

**IN THE MISSOURI SUPREME COURT**

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**No. SC 87279**

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**STATE EX. REL. TRI-COUNTY ELECTRIC COOPERATIVE ASSOCIATION,**

**Relator**

**vs.**

**THE HONORABLE GARY DIAL,  
Presiding Judge of the Circuit Court of Schuyler County, Missouri  
Division 3**

**Respondent**

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**PETITION IN PROHIBITION FROM THE CIRCUIT COURT OF SCHUYLER  
COUNTY, MISSOURI FIRST JUDICIAL CIRCUIT, DIVISION 3  
The Honorable Gary Dial, Circuit Judge**

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**BRIEF OF RELATOR  
TRI-COUNTY ELECTRIC COOPERATIVE, ASSOCIATION**

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**ANDERECK, EVANS, MILNE,  
PEACE & WIDGER, L. L.C.**

**Andrew J. Sporleder, Mo Bar 51197  
Terry M. Evans, Mo Bar 21922  
Erwin L. Milne, Mo Bar 24028  
700 East Capitol, P. O. Box 1438  
Jefferson City, MO 65102  
Telephone: 573-634-3422  
Facsimile: 573-634-7822**

**ATTORNEYS FOR RELATOR**

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## JURISDICTIONAL STATEMENT

The matter herein involves the question of whether Respondent exceeded his jurisdiction in denying Relator's Motion to Dismiss for Lack of Subject Matter Jurisdiction in direct opposition to Missouri's Workers' Compensation Law (Chapter 287, RSMo. 2000), which provide for employer immunity from such actions (§287.120.1 RSMo. 2000), thereby allowing the plaintiffs in the underlying civil action to continue prosecution of a wrongful death action (pursuant to §537.080, RSMo.) against Relator, the employer of plaintiffs' son who, while working within the scope of Relator's business, sustained fatal injuries and hence involves the validity of a statute of the State of Missouri.

This Court has jurisdiction under the Missouri Constitution, Article V, §§ 3 and 4.1 and Missouri Supreme Court Rule 84, as well as §§ 530.010 to 530.090, RSMo. 2000, to hear and decide whether Respondent Judge Dial, by issuance of his September 19, 2005 order denying Relator's Motion to Dismiss for Lack of Subject Matter Jurisdiction exceeded his jurisdiction.

This is a Petition for Writ of Prohibition pursuant to Missouri Supreme Court Rules 84.22 to 84.25, inclusive and 97. On September 19, 2005, the Honorable Gary Dial, Missouri First Judicial Circuit, Division 3, Circuit Court of Schuyler County, issued an order denying Relator's Motion to Dismiss for Lack of Subject Matter Jurisdiction. **(Exhibit 1, Appendix, A1)**. A Petition for Writ of Prohibition and Suggestions in Support were filed with the Western District Court of Appeals of Missouri on November 3, 2005. **(Exhibit 2, Appendix, A3)**. On November 18, 2005, the Western District Court

of Appeals of Missouri issued its order denying the petition. (**Exhibit 3, Appendix, A96**). The proper remedy to contest the denial of a writ of prohibition is to request an extraordinary writ from a higher court and not a direct appeal. §530.020, RSMo. 2000; *Office of Public Counsel v. Missouri Public Service Comm'n*, 741 S.W.2d 114, 115 (Mo.App. 1987); *State Ex rel. Arnett v. Greer*, 921 S.W.2d 128, 129 (Mo.App. 1996).

### **STATEMENT OF FACTS**

Steven Watson (hereinafter “Watson”), the decedent, was employed by Relator Tri-County Electric Cooperative Association (hereinafter “Tri-County”) as a journeyman lineman. At the time of his death, Watson had been in the service of Tri-County for ten years. Watson’s job duties included maintaining and repairing Tri-County’s electric power distribution lines. On August 4, 2004, Watson was called at home and thereafter dispatched to assist co-employee Bobby G. Newland to make repairs to Tri-County’s electric power lines at or near Flax Trail Road off Highway FF in Putnam County, Missouri. While Watson was making repairs to Tri-County’s electrical power line, he made contact with an energized wire and sustained serious injuries that ultimately led to his death. Decedent Steven Watson’s parents, Gary and Martha Watson, on July 5, 2005, filed their petition for damages in the Circuit Court of Schuyler County, case number 05SY-CV00037. (**Exhibit 4, Appendix, A97**). The Plaintiffs’ Petition against Relator is brought pursuant to §537.080, RSMo. ((**Exhibit 4, Paragraph 8, Appendix, A99**)). The petition alleged the wrongful death of plaintiffs’ son and named Bobby G. Newland and Tri-County as defendants.

On August 10, 2005, Relator Tri-County, and Bobby G. Newland, as defendants in said action, filed a timely joint Motion to Dismiss for Lack of Subject Matter Jurisdiction, **(Exhibit 5, Appendix, A103)**, and Suggestions in Support the Motion to Dismiss for Lack of Subject Matter Jurisdiction, **(Exhibit 6, Appendix, A109)**, asserting therein that jurisdiction over the subject matter raised by plaintiffs in said action was vested by Missouri Workers' Compensation statutes and case law precedent in the Labor and Industrial Relations Commission, Division of Workers' Compensation, and not with any circuit court. On September 1, 2005, at the hearing on the Motion to Dismiss, Plaintiffs filed suggestions in opposition to Relator's and Bobby Newland's Motion to Dismiss for Lack of Subject Matter Jurisdiction. **(Exhibit 7, Appendix, A116)**. Thereafter, on September 14, 2005, Relator and Bobby Newland filed suggestions in opposition to Plaintiffs' suggestions in opposition to Relator's and Bobby Newland's Motion to Dismiss for Lack of Subject Matter Jurisdiction. **(Exhibit 8, Appendix, A143)**.

The Respondent on September 19, 2005, entered an order overruling Relator's and Bobby Newland's Motion to Dismiss for Lack of Subject Matter Jurisdiction. **(Exhibit 1, Appendix, A1)**. Thereafter, on October 3, 2005, it was appropriate for Relator and Bobby Newland to file an Answer to plaintiffs' petition and therein to aver affirmative defenses to plaintiffs' petition so as to proceed with defense of the cause on its merits. **(Exhibit 9, Appendix, A165)**.

On November 3, 2005 Relator and Bobby Newland filed a petition for writ of prohibition and suggestions in support with the Missouri Court of Appeals, Western District. **(Exhibit 2, Appendix, A3)**. Thereafter on November 7, 2005, the Missouri court

of Appeals, Western District issued an Order finding that the petition for writ of prohibition and suggestions in support were in proper form. (**Exhibit 10, Appendix, A169**). The petition for Writ of Prohibition was denied without opinion by the Western District of the Missouri Court of Appeals by Order of November 18, 2005. (**Exhibit 3, Appendix, A96**).

On November 28, 2005, Relator and Bobby Newland filed a petition for writ of prohibition and suggestions in support with this Court. (**Exhibit 11, Appendix, A170**). Thereafter, on December 20, 2005 this Court issued its Preliminary Writ of Prohibition as to Relator Tri-County and denied the petition as to Bobby G. Newland. (**Exhibit 12, Appendix, A194**).

## POINTS RELIED ON

### I.

Relator is entitled to an Order prohibiting Respondent from doing anything other than vacating Respondent's September 19, 2005 order overruling Relator's Motion to Dismiss for Lack of Subject Matter Jurisdiction as it pertains to Relator, and thereafter entering an order sustaining said motion as to Relator, because Respondent is without subject matter jurisdiction as to plaintiffs' claims alleged against Relator and thus Respondent exceeded his jurisdiction in denying Relator's Motion to Dismiss for Lack of Subject Matter Jurisdiction in that plaintiffs' decedent suffered fatal injuries from an accident arising out of and in the course of employment by Relator and while working within the scope and course of Relator's business, and therefore Missouri's Workers' Compensation Law vests exclusive jurisdiction over plaintiffs' claims with the Missouri Labor and Industrial Relations Commission and not with Respondent.

### Cases

*Marie v. Standard Steel Works*, 319 S.W.2d 871, (Mo. banc 1959).

*State ex rel. Jones Construction Co. v. Sanders*, 875 S.W.2d 154 (Mo.App. 1994).

*State Ex. Rel. Larkin v. Oxenhandler*, 159 S.W.3d 417 (Mo.App. W.D.2005).

*State ex rel. Taylor v. Wallace*, 73 S.W.3d 620 (Mo. banc 2002).

### Statutes

§287.120.1 RSMo. 2000;

§287.120.2 RSMo. 2000;

§537.080 RSMo. 2000;

§537.080.1 RSMo. 2000;

§537.080.2 RSMo. 2000.

## II.

**Relator is entitled to an Order prohibiting Respondent from doing anything other than vacating Respondent's September 19, 2005 order overruling Relator's Motion to Dismiss for Lack of Subject Matter Jurisdiction as it pertains to Relator, and thereafter entering an order sustaining said motion as to Relator, because Respondent is without subject matter jurisdiction as to plaintiffs' claims alleged against Relator and thus Respondent exceeded his jurisdiction in denying Relator's Motion to Dismiss for Lack of Subject Matter Jurisdiction in that plaintiffs' widow and minor child have received, since the date of Watson's death, and will continue to receive, per Missouri's Workers' Compensation Law, benefits for the death of Watson and are members of the same statutory class as the plaintiff parents, and therefore entitled, pursuant to the Missouri wrongful death statute to share in any award for the wrongful death of Steven Watson, thereby Respondent's September 19, 2005 order is in direct opposition to the immunity from tort liability provided employers in Missouri by the Missouri Workers' Compensation Law, and therefore, if left unrestrained, will obliterate the employer immunity provisions of Missouri's Workers' Compensation Law.**

### **Cases**

*Barbera v. Brod-Dugan Co.*, 770 S.W.2d 318 (Mo.App. 1989).

*Kelley v. DeKalb Energy Company*, 865 S.W.2d 670 (Mo. banc 1993).

*State ex rel. Badami v. Gaertner*, 630 S.W.2d 175 (Mo.App. 1982).

*State ex rel. Taylor v. Wallace*, 73 S.W.3d 620 (Mo. banc 2002);

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§287.120.2 RSMo. 2000;

§537.080 RSMo. 2000;

§537.080.1 RSMo. 2000;

§537.080.2 RSMo. 2000.

## ARGUMENT

### I.

**Relator is entitled to an Order prohibiting Respondent from doing anything other than vacating Respondent's September 19, 2005 order overruling Relator's Motion to Dismiss for Lack of Subject Matter Jurisdiction as it pertains to Relator, and thereafter entering an order sustaining said motion as to Relator, because Respondent is without subject matter jurisdiction as to plaintiffs' claims alleged against Relator and thus Respondent exceeded his jurisdiction in denying Relator's Motion to Dismiss for Lack of Subject Matter Jurisdiction in that plaintiffs' decedent suffered fatal injuries from an accident arising out of and in the course of employment by Relator and while working within the scope and course of Relator's business, and therefore Missouri's Workers' Compensation Law vests exclusive jurisdiction over plaintiffs' claims with the Missouri Labor and Industrial Relations Commission and not with Respondent.**

### Standard of Review

A motion to dismiss for lack of subject matter jurisdiction is the proper method to raise the exclusive jurisdiction of the Industrial Relations Commission under the Workers' Compensation Law as a defense to a tort action. *Groh v. Kohler*, 148 S.W.3d 11, 13 (Mo.App. 2004); *Burns v. Employer Health Services, Inc.*, 976 S.W.2d 639, 641

(Mo.App. 1998); *Shaver v. First Union Realty Management, Inc.*, 713 S.W.2d 297, 299 (Mo. App. 1986). *Parmer v. Bean*, 636 S.W.2d 691, 695 (Mo. App. 1982). *See also Jones v. Jay*, 709 S.W.2d 114 (Mo. banc 1986). A motion to dismiss should be granted when it appears that the trial court lacks subject matter jurisdiction. *Sexton v. Jenkins & Associates, Inc.*, 41 S.W.3d 1, 4 (Mo.App. 2000); *James v. Union Electric Co.*, 978 S.W.2d 372, 374 (Mo.App. 1998). “ ‘As the term “appears” suggests the quantum of proof is not high.’ ” *Burns*, 976 S.W.2d at 641 (quoting *Parmer v. Bean*, 636 S.W.2d 691, 694 (Mo.App. 1982)). The party raising the defense must show by a preponderance of the evidence that the trial court is without subject matter jurisdiction. *James*, 978 S.W.2d at 374. In determining whether it has jurisdiction, the trial court may consider affidavits, exhibits, and evidence pursuant to Rules 55.27 and 55.28. *Burns*, 976 S.W.2d at 641. The Workers’ Compensation Law is to be liberally interpreted, and where there is doubt regarding a question of jurisdiction, it should be resolved in favor of the Labor and Industrial Relations Commission rather than the circuit court. *State ex rel. Larkin v. Oxenhandler*, 159 S.W.3d 417, 421 (Mo.App. W.D.2005); *Nowlin v. Nichols*, 163 S.W.3d 575, 578 (Mo.App. 2005); *Sexton v. Jenkins & Assocs. Inc.*, 41 S.W.3d 1, 4 (Mo.App. W.D.2000).

Where the facts bearing on the issue are contested between the parties, the proper standard of review for the trial court’s decision on a motion to dismiss for lack of subject matter jurisdiction is abuse of discretion. *Mo. Soybean Ass’n. v. Missouri Clean Water Commission*, 102 S.W.3d 10, 22 (Mo. banc 2003). Judicial discretion is abused where “the trial court’s ruling is clearly against the logic of the circumstances then before the

court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration . . .” *Newman v. Ford Motor Co.*, 975 S.W.2d 147, 151 (Mo. banc 1998) (quoting *Richardson v. State Highway & Transp. Comm’n*, 863 S.W.2d 876, 881 (Mo. banc 1993)); *Crow v. Kansas City Power & Light Company*, 174 S.W.3d 523, (Mo.App. W.D.2005).

### **Argument**

The Missouri General Assembly has provided in the Missouri Workers’ Compensation Law, at section 287.120.1 RSMo. 2000 that: “Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident arising out of and in the course of the employee's employment, **and shall be released from all other liability therefor whatsoever, whether to the employee or any other person.**” (§287.120.1, RSMo.2000, *Emphasis Added*). The rights and remedies of a Missouri employee under the Missouri workers’ compensation laws “shall exclude all other rights and remedies of the employee, his wife, her husband, **parents**, personal representatives, dependents, heirs, or next kin, at common law or otherwise...” (§287.120.2 RSMo. 2000; *emphasis added*).

Prior to entering his September 19, 2005 order denying Relator’s Motion to Dismiss for Lack of Subject Matter Jurisdiction, Respondent had before him for consideration Plaintiffs’ petition, wherein numerous paragraphs allege and Relator admits that plaintiffs’ decedent was at the time of his death an employee of Relator Tri-County

and was engaged in one of his duties as an employee, repairing electric distribution lines owned by Relator Tri-County. (**Exhibit 4, Paragraphs 4, 6 & 9, Appendix, A98-A99**). Relator also presented for Respondent's consideration and in support of Relator's Motion to Dismiss, numerous sworn affidavits attached as exhibits to Relator's / Defendants' Suggestions in Opposition to Plaintiffs' Suggestions in Opposition to Defendants' Motion To Dismiss for Lack of Subject Matter Jurisdiction. These affidavits clearly set forth to Respondent that plaintiffs' decedent was an employee of Relator whose death was caused by an accident arising out of and in the course of decedent's employment and was at the time of his death engaged in activities in furtherance of the business of Relator. (**Exhibit 8, Appendix, A154-A160**).

Relator was an employer, as that term is defined in §287.030, RSMo. 2000, on August 4, 2004, the date of decedent's accidental death, as Relator was on said date a Missouri corporation employing five or more employees. Relator Tri-County Electric Cooperative is an employer which is subject to the Missouri Workers' Compensation laws, and therefore maintains workers' compensation insurance on all employees, including plaintiffs' decedent, Steven Watson on August 4, 2004. (**Exhibit 8, Appendix, A163**). "The employer has a nondelegable duty to provide a reasonably safe place to work." *Kelley v. DeKalb Energy Company*, 865 S.W.2d 670, 672 (Mo. banc 1993). "An employee injured performing his work duties and sustaining his injuries because the workplace was unsafe has no common law suit against either the employer or the employer's agent, but is relegated to the benefits provided under the Workers' Compensation Law." *Crow v. Kansas City Power & Light Company*, 174 S.W.3d 523,

(Mo.App. W.D.2005), (quoting *Gabler v. McColl*, 863 S.W.2d 340, 343 (Mo.App. E.D.1993)). “Missouri’s Workers’ Compensation Law pre-empts judicial resolution of tort claims arising ‘out of and in the course of’ employment; an employer is released from liability but required to furnish compensation irrespective of negligence.” Section 287.120.1 RSMo. 2000; *State Ex. Rel. Larkin v. Oxenhandler*, 159 S.W.3d 417, 420 (Mo.App. W.D.2005). The Missouri Supreme Court has long held that the workers’ compensation law is not supplemental or declaratory of any existing rule, right or remedy, but created an entirely new right or remedy which is “wholly substitutional in character and supplants all other rights and remedies at common law or otherwise.” *Marie v. Standard Steel Works*, 319 S.W.2d 871, 875 (Mo. banc 1959). Missouri’s Workers’ Compensation Law provides the exclusive remedy for employees against employers for injuries covered by its provisions, and subject matter jurisdiction over such matters properly lies only in the Labor and Industrial Relations Commission. *State ex rel. Taylor v. Wallace*, 73 S.W.3d 620, 621 (Mo. banc 2002). “In consideration of its grant of benefits to an employee coming within the coverage of the Workers’ Compensation Act, the legislature has required that employers be released from all other liability, and that the employee and those claiming under or through him, **including parents**, (emphasis added) be excluded from all other rights and remedies. Had the Legislature desired to allow other actions to those not compensated for under the Act, it could have so provided.” *Combs v. City of Maryville*, 609 S.W.2d 475, 478 (Mo.App. W.D.1980); (RSMo., §287.120.2).

Once the employer, the employee and the accident fall under the Workers’ Compensation Law, the case is cognizable by the Labor and Industrial Relations

Commission and the Commission's jurisdiction is original and exclusive. *State ex rel. Jones Construction Company v. Sanders*, 875 S.W.2d 154, 156 (Mo.App. 1994); *Parmer v. Bean*, 636 S.W.2d 691, 693 (Mo.App. 1982); *Sheen v. DiBella*, 395 S.W.2d 296, 302 (Mo.App. 1965). Prohibition is the proper remedy to prevent a court from acting without jurisdiction. *State ex rel. McDonnell-Douglas Corp. v. Luten*, 679 S.W.2d 278 (Mo. banc 1984); *State ex rel. Barnes Hospital v. Tillman*, 714 S.W.2d 538 (Mo. App. 1986).

## **Conclusion**

Plaintiffs' decedent, Steven Watson was at the time he suffered fatal injuries employed by Relator. Relator is an "employer" as that term is defined by Missouri's Workers' Compensation Law. Decedent's fatal injuries were caused by an accident arising out of and in the course of his employment by Relator. Pursuant to the Missouri Workers' Compensation Law, Relator as decedent's employer, is afforded immunity from any suit for Watson's injuries or death as Watson was at all relevant times an employee covered by the Missouri Workers Compensation Law.

In light of the relevant statutes, case law precedent and facts presented through affidavits and exhibits before the circuit court, Respondent abused his judicial discretion, as his September 19, 2005 order denying Relator's Motion to Dismiss for Lack of Subject Matter Jurisdiction is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable so as to shock the sense of justice and clearly indicates a lack of careful consideration by Respondent.

This Court should enter its order prohibiting Respondent from continuing with the prosecution of Schuyler County Missouri Circuit Court case number 05SY-CV00037 as to Relator Tri-County, and furthermore directing that Respondent dismiss Relator Tri-County from said case as Respondent is without subject matter jurisdiction.

## II.

Relator is entitled to an Order prohibiting Respondent from doing anything other than vacating Respondent's September 19, 2005 order overruling Relator's Motion to Dismiss for Lack of Subject Matter Jurisdiction as it pertains to Relator, and thereafter entering an order sustaining said motion as to Relator, because Respondent is without subject matter jurisdiction as to plaintiffs' claims alleged against Relator and thus Respondent exceeded his jurisdiction in denying Relator's Motion to Dismiss for Lack of Subject Matter Jurisdiction in that plaintiffs' widow and minor child have received, since the date of Watson's death, and will continue to receive, per Missouri's Workers' Compensation Law, benefits for the death of Watson and are members of the same statutory class as the plaintiff parents, and therefore entitled, pursuant to the Missouri wrongful death statute to share in any award for the wrongful death of Steven Watson, thereby Respondent's September 19, 2005 order is in direct opposition to the immunity from tort liability provided employers in Missouri by the Missouri Workers' Compensation Law, and therefore, if left unrestrained, will obliterate the employer immunity provisions of Missouri's Workers' Compensation Law.

### Standard of Review

A motion to dismiss for lack of subject matter jurisdiction is the proper method to raise the exclusive jurisdiction of the Industrial Relations Commission under the Workers' Compensation Law as a defense to a tort action. *Groh v. Kohler*, 148 S.W.3d 11, 13 (Mo.App. 2004); *Burns v. Employer Health Services, Inc.*, 976 S.W.2d 639, 641 (Mo.App. 1998); *Shaver v. First Union Realty Management, Inc.*, 713 S.W.2d 297, 299 (Mo. App. 1986). *Parmer v. Bean*, 636 S.W.2d 691, 695 (Mo. App. 1982). *See also Jones v. Jay*, 709 S.W.2d 114 (Mo. banc 1986). A motion to dismiss should be granted when it appears that the trial court lacks subject matter jurisdiction. *Sexton v. Jenkins & Associates, Inc.*, 41 S.W.3d 1, 4 (Mo.App. 2000); *James v. Union Electric Co.*, 978 S.W.2d 372, 374 (Mo.App. 1998). “ ‘As the term “appears” suggests the quantum of proof is not high.’ ” *Burns*, 976 S.W.2d at 641 (quoting *Parmer v. Bean*, 636 S.W.2d 691, 694 (Mo.App. 1982)). The party raising the defense must show by a preponderance of the evidence that the trial court is without subject matter jurisdiction. *James*, 978 S.W.2d at 374. In determining whether it has jurisdiction, the trial court may consider affidavits, exhibits, and evidence pursuant to Rules 55.27 and 55.28. *Burns*, 976 S.W.2d at 641. The Workers' Compensation Law is to be liberally interpreted, and where there is doubt regarding a question of jurisdiction, it should be resolved in favor of the Labor and Industrial Relations Commission rather than the circuit court. *State ex rel. Larkin v. Oxenhandler*, 159 S.W.3d 417, 421 (Mo.App. W.D.2005); *Nowlin v. Nichols*, 163 S.W.3d 575, 578 (Mo.App. 2005); *Sexton v. Jenkins & Assocs. Inc.*, 41 S.W.3d 1, 4 (Mo.App. W.D.2000).

Where the facts bearing on the issue are contested between the parties, the proper standard of review for the trial court's decision on a motion to dismiss for lack of subject matter jurisdiction is abuse of discretion. *Mo. Soybean Ass'n. v. Missouri Clean Water Commission*, 102 S.W.3d 10, 22 (Mo. banc 2003). Judicial discretion is abused where "the trial court's ruling is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration . . ." *Newman v. Ford Motor Co.*, 975 S.W.2d 147, 151 (Mo. banc 1998) (quoting *Richardson v. State Highway & Transp. Comm'n*, 863 S.W.2d 876, 881 (Mo. banc 1993)); *Crow v. Kansas City Power & Light Company*, 174 S.W.3d 523, (Mo.App. W.D.2005).

### **Argument**

The Missouri Workers' Compensation Law was enacted to place the burden of employment accidents upon the employer and give employees the right to recover for such accidents without having to prove any elements or be subjected to defenses of the employer. *State ex rel. Badami v. Gaertner*, 630 S.W.2d 175, 180 (Mo.App. 1982). In return, the employer received immunity from general tort liability and damages. *Id.*

Pursuant to Report of Injury No. 04181D521999, filed with the Missouri Labor and Industrial Relations Commission, Division of Workers' Compensation, Watson's widow and minor child have received, since the date of Watson's death, and will continue to receive workers' compensation benefits for the death of Watson. (**Exhibit 13, Appendix, A196**). The Plaintiffs' have brought claims against Relator pursuant to

§537.080, RSMo. 2000, Missouri's wrongful death statute. Section 537.080.2 RSMo., provides that only one action may be brought under this section against any one defendant for the death of any one person. Watson's widow and minor child, though not named plaintiffs in the underlying action are members of the same class as the plaintiff parents, and therefore entitled to share in any award for the wrongful death of Steven Watson. §537.080.1(1) RSMo. 2000; *Barbera v. Brod-Dugan Co.*, 770 S.W.2d 318, 321 (Mo.App. 1989).

“Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident arising out of and in the course of the employee's employment, **and shall be released from all other liability therefor whatsoever, whether to the employee or any other person.**” (§287.120.1, RSMo.2000, *Emphasis Added*). The rights and remedies of a Missouri employee under the Missouri workers' compensation laws “shall exclude all other rights and remedies of the employee, his wife, her husband, **parents**, personal representatives, dependents, heirs, or next kin, at common law or otherwise...” (§287.120.2 RSMo. 2000; *emphasis added*). Missouri's Workers' Compensation Law provides the exclusive remedy for employees against employers, such as Relator Tri-County, for injuries covered by its provisions, and subject matter jurisdiction over such matters properly lies only in the Labor and Industrial Relations Commission. *State ex rel. Taylor v. Wallace*, 73 S.W.3d 620, 621 (Mo. banc 2002); *Hedglin v. Stahl*, 903 S.W.2d 922, 926 (Mo.App. W.D.1995); *Kelley v. DeKalb Energy Company*, 865 S.W.2d 670, 672 (Mo. banc 1993). Respondent's September 19,

2005 order will allow for the possibility of an additional recovery against Relator by decedent's parents, surviving widow and minor child, beyond that already provided by Missouri's Workers' Compensation Law.

Unless prohibited by this Court, Respondent's September 19, 2005 Order will effectively destroy a Missouri employer's immunity from tort liability for employee accidents arising out of and in the course of employment, as currently provided for by Missouri's Workers' Compensation Law.

### **Conclusion**

Missouri's Workers' Compensation Law provides the exclusive remedy of the plaintiffs' and others for the injuries and death of Steven Watson. To allow Relator, as the employer, to be liable for payment of the workers' compensation claim of the widow and minor son and any additional claims for the same employee and injury already covered under the Missouri Workers' Compensation Law is in direct conflict with Missouri's Workers' Compensation Law and will effectively destroy all immunity from tort liability currently provided to employers in Missouri who fall under the coverage of Workers' Compensation.

Review of the relevant statutes, case law precedent and facts presented through affidavits and exhibits before the circuit court, reveals that Respondent abused his judicial discretion, as his September 19, 2005 order denying Relator's Motion to Dismiss for Lack of Subject Matter Jurisdiction is clearly against the logic of the circumstances

then before the court and is so arbitrary and unreasonable so as to shock the sense of justice and clearly indicates a lack of careful consideration by Respondent.

This Court should enter its order prohibiting Respondent from continuing with the prosecution of Schuyler County Missouri Circuit Court case number 05SY-CV00037 as to Relator Tri-County, and furthermore directing that Respondent dismiss Relator Tri-County from said case as Respondent is without subject matter jurisdiction.

### **CONCLUSION**

**WHEREFORE,** Relator prays this Court to enter an Order prohibiting Respondent from doing anything other than vacating Respondent's September 19, 2005 order overruling Relator's Motion to Dismiss for Lack of Subject Matter Jurisdiction as it pertains to Relator, and thereafter dismiss Relator as a party from Circuit Court of Schuyler County, case number 05SY-CV00037.

Respectfully submitted,

**ANDERECK, EVANS, MILNE  
PEACE & WIDGER, L.L.C.**

By: \_\_\_\_\_  
Andrew J. Sporleder MO Bar #51197  
Erwin L. Milne MO Bar #24028  
700 East Capitol Avenue  
P.O. Box 1438  
Jefferson City, MO 65102  
Telephone: 573/634/3422  
Facsimile: 573/634/7822

Terry M. Evans MO Bar #21922  
119 East Main Street  
Smithville, MO 64089

Telephone: (816) 532-3895  
Facsimile: (816) 532-3899

**ATTORNEYS FOR RELATOR**

**CERTIFICATE OF SERVICE AND COMPLIANCE**

The undersigned hereby certifies that one (1) complete copy and a computer disk containing one (1) complete electronic copy of this Brief of Relator in Microsoft Word 2002 format, were mailed, U. S. Mail, postage pre-paid, this 21<sup>st</sup> day of February, 2006, to:

**RESPONDENT**

The Honorable Gary Dial  
205 Courthouse,  
117 S. Market St.,  
Memphis, MO 63555

**ATTORNEYS FOR RESPONDENT**

Mr. Jay Benson  
THE BENSON LAW FIRM L.L.C.  
111 South Baltimore  
P.O. Box 219  
Kirksville, MO 63501

Mr. Mark P. Dupont  
123 South Main St.  
Dupo, IL 62239

Furthermore, the undersigned certifies that: (1) Relator's Brief complies with the limitations contained in Rule 84.06; (excluding the cover, certification of service and compliance, signature block and appendix there are 5,192 words in Relator's Brief; the name and version of the word processing software used to prepare Relator's Brief is Microsoft Word 2002; and the diskette provided to this Court has been scanned for viruses and is virus free.

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Andrew J. Sporleder, Mo Bar# 51197