

**Summary of SC88368, *Missouri Alliance for Retired Americans, et al. v. Department of Labor and Industrial Relations, Division of Workers' Compensation***  
Appeal from the Cole County circuit court, Judge Byron L. Kinder.

**Attorneys:** The labor organizations were represented by: Alan S. Mandel of Schlueter, Mandel & Mandel of St. Louis, (314) 621-1701; John B. Boyd of Boyd & Kenter PC in Kansas City, (816) 471-4511; Scott A. Wilson of The Hines Law Firm LLC in Columbia, (573) 443-4500; Philip M. Hess of Larsen, Feist & Hess PC in St. Louis, (314) 621-4500; Sally I. Heller of Fox, Heller, Gallagher & Finley LLP in St. Louis, (314) 725-1780; Joseph W. Moreland of Blake & Uhlig PA of Kansas City, (816) 472-8883; Mark E. Moreland and Michael Goldberg of Weinhaus, Dobson, Goldberg & Moreland in St. Louis, (314) 621-8363; and Robert S. Peck and Jeffrey R. White of the Center for Constitutional Litigation PC in Washington, D.C., (202) 944-2839.

The division was represented by James Layton and Alana M. Barragan-Scott of the attorney general's office in Jefferson City, (573) 751-3321.

There were a number of organizations that filed briefs as friends of the Court: Associated Industries of Missouri, National Federation of Independent Business Legal Foundation, and Associated Home Builders and Contractors Inc. were represented by Marc H. Ellinger of Blitz, Bardgett & Deutsch LC in Jefferson City, (573) 634-2500; Missouri State Labor Council and AFL-CIO were represented by Paul C. Hetterman of Bartley Goffstein LLC in St. Louis, (314) 531-1054; International Association of Fire Fighters was represented by Jeffrey Hartnett of Bartley Goffstein LLC in St. Louis, (314) 531-1054, and Thomas A. Woodley, Douglas L. Steele and Bryan G. Polisuk of Woodley & McGillivray in Washington, D.C., (202) 833-8855; Missouri Association of Trial Attorneys was represented by Leland F. Dempsey of Dempsey & Kingsland PC in Kansas City, (816) 421-6868; and Workers Injury Law and Advocacy Group was represented by B. Michael Korte of Kirkwood, (314) 821-4727.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** Labor organizations challenged the constitutional validity of 2005 amendments to the workers' compensation law. The trial court found that most of these challenges were not justiciable (could not be decided) because the suit included no individual injured person or group of person whose legal rights could be decided in the context of specific facts. It did find two of the nine counts to be ripe for review and granted judgment as a matter of law to the division of workers' compensation on these two counts, granting the division summary judgment on all other counts that could not be decided. In a plurality decision that cannot be attributed to any particular judge and that is joined by three judges, the Supreme Court of Missouri holds that only one of the nine claims – one seeking declaratory judgment as to an exclusivity provision in the amendments – is justiciable (reversing the trial court's decision that this claim could not be decided). The Supreme Court grants the division declaratory judgment as to that claim, reverses the judgment as a matter of law on the other two counts because, without specific injured persons as part of the case, it is premature to decide those counts. It affirms the trial court's decision that

the remaining six claims cannot be decided at this time. In a concurring opinion in which two other judges concur, Judge Wolff expresses concern that the count seeking a declaratory judgment as to the exclusivity provision is just as hypothetical as the rest of the claims, as there is no injured worker whose facts give context for a decision. In a dissenting opinion, Judge Teitelman notes that, while he agrees the exclusivity provision permits workers whose injuries no longer fall within the provision's terms to sue under common law causes of action, he would decide the rest of the claims on their merits as well and would hold they violate the open courts provision of the state's constitution.

**Facts:** In 2005, the legislature made significant changes to the workers' compensation law. In response, 71 organizations – including labor unions, labor councils and one not-for-profit corporation – filed a nine-count petition against the division of workers' compensation challenging the constitutional validity of the amendments, asserting the amendments' primary import was to reduce the scope of benefits available to workers injured on the job. Six of these claims alleged the amendments violate the open courts provision of the Missouri Constitution or the constitutional rights of workers. No individual injured person or group of persons joined the suit. The trial court granted summary judgment to the division on two counts of the petition, holding the division was entitled to judgment as a matter of law on those points, and granted the division's motion for summary judgment holding that all the other counts were not justiciable. The labor organizations appeal.

#### **AFFIRMED IN PART; REVERSED IN PART.**

**Court en banc holds:** (1) The labor organizations do not have standing to raise eight of their nine claims because these claims are not yet ripe for review, and because no injured person or group of persons joined this action, any claims that the amendments will deprive a particular person of the person's constitutional rights are, at this point, completely hypothetical. Accordingly, the trial court's judgment granting the division judgment on the pleadings on counts I and III is reversed because these claims are not ripe. It would be premature for this Court to decide the labor organizations' claims that the amended act impairs the constitutional rights of workers and has no rational basis and that the legislature must provide a *quid pro quo* to workers that is at least substantially equivalent to or greater than that provided in the original workers' compensation act of 1926. These claims are not raised properly and are not justiciable at this time. The labor organizations have developed no facts to support these claims, for no individual workers' compensation claims are before this Court. Their attack is a general one, on the effect of the amendment as a whole in a hypothetical sense, without application to any particular injured worker. As such, there is no justiciable claim as to these provisions at this time. Although there is a substantial controversy between the parties about the extent of coverage under the revised workers' compensation law and whether the revised law violates workers' substantive due process guarantees, the issues are not yet ripe, for deciding any particular case necessarily depends on the particular circumstances of the case. In the absence of individual facts here, it is impossible to adjudicate the claims. Nothing in the record shows how they are being applied or what interpretation they have been given. Absent interpretation of the provisions being attacked, this Court cannot determine whether the law violates the open courts or due process provisions of the constitution. To the extent the trial court found that claims II, V, VI, VII, VIII and IX were not justiciable, these portions of the judgment are affirmed.

(2) One claim – count IV, the labor organizations’ request for declaratory judgment as to the scope of the exclusivity clause in section 287.120, RSMo Supp. 2008 – is justiciable. The trial court’s judgment granting the division summary judgment on count IV, based on a lack of justiciability, is reversed. The labor organizations’ request for declaratory judgment as to the scope of the exclusivity clause in section 287.120, RSMo Supp. 2008, is ripe and justiciable. No factual development is necessary to address this legal question, which requires only that the Court review changes in the scope of the act’s exclusivity provisions as applied to “injuries” resulting from an “accident.” The amendments narrow the definition of “injury” that falls within the definition of an “accident,” which limits the scope of the act. Removing certain injuries and accidents from the act’s scope places workers who have suffered those injuries outside the workers’ compensation system. The Court is not asked to decide what injuries fall within the definition of “accident” in section 287.120.2, RSMo Supp. 2008, and, therefore, it expresses no such opinion. This Court enters declaratory judgment pursuant to section 512.160(3), RSMo Supp. 2008 – workers excluded from the act by the narrower definitions of “accident” and “injury” have a right to bring suit under the common law, just as they could and did before the act initially was adopted, because they no longer fall within the exclusivity provision of the act in section 287.120.

**Concurring opinion by Judge Wolff:** The author concurs in the plurality opinion but notes he believes the claim on which the Court grants relief – for declaratory judgment – is as hypothetical as the rest of the claims because there is no injured worker here.

**Dissenting opinion by Judge Teitelman:** The author agrees with the plurality opinion that workers now excluded from workers’ compensation benefits by the narrower definitions of “accident” and “injury” have a right to pursue a common law cause of action, but he would address the remaining issues and would hold that the 2005 amendments violate the open courts provision of article I, section 14 of the Missouri Constitution, which affords that “certain remedy” shall be afforded for personal injury. This provision essentially is a “second due process clause to the state constitution” and, as such, has both procedural and substantive components – including a substantive guarantee of an adequate legal remedy for personal injury. Although the open courts provision leaves the legislature free to alter or abolish any statutory or common law cause of action, it does not necessarily have unfettered authority to abolish all remedies for personal injury. Otherwise the right to a “certain remedy” is not a right at all. Here, the plain language of the amendments – without exception and independent of the particular facts of any case – are aimed at reducing both the availability and the amount of compensation afforded to injured workers. They raise the employees’ burden of proof, limit the availability of evidence to prove a workplace injury and inject fault into what is purported to be a no-fault system.