IN THE
SUPREME COURT OF MISSOURI

No. SC88992

JOHN COX, deceased, and BETTY COX
Appellants,

v.

TREASURER OF THE STATE OF MISSOURI,
as Custodian of the Second Injury Fund,
Respondent.

Appeal from the Labor and Industrial
Relations Commission
#01-037458

SUBSTITUTE REPLY BRIEF

OF APPELLANTS JOHN COX (deceased) AND BETTY COX

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Schoemehl v. Treasurer of the State of Missouri, 217 S.W.3d 900 (Mo. 2007).

Greenlee v. Dukes Plastering Service, 75 S.W.3d 273 (Mo. 2002).

MO. CODE REGS. ANN. 8, §20-3.010(4) (1993).

MO. REV. STAT. §287.200.2 (1994).

MO. REV. STAT. §287.203 (1994).

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ARGUMENT

The Labor and Industrial Relations Commission erred in finding that it does not have jurisdiction over Mrs. Cox's claim to a continuation of permanent total disability benefits following the death of Mr. Cox, because the Missouri Supreme Court stated in *Schoemehl v. Treasurer of the State of Missouri, 217 S.W.3d 900 (Mo. 2007)* that: 1) §287.230.2 of the Missouri Workers' Compensation Law establishes a right to a continuation of such benefits if the injured worker dies of causes unrelated to the work injury and leaves behind dependents; and 2) the determination of whether a worker's death is from unrelated causes, as well the determination of whether dependents have survived the worker, are questions of fact within the exclusive jurisdiction of the Commission; in that the Commission's finding leaves Mrs. Cox without legal means of determining her entitlement to benefits under the Missouri Workers' Compensation Act, and in that the Commission's finding creates a constitutional infirmity concerning matters of due process and equal protection; such that the Commission's finding should be reversed and remanded to the Commission with instructions to conduct such further hearings as may be necessary to determine Mrs. Cox's entitlement to a continuation of permanent total disability benefits.

Each of the arguments contained within the Substitute Brief of Respondent contain errors which are critical to the evaluation of this matter. They will be addressed in the order in which they appear in Respondent's Brief.

I. Appellant's Citation to Statutory Authority

Respondent argues that Appellants' have no grounds for appeal because, it is said, Appellants are unable to reference statutory authority which allows for a final decision to be re-opened. Respondent states:

> [d]espite appellant's many arguments, she can cite to absolutely no authority within the workers' compensation statute that allows for a decision that is final to be re-opened, and additional evidence to be adduced.

(Respondent's Brief, p. 6).

Respondent's statement should be compared and contrasted with the argument in Appellants' Substitute Brief under the section entitled "The Commission's Continuing Jurisdiction." (Appellants' Brief, p. 36-42). In those pages, Appellants cite and discuss numerous statutory sections which allow for additional Commission proceedings after a "final" award has been issued. These include MO. REV. STAT. §§287.200.2 (1994), (Appellants' Brief, p. 38), MO. REV. STAT. §287.203 (1994), (Appellants' Brief, p. 39), MO. REV. STAT. §287.220 (1994), (Appellants' Brief, p. 40), and MO. CODE REGS. ANN. 8, §20-3.010(4) (1993), (Appellants' Brief, p. 41-42).

Respondent's statement should also be compared and contrasted with the statement Respondent makes on the next page of its own Brief. After stating that Appellants can cite

to no statutory authority allowing the "re-opening" of a final award, Respondent claims, on the very next page, that there are such sections:

> [i]n *Smith v. Ozark Lead Co.*, the Court spoke (in dicta) of post-final modification by the Commission and indicated that it can only occur pursuant to specific statutory authority, giving as examples §§287.140, 200(2), and .470.

(Respondent's Brief, p. 7). One of those sections, §287.200.2, is even one of the sections upon which Appellants principally rely. Respondent's argument on this issue is without merit, as it contradicts itself and disregards the statutory provisions upon which Appellants have relied.

II. Determination of Dependency

Respondent next argues that Appellants' arguments must fail because Appellants have neglected to identify "any authority for the proposition that the Commission has a particular expertise in determining the identity of dependents." (Respondent's Brief, p. 6). Without such a particular expertise, Respondent argues, Appellants' must look to the circuit courts on issues of dependency. (Respondent's Brief, p. 9). Respondent's argument is essentially this: 1) dependency issues are sometimes determined in civil court actions; 2) therefore dependency is not an issue peculiar to the Commission; 3) and since it is not peculiar to the Commission, the Commission has no particular expertise in the issue; and 4) the Commission therefore has no authority to determine it.

Respondent's argument fails for a couple of reasons. First, the Commission does have expertise in determining "dependency" *as it is defined by the Workers' Compensation Act.* See *Dykes v. Thornton*, 282 S.W.2d 451 (Mo. 1955). And second, if we operate under the assumption that the Commission loses jurisdiction over any issue that is also determined in civil court actions, then absurd consequences emerge. Issues such as "medical causation," in which it is determined whether an accident caused a certain medical condition, are heard everyday in the circuit court personal injury actions. Under Respondent's argument, the Commission loses jurisdiction over medical causation questions because the issue is also decided in circuit court. Obviously, the Act did not intend such a result.

Respondent's argument seems to be equating "paternity" with "dependency." Of course the Commission has no expertise in determining paternity. Appellants already explained this in their Brief. (Appellants' Brief, p. 26-27). But the question in this matter is not one of paternity, it is a question of "who is a dependent under the Missouri Workers' Compensation Act?" The Missouri Supreme Court has explained why it is that the Commission needs to determine dependency, *Id; Reneau v. Bales Electric Co.*, 303 S.W.2d 75, 81 (Mo. 1957), and other courts have been clear in stating that "the question of dependency [is] for the industrial commission and not for this court to determine." *Daniels v. Kroeger*, 294 S.W.2d 562, 565 (Mo.App. 1956). Respondent's argument regarding dependency is without merit and should be rejected.

III. Determination of Cause of Death

This Court ruled in *Schoemehl* that, based largely on the language of §287.230.2, dependents of permanently and totally disabled workers are entitled to continue receiving the injured worker's permanent total disability benefits upon his or her death, so long as: 1) the injured worker died from causes unrelated to his workplace accident; and 2) the injured worker was survived by dependents. *Schoemehl v. Treasurer of the State of Missouri*, 217 S.W.3d 900, 902 (Mo. 2007). Appellants' discussed both of these qualifications in their Substitute Brief. (Appellant's Brief, p. 23-27). But Respondent only responds to the dependency issue, and never even mentions the issue of "cause of death." While Missouri law does not mandate that a respondent address all the arguments made in an appellant's brief, *Vogli & Co. v. Lane*, 405 S.W.2d 885, 888 (Mo. 1966), Appellants contend that Respondent's failure to address such a crucial point lends credence to their argument.

IV. Show Cause Orders

Respondent next addresses the "show cause" orders which are issued by the Commission whenever a permanently and totally disabled worker dies. (Respondent's Brief, p. 8). Respondent says that "appellant can cite to no regulation, statute or case that requires the issuance of a "Show Cause" Order to terminate the payment of PTD benefits." That is true, there is no law or case that requires that this be done. Still, the Commission has the authority to issue whatever orders it deems appropriate to carrying out its responsibilities under the Act. And the Commission has established a "pattern of behavior" in issuing show cause orders every time a permanently and totally disabled worker dies. This practice is so routine that Respondent previously assumed (incorrectly) that the Commission had done so

in this case, when in fact it had not. (ROA p. 67-69). And so, if as Respondent suggests, it is irrelevant whether a show cause order was issued, then why did Respondent previously raise the issue before the Commission, claiming that it was relevant? (ROA p. 67-69).

Show cause orders are relevant. The very fact that they exist reinforces the argument that the Commission has continuing jurisdiction to hear, and end, awards for permanent total disability, even long after the awards have been issued. And if the Commission has continuing jurisdiction over such an award, then it has jurisdiction to determine the "dependency" and "cause of death" issues which arise upon an injured workers' death.

V. Failure to Raise Dependency

Respondent argues that "the obligation to pay benefits terminated immediately upon the death of Mr. Cox because nothing in the Award identifies dependents or otherwise requires payment to them . . ." (Respondent's Brief, p. 8). This is certainly a different argument than we saw in the matter of *Thomas v. Milford Supply*, Missouri Labor and Industrial Relations Commission, No. 04-091950 (August 29, 2007), where it was argued, and the Judge determined, that it is too early to determine dependency issues if the injured worker is still alive.[1]

[1/] Appellants' believe the ruling in *Thomas* to have been the correct ruling, because while a dependent automatically steps into the shoes of the injured worker, becoming the "employee," *Schoemehl*, 217 S.W.3d at 903, until the injured worker dies it is not known whether dependents will have survived them, nor whether the death would have been caused

(continued...)

Despite the contradiction, Respondent argues that Appellants failed to raise issues concerning dependency and continuation of benefits at the initial hearing. (Respondent's Brief, p. 8). This Court needs to be aware that Appellants dispute the contention that evidence of dependency was not presented at the hearing of February 26, 2003. But the Transcript of that hearing is not a part of the record before this Court, and it would therefore be improper to refer to what is, and what is not, included within it. And the reason that it is not a part of the record is because *Respondent objected to its inclusion*. Indeed, Appellants had filed a Motion to Supplement Record on Appeal with the Eastern District Court of Appeals on July 13, 2007, asking that the Transcript be added to the Record. But Respondent opposed this, arguing in its Response that the Transcript is irrelevant. Respondent's objection apparently convinced the Court of Appeals to exclude the Transcript, but now that it serves their purpose, Respondent seeks to argue about its contents. Respondent's argument on this issue is improper, and should not be considered.

VI. *Greenlee v. Dukes Plastering Service*

Respondent argues that the matter of *Greenlee v. Dukes Plastering Service*, 75 S.W.3d 273 (Mo. 2002) is not analogous because, they say, Mr. Greenlee:

> died *while the appeal was pending*, therefore, the Award was not final and the Commission retained jurisdiction to address the factual dependency questions. (Emphasis original).

[1/] (...continued)
by the workplace accident.

(Respondent's Brief, p. 8). It is true that Mr. Greenlee died while his case was pending before the Commission. But that is irrelevant, because the Commission issued a final award and it was not until *four years later* that they again took up the case. This is the timeline in *Greenlee*:

1.	July 24, 1989	Date of accident. *Id*., at 274.
2.	May 20, 1995	Mr. Greenlee dies from gunshot wound while appeal is pending. *Id*., at 275.
3.	January 9, 1996	The Commission issues a final award, granting permanent total disability benefits to Mr. Greenlee. *Id*.
4.	January 4, 2000	Mr. Greenlee's spouse files a new and separate claim for benefits, based upon Mr. Greenlee's death. The Commission rules that filing a new claim was improper, and suggests that she file a motion for modification of Mr. Greenlee's original claim. *Id*., at 274.
5.	February 2000	Sometime in approximately February 2000, four years after issuance of a final award in Mr. Greenlee's case, his spouse files a motion to modify the Commission's 1996 Award.
6.	March 28, 2000	The Commission remands spouse's motion to the Division of Workers' Compensation for the taking of additional evidence. *Id*.

7.	April 4, 2001	The Commission issues an order denying spouse's request for a continuation of benefits, *based upon the merits of her claim* (not based upon jurisdictional grounds). *Id*.
8.	May 28, 2002	The Missouri Supreme Court issues its decision based upon the merits of spouse's claim. (not based upon jurisdictional grounds). *Id.*

From this timeline it can be seen that a final award was issued by the Commission on January 9, 1996. Then, four years after the so-called "final" award was issued, the Commission then accepted jurisdiction and remanded the matter for the taking of additional evidence on the merits. The Commission didn't say "we have no jurisdiction over the motion." And neither did the Supreme Court when it reviewed the Commission's judgment on the merits. *Id*.

Nevertheless, Respondent argues that "the Award [in *Greenlee*] was not final," (Respondent's Brief, p. 8), which seems an odd statement when compared with this statement from the Supreme Court:

> [f]ollowing the Commission's instructions, Nancy Greenlee moved to modify the Commission's final award.

Id. The fact of the matter is that the Commission's Award had been final for four years before the Commission *itself* suggested to Ms. Greenlee how she may re-open it and receive a hearing on the merits. Respondent's arguments concerning the relevance of *Greenlee* are incorrect and should be disregarded.

VII. Jurisdiction of Other Courts

Respondent's next argument again illustrates its attempts to negate the *Schoemehl* ruling. (See argument in Appellants' Substitute Brief, p. 32-36). Respondent argues that Appellants have another remedy, as they can simply file an action with the circuit court pursuant to §287.500. (Respondent's Brief, p. 9). That suggestion is, of course, illogical because a circuit court cannot determine the merits of a workers' compensation matter, it can only enforce an award. *Taylor v. St. John's Regional Health Center*, 161 S.W.3d 868, 871 (Mo.App. 2005). This means that a circuit court cannot determine, pursuant to *Schoemehl*, whether qualified dependents have survived the injured worker, and whether the workers' death was unrelated to the work injury. And this means that if Respondent is successful in convincing this Court that Appellants have a remedy with the circuit courts, then Respondent has effectively nullified *Schoemehl*.

VIII. Applicability of §287.200.2 and §287.203 to the Second Injury Fund

Respondent argues that Appellants' citation to Sections 287.200.2 and 287.203 is improper because those sections of the law only mention "employers" and not the Second Injury Fund. (Respondent's Brief, p. 9-10). Respondent is correct, those sections only mention "employers." But the Workers' Compensation Act must be read as a whole, harmonizing the various provisions. *Crest Communications v. Kuehle,* 754 S.W.2d 563, 566 (Mo. 1988). It is to be broadly and liberally interpreted "with a view to the public interest and with the understanding that the law is intended to benefit the largest possible class." *Kincade v. Treasurer of the State of Missouri*, 92 S.W.3d 310, 311 (Mo.App. 2002).

What Respondent misses is that *other* sections of the law -- sections dealing with the Second Injury Fund -- incorporate both §287.200 and §287.203. This is seen in §287.220, which is the section that establishes the Fund. It says that the Fund's liability for permanent total disability benefits is governed by §287.200, stating:

> the employee shall be paid the remainder of the compensation that would be due for permanent total disability under section 287.200 out of a special fund known as the "Second Injury Fund" . . .

MO. REV. STAT. §287.220.1 (1994). This means that §287.200 applies to the Fund, even though the words "Second Injury Fund" are not contained within it. And since it applies to the Fund, that means the Fund is subject to this statutory language:

> the division shall keep the file open in the case during the lifetime of any injured employee who has received an award of permanent total disability. In any case where the life payment is suspended under this subsection, the commission may at reasonable times review the case and either the employee or employer may request an informal conference with the commission relative to the resumption of the employee's weekly life payment in the case.

MO. REV. STAT. §287.200.2 (1994).

Similarly, §287.220.2 incorporates §287.203 by stating that Second Injury Fund permanent total disability awards "shall be subject to the provisions of this chapter governing review and appeal." MO. REV. STAT. §287.220.2 (1994). This means that permanent total disability awards against the Fund are subject to the *same procedural protections* as in

Employer permanent total disability awards. Of course, those procedural protections include the avenues of review and appeal discussed in §§287.200.2 & 287.203. Section 287.203 says:

> [w]henever the employer has provided compensation under section 287.170, 287.180 or 287.200, and terminates such compensation, the employer shall notify the employee of such termination and shall advise the employee of the reason for such termination. If the employee disputes the termination of such benefits, the employee may request a hearing before the division and the division shall set the matter for hearing within sixty days of such request and the division shall hear the matter on the date of hearing and no continuances or delays may be granted except upon a showing of good cause or by consent of the parties. The division shall render a decision within thirty days of the date of hearing.

MO. REV. STAT. §287.203 (1994).

Respondent's argument, that Sections 287.200.2 and 287.203 do not apply to the Fund, is clearly erroneous when the Act is read as a whole.[2]

IX. Death Case Analogy

[2/] See also Appellants' argument infra in which it is explained how a failure to harmonize these provisions of the Act can lead to constitutional infirmities.

Respondent argues that §20-3.010(4) of the Code of State Regulations is an inapplicable analogy. The regulation reads:

> [t]he commission shall have sole authority to modify final awards allowing death benefits to dependents. The commission may modify death benefit awards from time-to-time upon its own motion or upon motion by an interested party. All motions for modification of final awards shall be made to the commission and the movant shall submit proof of the change or condition or status of the parties receiving the benefits. Proof of the remarriage of the dependent surviving spouse shall be made by filing a copy of the marriage license of the remarried dependent surviving spouse or affidavit of the surviving spouse admitting remarriage. Proof of the death of any dependent shall be made by filing a copy of the death certificate of the dependent. Evidence of the remarriage of the dependent surviving spouse or the death of dependents maybe made by deposition or other evidence as the commission may specify.

MO. CODE REGS. ANN. 8, §20-3.010(4) (1993). And Respondent asserts:

> [u]nder the regulation, the Commission's review is for parties who have already been awarded benefits -- not to introduce new evidence about who might be a dependent or to make a new argument about the right of a dependent to receive benefits.

(Respondent's Brief, p. 10). Again, Respondent misses the point. Appellants' point in citing this regulation is not to show that it directly applies to this case. Appellants' point is to show that there are situations where the Commission may take evidence and make determinations, even after a final award has been issued. And as seen in *Greenlee*, the Commission may do so even years after a final award is issued.

Respondent argues in the early stages of its Brief that after issuance of a final award, the only court of jurisdiction is the circuit court. If Respondent's argument were consistent, it would be arguing that Ms. Greenlee should have had to go to circuit court, and should not have gotten a hearing from the Commission. But Respondent isn't arguing this, because the Supreme Court has already issued a decision allowing such a hearing. Respondent's arguments concerning the *Greenlee* matter are without merit and should be disregarded.

X. Due Process

In Respondent's argument concerning due process, it again improperly refers to factual information which it was previously successful in excluding from the Record.[3] (Brief of Respondent, p. 10). As such, those statements should be disregarded.

Respondent argues that Appellants' due process guarantees have not been limited because Appellants had the opportunity to present evidence at the initial hearing. Respondent does not explain how Appellants could have proven, at the initial hearing, either: 1) how Mr. Cox was going to die, or 2) whether any dependents would survive him.

[3/] See also argument "Failure to Raise Dependency," supra p. 12.

Obviously they could not do this. And since they cannot now go to circuit court, *Taylor*, 161 S.W.3d at 871, they are deprived of a property interest without notice or hearing.

XI. Equal Protection

Respondent disagrees with Appellants' contention that the Commission's ruling has created an equal protection problem. In making its argument, Respondent explains that the purpose behind the workers' compensation law is to litigate workplace injuries in the simpler forum of the Labor and Industrial Relations Commission, rather than in the civil courts. (Respondent's Brief, p. 12-13). Appellants agree that this is one of the purposes behind the Workers' Compensation Act. But it is contradictory for Respondent to state, on the one hand, that workplace litigation should be simpler and outside the civil courts, but then argue, on the other hand, that Appellants should have to seek redress in the civil courts for factual issues that do not involve enforcement of an Award.

Respondent also argues that even if we were to assume there is a constitutional infirmity, then the proper manner of handling the situation would be to send *everyone* to the circuit courts, no matter whether their benefits are paid by employers or by the Fund. (Brief of Respondent, p. 13). Appellants' disagree. First of all, the workers' compensation law says that hearings are to be held before the Commission. And second, since the purpose behind the Act is to provide a simpler forum in which to litigate workplace injuries, Appellants assert that the proper manner of handling the infirmity would be to have all such situations heard by the Commission.

Finally, Respondent argues that there is no equal protection problem because there are differences between employers and the Second Injury Fund. (Respondent's Brief, p. 12). It is true that there are differences. But the question isn't whether there are differences; the question is whether there is *a rational relation to a legitimate state interest* in having such a difference. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985). So the more appropriate question is this: even though employers and the Second Injury Fund both pay permanent total disability benefits out of the same statutory section (§287.200), and even though they both pay the same amounts for the same period of time to the same persons, should benefits paid by employers be subject to hearing and review, but benefits paid by the Fund not? Respondent essentially argues "yes, there are differences between employers and the Fund which indicate a rational relation to a legitimate state interest, and which therefore support the denial of a hearing to recipients of benefits from the Fund." And those differences, according to Respondent, are these:

1. Recipients of permanent total disability benefits from employers are eligible for such benefits because the workplace injury – alone – caused the disability, whereas recipients of the same benefits from the Fund are eligible because the workplace injury combined with pre-existing conditions caused the disability. (Brief of Respondent, p. 12). Therefore, Respondent argues, those receiving benefits from the Fund should not get a hearing.
2. Recipients of permanent total disability benefits from employers receive benefits from insurance that their own employer purchases, whereas recipients

of the same benefits from the Fund receive benefits from a fund into which all employers must pay. (Brief of Respondent, p. 12). Therefore, Respondent argues, those receiving benefits from the Fund should not get a hearing.

3. Recipients of permanent total disability benefits from employers must submit to medical examinations from time-to-time at the employer's request, whereas recipients of the same benefits from the Fund do not have to submit to medical examinations at the Fund's request. (Brief of Respondent, p. 12). Therefore, Respondent argues, those receiving benefits from the Fund should not get a hearing.

These "distinctions" are not rational to the question of whether one group should have procedural protections, but another should not. Respondent has successfully pointed out several administrative differences between employers and the Fund, but it hasn't explained why these differences force one party into an ill-fated argument before the circuit court, whereas the other gets a hearing on the merits before the Commission. There is no rational basis for the distinction, and Respondent's interpretation of the law is flawed since it thereby creates a constitutional infirmity.

Finally, Respondent argues, without citation to authority, that if Appellants' were truly arguing that the Commission's ruling has created a constitutional authority, then she would have appealed this matter directly to the Supreme Court. (Respondent's Brief, p. 13). Therefore, Respondent implies, Appellant's constitutional argument is not a serious argument. However, Respondent's statements are contrary to what this Court has held in the

past. In *Phillips Pipe Line Company v. Edward O. Brandstetter and Jeanette Brandstetter*, 254 S.W.2d 636, 637 (Mo. 1953), this Court said:

> [t]o present a constitutional question for review on the ground that a statute is unconstitutional, the constitutionality of the statute must be directly challenged. To say that a statute would be unconstitutional if construed in a certain manner does not meet the requirement.

And the Court of Appeals has said:

> to vest appellate jurisdiction with the Supreme Court on a constitutional issue, the attack on the constitutionality of the statute must be that whatever it means and under any construction of which it is susceptible, it is unconstitutional.

Missouri Prosecuting Attorneys and Circuit Attorneys Retirement System v. Pemiscot County, 217 S.W.3d 393, 399 (Mo.App. 2007). See also *State of Missouri v. Jeromy Lay*, 896 S.W.2d 693, 699 (Mo.App. 1995). Obviously, Appellants have never argued that the statute is unconstitutional under any construction, they have said that the Commission's interpretation of the law is unconstitutional. As such, Respondent's argument is without merit.

CONCLUSION

The Labor and Industrial Relations Commission is a Missouri administrative agency subject to the Missouri Administrative Procedure Act. As such, it has primary and exclusive jurisdiction over workers' compensation matters, especially questions of fact. This jurisdiction extends to questions which arise in any award which includes ongoing benefits, as such awards are not said to lapse.

The Missouri Supreme Court determined in *Schoemehl* that dependents of permanently and totally disabled workers are entitled to continue receiving the injured worker's permanent total disability benefits so long as the injured worker died from causes unrelated to his accident, and the injured worker was survived by dependents. Both of these issues involve questions of fact that fall within the jurisdiction of the Commission to determine. The refusal of the Commission to accept jurisdiction has left Mrs. Cox without recourse to answer the critical questions which would allow her to continue receiving benefits, despite the fact that statutory and case law establish that her claim remains pending before the Commission.

The Commission's refusal to accept jurisdiction also has the effect of depriving Mrs. Cox of property rights without being afforded notice and an opportunity to be heard. As such, it violates the due process clauses of the U.S. and Missouri Constitutions. At the same time, the Commission's refusal effectively discriminates among classes of persons without a rational basis. It creates a distinction between persons who are entitled to a hearing based upon a termination of benefits, depending on whether the person was being paid by an

employer versus the Second Injury Fund, and as such, it violates the equal protection clauses of the U.S. and Missouri Constitutions.

The Court should remand this matter to the Labor and Industrial Relations Commission with instructions to develop the record and take additional evidence, such that the Commission may determine whether Mrs. Cox, or other dependents, are entitled to a continuation of Mr. Cox's permanent total disability benefits as per this Court's pronouncement in *Schoemehl*.

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned hereby states that on this 29th day of January, 2008, a copy of the foregoing was mailed via first-class mail, postage prepaid to Ms. Lee B. Schaefer, Assistant Attorney General, P.O. Box 861, St. Louis, MO 63188.

_____
Dean L. Christianson

CERTIFICATE OF COMPLIANCE

This Brief complies with the provisions of Rule 84.06(b) and contains 5426 words. To the best of my knowledge and belief the enclosed disc has been scanned and is virus free.

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