

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

DAREN MOON

Appellant

v.

HY-VEE, INC.

Respondent

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DOCKET NUMBER **WD73695**

DATE: November 8, 2011

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Appeal From:

Circuit Court of Clay County, MO  
The Honorable Larry Dale Harman, Judge

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Appellate Judges:

Division One  
Alok Ahuja, P.J., Thomas H. Newton, and James Edward Welsh, JJ.

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Attorneys:

Laura Del Percio, Independence, MO

Counsel for Appellant

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Attorneys:

William Lewis, Smithville, MO  
Haley Peerson, Smithville, MO

Counsel for Respondent  
Co-Counsel for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

DAREN MOON, Appellant, v.  
HY-VEE, INC., Respondent

**WD73695**

**Clay County**

Before Division One Judges: Ahuja, P.J., Newton, and Welsh, JJ.

Mr. Daren Moon slipped and fell at Hy-Vee's Gladstone store. He sued Hy-Vee for negligence, alleging that the fall was caused by a wet floor. At the jury trial, counsel for Mr. Moon cross-examined two of Hy-Vee's expert witnesses, and asked them about testifying for Hy-Vee in prior lawsuits. On re-direct, Hy-Vee was permitted to ask the second expert about the jury verdicts in those prior suits, as well as the damages awards. The jury found for Hy-Vee. Mr. Moon's motion for new trial was denied. Mr. Moon appeals.

**REVERSED AND REMANDED.**

**Division One Holds:**

In the first point, Mr. Moon argues that the trial court erred in denying the motion for new trial because the jury was allowed to consider irrelevant and unduly prejudicial evidence of prior, unrelated verdicts in favor of Hy-Vee. The trial court reasoned that admission of the jury verdicts was permissible because Mr. Moon "opened the door" by asking about specific prior cases on cross-examination of Hy-Vee's experts. We disagree.

First, Mr. Moon's cross-examination was proper to suggest the experts' opinions were biased. Second, while Mr. Moon's questioning opened the door for Hy-Vee to rebut the inference of bias, interjection of the jury results on re-direct exceeded a permissible rebuttal. Evidence of the jury's findings on liability in cases against Hy-Vee involving the "same policies and procedures" had little bearing on bias and was highly prejudicial.

Moreover, Hy-Vee also elicited that even in those cases where the jury found for the plaintiff, the jury had awarded little or no damages. We perceive no purpose for this testimony other than to plant unfairly prejudicial information in the jurors' minds. Finally, we see no meaningful distinction between Mr. Moon's cross-examination of the first and second expert at issue, yet the trial court issued contrary rulings in response to Mr. Moon's objections to Hy-Vee's re-direct. Because the trial court abused its discretion in permitting this evidence, Mr. Moon's first point is granted. Since this ruling is dispositive, we do not address Mr. Moon's other points.

For the foregoing reasons, the judgment is reversed and remanded for a new trial.

Opinion by Thomas H. Newton, Judge

November 8, 2011

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