

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

---

COMPLETE TITLE OF CASE:

GRAEME AND KATY ABBOTT,

Appellant-Respondents

v.

MISSOURI GAS ENERGY.

Respondent-Appellant

---

DOCKET NUMBER WD74239 and WD74256

DATE: June 12, 2012

---

Appeal From:

Circuit Court of Jackson County, MO  
The Honorable John M. Torrence, Judge

---

Appellate Judges:

Division One  
Joseph M. Ellis, P.J., James Edward Welsh, and Alok Ahuja, JJ.

---

Attorneys:

Diane Breneman, Kansas City, MO	Counsel for Appellant-Respondent
Stacey Dungan, Kansas City, MO	Co-Counsel for Appellant-Respondent
Scott Bethune, Kansas City, MO	Co-Counsel for Appellant-Respondent

---

Attorneys:

Lynn Hursh, Kansas City, MO	Counsel for Respondent-Appellant
Karrie Clinkinbeard, Kansas City, MO	Co-Counsel for Respondent-Appellant

---

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

**GRAEME AND KATY ABBOTT, Appellant-Respondents, v.  
MISSOURI GAS ENERGY, Respondent-Appellant**

**WD74239 and WD74256**

**Jackson County**

Before Division One Judges: Joseph M. Ellis, P.J., James Edward Welsh, and Alok Ahuja, JJ.

Graeme Abbott and his wife, Katy Abbott, appeal from the circuit court's judgment against Missouri Gas Energy (MGE) on the Abbotts' claims of negligence and loss of consortium. The Abbotts contend that the circuit court erred (1) in entering judgment notwithstanding the verdict in favor of MGE on the Abbotts' claim for punitive damages, (2) in granting MGE's post-trial motion for a reduction of the judgment in the amount of the Abbotts' pre-trial settlement with ThyssenKrupp Access Corporation, and (3) in denying the Abbotts' motion to correct and amend the judgment with respect to the punitive damages award and the reduction of the judgment pursuant to section 537.060. In response to the Abbotts' appeal, MGE filed a cross-appeal asserting four points of error: (1) the circuit court erred in denying MGE's motion for directed verdict and motion for judgment notwithstanding the verdict because the Abbotts did not make a submissible case, (2) the circuit court erred in denying MGE's motion for new trial because the verdict was against the weight of the evidence, (3) the circuit court erred in denying MGE's motion for new trial because Instruction No. 6, the negligence instruction, was improper and prejudicial to MGE, and (4) the circuit court erred in denying MGE's motion for new trial based upon prejudicially received evidence.

**REVERSED AND REMANDED.**

**Division One holds:**

MGE's third point in its cross-appeal is dispositive of this appeal. Instruction No. 6 did not follow the applicable Missouri Approved Instruction (MAI) and misstated the applicable standard of care. The inclusion of the phrase "dangerous commodity" in the instruction suggested a heightened duty on the part of MGE and was unnecessary and prejudicial to MGE. The circuit court, therefore, erred in giving Instruction No. 6 as it deviated from the MAI and included language that suggested something more than ordinary care. The instruction as given was prejudicial, and MGE is entitled to a new trial.

**Opinion by: James Edward Welsh, Judge**

June 12, 2012

\* \* \* \* \*

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**