, 661 S.W.2d 11 (Mo. 1983).

a new, simple standard for parties in civil cases: "Evidence of alcohol consumption is admissible, if otherwise relevant and material."[110] The court identified two situations in which the standard applies: (1) where the proponent of the evidence does not allege intoxication as an independent act of negligence, and (2) where the proponent does allege intoxication as an independent act of negligence.[111]

The court explained that in the first situation, evidence of drinking may be relevant to the proof of other acts of negligence alleged, but will not support a submission of drinking as an independent negligent act.[112] In such cases, the party against whom the evidence is presented can seek a limiting instruction.

When intoxication is alleged as an independent act of negligence and a submissible case is made, "the appropriate jury instruction serves to diminish any undue prejudice."[113] The court also observed that possible prejudice can be reduced through appropriate questions posed to prospective jurors during voir dire and by presenting evidence and argument to the jury placing the issue of alcohol consumption in the appropriate context.[114]

The supreme court alluded to the possibility of establishing a "clear and convincing evidence" standard to support an award for punitive damages in *Call v. Heard.*[115] In *Rodriguez,* the court adopted that standard. Although the court had previously rejected a higher standard of proof for the submission of punitive damages,[116] the court observed that "[a] growing majority of states requires clear and convincing evidence before punitive damages can be considered."[117] Because of the extraordinary and harsh nature of punitive damages, the supreme court overruled the *Menaugh* standard of proof for punitive damages in favor of adoption of the clear and convincing evidence standard.[118]

V. ADMISSION OR USE OF OPINIONS CONTAINED IN MEDICAL RECORDS

In *Sigrist v. Clarke,* the Southern District Court of Appeals reversed and remanded for retrial a medical malpractice action which had resulted in a jury verdict for the defendant.[119] The plaintiff claimed error in the trial court's refusal to allow the plaintiff's expert to testify concerning opinions appearing in the

110. *Rodriguez,* 936 S.W.2d at 108.
111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.*
115. Call v. Heard, 925 S.W.2d 840, 847 n.3 (Mo. 1996).
116. Menaugh v. Resler Optometry, Inc., 799 S.W.2d 71, 75 (Mo. 1990).
117. Rodriguez v. Suzuki Motor Corp., 936 S.W.2d 104, 110 (Mo. 1997).
118. *Id.* at 111.
119. 935 S.W.2d 350 (Mo. Ct. App. 1996).

plaintiff's medical records and in excluding from evidence pages of the records offered as exhibits in rebuttal. The appellate court found the exclusion of the proffered testimony to be an abuse of discretion.[120]

The plaintiff's expert was asked whether the opinions expressed in the medical records at issue supported his opinion that the medical condition the defendant allegedly failed to correct existed during the defendant's care of the plaintiff. The bases for the trial court's ruling as to the expert's testimony were that the opinions contained in the records were hearsay and speculative. The court of appeals observed that once the records qualified as business records and overcame the hearsay objection, the records were admissible to the extent they did not contain passages which were objectionable on other grounds.[121] The court reasoned that because the persons whose opinions were contained in the record could have testified regarding those opinions at trial, those portions of the records were admissible. *Sigrist* thus does not impose a requirement that the opinions contained within the records be stated "within a reasonable degree of medical certainty."[122] The appellate court found that the plaintiff suffered prejudice as a result of the trial court's ruling because the exclusion of the doctors' opinions as contained in the records "may have had a significant impact on the jury's determination," and thus "'clearly offend[ed] the logic of the circumstances,'" constituting an abuse of discretion.[123]

The *Sigrist* court also ruled that the trial court did not abuse its discretion in excluding from evidence summaries of medical records, portions of which were highlighted. The court agreed that the exhibits could be found to be argumentative, although it emphasized that its conclusion should not be interpreted as a prohibition of the use of colors in an exhibit at trial.[124] The court found no prejudice suffered by the plaintiff from the exhibit's exclusion, noting

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120. *Sigrist* stated that "[t]his Court concludes that the trial court erred in refusing to allow [plaintiff's medical expert] to refer to pages two and three of Exhibit 7 and page one of Exhibit 8." *Sigrist*, 935 S.W.2d at 353. However, the opinion also states that on direct examination, the expert was prevented from discussing pages two and three of Exhibit 7 only, and that page one of Exhibit 8 was offered and refused admission during rebuttal. *Id.* The opinion does not indicate whether the portions of exhibits offered in rebuttal were refused in conjunction with the expert's testimony on rebuttal or merely offered as substantive evidence without testimonial support. *Id.* There is also no indication in the opinion as to whether any of the exhibits were offered into evidence during the plaintiff's case in chief. *Id.*

121. *Id.* at 353-54.

122. *Compare* Turnbo v. City of St. Charles, 932 S.W.2d 851, 856 (Mo. Ct. App. 1996).

123. *Sigrist*, 935 S.W.2d at 355 (citing Jennings v. Kansas City, 812 S.W.2d 724, 736 (Mo. Ct. App. 1991)).

124. *Id.*

that the information contained in the exhibits was presented to the jury in essentially the same form by way of a black and white transparency projection.[125]

VI. CONCLUSION

The cases summarized in the preceding sections appear to be the ones with the greatest potential to widely impact Missouri practice and procedure. Some holdings of the cases clarify the law, such as *State ex rel. Harvey v. Wells*'s discussion of Rule 55.27(d) motions to make more definite and certain. Others declare a clear departure from previous holdings, such as *Rodriguez v. Suzuki Motor Co.*'s treatment of admission of alcohol consumption in vehicular negligence actions. Still others serve a warning to all practitioners, such as *City of St. Louis v. Hughes*'s discussion of the requirements for finality of judgments under Rule 74.01(a). All of the cases, however, are required reading for practitioners who have any contact with civil litigation, regardless of the other issues presented in the cases in those filing cabinets.

125. *Id.*