IN THE SUPREME COURT OF MISSOURI

CITY OF HARRISONVILLE,	)	
	)	
Appellant/Respondent	)	
	)	
vs.	)	**SC94115**
	)	
MISSOURI PETROLEUM STORAGE TANK INSURANCE FUND, *et al.*,	)	
	)	
Respondent/Appellant.	)	

APPELLANT/RESPONDENT CITY OF HARRISONVILLE'S SUBSTITUTE REPLY/OPPOSITION BRIEF

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PSTIF continues to claim it is not at fault and cannot be liable for actual or punitive damages. Apparently, PSTIF does not recognize that the jury, the trial court, and the Court of Appeals found the City not only made a submissible case but provided proof to support $8,000,000 in punitive damages. PSTIF makes this argument even though it did not seek transfer to this Court following the ruling of the Court of Appeals. Nonetheless, now that this Court has accepted this case based on the City's application, PSTIF sees fit to take one last grasp at convincing this Court that it did nothing wrong. PSTIF's argument should be rejected.

I. THE CITY MADE A SUBMISSIBLE CASE OF FRAUD

PSTIF argues the trial court erred in denying its motion for judgment notwithstanding the verdict. The standard of review applicable to this argument is well-settled. The plaintiff need only present a submissible case to defeat such a motion. *Stanley v. Jer Den Foods, Inc.*, 263 S.W.3d 800, 802-03 (Mo. App. W.D. 2008). A plaintiff presents a submissible case by offering "substantial evidence for every fact essential to liability." *Id. (citing Love v. Hardee's Food Sys., Inc.*, 16 S.W.3d 739, 742 (Mo. App. E.D.2000)). An appellate court will not overturn a jury's verdict unless there is a "'complete absence of probative facts'" to support it. *Id.* As discussed more fully below, PSTIF utterly fails to demonstrate the absence of probative facts on the City's claims for fraud and negligent misrepresentation.

The City's fraud and negligent misrepresentation claims arose from the promise made by PSTIF to reimburse the remediation expenses if the City agreed to follow the

plan of PSTIF and utilize PSTIF's recommended contractor. The City agreed, Midwest Remediation ("Midwest") performed the work, the City paid, but PSTIF refused to reimburse the City.

The elements of fraudulent misrepresentation are well known to this Court. *See e.g. Hess v. Chase Manhattan Bank, USA, N.A.*, 220 S.W.3d 758, 765 (Mo. banc 2007) (setting forth the elements of fraud). A claim for negligent misrepresentation differs in only two respects. *See e.g. Kesselring v. St. Louis Group, Inc.*, 74 S.W.3d 809, 813 (Mo. App. E.D. 2002) (distinguishing fraud and negligent misrepresentation). PSTIF does not dispute the presence of either of these unique elements. PSTIF only argues that the City failed to present sufficient evidence to establish detrimental reliance. *See e.g. Hess*, 220 S.W.3d at 765.

The reasonableness of a plaintiff's reliance is for the jury's determination. *See Frame v. Boatmen's Bank of Concord Village*, 824 S.W.2d 491, 493 (Mo. App. E.D. 1992). That determination will be disturbed only where "no reasonable juror could find it reasonable to rely" on the misrepresentation. *Id.*

PSTIF claims the only question at issue is whether because of Mr. Vuchetich's statement, the City incurred greater expense than it would have otherwise incurred and that the City did not even attempt to prove this point. *See* PSTIF's Substitute Brief, p. 16. This simplified statement ignores the full extent of PSTIF's fraud and the substantial evidence produced by the City and recognized by the trial court and Court of Appeals.

The uncontroverted evidence showed Rose-Lan contracted to replace the entire south sewer interceptor. When Rose-Lan discovered petroleum contamination, it was legally required to cease construction in the area. (Tr. 70:12-24; 292:3-10). For Rose-Lan to complete the work as planned, all contaminated soil from the easement would have to be removed and replaced with "clean" soil. *Id.* The cost for this complete soil remediation exceeded $500,000.00. (Tr. 342:20 to 343:3). PSTIF would have borne all these costs. *See* § 319.131.5, RSMo. If the contaminated soil was completely removed, Rose-Lan could have completed the project at no increased cost to the City. (Tr. 292:18 to 293:5).

The alternative proposal submitted by PSTIF would leave the contaminated soil in place, but use an OSHA-qualified contractor and specially designed, petroleum resistant piping. (Tr. 342:2-7; 453:16-23; Trial Ex. 7). The initial budget from PSTIF's expert, Bob Fine, was $190,226.38, with the City paying 10% as costs it would have incurred absent contamination. (Tr. 382:19 to 383:2; Trial Ex. 7). PSTIF believed Fine's budget was too high and manipulated Midwest's bid to be acceptable to the City. (Tr. 76:25 to 77:7; 217:8-22; Trial Ex. 15 and 16). The second bid was significantly lower - $154,632.00. (Tr. 218:21-22; Trial Ex. 17). Thus, replacing the pipe within the contaminated soil was considerably cheaper than the $500,000.00 to remove and replace all the contaminated soil.

Now PSTIF reasons that because the Midwest bid was approximately $30,000.00 lower than the Fine bid, the City actually saved money. However, any savings resulting

from PSTIF's proposal were realized by PSTIF, not the City. Absent the City's reliance on PSTIF's false representation, PSTIF would have spent $500,000.00 to completely remove and replace all the contaminated soil, so that Rose-Lan could complete the project at no additional expense to the City. (Tr. 70:12-24; 292:3-10; 342:20 to 343:3; 343:10-12; 453:24 to 454:11). As it stands now, PSTIF saved $500,000.00 and the City is out the $172,100.98 it has not been reimbursed by PSTIF.

PSTIF also argues the City's proper cause of action was for breach of contract not fraud. PSTIF never raised this issue with the trial court until it submitted its post-trial motion. If the City's claim was improperly pled, the issue should have been raised in a dispositive motion, objection to jury instructions, or argument for directed verdict. PSTIF cannot wait until the trial is completed and a verdict for punitive damages is awarded to suggest the City's claims should have been for breach of contract. *See e.g. Gill Const., Inc. v. 18th & Vine Authority*, 157 S.W.3d 699, 718 (Mo. App. W.D. 2004) (objections to jury instructions must be made specifically and distinctly before the jury retires in order to avert error and allow the trial court to knowingly rule on the objection).

Even if the Court considers this untimely argument, there is a fundamental difference between contract and fraud. For fraud, the defendant promises to perform an act it had no intention to perform. This is precisely the testimony of PSTIF's director, Carol Eighmey. Her admission, that PSTIF never intended to pay, is the essence of fraud. *Hess*, 220 S.W.3d at 765.

Moreover, if PSTIF's promise to pay was an oral contract, its misrepresentation is still actionable fraud. The very authority cited by PSTIF makes clear that a misrepresentation in the negotiation of a contract, is sufficient to support a claim of fraud. *O'Neal v. Stifel, Nicolaus & Co., Inc.*, 996 S.W.2d 700, 702 (Mo. App. E.D. 1999); *see also Bernoudy v. Dura-Bond Concrete Restoration, Inc.*, 828 F.2d 1316, 1318 (8th Cir. 1987) (defendant who induced plaintiff into a contract by misrepresenting what the relationship would entail committed fraud).

The City's evidence established that PSTIF falsely represented it would reimburse the remediation costs. Eighmey admitted PSTIF had no intention of making such payment. (Tr. 209:11-14). PSTIF made the representation to induce the City to accept PSTIF's proposal, which saved over $300,000.00. The City's consent to the PSTIF remediation plan was made *because* of PSTIF's misrepresentations. PSTIF's misrepresentations arose from acts separate and distinct from PSTIF's refusal to pay. *O'Neal*, 996 S.W.2d at 702. The City established each element necessary for its claims. PSTIF's arguments fail.

II. PSTIF IS NOT PRECLUDED FROM PAYING PUNITIVE DAMAGES

PSTIF next argues that even if the City did make a submissible case of fraud, the City's claim for punitive damages should not have been submitted to the jury because PSTIF lacks any statutory authority to pay such damages. *See* PSTIF's Substitute Brief, p. 22. PSTIF bases this argument on the flawed interpretation that § 319.131.5, RSMo. precludes punitive damages. However, each portion of a statute should be read in the

context of the entire statute, not in isolation. *See Derousse v. State Farm Mut. Auto Ins. Co.*, 298 S.W.3d 891, 895 (Mo. banc 2009). Section 319.131.5, RSMo., discusses the coverage provided by PSTIF for third party claims against a covered owner or operator. As PSTIF concedes, the statute does not preclude an award of punitive damages against PSTIF itself. *See* PSTIF's Substitute Brief, p. 24-26. Rather, it simply precludes the insurer from providing compensation to a third party for punitive damages awarded against an owner or operator. In other words, PSTIF does not cover punitive conduct of its insured; however, the statute does not make PSTIF exempt for its own punitive conduct.

PSTIF argues that because the legislature specifically barred PSTIF from paying punitive damages assessed against owners or operators, it evidences the legislature's intent that money paid into the Fund be used only for costs of cleaning up contamination. *See* PSTIF's Substitute Brief, p. 25. To the contrary, the fact that the legislature saw fit to specifically preclude the Fund from paying punitive damages assessed against petroleum storage tank operators but not those assessed against the Fund itself further underscores the distinction that exists in the statute. It is well settled, to interpret a statute, the legislature is presumed to have acted intentionally when it includes language in one section of a statute, but omits it from another. *Denbow v. State*, 309 S.W.3d 831, 835 (Mo. App. W.D. 2010). ("A disparate inclusion or exclusion of particular language in another section of the same act is 'powerful evidence' of legislative intent.")

If PSTIF's argument were correct—the Fund can only act in accordance with its enabling statute—there would have been no need for the legislature to even carve out the prohibition on the Fund's payment of punitive damages or consequential damages assessed against petroleum storage tank operators because the enabling statute only authorized payment of the costs of cleaning up contamination, according to PSTIF. And yet, the legislature not only saw fit to include language in the statute specifying which damages the Fund could pay on behalf of petroleum storage tank operators and which it could not, it also elected not to preclude the Fund from paying punitive damages assessed against it.

The statute does not preclude the jury's award of actual or punitive damages, and PSTIF's point on appeal fails.

III. THE STATE'S EFFORT TO DISTINGUISH *LEWELLEN* FAILS

PSTIF next argues that even if it can pay punitive damages, the statutory cap in § 510.265.1(2) still applies even after this Court's decision in *Lewellen v. Franklin*, 441 S.W.3d 136 (Mo. 2014). According to PSTIF, (1) the City did not timely assert its constitutional challenge, and (2) the City has not shown it "heretofore" enjoyed entitlement to trial by jury under the Missouri Constitution. *See* PSTIF's Substitute Brief, p. 27-37. PSTIF's arguments strain logic and lack any support in the law.

A. The City's Timing in Raising Constitutional Challenge to § 510.265.1(2) is No Longer at Issue

Despite this Court's clear pronouncement in *Lewellen*, PSTIF persists in claiming the City is not entitled to the benefit of this Court's precedent because the City allegedly did not timely invoke its own constitutional challenge to the statute declared unconstitutional in *Lewellen*. As set forth in the City's Substitute Brief, the timing of the City's own challenge to the constitutionality of § 510.265.1(2) is no longer at issue. The punitive damage cap has been declared unconstitutional by this Court. "An unconstitutional statue is no law and confers no rights. This is true from the date of the decision so branding it." *State ex rel. Bloomquist v. Schneider*, 244 S.W.3d 139, 143-44 (Mo. banc 2008). While PSTIF seems to claim the City is not entitled to benefit from this Court's decision in *Lewellen*, PSTIF offer no legal authority for such a proposition. Missouri law is clear: unconstitutional statues are *void ab initio*. *Id.* at 143. "An unconstitutional statue is no law and confers no rights." *Trout v. State*, 231 S.W.3d 140, 148 (Mo. banc. 2007). Judicial enforcement of a statute after the statute is found to violate the Constitution is the exception, not the norm. *Id.* In this case, PSTIF has not endeavored to meet the requirements of the exception, which include its good-faith and reasonable reliance on the application of § 510.265.1(2) (which PSTIF could not argue, given it did not even plead application of the statute as an affirmative defense).

This Court has clearly and unequivocally declared the statutory cap on damages in § 510.265.1(2) is unconstitutional. *See Lewellen*, 441 S.W.3d 136. Accordingly, the

statute is no law and confers no rights, regardless of when the City asserted its own constitutional challenge.

B. PSTIF's Strained Interpretation of the Constitutional Right to Trial By Jury Fails

The majority of PSTIF's brief focuses on its attempt to distinguish the *Lewellen* decision in the desperate hope the punitive damage cap will apply to save PSTIF from its own tortious conduct. PSTIF claims the City cannot show that a political subdivision (as opposed to an individual) "heretofore" enjoyed the right to a jury trial as guaranteed under the Missouri Constitution. PSTIF further argues the City cannot demonstrate it enjoyed such a right against a government-created entity as a defendant. In making these strained arguments, PSTIF invents a test for determining whether the right to a jury trial was "heretofore" enjoyed that does not exist in Missouri law and which should be summarily rejected.

First, PSTIF misstates the analysis required to determine if the right to a jury trial applies. The question is not whether the specific plaintiff could have sued the particular defendant for the very cause of action being asserted at this time. Rather, "in applying the right to trial by jury, the question is whether the proceeding is analogous to an action at common law or whether it is in the nature of a suit in equity . . . ." *Scott v. Blue Springs Ford Sales, Inc.*, 176 S.W.3d 140, 142 (Mo. banc 2005). More plainly stated, "from the status of the right as of 1820, the simple analysis is whether the action is a civil action for damages. If so, the jury trial right is to remain inviolate." *Id.* (*citing Diehl v.*

O'Malley, 95 S.W.3d 82, 89 (Mo. banc 2003)). There is no question that the City's claim for fraud is an action at common law for which the right to trial by jury attaches.

Even if the Court entertains PSTIF's strained argument that the analysis somehow changes because a municipality is the plaintiff or because a state-created entity is the defendant, PSTIF's analysis wholly fails. First, Missouri's territorial laws (which pre-date statehood), provided for jury trials in "all civil cases of the value of one hundred dollars . . .if either of the parties require it." *Klotz v. St. Anthony's Medical Center*, 311 S.W.3d 752, 775 (Mo. banc 2010) (*citing* Mo. Terr. Laws 58, sec. 13 and *Diehl*, 95 SW.3d at 85)). The right applied to either party, regardless of whether that party was an individual or other entity. *Id.*

Case law further supports the City's position. In *Bank of Missouri v. Anderson*, this Court analyzed the "inviolate" right to jury trial as set forth in the Missouri Constitution as applied to a bank. 1 Mo. 244 (Mo. 1822). In *Bank of Missouri*, the Missouri Supreme Court held that "it is the right of all parties who are capable of being sued" to have a trial by jury if so demanded. *Id.* at 245. *See also State ex rel. Barker v. Tobben*, 311 S.W.3d 798, ftnt. 2 (Mo banc. 2010) (noting the common law right to jury trial could be invoked upon the request of either party and the state constitutional right to a jury trial carried forward the common law rights). Because the bank was a party, it had the right to have the facts tried to a jury. *Bank of Missouri,* 1 Mo. at 245. Thus, PSTIF's wholly unsupported suggestion that there is a distinction between individuals and other

entities for purposes of a party's right to trial by jury is simply wrong.[1] Similarly, there is no support in Missouri law for engaging in a more stringent right to jury trial analysis because PSTIF is the defendant.

IV. PSTIF WAIVED ANY DUE PROCESS ARGUMENTS, WHICH, IN ANY EVENT, DO NOT SUPPORT A REDUCTION IN THE JURY'S PUNITIVE DAMAGE AWARD

In PSTIF's final two arguments, it claims:

- due process requires remittitur of the punitive damage award to something less than the $2,500,000.00 awarded by the trial Court, and,
- if all its other arguments fail, the trial court properly remitted the punitive damage verdict to $2,500,000.00 from the original jury award of $8,000,000.00.

PSTIF's final, contradictory arguments equally fail.

First, PSTIF waived any due process constitutional challenge to the punitive damage award against it. PSTIF does not deny its failure to raise its due process

[1] PSTIF attempts to draw a comparison between the right to trial by jury and other constitutional rights such as the passage of retrospective laws and due process claims. *See* PSTIF's Substitution Brief, p. 33-34. PSTIF's comparisons are not only confusing and inapplicable, but they also ignore clear Missouri law on the Constitutional guarantee to the right to jury trial.

challenge at the earliest opportunity. *See* PSTIF's Substitute Brief, p. 38-39. *Hollis v. Blevins*, 926 S.W.2d 683, 683-84 (Mo. banc 1996) (rejecting an argument that constitutional claim challenging statutory prejudgment interest only arose after judgment was entered and finding claim waived when not raised in answer to petition). PSTIF does not dispute that it did not raise any constitutional defenses in its Answer, as an affirmative defense, or during trial. PSTIF also failed to set forth any such argument in its post-trial briefing. *State v. Wickizer*, 563 S.W.2d 109, 110 (Mo. App. 1978) (constitutional question first raised in motion for new trial was not raised soon enough and therefore waived); *State v. Arnett*, 370 S.W.2d 169, 172 (Mo. App. 1963) (refusing to consider constitutional question first raised in motion for new trial).

Instead, PSTIF claims it is excused from adherence to clear Missouri law that requires constitutional challenges to be raised at the earliest opportunity because, despite the clear request for punitive damages in the City's Petition, it would have been "speculation in its entirety" for PSTIF to assert a due process defense at the outset. *See* PSTIF's Substitute Brief, p. 40. It is no surprise that PSITF cites no law in support of this novel concept. If PSTIF's argument is correct, no defendant would ever be required to raise due process challenges until after the jury awarded punitive damages because, despite a punitive damage prayer in the petition, a defendant never has "control over what the [plaintiff will] do through pretrial or trial." *See* PSTIF's Substitute Brief, p. 39. The exception PSTIF advocates for itself would swallow the entire rule requiring assertion of constitutional challenges at the earliest opportunity. Fortunately, this is not the law.

PSTIF waived its due process challenges. *See McCormack v. Capital Elec. Const. Co.*, 159 S.W.3d 387, 404 (Mo. App. W.D. 2004).

Turning next to the substance of PSTIF's due process challenge, PSTIF suggests this case does not warrant an award of punitive damages beyond the single-digit ratio articulated in the U.S. Supreme Court precedent. PSTIF strains its analysis while it struggles to defend its conduct of lying to the City for years and refusing to pay for the remediation costs for which it promised to reimburse the City, all for the sake of saving itself from paying the more substantial costs of remediation it knew it was obligated to pay. The attempt by PSTIF to put "into context" the City's evidence of the reprehensible, intentional misconduct by PSTIF is half-hearted at best and addresses only a handful of the City's points. PSTIF makes no effort to explain or add "context" to the bid-tampering which deceived the City, the evidence of PSTIF's pattern and practice of reprehensible conduct in several other situations, or the outright lies of Mr. Vuchetich, as confirmed by Ms. Eighmey, who testified PSTIF never had any intention of paying for the cost of remediation. *See* City's Substitute Brief, p. 6. The very fact that PSTIF undertook calculated misrepresentations and continual stalling tactics to avoid payment and still continues to deny any responsibility for its actions, highlights the reprehensibility of PSTIF's conduct.

The trial court's order reflects no consideration of the facts germane to the reprehensibility of PSTIF's conduct, which is the most important factor in considering the reasonableness of a punitive damage award. *Peel v. Credit Acceptance Corp.*, 408

S.W.3d 191, 212 (Mo. App. W.D. 2013), transfer denied (June 25, 2013), transfer denied (Oct. 1, 2013). The most important factor in any due process analysis—reprehensibility—is well-satisfied. The jury's verdict of $8,000,000 should be reinstated.

PSTIF makes no real effort to address the other two factors in the due process analysis: the disparity between the actual and punitive damage award and a comparison of awards in similar cases. As set forth in detail in the City's Substitute Brief, ample case law supports the jury's punitive damage award of $8,000,000 in this case. *See* City's Substitute Brief, p. 34-35.

In PSTIF's last-ditch effort to avoid the jury's punitive damage award of $8,000,000, it makes an about-face and argues the trial court's decision to remit the award from $8,000,000 to $2,500,000 was not an abuse of discretion and should be upheld on appeal. PSTIF concedes the trial court relied upon (without overtly applying) the unconstitutional damage cap statute of Section 510.265 and case law raising due process considerations. *See* PSTIF's Substitute Brief, p. 46-7. PSTIF claims these considerations were appropriate and $2,500,000 represents "fair and reasonable compensation" to the City. *Id.* However, to reach its decision of remittitur, the trial court looked to the public policy exemplified in an unconstitutional statute and due process considerations which were waived by PSTIF. On these bases, the trial court had no authority to remit the Jury's verdict. *Wiley v. Homfeld*, 307 S.W.3d 145, 148 (Mo. App. W.D. 2009) (trial court must have proper authority to remit a verdict.)

Further, the trial court referenced no facts from which it concluded that PSTIF deserved a "break," had learned its lesson, or how remittitur was appropriate or warranted. *Hill v. City of St. Louis*, 371 S.W.3d 66, 80 (Mo. App. E.D. 2012) (court "must also remain 'mindful' that the purpose of punitive damages is to punish and deter a party from performing similar wrongful conduct.") It cannot be said that any evidence affords "reasonable and substantial" support for the trial court's remittitur.

The jury determined that fair and reasonable compensation for the City was $8,000,000. The trial court refused to apply the statutory cap on punitive damages overtly. However, it went on to rely upon it as "instructive" in remitting the punitive damage award.[2] The statutory damage cap has now been declared unconstitutional by this Court. Reliance in any form on an unconstitutional law cannot provide reasonable or substantial support for the decision of the trial court. An unconstitutional statute is *void ab initio* and is of no law or effect. *Trout*, 231 S.W.3d at 148. Surely the trial court cannot rely indirectly upon what it is prohibited from relying upon directly. *See e.g. T.I.M.E. v. U.S.*, 359 U.S. 464, 469, 79 S.Ct. 904, 908 (1959) (noting the Court declined to permit the Interstate Commerce Commission to accomplish indirectly that which

[2] Had the trial court simply applied the statute directly to the $8.0 million punitive award, the decision would be overturned based on this Court's ruling in *Lewellen* and the entire $8.0 million award would be reinstated. The result should not be different simply because the trial court elected to apply the same unconstitutional statute indirectly to reduce the award to $2.5 million.

Congress did not allow it to accomplish directly). Accordingly, the first of the two bases upon which the trial court granted remittitur affords no support for the trial court's remittitur and reveals the trial court abused its discretion.

The trial court's second consideration in granting remittitur of the punitive damage award from $8,000,000 to $2,500,000 involved due process considerations. As discussed in detail in the City's Substitute Brief, the trial court's analysis of PSTIF's due process considerations was in error because PSTIF waived consideration of due process claims and because the evidence clearly supported the jury's full verdict against PSTIF. Nonetheless, PSTIF claims, without support, that the trial court properly analyzed due process considerations as part of its remittitur analysis regarding whether the verdict was "fair and reasonable." *See* PSTIF's Substitute Brief, p. 47. Again, the trial court should not consider indirectly through its remittitur analysis due process considerations which PSTIF waived.

Further compounding its error, the trial court referenced nothing in the record to conclude remittitur was appropriate. For example, the trial court cited no evidence from which it concluded that payment by PSTIF of $2.5 million instead of $8.0 million would result in a change in PSTIF's practices or deter future similar conduct by PSTIF. In fact, no changes have been made. Eighmey and Vuchetich are still in control. PSTIF continues with its reprehensible practices as if nothing has happened. In fact, PSTIF still asserts it did nothing wrong. This bold refusal to acknowledge responsibility does not warrant

remittitur. *Blanks v. Fluor Corp*, No. ED97810, 2014 WL 4589815, (Mo. App. E.D. Sept. 16, 2014.) (Defendants bold contention that they did no harm justified no remittitur.)

Similarly, the trial court cited no evidence from which it concluded that $2.5 million, as opposed to $8.0 million, is sufficient to adequately compensate the City for the harm caused by PSTIF's conduct. In fact, due to PSTIF's eight years of delay and endless litigation, the $2.5 million and interest is insufficient to cover the City's costs and expenses, after the award is split with the Attorney General.[3]

In the end, the trial court's order for remittitur was based on two legal principles—an unconstitutional statute and a due process concern. Neither issue was proper for consideration. One is unfounded and the other was waived. With no legitimate legal basis and no factual analysis at all, the trial court's order lacks any reasonable and substantial support. *Badahman v. Catering St. Louis*, 395 S.W.3d 29, 37 (Mo. 2013). There is no justification for the trial court's decision to remit the jury's punitive damage verdict. This Court should reinstate it in its entirety.

CONCLUSION

For the reasons stated above and in its Substitute Brief, the Court should reverse the trial court's order of remittitur and reinstate the punitive damage verdict awarded by the jury at trial.

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[3] Long after this case was appealed, the Attorney General asserted a demand for half of any punitive damage payment. *See* Attorney General's April 7, 2014, Notice of Lien.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that pursuant to Rule 84.06 of the Missouri Rules of Civil Procedure, this Brief complies with the limitations given in Rule 84.06(b), contains 5169 words, and is filed electronically under Supreme Court Rule 103 and Court Operating Rule 27.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via e-mail and U.S. First Class Mail, postage prepaid this 10th day of December, 2014, to:

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