No. SC96901
In the Supreme Court of Missouri

HEATHER SHALLOW, MICHAEL BISHOP, and TODD BISHOP,

Plaintiffs-Appellants,

v.

RICHARD FOLLWELL, D.O., and RICHARD O. FOLLWELL, P.C.,

Defendants-Respondents.

Appeal from the Circuit Court of Lincoln County, Missouri
The Honorable Chris Kunza Mennemeyer
Case No. 13L6-CC00122

Brief of Amicus Curiae Missouri Organization of Defense Lawyers

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I. Background and Purpose of the Organization

The Missouri Organization of Defense Lawyers ("MODL") is a professional organization of over 1,300 attorneys involved in defending civil litigation, including medical malpractice cases filed against healthcare providers.

MODL's goals include ensuring that parties in our civil justice system receive fair and impartial treatment by juries, the judiciary, and the legislature. To that end, MODL members work to advance and exchange information, knowledge, and ideas amongst themselves, the public, and the legal community to enhance the standards of trial practice throughout the state.

MODL's member attorneys devote a substantial amount of their professional time to representing defendants in civil litigation, including individual Missouri citizens. As an organization composed entirely of Missouri attorneys, MODL is concerned and interested in the establishment of fair and predictable laws affecting tort litigation involving individual and corporate clients, so as to maintain the integrity and fairness of civil litigation for both plaintiffs and defendants.

II. MODL's Interest in this Case

MODL supports the Defendants-Respondents' position in this case. The trial court did not abuse its considerable discretion in allowing the testimony of Dr. Follwell's medical experts, each of whom provided necessary context for the jury from the vantage point of a different medical specialty. To support his defense and counter Plaintiffs' position

that the case was "simple," Dr. Follwell needed the experts to present two complex, alternative defense theories.

In any trial, evidence presented through one witness or document is typically not 100% unique as compared to what another witness or document may establish. Recognizing this reality, the trial court reasonably found that Defendants' expert testimony was not needlessly cumulative. The trial court did not abuse its broad discretion. In response to Plaintiffs' objections, the trial court carefully weighed whether the probative value of each expert's testimony outweighed the cost of admitting potentially cumulative evidence, and concluded that each expert's testimony would assist the jury in understanding the evidence and determining a fact in issue. Nothing about the trial court's rulings shocks the sense of justice or indicates an arbitrary decision lacking due consideration.

MODL is concerned about the chilling effect a reversal of the trial court's evidentiary ruling would have on civil litigants. Due process mandates that defendants be permitted to develop theories—and evidence in support—addressing a plaintiff's claims, responding to a plaintiff's theories, and proving any affirmative defenses.

In this case, Plaintiffs chose to present a simple theory to the jury (*i.e.*, that an intraoperative complication—a bowel perforation—was not timely recognized and treated, resulting in sepsis and ultimately death). In support of their simple theory, Plaintiffs used one expert witness to address medical issues covered by several specialties, including general surgery, cardiology, vascular surgery, and colorectal surgery.

Dr. Follwell, however, theorized that decedent's injuries could not be explained by Plaintiffs' simple theory. As was his prerogative, Dr. Follwell chose to defend the claims

against him by showing the jury that the mechanism of injury was actually quite complex. Due to the complex nature of Dr. Follwell's defense theories, testimony from four different medical specialties was required to adequately educate and inform the jury. The trial court was careful in its deliberations regarding the admissibility of each defense expert's testimony, which was not impermissibly cumulative. Indeed, to hold otherwise would invade the province of the jury (*i.e.*, by finding that Plaintiff's simple theory was the "right" type of theory, such that the defense would not be permitted to respond by offering a complex theory requiring medical testimony from multiple experts).

A reversal of the trial court's discretionary evidentiary rulings on this point would compromise civil defendants' ability to defend themselves when plaintiffs elect to present a simple theory of liability to the jury—even in the face of complex facts, such as in a medical malpractice case. MODL respectfully urges this Court to affirm the trial court's evidentiary rulings permitting Dr. Follwell to advance a complex theory supported by testimony from physicians of different specialties. The trial court's rulings permitting this testimony were well within the trial court's broad discretion and should not be disturbed on appeal.

Consent of the Parties

In accordance with Missouri Rule of Civil Procedure 84.05(f)(2), all parties have consented to the filing of this amicus brief.

Statement of Facts

To avoid repetition, MODL adopts the statement of facts in Respondents' Substitute Brief. Pertinent facts will be discussed below, as needed.

Argument

The Court should affirm the trial court's evidentiary rulings permitting the testimony of Dr. Follwell's medical experts. Due process mandates that a party have the right to offer the jury its own explanation of the facts—and when those facts are inherently complex as in a medical malpractice case, a party should not be required to disprove a simple theory offered by an opponent by accepting the notion that the case is simple. Instead, civil defendants have the right to explain why a case is actually complex and to bring forward evidence to prove their theory.

Moreover, the admissibility of evidence is left to the trial court's sound discretion. Here, the trial court duly exercised that discretion in admitting the testimony of Dr. Follwell's defense experts, each of whom came from a different medical specialty and offered testimony that interlocked with other expert testimony to form a larger, complex whole. The trial court recognized the interdependence of such testimony and allowed it. The record does not show that, in doing so, the trial court abused its discretion. For these reasons, and as further argued below, the Court should affirm the trial court's judgment.

I. Standard of Review

The core issue in this appeal is legal relevance: whether the trial court abused its discretion in admitting evidence that Plaintiffs contend was needlessly cumulative. The admissibility of evidence is within the broad discretion of the trial court. *Hancock v. Shook*, 100 S.W.3d 786, 795 (Mo. banc 2003). Appellate courts must defer to the trial court's decision on admissibility issues, unless there is a clear abuse of discretion. *Id.* This standard is in place because the trial court is in the best position to determine wheth-

er the potential prejudice of cumulative evidence (if any) outweighs its probative value. *See Giles v. Riverside Transport, Inc.*, 266 S.W.3d 290, 295 (Mo. App. 2008), citing *State v. Hawkins*, 778 S.W.2d 780, 782–83 (Mo. App. 1989). An appellate court, stuck with a cold record, is not well equipped to make this determination. *See id.*

This Court can only find an abuse of discretion when the underlying ruling is clearly against the logic of the circumstances then before the trial court. *Hancock*, 100 S.W.3d at 795. The ruling must be so unreasonable and arbitrary as to shock this Court's sense of justice and indicate a lack of careful, deliberate consideration. *Id.* There is no abuse of discretion if reasonable people could differ about the propriety of the trial court's action. *Richardson v. State Highway & Transp. Comm'n*, 863 S.W.2d 876, 881 (Mo. banc 1993).

II. A reversal of the trial court's evidentiary rulings allowing Defendants to present complex theories requiring multiple medical experts would chill parties' due process right to develop—and properly support—their own theories.

MODL's primary concern in this case is the chilling effect a reversal of the trial court's expert-related evidentiary rulings would have on civil defendants' ability to challenge a plaintiff's "simple" theory of liability. Cases, of course, come in all shapes and sizes. Case theories do too. At trial, this case boiled down to a conflict between two competing theories: one simple, one not.

Plaintiffs sought to simplify their case as much as possible. They offered a simple theory with one expert to explain it all. Conversely, Defendants believed the underlying facts were more complex and required explanations from multiple medical specialties to properly aid the jury in understanding the science and the medicine. The trial court al-

lowed both sides to present their cases as they saw fit, and ultimately the jury resolved these competing views of the evidence. For an appellate court to later decree that the case should have been tried as a "simple" one would necessarily involve a finding that Plaintiffs were "right" to offer a simple theory (and that Defendants were "wrong" to offer a theory that was not simple). Any such finding would invade the province of the trial court and jury.

If the Court reverses the trial court in this case, plaintiffs in future cases would have a weapon with which to limit defendants' due process right to develop and properly support their own theories. In particular, plaintiffs could frame a case as simple and force the other side to defend it as such, even if the facts could be portrayed in a different, complex light—as in many product liability cases, catastrophic automobile accident cases, business fraud cases, and medical malpractice cases, among others. A reversal in this case would prompt trial courts to bar defendants from bringing in multiple experts whenever plaintiffs offer a "simple" theory of liability.

1. Missouri law protects a defendant's due process right to introduce theories and evidence independent of the opposition's framework.

A party has a right to present its case in any judicially acceptable manner that the party chooses. *United Services of Am., Inc. v. Empire Bank of Springfield*, 726 S.W.2d 439, 445 (Mo. App. 1987). This rule is consistent with due process, because judicial investigations require an opportunity for a trial. *Hulett v. Missouri, K. & T. Ry. Co.*, 46 S.W. 951, 952 (Mo. 1898). Due process of law as applied to judicial proceedings means the administration of law in regular course through the courts of justice, which hears be-

fore it condemns, proceeds on inquiry, and renders judgment only after trial. *Wilcox v. Phillips*, 169 S.W. 55, 58 (Mo. 1914). At trial, a defendant must get his or her day in court, which includes the incidental right to introduce evidence for consideration. *Hulett*, 46 S.W. at 952. Allowing a defendant a full opportunity to introduce evidence at trial ensures compliance with due process. *Id.*; *see also Rodriguez v. Suzuki Motor Corp.*, 996 S.W.2d 47, 57 (Mo. banc 1999) (an opponent has the "right to present evidence tending to contradict or diminish the weight" of another party's evidence), quoting *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 168 (1988).

As the above authorities confirm, Dr. Follwell did not have to conform his evidence to the framework established by Plaintiffs. Dr. Follwell developed a theory that the mechanism of decedent's injury was far more complex than Plaintiffs portrayed in their case-in-chief. Based on his years of extensive medical training and experience (and his experts' training and experience), Dr. Follwell's theory of the case was complicated. Irrespective of Plaintiffs' "simple" theory, Dr. Follwell properly received the opportunity to present a different, more complex one to the jury. And the fact that each of his experts did not offer testimony that was 100% unique as compared to other evidence presented at trial did not somehow disqualify his experts or render their testimony needlessly cumulative. Under similar circumstances, future civil litigants should be able to do the same thing Dr. Follwell did here.

2. The right, however, is not unfettered.

Though parties are entitled to defend themselves as they see fit—to include presenting testimony from well-credentialed experts of their choice—MODL acknowledges

that due process does not guarantee an unrestricted right to present one's case in the manner he or she chooses. To the contrary, parties have the right to present their case in a "judicially acceptable manner" of their choosing. *Empire Bank of Springfield*, 726 S.W.2d at 445. The trial court has the "right and duty to exercise its discretion to exclude evidence it believes may 'confuse or sidetrack the jury.'" *Still v. Ahnemann*, 984 S.W.2d 568, 574 (Mo. App. 1999). But it is the trial court that has the discretion to determine what is a "judicially acceptable manner."

In exercising its discretion, the trial court must weigh (A) the right and ability of defendants to present evidence necessary to (1) grapple with the elements of a plaintiff's case; and (2) support any affirmative defenses; against (B) the costs to the system in permitting that evidence. Allowing the trial court to balance these concerns in a reasonable manner and in real-time—with full knowledge of the circumstances—best protects the due process right of defendants to present their cases as they see fit, rather than being constrained by a plaintiff's view of the case.

Here, with full awareness of the circumstances surrounding the trial, the circuit judge properly exercised her discretion and rejected Plaintiffs' argument that the testimony of Defendants' experts was needlessly cumulative. This Court therefore should affirm.

3. Medical malpractice cases routinely require the testimony of multiple experts from various specialties.

By their very nature, medical malpractice cases involve scientific and medical issues outside the understanding of a lay juror. As such, expert testimony regularly holds the key in these cases, with the side having the more credible experts (as judged by the

jury) typically prevailing. In light of this reality, the choice of experts often proves to be one of the most significant decisions a defendant will make in defending a case.

Here, Plaintiffs made the strategic choice to obtain testimony from only one expert. That expert offered opinions outside his medical specialty. Plaintiffs' decision to stake their case on a single medical expert testifying outside his specialty, however, did not require Defendants to do the same. Instead, Dr. Follwell presented experts to testify within their respective specialties. Each side chose how to present evidence spanning four medical specialties: through a single witness; or through four witnesses, each limited to a single specialty.

Because experts' credibility is of critical importance in medical malpractice cases, parties should have discretion to select and present the experts they deem most qualified to testify regarding each issue. This discretion is consistent with permitting parties to have their day in court. In areas of law like medical malpractice, such discretion often includes presenting experts from multiple medical specialties.

Notably, this case is not one involving multiple experts within the same medical specialty testifying on the same issues. Each of Defendants' experts brought different expertise and training to the fore, and offered a different perspective for the jury in understanding Dr. Follwell's chosen defense. To specialize in their respective fields, each of Defendants' experts undertook different post-graduate training, in addition to four years of medical school and four to six years of residency. In particular, Dr. Bochicchio completed a one-year trauma and critical care surgery fellowship; Dr. Rinder completed a four-year cardiology fellowship and a one-year interventional cardiology fellowship; Dr.

Naslund completed a two-year vascular surgery fellowship; and Dr. Brabbee completed a one-year colorectal fellowship.

In light of the experts' disparate post-graduate training and subsequent medical experience, each of them was more qualified to testify within his chosen specialty than in others. Thus, for example, a jury would likely find Dr. Rinder—with his many years of post-graduate training in internal medicine, cardiology, and interventional cardiology—more credible on issues of cardiology than Plaintiffs' expert, who had no post-graduate training in cardiology. Furthermore, because his defense theory involved issues of cardiology, Dr. Follwell was entitled to present testimony from a qualified cardiologist. Selecting qualified experts in each relevant medical specialty was a strategic decision necessary for Dr. Follwell to present his chosen defense.

4. The same logic would apply in a legal malpractice case.

By way of analogy, compare the situation when a malpractice claim is against a lawyer rather than a doctor. Suppose there is a claim against an attorney for failing to adequately and properly defend a client accused of criminal tax evasion in the handling of an estate. Any licensed attorney could in theory be qualified to testify on the defendant's behalf, just as Plaintiffs' expert physician here could in theory opine regarding any medical specialty. Yet a criminal defense attorney would be more qualified to render an opinion regarding the standard of care for criminal defense attorneys than, say, a general practitioner.

Furthermore, to assist the jury in understanding the underlying issues, the defendant likely would need another expert to opine regarding the estate law and taxation issues.

An estate lawyer who occasionally has clients with tax issues could in theory testify regarding the estate law and taxation issues, but the defendant would prefer to have a tax attorney (ideally with a master of laws degree in taxation) testify regarding the tax issues, and an estate lawyer to cover issues related to estate law.

There is no question that a criminal defense attorney, a tax attorney, and an estate lawyer all have different training, experience, and expertise. As such, allowing all three legal experts to testify in a legal malpractice case would be well within a trial court's sound discretion. Moreover, because each of them is at least minimally qualified to testify regarding the standard of care and causation in a legal malpractice case, the jury would expect each of them to briefly testify that the defendant did not violate the standard of care and did not cause the alleged damages.

The same analysis applies in a medical malpractice case such as this one, which is why the Court should affirm the circuit judge's sound exercise of her discretion.

III. Within the context of this case, the trial court did not abuse its considerable discretion in allowing Dr. Follwell to present expert testimony from different medical specialties over Plaintiffs' objections.

The trial court's careful, deliberate weighing of the evidence's admissibility was well within its broad discretion—and certainly does not shock the sense of justice. To be admissible, evidence must be relevant in two senses: logically and legally. "Evidence is 'logically relevant' if such evidence tends to make the existence of any material fact more or less probable than it would be without the evidence." *State v. Sladek*, 835 S.W.2d 308, 314 (Mo. banc 1992). Assuming evidence passes the logically relevant hurdle, it must also be legally relevant to be admissible. *See id.*

This appeal hinges on legal relevance. Legal relevance requires the trial court to make a judgment call: to determine whether the usefulness of the evidence outweighs the costs, which include unfair prejudice, confusion of the issues, undue delay, misleading the jury, and—at issue here—"needless presentation of cumulative evidence." *Reed v. Kansas City Missouri Sch. Dist.*, 504 S.W.3d 235, 242 (Mo. App. 2016); *see also State v. Davis*, 318 S.W.3d 618, 640 (Mo. banc 2010).

Every case includes some degree of "cumulative evidence," because cumulative evidence is simply additional evidence of the same kind bearing upon the same point. *Sampson v. Missouri Pac. R. Co.*, 560 S.W.2d 573, 590 (Mo. banc 1978). Evidence is only problematically cumulative when the presentation of such evidence becomes needless, such that—in the trial court's estimation—the costs outweigh the probative value of the evidence. *Reed*, 504 S.W.3d at 242. "The trial judge has a great deal of discretion in this weighing process." *Sladek*, 835 S.W.2d at 314. In this case, the admissibility of Defendants' expert testimony involved a question on which reasonable minds may differ. Moreover, the allegedly "needlessly cumulative" evidence (*i.e.*, expert testimony on standard of care and causation) went to the "very root of the matter in controversy." *Kummer v. Cruz*, 752 S.W.2d 801, 808 (Mo. App. 1988).

1. The parties set out on competing paths to prove their respective cases.

In attempting to secure a verdict, Plaintiffs endeavored to simplify their case for the jury.[1] They presented a theory whereby Dr. Follwell allegedly perforated Ms. Bea-

[1] In the interest of judicial economy, this brief discusses the facts in broad strokes, recognizing that the parties' briefs delve deeper.

ver's bowel during surgery on November 30, 2012. (Tr. 3, 402:11–403:8.) According to Plaintiffs, this perforation started leaking during, or shortly after, the surgery. (*Id.*) Plaintiffs' lone retained expert, Dr. Ruben, testified that Dr. Follwell's actions fell below the standard of care on December 1 when he allegedly failed to adequately assess and treat the decedent. According to Dr. Ruben, if Dr. Follwell met the standard of care by diagnosing and surgically treating the perforation on December 1, Ms. Beaver would not have progressed to septic shock and died. (Tr. 3, 436:10–23.) Plaintiffs believed this simple (or, as Defendants contended at trial, simplistic) theory could be explained by one medical expert, via all-encompassing testimony.

Defendants chose a different path: They presented two alternative theories regarding the cause of Ms. Beaver's death. One of the defense experts—Dr. Bochicchio, board certified in general surgery and critical-care medicine—opined that Ms. Beaver's bowel was not fully perforated during the procedure, but had a superficial serosal tear that gradually eroded into a full perforation after she was discharged from the hospital on December 2, 2012. (Tr. 6, 913:24–914:4; 942:17–943:1.) In explaining that potential mechanism of decedent's injury to the jury, Dr. Bochicchio testified that Dr. Follwell's actions did not fall below the standard of care. (Tr. 6; 911:10–912:21.)

The second, alternative theory was that Ms. Beaver sustained no injury during Dr. Follwell's surgery. Instead, the bowel was perforated after she left the hospital on December 1, 2012, due to an unrelated medical condition. In support of that theory, Defendants presented evidence that Ms. Beaver had (1) a previously undiagnosed cardiac condition called atrial fibrillation ("A-fib"); (2) the A-fib caused a blood clot to form in the left

atrium of the heart; (3) the clot broke apart into smaller pieces commonly referred to as emboli; (4) the emboli traveled through the arterial system until they effectively got stuck in a small vessel; (5) the stuck emboli thereby occluded the small vessel; (6) the occlusion then killed the tissue served by the occluded vessel because the tissue was deprived of oxygen; and (7) the dead tissue allowed the bowel contents to leak, leading to sepsis and death. Defendants argued that this theory better accounted for the segmental ischemia ultimately discovered in Ms. Beaver's bowel (*i.e.*, her bowel was not ischemic throughout; instead, there was a functioning bowel, followed by a dead bowel, followed by a functioning bowel, followed by a dead bowel). Defendants argued that the segmental ischemia could not be explained by Plaintiffs' simplistic theory. Notably, this alternative theory was first raised by Plaintiff's sole expert, Dr. Ruben. (Tr. 3, 466–476.)

To fully and adequately explain to jurors these alternative mechanisms of injury, Defendants chose to present the testimony of four medical experts, each with a different specialty. Dr. Bochicchio, an expert in critical care surgery with specific expertise in laparoscopic hernia repair, presented the first theory. Defendants presented the second explanation through the testimony of three experts, each covering a different specialty. Dr. Rinder—a cardiologist—explained the role of A-fib in causing Ms. Beaver's injuries. (Tr. 7, 980:6–988:2.) Dr. Naslund—a board certified vascular surgeon and the Chief of the Division of Vascular Surgery at Vanderbilt University—explained the route of the emboli from the left atrium, through the vascular system, and its ultimate termination in a blood vessel feeding the bowel. (Tr. 8, 1096–1162.) And finally, Dr. Brabee—the colorectal surgeon—opined about issues related to the bowel. (Tr. 9, 1223–1289.)

In attempting to refute Defendants' theory, Plaintiffs chose one expert to opine about several areas of medicine. Plaintiffs' expert was a handyman, a jack of all trades. He addressed everything. Defendants, however, believed there would be more probative value in presenting multiple experts, each of a different medical specialty (cardiology, vascular surgery, colorectal surgery, and general surgery), to explain the complex medical issues.

2. Yes, the evidence was cumulative in part, but it was not needlessly so.

Was certain evidence cumulative? To some extent, yes. Plaintiffs have identified several points that more than one defense expert mentioned. (*See* Appellants' Substitute Brief, at 7–16.) But as Defendants explained to the jury, each medical expert was like one piece of a larger puzzle, each interlocking with the others—and none of the defense experts could adequately, credibly cover everything.

The question for the circuit judge during the trial was not merely, "Is this evidence cumulative?" The question was whether the evidence was *needlessly* cumulative, to the point of being overly costly to the system of justice. *See Reed*, 504 S.W.3d at 242 (explaining that evidence is only problematically cumulative when the evidence is needless to such an extent that, in the trial court's estimation, the costs outweigh the evidence's probative value). **And that was a question for the trial court**. Here, the trial court did not think so, and properly exercised (and certainly did not abuse) its discretion in admitting the interlocking testimony of the defense experts over Plaintiffs' objections.

3. Plaintiffs cannot overcome the standard of review on appeal.

Plaintiffs have a difficult task on appeal. They must convince this Court that the trial court's admission of the defense experts' testimony was so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful, deliberate consideration. *Hancock*, 100 S.W.3d at 795. Plaintiffs have not cited a single case in which a Missouri court reversed a lower court and found an abuse of discretion for admitting cumulative evidence. And reversing a jury's verdict for an alleged error in admitting cumulative evidence requires an extreme case—which this one isn't.

4. The trial court struck an appropriate balance.

The trial court dutifully considered Plaintiffs' objections and thoughtfully struck a balance between those objections and allowing Dr. Follwell to present his case. (*See* Tr. 2, 325:3–6 ("just because there are several [experts] in number does not mean they would not be able to give their testimony"); Tr. 7, 963:12–15 ("I'm going to, just again, caution counsel to use discretion in how deep we're going as far as the chain of events and things that have already been covered"); Tr. 8, 1125:20–22 ("At this point I'm going to overrule as cumulative. I mean, it could get there. I don't think it's there yet"); Tr. 8, 1200:24–1204:8 (after a long exchange about the purported cumulativeness of Dr. Brabee's opinions, the trial court stated, "Well, up to this point, I will say that each one of the experts did have a different specialty. They gave their own parts. So with respect to that information, I believe that he wouldn't be cumulative. I mean, any extra testimony is always cumulative, but it's not cumulative to the point that it should be excluded"); Tr. 9, 1254:2–1255:20 (after another discussion with counsel, the trial court allowed the evi-

dence but pressed the defense to move things along: "I'm going to allow you to continue, but let's move through it quickly and get to the end result")).

Notably, as the trial proceeded, the circuit judge was not arbitrarily overruling objections as to purported cumulativeness. Rather, the court was thoughtfully, and reasonably, exercising its discretion. The fact that the court (as illustrated above from the trial transcript) weighed the pros and cons of admitting the evidence should preclude an abuse of discretion finding. In response to the trial court's rulings and admonitions to move quickly through certain subject matter, defense counsel limited the questioning of their experts to avoid needlessly cumulative evidence.

It is true that each defense witness briefly testified in support of the theory of the case (thereby referring to the whole puzzle), while focusing upon how his medical specialty and years of training enabled him to arrive at an opinion (*i.e.*, one interlocking piece of the larger puzzle). The trial judge considered such overlaps when ruling that any cumulative testimony was outweighed by the probative value of the remaining bulk of each expert's testimony.

Furthermore, because each expert was qualified to testify regarding the standard of care, defense counsel briefly asked each one whether he believed the standard of care had been met. Defense counsel did so to avoid undermining the experts' credibility before the jury. Failing to ask the experts that question could have led jurors to believe the standard was not met. And undoubtedly, Plaintiffs' counsel would have urged such a negative inference during closing argument.

For the reasons stated above, and as more fully argued in Respondent's Substitute Brief, even if reasonable people could differ regarding the propriety of admitting the purportedly cumulative testimony of Defendants' experts in this case, such a disagreement does not equal an abuse of discretion. This Court should affirm the trial court's judgment.

Conclusion

In this case, the circuit court recognized and—through its evidentiary rulings—protected Defendants' due process right to defend themselves using their own theory supported by admissible evidence. The court certainly did not abuse its considerable discretion in allowing Dr. Follwell to present expert testimony from different medical specialties over Plaintiffs' objections. As amicus curiae, the Missouri Organization of Defense Lawyers respectfully suggests that this Court should affirm the trial court's judgment in favor of Defendants.

Respectfully submitted,

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Certificate of Compliance and Service

I certify that this amicus brief contains 5,496 words and, per rule 84.04(f)(5), conforms with Rule 84.06. I further certify that on April 16, 2018, a copy of this brief was served via the Court's electronic filing system upon the following counsel:

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