IN THE SUPREME COURT OF MISSOURI

Case No. SC98168

LUCILLE SCHOEN,
Appellant,

v.

MID-MISSOURI MENTAL HEALTH,
Respondent,

and

SECOND INJURY FUND,
Respondent.

SUBSTITUTE REPLY BRIEF OF APPELLANT

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ARGUMENT

Respondent maintains that Appellant did not prove either causative requirement mandated by the 2005 legislative amendments regarding the secondary injuries. Respondent asserts that the risk of being tripped by a doctor kicking a loose dog is not related to being treated for a respiratory exposure and did not arise out of a risk source related to work or medical treatment. Respondent argues Appellant did not prove either prevailing factor or equal exposure in non-employment life but only established a "but-for" causation link which is insufficient. Respondent maintains that the 2005 amendments requiring strict construction and impartial adjudication prohibit the application of the natural consequence doctrine beyond actual treatment. Respondent asserts that walking to an exam room for respiratory evaluation and treatment is not medical treatment.

Randolph County v. Moore-Ransdell, 446 S.W. 3d 699, 706 (Mo. App. W.D. 2014) sets forth a concise statement of arising out of employment under Section 287.020.3(2)(b). The Court states the following:

> For an injury to arise out of employment under Section 287.020.3(2)(b), there must be "a causal connection between the injury at issue and the employee's work activity." *Johme v. St. John's Mercy Healthcare,* 366 S.W.3d 504, 510 (Mo. banc 2012). A causal connection does not exist if the injury "merely happened to occur while working but work was not a prevailing factor" and the risk involved was one to which the worker would have been equally exposed in normal non employment life. *Miller v. Mo.*

Highway & Transp. Comm'n, 287 S.W.3d 671, 674 (Mo. banc. 2009). The injury must have occurred because the risk was due to some **condition of the worker's employment**. *Id.* (emphasis added). In other words, the employee must have been injured because she was at work and not simply while she was at work. *Pope v. Gateway to West Harley Davidson,* 404 S.W.3d 315, 320 (Mo. App. E.D. 2012).

In *Miller*, the court stated:

> The meaning of these provisions is unambiguous. An injury will not be deemed to arise out of employment if it merely happened to occur while working but work was not a prevailing factor and the risk involved — here, walking — is one to which the worker would have been exposed equally in normal non-employment life. The injury here did not occur because Mr. Miller fell due to some condition of his employment. He does not allege that his injuries were worsened due to some condition of his employment or due to being in an unsafe location due to his employment. He was walking on an even road surface when his knee happened to pop. Nothing about work caused it to do so. The injury arose during the course of employment, but did not arise out of employment. Under sections 287.020.2, .3 and .10 as currently in force, that is insufficient. *Miller*, at 674.

Appellant maintains the medical treatment is incidental to or a condition of employment and that medical treatment includes following the doctor's orders to go

where directed, and that once the prevailing factor is found in the original injury, then the question is what necessary medical treatment "as may reasonably be required after the injury," which is a lower standard than the prevailing factor threshold. *Tillotson v. St. Joseph Medical Center*, 347 S.W.3d at 518; § 287.140.1. The prevailing factor criteria is not applicable other than regarding the original injury.

Even if a risk source analysis is applicable to the secondary injury, the risk source is easily identified in this cause which is the doctor kicking Appellant. It is clear that the cause of Appellant's orthopedic injuries is the doctor tripping Appellant. Because medical treatment is incidental to employment and a causal link between the secondary injuries and the receipt of treatment for the original injury is established, the natural consequence doctrine is applicable and Appellant is entitled to compensation for the orthopedic injuries.

CAUSATION

Respondent fails to acknowledge that an injury need not occur while engaged in actual work but work related includes injuries incurred as an incident or condition of employment. *See* § 287.020.3 which provides an injury under Chapter 287 is defined as one that has arisen out of employment. The limitation of arising out of merely to work is contrary to section 287.020.3 RSMo. and caselaw. There is no dispute that there must be a causal link between the original injury and secondary injuries. The question Respondent raises is whether prevailing factor must be established regarding the

secondary injuries or does the question become the extent of treatment needed once the prevailing factor is established regarding the original injury.

Manley v. American Packing, 253 S.W.2d 165 (Mo. banc. 1952) expressly adopts the chain of causation theory and language and states:

> The chain of causation means the original force and every subsequent force which it puts in motion. If an accident causes an injury and that injury moves forward step by step, causing a series of other injuries, each injury accounting for the one following until the final result is reached, the accident which set the first injury or force in motion is responsible for the final result. ***It is immaterial that the final result might not ordinarily be expected***. (emphasis added). It is enough if the injury in a given case did produce the final injury or death….Thus injuries which follow as legitimate consequences of the original accident are compensable, and such accident need not have been the sole or direct cause of the condition complained of, it being sufficient if it is an efficient, exciting, superinducing, concurring, or contributing cause; thus it is immaterial whether or not a disability results directly from the injury or from a condition resulting from the injury. Also, if the resultant disability is directly traceable to the original accident, the intervention of other and aggravating causes by which the disability is increased will not bar recovery. *Id*. at 169.

See Appellant's brief pp. 33-37 regarding cases involving the natural consequence doctrine in which a causative link, "chain of causation" or "flows from" are all that is needed and such causative link need not be the sole or primary cause.

In *Randolph County v. Moore-Ransdell*, 446 S.W. 3d 699, 706 (Mo. App. W.D. 2014) *supra*, the court discussed the difference in meeting the compensability standard of the prevailing factor and a lower standard regarding what treatment is needed. In *Ransdell*, the accident caused a sprain but the treatment prescribed was a back fusion. The court stated: "Finally, the question presented is whether the workplace accident was the prevailing factor in Moore-Ransdell's injury, not whether the compensable injury is the prevailing factor in her overall resultant medical treatment." *Tillotson*, 347 S.W.3d at 518. *Moore-Ransdell*, at 708.

The court also noted: "Additionally, Dr. Highland's testimony establishes necessary medical treatment "as may reasonably be required after the injury," which is a lower standard than the prevailing factor threshold. *Tillotson*, 347 S.W.3d at 518; § 287.140.1. *Moore-Ransdell,* at 714, fn 6.

BUT-FOR CAUSATION

Respondent argues that Appellant only proved a "but-for" causal link citing *Miller v. Missouri Highway and Transp. Com'n.*, 287 S.W.3d 671 (Mo. banc. 2009) and *Snowbarger v. MFA Central Co-Operative*, 349 S.W.2d 224 (Mo. banc. 1961) as authority. Appellant does not question that her burden is greater than but-for causation. *Miller* and *Snowbarger* do not use or discuss but-for causation, but looked to see if there

was a risk source or condition of employment which caused the injury, whether the injury occurred because the worker was at work or merely occurred while the worker was at work. Finding no risk source from employment in *Miller* and *Johme*, this Court failed to find their injuries compensable.

Respondent is correct that Appellant would not have been kicked by this particular doctor "but-for" the employer's direction to be there. However, this but-for does not answer the question whether there was a risk source or causal connection between being tripped by a doctor and whether the injury occurred merely because the worker was there. The doctor's contribution was central to this injury and nothing can erase the causal connection between this injury and Appellant being kicked by the doctor at the doctor's office. But for the doctor's ill-tempered kicking, Appellant would not have been injured. The same can be said for the dirt clod in *Young v. Boone Electric Cooperative*, 462 S.W.3d 783 (Mo. App W.D. 2015) and the hole by the sidewalk in *Lincoln Univ. v. Narens*, 485 S.W.3d 811 (Mo. App. W.D. 2016). Even though one can use but-for, the ill-tempered kicking, the dirt clod, and the hole were risk sources or causes arising out of employment. A but-for cause or a triggering cause can also be a prevailing factor cause. *Randolph County v. Moore-Ransdell*, at 714, fn6. While the employer/insurer directed Respondent to be at this particular office at this particular time, the fall only happened because the doctor kicked Appellant. The fall was not something that just happened but was predicated and caused by the doctor's kicking. Appellant was not just walking.

Using but-for does not contribute to understanding the causal link between treatment and the doctor's kick because it is a lesser standard of causation. Respondent

attempts to argue away the kicking doctor. It is as easy to believe that a patient could step on an object on the floor in a doctor's office and tripping on it as it is to envision stepping on a dirt clod or stepping off a sidewalk into a hole. The doctor kicking is the risk source.

RISK SOURCE

Respondent states that the determinative factor in this case is the risk source. Respondent asserts the dog is the risk source and not the doctor. Respondent's Brief, p. 19. An analysis of the dog vs. doctor risk source shows that the doctor is the risk source. The dog is only an ancillary part of the story in this case. The dog merely was present and an irritant to the doctor. The dog did not jump up on or bite Claimant. The dog did not run into Appellant and knock her down. The dog did not frighten Appellant causing her to lose her balance and fall. The dog did not injure Appellant. The doctor's kick caused the injury and was the risk source.

Respondent asserts this is a freak accident. One's first impression is that a doctor's office is not a risky place. However, the scenario of a doctor or staff person hurrying out of an exam room and bumping into a patient walking down a hall to another exam room is not a freak or an unheard of accident. There is minimal distinction between a doctor or staff member hurrying out of an exam room and bumping into a patient and a doctor kicking a patient as he comes out of a room in a hurry. A patient going around a corner and being struck by a cart is not a freak accident or unheard of.

Slipping on a wet floor from snow or mopping while going to an exam room or the reception desk is not a freak accident or hard to believe.

"Comfort dogs" or other "comfort animals" are becoming more prevalent at a doctor's office and other public places. There is no authority to exclude freak accidents or for that matter dog injuries. UPS and Fed-X employees are appreciative that there is no dog exclusion from workers' compensation coverage. Many accidents are unforeseen in the mechanism of the accident as well as the result. The exclusion in the definition of accident is for intentional acts, not freak occurrences or negligent acts. The court in *Wright v. Treasurer*, 484 S.W.2d 56, 63-64 (Mo. App. E.D. 2015) instructs that this is not an examination of how common a particular accident is.

Respondent asserts "because the dog-tripping incident did not occur at work or while working, Employee relies on back dooring her claim through her ant-spray exposure." Respondent Brief, p.13. Respondent studiously avoids the concept of incidental to employment or condition of employment. Nowhere in its brief is this concept acknowledged which is replete in workers' compensation cases. It is so common that references are not necessary, but can be seen as all the natural consequence doctrine cases cited by either party in this matter as well as *Miller* and *Johme*.

Employer cites *Miller v. Missouri Highway and Transp. Com'n* , 287 S.W.3d 671 (Mo. banc. 2009) as being contrary to the Western District's decision because being directed to the place where the accident occurred is not sufficient causation. *Miller* held that a knee injury occurring on the job was not compensable because there was no contribution to the injury by work other than it was occasioned at work. The *Miller* court

identified various conditions all of which were absent which could have been the basis for rendering Miller's knee injury compensable. Similarly, in *Johme*, the employee solely decided the kind of shoes she wore and employment did not require or determine the type of footware the employee wore. For *Miller* or *Johme* to be applicable, Appellant would have had to be just walking and fall without any cause being identified as a condition of employment.

Nothing could be clearer that the cause of Appellant's injury was the doctor's kick and the kick was the risk source which Appellant encountered as a condition arising out of her employment. Medical treatment is a condition of employment and a kicking doctor caused the injury while providing treatment.

The courts have instructed that the risk source is the one particular to the accident and **is not an examination of how common a particular accident is.** *Wright v. Treasurer*, 484 S.W.2d 56, 63-64 (Mo. App. E.D. 2015) held that the risk factor was sitting in the particular chair which collapsed and was not the act of sitting in general. *See also Scholastic, Inc. v. Viley*, 452 S.W.3d 680, 687 (Mo. App. W.D. 2014); *Young v. Boone Electric Cooperative*, 462 S.W.3d 783, (Mo. App. W.D. 2015); *Duever v. All Outdoors, Inc*. 371 S.W.3d 863 (Mo. App. E.D. 2012); *Dorris v. Stoddard County*, 436 S.W.3d 586 (Mo. App. S.D. 2014).

Respondent argues, "[h]ere, the Commission correctly found that Employee failed to prove a sufficient causal connection between her employment and injuries that she sustained as a result of a doctor kicking at a loose dog." Respondent's Brief, p. 12.

"Employee's injuries was a fall caused by an unrelated risk source—a loose dog and a doctor's attempt to divert it." Respondent's Brief, p. 13. The **Commission's findings** linking the dog to the doctor should resolve what the risk source was.

Respondent continues: "[t]he risk source was not the doctor himself, as Employee asserts, or any treatment Employee was undergoing for her work injury, but rather the risk source was the freak occurrence of a dog getting loose in an office setting." Respondent's Brief, p. 19. In its brief, Respondent does not consistently maintain this distinction of the dog and not the doctor being the risk source. Respondent refers to the doctor kicking at the loose dog ten times in its brief and only refers to the loose dog without the doctor three times. Respondent's Brief, pp. 12, 13, 15, 16, 18, 19.

MEDICAL TREATMENT

Respondent asserts that this cause is the first ever to allow compensation for a secondary injury caused by a source unrelated to medical treatment. Respondent's Brief, p. 14; Application for Transfer p. 5. The Supreme Court in *Manley v. American Packing Co., supra* disproves this assertion. While Respondent refers to *Manley v. American Packing Co.*, Respondent's summary of *Manley* is limited to the treatment causing the pulmonary emboli and death. This summary ignores how Manley got to the fatal surgery. The facts in *Manley* are clear that the knee was weakened by the workers' compensation injury which made Manley prone to having his knee give way and falling. The weakened knee gave way while Manley was walking in a private orchard approximately two and one half years later on unlevel ground thereby necessitating the fatal surgery. *Manley*, at 168. The *Manley* court held that liability of the employer/insurer extended to all

subsequent consequences which was a part of an uninterrupted chain of causation. *Id.* at 169. Walking in an orchard is no more a treatment modality than kicking at a dog. *Manley* illustrates a secondary injury caused by a non-medical treatment source is a compensable part of the original injury contrary to Respondent's contentions.

In addition to *Manley*, *Lahue v. Treasurer*, 820 S.W.2d 561 (Mo. App. W.D. 1991) challenges this proposition. Respondent maintains that Lahue's injury was actually caused by a risk source related to medical treatment itself. Respondent goes so far as to interpolate facts not remotely found in *Lahue* and states: "[t]hus, the risk-source connection between injuries sustained from falling from a chair with one leg awkwardly in a whirlpool (while already in a compromised state from prior orthopedic injury) and the orthopedic injury being treated is clear and direct; whereas, the connection here between respiratory treatment and Employee being tripped by a doctor chasing a dog is not." Respondent's Brief, p. 16. The *Lahue* court does not provide these details or other details of the injury beyond that Lahue fell off a chair while undergoing physical therapy. There is no discussion where the chair was. The chair could have been in the waiting room, a locker room, by the whirlpool itself or, very unlikely, in the whirlpool itself. The *Lahue* court provided all the necessary facts to decide the case and leaves some of the details to one's own imagination. The case does not substantiate Respondent's interpretation as above.

Respondent points to the court's use of "while undergoing whirlpool therapy." Respondent's Brief, p. 16. Undergoing treatment can be used two different ways. One way is as above in "undergoing treatment itself." This concept, as Respondent has used

it, refers to treatment occurring during the conduct of a specific treatment procedure. The second way is more general. For example, "I am undergoing cancer treatment" or "I am undergoing physical therapy," referring to ongoing treatment without reference to a specific procedure at a specific time. The court did not describe any hands on treatment or any interaction with the provider.

Respondent argues that Employee's injuries were caused by "an unrelated risk source—a loose dog and a doctor's attempt to divert it." Respondent's Brief, p. 13. The heart and soul of Respondent's argument is nothing short of hands on medical care is medical treatment and the risk source must be the medical treatment. Respondent's Brief, p. 15. One cannot dissect medical treatment to exclude getting to the exam room from medical treatment without reversing a whole body of law regarding compensability. In the instant case, the Western District cited its own independent research and the absence in Employer's brief of any case in which Missouri courts have denied the compensability of an injury received while at the medical facility and receiving authorized treatment for the original injury. Western District Slip Opinion, p. 10. Respondent's assertion that all prior cases awarding benefits for secondary injuries involved injuries that were directly caused by the medical treatment itself is incorrect. Respondent's Brief, p. 14.

Respondent objects to Appellant's use of "treating doctor" but is correct to point out that if the treatment were unauthorized, Claimant would assert the natural consequence doctrine. The significance of the treating physician is that there is a close link to the Employer/Insurer because the Employer/Insurer dictated the terms of the

treatment by selecting the doctor and setting the appointment. If the doctor's actions in a personal injury case who is **not** selected by the third party tortfeasor can impose further liability by his negligence on a third party tortfeasor, then the liability on the Respondent from a doctor it selects to treat a worker and causes injury to an already injured worker should be clear. *State ex. rel. Smith v. Weinstein*, 398 S.W.2d 41 (Mo. App. 1965). The fact that the injury was caused by the treating doctor shows clearly that the visit to the doctor is an incident or condition of employment and not just a random or personal visit.

Bear v. Anson Implement, Inc., 976 S.W.2d 553 (Mo. App. W. D. 1998) is not the exclusive statement of the natural consequence doctrine or as Respondent states "the so-called 'natural consequence doctrine.'" Respondent's Brief, p. 18. For one to elevate the *Bear* case to such stature ignores the body of law premised on *Manley* and ignores the facts of *Bear* itself. *Bear* is a coming and going case and Bear's attempt to disguise this fact by pointing to just leaving employer directed medical treatment as the cause was unsuccessful. *Bear* only stands for the proposition that once Bear left the therapy premises, he was going home and going home is not compensable.

STRICT CONSTRUCTION

Respondent argues that strict construction changes the rules of causation and prohibits expansion or maintaining the judicially created natural consequence doctrine. The *Wright* court dealt with a challenge to a judicially created personal comfort doctrine, holding that injuries occurring when employees are performing duties incidental to employment (such as tending to their own personal comfort) are compensable. The court

held that the personal comfort doctrine survived the 2005 amendments and applied the personal comfort doctrine in the traditional way. *Wright v. Treasurer of Missouri*, 484 S.W. 3d 56 (Mo. App. E. D. 2015).

The rationale and circumstances in *Wright* regarding the personal comfort doctrine are the same as in this instant case regarding the natural consequence doctrine. Both involve a long standing interpretation of what an incident or condition of employment means. Both cases are subsequent to the 2005 amendments and the strict construction and impartial adjudication provisions. Both involve the application of the "prevailing factor" requirement. The lessons of *Wright* are that the risk factor is the particular one the worker faced and not a generalized risk, strict construction does not vitiate the personal comfort doctrine, and the prevailing factor does not preclude applying the personal comfort doctrine in the traditional way.

Respondent's strict construction argument has been addressed by each court of appeals in Missouri. The Eastern District in *Wright v. Treasurer of Missouri*, 484 S.W.3d 56 (Mo. App. E.D. 2015) as discussed above.

The Western District recently decided *Reynolds v. Wilcox Truck Line*, WD81969, slip opinion, (Western District, September 17, 2019, transfer denied December 24, 2019) and held that a judicial interpretation under liberal construction may still be applicable under strict construction. *Reynolds*, at 13-17. **In fact, the court states that common law stands unless there is a positive legislative expression clearly abrogating prior judicial interpretation**. *Citing Ahern v. P & H, LLC*, 254 S.W.3d 129, 133 (Mo. App. 2008) and *O'Grady v. Brown*, 654 S.W.2d 904, 911 (Mo. banc. 1983) (emphasis added).

The Southern District issued *Sell v. Ozarks Medical Center*, 333 S.W.3d 498 (Mo. App. S.D. 2011) discussing the application of strict construction to pre-existing case law. The court indicated that strict construction does not necessarily change all case law. The court noted that the 2005 amendments specifically abrogated specific cases and their progeny but that the notice provision cases were not abrogated. *Sell*, at 506-10. The court interpreted this as the legislature's intention to accept existing case law. *Id.* at 508. The *Sell* court further stated:

> Furthermore, "[i]n construing a statute a fundamental precept is that the legislature acted with knowledge of the subject matter and the existing law." *Holt v. Burlington N. R.R. Co.,* 685 S.W.2d 851, 857 (Mo. App.1984). In revising the workers' compensation statutes as a whole, the legislature clearly expressed its intent to negate the effects of various cases and their progeny relevant to some of the sections and terms of the workers' compensation chapter. No such actions were directed toward section 287.420, and, particularly, the legislature made no mention of prior cases interpreting the notice exception at issue here. Such an omission signals an intentional acceptance of existing case law governing the unchanged portion of section 287.420. *Id.* at 508. *See also Peters v. Treasurer of Missouri*, 404 S.W3d 322, 325 (Mo. App. E.D. 2012).

In summary, there is unanimity between the appellant districts of Missouri on the effect of strict construction **not** repealing long standing judicial decisions. *Miller* and

Johme were expressly decided using strict construction regarding the causation standard. *Miller*, at 673-74; and *Johme*, at 510-12. The court has not ignored or failed to apply strict construction to compensability.

Respondent challenges the application of *Pace v. City of St. Joseph,* 367 S.W.3d 137, 147 (Mo. App. W.D. 2012) to the this case on page 14 of its brief but on page 22 it implicitly acknowledges the legal doctrine and requests that to the extent it and other natural consequence cases "can be interpreted as support for Employee's assertion, they should be explicitly overruled as inconsistent with the strict construction mandate of 287.800." Respondent's Brief, p. 22. Respondent continues arguing "[t]his is because Section 287.020.3 is effectively nullified (and the legislature's intent circumvented) if its causation standards can be disregarded for all tangentially related injuries, conditions, or disabilities once any *de minimis* compensable injury has been identified." Respondent's brief p. 8.

Pace is a case which involved the issue of whether the substantial factor causation requirement enacted in 1993 eliminated the natural consequence doctrine. The legislative enactment of the higher causation standard of "substantial factor" is a similar case to the instant cause in which Respondent argues the 2005 legislative enactment of the higher causation standard of "prevailing factor" eliminates the natural consequence doctrine. Just as the enactment of the substantial factor requirement did not eliminate the natural consequence doctrine, neither should the 2005 enactment of the prevailing factor requirement. The *Pace* court declined to overrule the natural consequence doctrine holding "when work is a substantial factor in causing the medical condition, 'every

natural consequence that flows from the injury, including a distinct disability in another area of the body, is compensable as a direct and natural result of the primary or original injury.'" *Id.* at 147, quoting *Cahall v. Riddle Trucking, Inc.*, 956 S.W.2d 315, 322 (Mo. App. 1997), overruled on other grounds by *Hampton*, 121 S.W.3d at 226. *Pace* causally connected a series of falls to the original injury without applying the substantial factor requirement. *Id.* at 147. The court held that three falls because of the weakened knee were causally linked to the original injury and therefore compensable.

This request to overrule the natural consequence doctrine cases is made after asserting that Appellant's theory greatly expands the natural consequence doctrine. Appellant's theory does not require any expansion. Appellant's theory will do nothing other than clarify that following the doctor's directives to the exam room is a part of medical treatment. This is not actually an expansion but only an application of the natural consequence doctrine to a fact pattern. It is not Appellant, but rather Respondent who is asking this court to radically change the law by overruling approximately 70 years of case law.

Respondent attacks the legitimacy of the natural consequence doctrine when it is attached to a *de minimis* compensable injury. Respondent's Brief, p. 22. Essentially, Respondent argues that this case should not be compensable because the primary injury is so *de minimis*. On the other hand, Respondent argues that this case should not be compensable because the ALJ believed Respondent owed Appellant lifetime payments, which is just too much money. Simply put, there is no such law or case, which

recognizes compensability in these terms. To act as Respondent requests, this Court would have to create this law rather than overrule cases contrary to Respondent's position.

Courts providing judicial definition of statutory provisions is central to our laws and procedures which as Respondent has pointed out the natural consequence doctrine has existed for approximately 70 years. There can be no question that this doctrine has uniformly been applied and the underlying rationale has never been questioned. 70 years of law does not make this doctrine "old" but shows the strength and vibrancy of a judicial interpretation which has been affirmed over and over again.

NO PERMANENT DISABILITY

Respondent points out that the extent of disability is within the exclusive province of the Commission and other similar statements regarding well recognized law. Respondent's Brief, p. 24. Appellant does not dispute Respondent as far as this goes. However, the court in *Snowbarger* stated:

> Of course, the commission may not arbitrarily ignore competent, substantial and undisputed evidence and base its findings upon conjecture or personal opinion. *Toole v. Bechtel Corporation, Mo.*, 291 S.W.2d 874, 880 (Mo. 1956). *Snowbarger*, at 225.

Respondent ignores that the Commission is not inviolate and its decisions must be based on substantial evidence.

CONCLUSION

Appellant prays this case be remanded with instructions that an award be entered which finds that the trip and fall by Dr. Runde is medically causally connected with the respiratory injury which occurred on May 8, 2009; to reconsider the issues of whether Employee is entitled to reimbursement for past and future medical expenses related to the fall; and to reconsider the nature and extent of Employee's disability including whether Employee is permanently and totally disabled against the employer or the Fund.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing Appellant's Reply Brief complies with the limitations set forth in Rule 84.06(b), contains 5,430 words, as counted by the word-processing software used, Microsoft Word 2013, the typeface are size 13 Times New Roman. The signature block of the foregoing brief contains the information required by Rule 55.03.

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CERTIFICATE OF SERVICE

I certify that I have served a copy of this brief to all attorneys of record electronically via Missouri's eFile system this 10th day of January, 2019.

/s/ Truman E. Allen
Truman E. Allen