

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

TONYA MUSSKOPF,

And

AUSTIN JARVIS

Plaintiffs,

vs.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION,

And

MICHAEL J. LOVE

And

KRISTINA JORDAN,

And

GARY LUDWICK,

And

JAMES HENSON,

And

STANLEY W. MCFADDEN,

Defendants.

Case No.: 22SL-CC02521

Division: 4

**DEFENDANT MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

COMES NOW Defendant Missouri Highways and Transportation Commission,
("MHTC"), by and through undersigned counsel, pursuant to Missouri Supreme Court Rule 55.27,

respectfully request that the Court grant it judgment on the pleadings with respect to Counts I and IV of Plaintiffs' Petition. In support of its motion, MHTC states as follows:

SUMMARY OF FACTS

Plaintiff Tonya Musskopf, the surviving natural mother of Kaitlyn Anderson (hereinafter "Anderson") and surviving grandmother of Jaxx Jarvis, and plaintiff Austin Jarvis, the surviving father of Jaxx Jarvis, ("Plaintiffs") allege that on or about November 18, 2021, Anderson, an employee of MHTC, and with Jaxx Jarvis in utero, was performing intersection striping within a traffic lane on Telegraph Road near the entrance ramp of Interstate I-255, in the County of St. Louis. (Plaintiffs' Petition ¶¶ 16 – 20). Plaintiffs allege that while Anderson crouched down placing lane control arrows an errant vehicle drove into her workspace, striking Anderson and Jaxx Jarvis in utero, causing death to both persons. (Plaintiffs' Petition ¶¶ 28, and 31 - 35).

Plaintiffs filed their *Second Amended Petition for Wrongful Death* on September 30, 2022. The filing of an amended petition has the effect of abandoning the prior petition. *McDonald v. City of Kansas City*, 285 S.W.3d 773, 774 (Mo. App. W.D. 2009). A motion to dismiss filed on a prior petition is moot after the filing of an amended petition. *Id.* As such, Defendant MHTC is required to file an additional motion to dismiss on the amended petition to preserve their rights on appeal should the Court deny their motion.

Contained therein, Counts I and Count IV of Plaintiffs' Petition assert wrongful death claims against the employer, MHTC for the deaths of Jaxx Jarvis and Anderson, respectively. Plaintiffs allege that the deaths of Anderson and Jaxx Jarvis resulted from the acts and omissions of MHTC. (Plaintiffs' Petition ¶¶ 34 - 35). Plaintiffs allege that violations of workplace rules, policies and procedures created a risk of injury. (Plaintiffs' Petition ¶¶ 25, 29, 48, and 69). Plaintiffs present in the Facts Common to All Counts section of their Petition that at all times

relevant Anderson, with Jaxx Jarvis in utero, was employed by MHTC and performing duties within the scope of that employment. (Plaintiffs' Petition ¶¶ 4, 16, 18, 20, and 25 - 28).

MOTION FOR JUDGMENT STANDARD

A motion for judgment on the pleadings tests whether the non-moving party's facts, which are presumed to be true, are nevertheless insufficient as a matter of law. *Mo. Mun. League v. State*, 489 S.W.3d 765, 767-68 (Mo. Banc 2016). "A motion for judgment on the pleadings is properly granted if, from the face of the pleadings, the moving party is entitled to judgment as a matter of law." *French v. Missouri Dep't of Corr.*, 601 S.W.3d 299, 300 (Mo. App. W.D. 2020) (quotation omitted); see also *Woods v. Missouri Dep't of Corr.*, 595 S.W.3d at 505 (similarly finding). "Conclusory allegations of fact and legal conclusions are not considered in determining whether a petition states a claim upon which relief can be granted." *Willamette Indus., Inc. v. Clean Water Comm'n of State of Mo.*, 34 S.W.3d 197, 200 (Mo.App. W.D. 2000), citing *Cady v. Hartford Accident and Indemnity Co.*, 439 S.W.2d 483, 485-86 (Mo. 1969). For a motion for judgment on the pleadings, "[t]he question presented by a motion for judgment on the pleadings is whether the moving party is entitled to judgment as a matter of law on the face of the pleadings." *Eaton v. Mallincrodt, Inc.*, 24 S.W.3d 596, 599 (Mo. Banc 2007). "The well-pleaded facts of the non-moving party's pleading are treated as admitted for purposes of the motion." *Id.*

ARGUMENT AND AUTHORITY

I. Plaintiffs have failed to state a claim in Count IV for which relief can be granted because the liability of MHTC is expressly set out in Missouri's Workers' Compensation Law.

Count IV of Plaintiffs' Petition sets forth Tonya Musskopf's and Austin Jarvis' claims for the wrongful death of Anderson against MHTC. (Plaintiffs' Petition ¶¶ 67 -78). First, we address the claim of Mr. Jarvis. Mr. Jarvis has not plead any facts within the four corners of Plaintiffs' Petition

that he is a member of the class of persons who are entitled to recover damages under Missouri law for Anderson's alleged wrongful death. An action for wrongful death may only be brought in Missouri pursuant to RSMo. § 537.080. The statute provides:

Whenever the death of a person results from any act, conduct, occurrence, transaction, or circumstance which, if death had not ensued, would have entitled such person to recover damages in respect thereof, the person or party who, or the corporation which, would have been liable if death had not ensued shall be liable in an action for damages, notwithstanding the death of the person injured, which damages may be sued for:

(1) By the spouse or children or the surviving lineal descendants of any deceased children, natural or adopted, legitimate or illegitimate, or by the father or mother of the deceased, natural or adoptive;

(2) If there be no persons in class (1) entitled to bring the action, then by the brother or sister of the deceased, or their descendants, who can establish his or her right to those damages set out in section 537.090 because of the death;

Austin Jarvis only alleges he is the surviving natural father of Jaxx Jarvis and does not plead a familial relationship with Anderson. (Plaintiffs' Petition ¶ 2). He, therefore, does not fall into class 1 of the wrongful death statute which allows a spouse, a child or child's lineal descendants or parents of a decedent to bring a lawsuit. Moreover, he does not fall into class 2 of the statute because he is not a sibling or descendant of a sibling of the decedent, Anderson, and it further appears that Anderson has a surviving parent, Ms. Musskopf, who would preclude a member of class 2 from bringing a wrongful death cause of action. Austin Jarvis's purported claim in Count IV, for the wrongful death of his girlfriend, Kaitlyn Anderson, must be granted because no such claim exists. *Sullivan v. Carlisle*, 851 S.W.2d 510, 513 (Mo. Banc 1993) (affirming dismissal of a petition on these grounds).

Secondly, assuming *arguendo*, Austin Jarvis could satisfy the class requirements of RSMo. § 537.080 and join Plaintiff Musskopf in bringing Count IV, the Plaintiffs' exclusive remedy for

compensation for the alleged wrongful death of Anderson is under the Workers' Compensation Law. Plaintiffs' claims are barred by workers' compensation exclusivity as a matter of law.

Workers' compensation exclusivity is an affirmative defense rather than a jurisdictional question. However, where an affirmative defense is proven on the face of the Petition, the case may be dismissed as a matter of law – *i.e.*, by a motion for judgment on the pleadings. “When the applicability of section 287.120 appears from the face of the petition, a defendant can also properly file a motion to dismiss for failure to state a claim upon which relief can be granted, *see* Rule 55.27(a)(6), or for judgment on the pleading pursuant to Rule 55.27(b) if the affirmative defense appears from the petition and other pleadings.” *Fortenberry v. Buck*, 307 S.W.3d 676, 679 n.2 (Mo.App. W.D. 2010). “A motion for judgment on the pleadings is properly granted if, from the face of the pleadings, the moving party is entitled to judgment as a matter of law.” *French v. Missouri Dep’t of Corr.*, 601 S.W.3d 299, 300 (Mo.App. W.D. 2020).

The Petition admits that at all relevant times, the decedent, Anderson, was an employee of MHTC. Also, uncontrovertibly, she was performing duties within the scope of that employment, with Jaxx Jarvis in utero. (Plaintiffs’ Petition ¶¶ 4, 16, 18, 20, and 25 - 30). Accordingly, Anderson and Jaxx Jarvis, having succumbed to death by an accident, with said injuries arising out of and in the course of employment with MHTC, the Missouri’s Workers’ Compensation Law (“the Act”) provides the exclusive remedy for the death of Anderson. Subsections 1 and 2 of RSMo. § 287.120 of the Act provides:

1. Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident or occupational disease arising out of and in the course of the employee's employment. Any employee of such employer shall not be liable for any injury or death for which compensation is recoverable under this chapter and **every employer and employees of such employer shall be released from all other liability whatsoever**, (emphasis added) whether to the employee or any other person,

except that an employee shall not be released from liability for injury or death if the employee engaged in an affirmative negligent act that purposefully and dangerously caused or increased the risk of injury. The term “**accident**” as used in this section shall include, but not be limited to, injury or death of the employee caused by the unprovoked violence or assault against the employee by any person.

2. The rights and remedies herein granted to an employee **shall exclude all other rights and remedies** of the employee, the employee's spouse, parents, personal representatives, dependents, heirs or next kin, **at common law** or otherwise, on account of such injury or death by accident or occupational disease, except such rights and remedies as are not provided for by this chapter.” (Emphasis added).

The highlighted phrase in section 1 of the above statute, has been referred as the “release clause” by courts; the first portion of the sentence of section 2 of the statute is called the “exclusion clause” and the last clause of that sentence the “exception clause.” See *Sharp v. Producers' Produce Co.*, 226 Mo. App. 189, 47 S.W.2d 242, 243–44 (1932).

Notwithstanding the forgoing statutory authority which specifically releases and excludes an employer from civil claims by any other persons whatsoever, Plaintiffs allege that “worker’s compensation cannot serve as a bar to Plaintiffs’ claims against Defendant MHTC,” because there is no remedy provided to Plaintiffs under Missouri Worker’s Compensation laws. (Plaintiffs Petition ¶ 76). Plaintiffs appear to allege that because neither Ms. Musskopf nor Mr. Jarvis are dependents of Anderson, they have received no compensation from MHTC under the Act. To state it differently, they allege the lack of receipt of monetary benefits under the Act forms the basis that their rights have not been provided for under the Act and the immunity granted to MHTC by RSMo. § 287.120 does not apply. (Plaintiffs Petition ¶¶ 75 - 77). Plaintiffs’ Count IV is premised on objectively misapplying the ending clause of RSMo. § 287.120(2). This clause, known generally as the “exception clause” reads as follows: “[e]xcept such rights and remedies as are not provided for by this chapter,” *Sharp v. Producers' Produce Co.*, 226 Mo. App. 189, 47 S.W.2d 242, 243–44 (1932), *Combs v. City of Maryville*, 609 S.W.2d 475, 476 (Mo. Ct. App. 1980).

Plaintiffs allege that because the Act does not permit compensation to the specific class of persons in which the Plaintiffs are categorized; Ms. Musskopf being a non-dependent parent of Anderson and Austin Jarvis being the father of Anderson's unborn child with no familial or marital relationship to Anderson, that Plaintiffs' rights and remedies are not "provided for" in RSMo. § 287.120(2) and they can bring a civil cause of action for the death of Anderson. This position is not supported by the Missouri's appellate decisions interpreting the "exception clause" of RSMo. § 287.120(2). The issue was first addressed in 1932 and since that time courts have upheld the same interpretation of the clause. The seminal case initially held: the "exception clause" is "[n]ot intended thereby to preserve the common-law rights ... contrary to other express provisions of the act and in opposition to the evident intent of the Legislature as indicated by the title to the act." *Sharp v. Producers' Produce Co.*, 226 Mo. App. 189, 47 S.W.2d 242, 245 (1932). Following the *Sharp* decision which involved a husband's common-law action for loss of services of his wife, the Missouri Court of Appeals has specifically addressed, similar to the facts in the case at bar, a non-dependent parent's inability to bring a civil wrongful death action for the death of a child injured and dying within the course of the child's employment in *Combs v. City of Maryville*. In *Combs*, the court followed the reasoning set forth in the decision of *Sharp*. The court held that phrase "provided for" within the "exception clause" of RSMo. § 287.120(2) was not intended by the Legislature and has not been interpreted by the courts to mean "compensated for." In other words, whether an individual received monetary benefits was not the measure to be applied. The *Combs* court cited and upheld the *Sharp* court's reasoning as follows: "We do not understand the words 'provided for' to mean 'compensated for.' It is common legal parlance to refer to different parts of a statute as 'provisions' thereof. * * * One definition of the word 'provide' as found in Webster's New International Dictionary, is 'to stipulate.' It is in that sense we believe the

Legislature used the words ‘provided for’ in the exception clause. It follows that, if a right or remedy be completely destroyed by the act, it would be ‘provided for’ or ‘prescribed’ or ‘defined,’ as we interpret those words”, . . . “it is our opinion the release clause and the exclusion clause were intended to take away this common-law right. . . . Plaintiff’s contention would result in placing the Legislature in the absurd position of saying in one breath, so to speak, that the . . . sole common-law right to recover . . . is destroyed and in the next breath, by said exception, saying we do not intend that this shall include . . . common-law rights. * * * Recognizing the rule that different portions of an act should be harmonized, if possible, we think the exception clause referred to other portions of the act which by their terms do not ‘provide for’ the ‘employee, his wife, her husband, parents,’ etc.” *Combs v. City of Maryville*, 609 S.W.2d 475, 476 (Mo. Ct. App. 1980).

Accordingly, “the release provisions in section 287.120.1 apply to any liability whatsoever to any person, including non-dependent parents, for injury or death caused by accident arising out of and in the course of employment.” *Page v. Clark Ref. & Mktg., Inc.*, 3 S.W.3d 385, 388 (Mo. Ct. App. 1999). Plaintiffs’ reliance on the “exception clause” is objectively a misapplication of the statutory instruction of RSMo. § 287.120(2). “Whatever actuated the Legislature in making use of this exception clause, we are certain it was not intended thereby to preserve the common-law rights . . . contrary to other express provisions of the act and in opposition to the evident intent of the Legislature as indicated by the title to the act.” *Sharp v. Producers’ Produce Co.*, 226 Mo. App. 189, 47 S.W.2d 242, 245 (1932).

Accordingly, by Missouri Legislative intent, it matters not that these particular Plaintiffs have received no compensation from MHTC. Count IV fails to state a claim and must be dismissed.

II. Plaintiffs have failed to state a claim in Count I for which relief can be granted because the liability of MHTC is expressly set out in Missouri's Workers' Compensation Law.

Count I of Plaintiffs' Petition sets forth Tonya Musskopf's and Austin Jarvis' claims for the wrongful death of the unborn child, Jaxx Jarvis, against MHTC. First, we address the claim of Ms. Musskopf. Ms. Musskopf has not plead any facts within the four corners of Plaintiffs' Petition that she is a member of the class of persons who are entitled to recover damages under Missouri law for Jaxx Jarvis' alleged wrongful death. An action for wrongful death may only be brought in Missouri pursuant to RSMo. § 537.080. The statute provides:

Whenever the death of a person results from any act, conduct, occurrence, transaction, or circumstance which, if death had not ensued, would have entitled such person to recover damages in respect thereof, the person or party who, or the corporation which, would have been liable if death had not ensued shall be liable in an action for damages, notwithstanding the death of the person injured, which damages may be sued for:

- (1) By the spouse or children or the surviving lineal descendants of any deceased children, natural or adopted, legitimate or illegitimate, or by the father or mother of the deceased, natural or adoptive;
- (2) If there be no persons in class (1) entitled to bring the action, then by the brother or sister of the deceased, or their descendants, who can establish his or her right to those damages set out in section 537.090 because of the death;

Ms. Musskopf only alleges she is the surviving natural grandmother of Jaxx Jarvis. (Plaintiffs' Petition ¶ 1). She, therefore, does not fall into class 1 of the wrongful death statute which allows a spouse, a child or child's lineal descendants or parents of a decedent to bring a lawsuit. Moreover, she does not fall into class 2 of the statute because she is not a sibling or descendant of a sibling of the decedent, Jaxx Jarvis. Finally, it further appears that Jaxx Jarvis has a surviving parent, Austin Jarvis, who would preclude a member of class 2 from bringing a wrongful death cause of action. Tonya Musskopf's purported claim in Count 1, for the wrongful death of her grandson Jaxx

Jarvis, must be granted because no such claim exists. *Sullivan v. Carlisle*, 851 S.W.2d 510, 513 (Mo. Banc 1993) (affirming dismissal of a petition on these grounds).

Secondly, assuming *arguendo*, Muszkopf could satisfy the class requirements of RSMo. § 537.080 and join Plaintiff Jarvis in bringing Count I for the death of Jaxx Jarvis, the Plaintiffs' exclusive remedy for compensation for the alleged wrongful death of Jaxx Jarvis is under the Workers' Compensation Law. As previously discussed Section I herein, the release and exclusion provisions in RSMo. § 287.120(2) expressly excludes an employer of "all other liability whatsoever" to the employee and to that employee's "parents, personal representatives, dependents, heirs or next of kin at common law or otherwise, on account of such injury or death by accident ..." (emphasis added). MHTC incorporates its prior arguments and caselaw set forth in the above section regarding the death claim for Kaitlyn Andersen regarding the broad application of RSMo. § 287.120 to the claim for the unborn child.

In addition, there is further support within the Act that the death claim for Jaxx Jarvis is subject to the release and exclusion clauses of RSMo. § 287.120. We need only examine the Act's clear statutory definition of "employee." Jaxx Jarvis falls within the definition of employee under § 287.020(1). The Act provides that the word "employee" as used in its many parts shall be construed to mean, when the employee dies, as the result of a workplace accident, to include within its definition the employee's dependents.

Moreover, related statutes further clarify the statutory definition and intent that Jaxx Jarvis, according to current Missouri statute, shall be included within the classification of an "employee" under RSMo. § 287.120 because Jaxx Jarvis is a "dependent" of Anderson.

RSMo. § 287.020(1) states:

The word "**employee**" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract

of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Except as otherwise provided in section 287.200, any reference to any employee who has been injured shall, when the employee is dead, also include his or her **dependents**, and other persons to whom compensation may be payable.

RSMo. § 287.240 then defines “dependent” as applicable to how compensation shall be provided under Chapter 287 Workers’ Compensation Law. RSMo. § 287.240(3) states:

(3) The word "**dependent**" as used in this chapter shall mean:

...

(b) A **natural, posthumous**, or adopted child or children, whether legitimate or illegitimate, including any stepchild claimable by the deceased on his or her federal tax return at the time of injury, under the age of eighteen years, or over that age if physically or mentally incapacitated from wage earning, upon the parent legally liable for the support or with whom he, she, or they are living at the time of the death of the parent . . .

Jaxx Jarvis’s rights under Missouri law began at his conception. RSMo. § 1.205 states:

1. The general assembly of this state finds that:

- (1) The life of each human being begins at conception;
- (2) Unborn children have protectable interests in life, health, and well-being;
- (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child.

2. Effective January 1, 1988, the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state.

3. As used in this section, the term "unborn children" or "unborn child" shall include all unborn child or children or the offspring of human beings from the moment of conception until birth at every stage of biological development.

In applying the definition of “employee” found in RSMo. § 287.120(2) we find Andersen to be an employee of MHTC who has died. Next, Plaintiffs acknowledge that Jaxx Jarvis is Anderson’s unborn child and dependent. The laws of Missouri are specifically structured so as to contemplate the present matter. Jaxx Jarvis was a “dependent” of Anderson. **Anderson’s injuries and remedies are statutorily prescribed under the exclusivity of the Workers’ Compensation Laws, and thus the rights and remedies for Jaxx Jarvis are likewise under the exclusivity of the Workers’ Compensation Laws.** There is no ambiguity, Plaintiffs’ sole remedy is under the Act, and Count I must be dismissed.

When looking at the Missouri state law statutory scheme, the inclusion of any “posthumous” child as a “dependent” in § 287.240 indicates a legislative intent that supports Jaxx Jarvis’ classification as a “dependent” of Anderson. In many States, posthumous children are not included as the deceased dependents in Workers Compensation claims. In Missouri, under Workers’ Compensation actions, when an injured worker dies, dependent status is determined at the time of injury, not the time of death. See, e.g., *Gervich v Condaire, Inc.*, 370 S.W.3d 617, 622 (Mo. 2012). If Jaxx Jarvis died after Anderson passed away, in which case we likely have no way of knowing, then he would have fallen under the “posthumous” children category. “Construction of statutes should avoid unreasonable or absurd results.” *Reichert v. Bd. of Educ. of St. Louis*, 217 S.W.3d 301, 305 (Mo. Banc 2007). When reading the statute as a whole, it is clear that § 287.240 intended to include any unborn child of an employee as “dependent.” To deny Jaxx Jarvis’ status as a “dependent” under § 287.240 would be inconsistent with the inclusion of any “posthumous” child by the statute and would be a denial of his identity as a natural son of Anderson at the time of their death, leading to unreasonable and absurd results conflicting the meaning and intention of the statute.

Plaintiffs allege the application of statutory language reaches an unfair result if the employee's child is injured by the same workplace accident that killed the employee. As before, this fairness analysis is precluded by the Legislature's command to "construe the provisions of this chapter strictly." RSMo. § 287.800. A strict construction means interpreting the statute as written. *Linkous v. Kirkwood Sch. Dist.*, 626 S.W.3d at 894; *Shaw v. Mega Indus.*, 406 S.W.3d at 472.

It is clear that the Legislature considered, and textually approved, an exception where the definition of "employee" stated in § 287.020(1) was not in harmony with § 287.200. But the Legislature did not carve out a similar extension for situations in which an *in utero* child perishes along with the mother in a workplace accident. It cannot be said that such situations were beyond the contemplation of the Legislature. There are factually similar, and equally tragic, situations appearing in Missouri case law. *See, LeSage v. Dirt Cheap Cigarettes & Beer, Inc.*, 102 S.W.3d 1 (Mo. banc 2003) (employee mother and *in utero* child killed in an armed robbery). It is also not patently unreasonable to afford the same rights and limitations to a mother and her *in utero* child.

Since the 2005 amendments that added RSMo. § 287.800, the courts have held that a strict construction means that exceptions or expansions of the statutory language must come from the Legislature. Although the death of a child with the parent in a workplace accident is not common, the fact pattern at issue in this case is not unique or unforeseeable. **Pregnant women and their *in utero* children have long been part of the workforce. An employer cannot exclude the *in utero* child from the workplace. The Legislature has chosen not to modify the workers' compensation act to take the *in utero* child out of the definition of "employee" in RSMo. § 287.020. The Court should not create such an exception for this case.**

WHEREFORE, pursuant to the allegations and facts presented in Count I and IV of Plaintiffs Petition, by the plain language of the Missouri Worker's Compensation Act, and

specifically RSMo. Chapter 287, Plaintiffs' decedent Anderson and Jaxx Jarvis, are an "employee" of MHTC, and the Missouri Worker's Compensation Act provides the exclusive remedy for Plaintiffs' claims in Counts I and IV of Plaintiffs' Petition. Therefore, MHTC states that this Court has no personal or subject matter jurisdiction over MHTC, and Plaintiffs fail to state a claim against MHTC upon which relief can be granted. MHTC has established a right to judgment as a matter of law on the following issues and asks the Court to enter an Order finding:

1. That Plaintiff Tonya Muszkopf does not have standing under RSMo. § 537.080 to bring a claim for the death of her grandson, Jaxx Jarvis (Count I);
2. That Plaintiff Austin Jarvis does not have standing under RSMo. § 537.080 to bring a claim for the death of his girlfriend, Kaitlyn Anderson (Count IV);
3. That Tonya Muszkopf's claim against MHTC for the death of her daughter Kaitlyn Anderson (Count IV) is barred by the exclusive remedy provision of RSMo. § 287.120; and
4. That Austin Jarvis' claim against MHTC for the death of his unborn son Jaxx Jarvis (Count I) is barred by the exclusive remedy provision of RSMo. § 287.120 pursuant to the definition of "employee" stated in RSMo. § 287.020(1);

and for such other relief as the Court deems appropriate.

Respectfully submitted,

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

/s/ Theresa A. Otto

Theresa A. Otto	MBN 43453
Patrick M. Hunt	MBN 63898
Christopher M. Isbell	MBN 71412

BATY OTTO CORONADO SCHEER PC
One Main Plaza
4435 Main Street, Suite 1100
Kansas City, MO 64111
Telephone: (816) 531-7200
Facsimile: (816) 531-7201
totto@batyotto.com
phunt@batyotto.com
cisbell@batyotto.com

Jay L. Smith # 40768
Assistant Chief Counsel
600 Northeast Colbern Rd.
Lee's Summit, MO 64086-4712
Telephone: (816) 607-2077
Facsimile: (816) 622-0399
Jay.Smith@modot.mo.gov

Rich Tiemeyer # 23284
Chief Counsel

CERTIFICATE OF FILING

I hereby certify that on November 14, 2022, the foregoing document was filed with the Court via the ECF electronic filing system, causing a service copy to be sent electronically, to:

Andrew G. Mundwiller MO 62497
THE CAGLE LAW FIRM, LLC
500 North Broadway, Ste 1605
St. Louis, MO 63102
Telephone: (314) 241-1700
Facsimile: (888) 292-3677
andrew@caglellc.com
ATTORNEY FOR PLAINTIFFS

/s/ Theresa A. Otto

Attorney for Defendant Missouri Highways
and Transportation Commission