

No. ED 99246

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

RUTH NISHIDA, ALISON TUCKER, AND NICHOLAS WHITE,

Plaintiffs-Appellants,

v.

PHARMACIA CORPORATION,

Defendant-Respondent.

ON APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
AT ST. LOUIS, MISSOURI

**BRIEF OF TORTS PROFESSORS MICHAEL D. GREEN AND
W. JONATHAN CARDI AS *AMICI CURIAE*
IN SUPPORT OF APPELLANTS**

Brent M. Rosenthal
Texas State Bar No. 17281075
LAW OFFICE OF BRENT M. ROSENTHAL, PC
5400 LBJ Freeway, Suite 1260
Dallas, Texas 75240
Phone: (214) 871-6602
Fax: (214) 871-6640
E-mail: brent@brentmrosenthallaw.com

Counsel for *Amici Curiae* Torts Professors

Dated: February 8, 2013

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

INTEREST OF AMICI CURIAE 1

INTRODUCTION AND SUMMARY OF ARGUMENT 1

POINTS RELIED ON 3

ARGUMENT

POINT I: IN PLACING PRIMARY EMPHASIS ON ITS
DETERMINATION THAT THE TYPE OF INJURIES
SUSTAINED BY PLAINTIFFS AND THE MANNER IN
WHICH THEY WERE SUSTAINED WERE NOT
FORESEEABLE TO MONSANTO IN CONCLUDING
THAT MONSANTO OWED NO DUTY OF
ORDINARY CARE TO PLAINTIFFS, THE TRIAL
COURT DEVIATED FROM THE APPROACH TO
DETERMINING DUTY ENDORSED BY THE THIRD
RESTATEMENT AND LARGELY APPLIED BY THE
CALIFORNIA SUPREME COURT. 4

CONCLUSION 16

CERTIFICATE OF COMPLIANCE 16

CERTIFICATE OF SERVICE 17

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>A.W. v. Lancaster County. Sch. Dist. 0001</i> , 794 N.W.2d 907 (Neb. 2010)	12, 13
<i>B.R. ex rel. Jeffs v. W.</i> , 275 P.3d 228 (Utah 2012)	13
<i>Ballard v. Uribe</i> , 715 P.2d 624 (Cal. 1986)	8
<i>Cabral v. Ralphs Grocery Co.</i> , 248 P.3d 1170 (Cal. 2011).....	3, 8, 9, 10, 15
<i>Gipson v. Kasey</i> , 150 P.3d 228 (Ariz. 2007)	10
<i>Thompson v. Kaczinski</i> , 774 N.W.2d 829 (Iowa 2009)	11, 12
 <u>Statutes</u>	
CAL. CIV. CODE § 1714(a)	9
 <u>Other Authorities</u>	
Jonathan Cardi, <i>Purging Foreseeability: The New Version of Duty and Judicial Power in the Proposed Restatement (Third) of Torts</i> , 58 VAND. L.REV. 739 (2005)	10
Michael D. Green, <i>Symposium: Flying Trampolines and Falling Bookcases: Understanding the Third Restatement of Torts (2010)</i> , 37 WM. MITCHELL L. REV. 1011 (2011)	5
RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL & EMOTIONAL HARM § 7 (2010)	<i>passim</i>
RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL & EMOTIONAL HARM § 7 cmt. a (2010)	6, 9, 14

<u>Other Authorities (cont.)</u>	<u>Page</u>
RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL & EMOTIONAL HARM § 7 cmts. c-g (2010)	7
RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL & EMOTIONAL HARM § 7 cmt. i (2010)	7
RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL & EMOTIONAL HARM § 7 cmt. j (2010)	8
RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL HARM § 7 cmt. j (Proposed Final Draft No. 1, 2005)	11

INTEREST OF THE AMICI CURIAE

The *Amici Curiae* are law professors who regularly teach and write about the law of torts. Professor Michael D. Green of Wake Forest University Law School served as co-reporter for the Restatement (Third) of the Law of Torts: Liability for Physical and Emotional Harm (2010). Professor W. Jonathan Cardi has published articles on various issues in tort law including the proper role of foreseeability in determining the existence of duty and the scope of liability. Amici have no stake in the outcome of this case other than their academic interest in the logical and rational development of the law. Because this case implicates fundamental issues of tort law, amici believe that their unique perspective may assist the Court in its resolution of this case.

This brief was prepared pro bono. No counsel for a party authored this brief in whole or in part, and no person or entity, including *amici* and their counsel, made a monetary contribution for the preparation and filing of this brief (other than production and filing costs which were borne by counsel for amici).

INTRODUCTION AND SUMMARY OF ARGUMENT

The plaintiffs/appellants in this case allege that they developed non-Hodgkins' lymphoma as a result of their exposure to PCBs released into the environment by Monsanto products and equipment. The plaintiffs presented evidence that Monsanto made more than 99 percent of the products that contained PCBs in the United States; that PCBs released into the environment by the use or

disposal of these products circulated through and remained in the environment for decades; that sophisticated blood testing revealed that the plaintiffs had elevated levels of PCBs in their bloodstreams, that the most likely sources (if not the only possible sources) of the PCBs were Monsanto products, and that, within reasonable medical probability, the plaintiffs' non-Hodgkins lymphoma was caused by their excessive levels of PCBs. The plaintiffs also presented evidence, in the form of documents generated by Monsanto and detailed expert testimony, that Monsanto was aware of the ability of the PCBs that it introduced into the stream of commerce to remain in and to permeate the environment and in the likelihood that those PCBs would cause harm of the type experienced by plaintiffs. Nevertheless, the trial court found that because the plaintiffs could not specify the manner of exposure and because the exposure could have occurred through disposal or misuse of the products containing PCBs, the defendant Pharmacia (Monsanto) did not owe a duty to the plaintiffs and could not be liable in tort.

The torts professors who file this brief as amici curiae submit that the trial court erred in granting Monsanto an exemption from its general duty to exercise ordinary care to avoid causing harm to others. Under the approach of the Restatement (Third) of Torts: Liability for Physical Harm (2010), largely endorsed by the California Supreme Court, an exception to the general duty of ordinary care should be recognized only in exceptional cases, when an articulated principle or policy warrants denying or limiting liability in a particular category of cases. The trial court identified no such compelling principle or policy, and no

specific, limited category of cases, excusing Monsanto from its general duty of ordinary care. Moreover, under both the Restatement and California law, the foreseeability of the precise type and manner of injury, upon which the trial court placed paramount importance, is not a consideration in determining whether an exception to duty should be recognized. Rather, the foreseeability of the type and manner of injury is a factor to be considered by the jury in determining whether the defendant breached its duty of ordinary care. The trial court's order of summary judgment should be reversed so that the issue of the foreseeability of the plaintiffs' harm could be evaluated by the jury.

POINTS RELIED ON

1. The trial court erred in granting summary judgment in favor of Monsanto based on its conclusion that Monsanto owed no duty to plaintiffs, because the trial court placed excessive weight on its own conclusion that the specific type and manner of harm was unforeseeable, in that under the applicable law and better-reasoned view that type of foreseeability determination has no place in the duty analysis.

RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL & EMOTIONAL
HARM § 7 (2010)

Cabral v. Ralphs Grocery Co., 248 P.3d 1170 (Cal. 2011)

ARGUMENT

IN PLACING PRIMARY EMPHASIS ON ITS DETERMINATION THAT THE TYPE OF INJURIES SUSTAINED BY PLAINTIFFS AND THE MANNER IN WHICH THEY WERE SUSTAINED WERE NOT FORESEEABLE TO MONSANTO IN CONCLUDING THAT MONSANTO OWED NO DUTY OF ORDINARY CARE TO PLAINTIFFS, THE TRIAL COURT DEVIATED FROM THE APPROACH TO DETERMINING DUTY ENDORSED BY THE THIRD RESTATEMENT AND LARGELY APPLIED BY THE CALIFORNIA SUPREME COURT.

In ruling that Monsanto cannot be liable under California law for plaintiffs' injuries caused by their exposure to Monsanto's PCBs, the trial court relied heavily on its own determination that "Monsanto could not reasonably foresee that its conduct would harm the plaintiffs." Slip op. at 11. Expressing the view that "[f]oreseeability is the chief factor in the duty analysis," the trial court believed that "if the court determines that the injury was not foreseeable, then there was no duty and the remaining factors need not be discussed." Slip op. 9. The trial court's finding that plaintiffs' injuries were unforeseeable to Monsanto required it, in its view, to rule that Monsanto owed no duty to plaintiffs and could not be liable for their injuries as a matter of law.

As plaintiffs demonstrate in their initial brief in this appeal, the record in this case does not permit a reasonable conclusion—as a matter of law or under any other common legal standard—that plaintiffs' injuries resulting from their

exposure to Monsanto PCBs were in any sense unforeseeable. The point of this brief, however, is to emphasize that the trial court's approach in placing "chief" significance on foreseeability in determining whether Monsanto owed any duty to plaintiffs is flatly inconsistent with the approach urged by the American Law Institute ("ALI") in its most recent Restatement of the Law of Torts and, more importantly, with California's most recent pronouncements on the issue.

Following extensive commentary and debate, the ALI approved and published the Restatement (Third) of Torts: Liability for Physical and Emotional Harm (2010). As Professor Michael Green, one of the Reporters of the Restatement, acknowledged, the "role of foreseeability in duty determinations is probably the most controversial provision" in the third Restatement. Michael D. Green, *Symposium: Flying Trampolines and Falling Bookcases: Understanding the Third Restatement of Torts (2010)*, 37 WM. MITCHELL L. REV. 1011, 1017 (2011). Under the ALI's approach, foreseeability has no place in the duty analysis, because foreseeability always depends on the specific facts of the case, which should be for the jury to determine unless no reasonable person could disagree. Rather, duty rules must be determined on a categorical basis so that it could be decided as a matter of law by the court and applied in similar cases.

The ALI's general rule governing duty in a tort case is set forth in Section 7 of the Restatement (Third). That section provides:

- (a) An actor ordinarily has a duty to exercise reasonable care when
the actor's conduct creates a risk of physical harm.

(b) In exceptional cases, when an articulated countervailing principle or policy warrants denying or limiting liability in a particular class of cases, a court may decide that the defendant has no duty or that the ordinary duty of reasonable care requires modification.

RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL & EMOTIONAL HARM § 7 (2010). Thus, the court begins its duty analysis with the broad proposition that the defendant is simply under a duty to exercise reasonable care not to cause harm. The court then determines whether the case belongs to a category of cases in which, for policy reasons, no duty of reasonable care should be imposed on the defendant. The drafters of the duty rule emphasize that “[n]o-duty rules are appropriate only when a court can promulgate relatively clear, categorical, bright-line rules of law applicable to a general class of cases.” *Id.*, §7 cmt. a. These categories—exceptions to the general rule that an actor has a duty to exercise ordinary care not to create a risk of physical harm—may be determined by a variety of factors, such as:

- the relationship between the actor and the person harmed (i.e., landowners are often free from liability to some trespassers)
- social norms of responsibility (social hosts may be free from liability for harms caused by intoxicated guests; persons in competitive sports may owe no duty to spectators)

- whether a duty would conflict with another area of law (the First Amendment may limit the duty of publishers to persons who may be injured as a result of their publications)

among many others. *Id.*, §7 cmts. c-g. The essential characteristic of a no-duty determination is that it applies to a specific category of factual scenarios and can be applied in similar cases without reference to the particular facts of those cases. Viewing the question of duty as a categorical determination rather than as a fact-specific inquiry “also has the benefit of providing clearer rules of behavior for actors who may be subject to tort liability and who structure their behavior in response to that potential liability.” *Id.*, §7, cmt. i.

As the drafters further explained, the issue of the foreseeability of harm to the particular plaintiff in the case is not a duty question but a proximate cause question. Foreseeability does not limit the duty of ordinary care, but instead narrows the actor’s scope of liability for breach of that duty.

In order to determine whether appropriate care was exercised, the factfinder must assess the foreseeable risk at the time of the defendant’s alleged negligence. The extent of foreseeable risk depends on the specific facts of the case and cannot be usefully assessed for a category of cases; small changes in the facts may make a dramatic change in how much risk is foreseeable. Thus, . . . courts should leave such determinations to the juries unless no reasonable person could differ on the matter.

Id., §7, cmt. j. As the last quoted sentence indicates, this does not mean that a court cannot dismiss a case despite a complete lack of evidence of foreseeability, but “such a ruling is not a no-duty determination. Rather, it is a determination that no reasonable person could find that the defendant has breached the duty of reasonable care.” *Id.* The ALI intended its elimination of foreseeability from the duty analysis order “to facilitate more transparent explanations of the reasons for a no-duty ruling and to protect the traditional function of the jury as factfinder.” *Id.*

The approach of the California Supreme Court in its recent opinion in *Cabral v. Ralphs Grocery Co.*, 248 P.3d 1170 (Cal. 2011) reflects the third Restatement’s conclusion that foreseeability is primary a factual, rather than a legal, inquiry. Although California does not ascribe to the Restatement's view that foreseeability should not be considered at all in determining whether an exception to duty applies, it considers foreseeability, for the purpose of determining whether a duty exists, "at a relatively broad level of generality." 248 P.3d at 1175. The court's task in determining duty "is not to decide whether a *particular* plaintiff's injury was reasonably foreseeable in light of a *particular* defendant's conduct, but to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed." *Id.* (quoting *Ballard v. Uribe*, 715 P.2d 624, 628 n.6 (Cal. 1986) (emphasis in original)).

In *Cabral*, a driver for the defendant parked his tractor-trailer on the shoulder of a freeway designated for emergency parking only, although he was not

experiencing an emergency. A motorist either fell asleep or suffered an unknown medical condition, drove off the road, and struck the rig, sustaining fatal injuries. The widow of the motorist sued the driver's employer; the employer argued that it owed no duty to a motorist who failed to keep his vehicle on the road. Like the third Restatement, California recognizes a general, default duty to exercise reasonable care to avoid risking harm to others, then considers whether "carving out an entire category of cases from that general duty rule is justified by clear considerations of policy." 248 P.3d at 1175; *compare* CAL. CIV. CODE § 1714(a) (stating California's duty rule) with RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL & EMOTIONAL HARM § 7 (2010). This approach, the California Supreme Court observed, "preserve[s] the crucial distinction between a determination that the defendant owed the plaintiff no duty of ordinary care, which is for the *court* to make, and a determination that the defendant did not breach the duty of ordinary care, which in a jury trial is for the *jury* to make." *Id.* (emphasis in original). In this respect, the Court noted, "California law accords with the Restatement view." *Id.* at 1176 n. 3 (quoting the Restatement, § 7, cmt. a). In deciding whether to recognize an exception to the general duty to exercise due care, the court noted, the foreseeability question "is not whether [the rig driver] could reasonably have foreseen an accident at that exact spot along the highway"--which would be a jury question of proximate cause--but "whether it is generally foreseeable that a vehicle stopped alongside a freeway may be hit by one departing, out of control, from the road"--which is a legal question for the court.

Id. at 1179. Following an approach largely consistent with that of the third Restatement, the court "decline[d] to create a categorical rule exempting those parking alongside freeways from the duty of drivers to exercise ordinary care for others in their use of streets and highways." *Id.* at 1172.

Although the ALI's approach differs from the emphasis on foreseeability that many courts have taken historically, an increasing number of jurisdictions are adopting it as the better reasoned view. Even before the ALI formally approved third Restatement, the Arizona Supreme Court expressly held that "foreseeability is not a factor to be considered by courts when making determinations of duty" and rejected "any contrary suggestion in prior opinions." *Gipson v. Kasey*, 150 P.3d 228, 231 (Ariz. 2007). In *Gipson*, the court considered whether a restaurant employee who furnished prescription painkillers to a co-worker who then provided them to her boyfriend could be liable for the death of the boyfriend caused by the toxic effect of the drugs and alcohol. The employee argued that he owed no duty to the boyfriend because, among other reasons, the outcome was not foreseeable. The Arizona Supreme Court rejected the argument, noting that the foreseeability of a particular type of harm is inherently a case-specific inquiry.

Whether an injury to a particular plaintiff was foreseeable by a particular defendant necessarily involves an inquiry into the specific facts of an individual case. See W. Jonathan Cardi, *Purging Foreseeability: The New Version of Duty and Judicial Power in the Proposed Restatement (Third) of Torts*, 58 VAND. L. REV. 739, 801

(2005). Moreover, foreseeability often determines whether a defendant acted reasonably under the circumstances or proximately caused injury to a particular plaintiff. Such factual inquiries are reserved for the jury. The jury's fact-finding role could be undermined if courts assess foreseeability in determining the existence of duty as a threshold legal issue.

150 P.3d at 231. Citing a draft of the third Restatement, the court observed its decision to consider foreseeability as relevant to the issue of breach of duty but not existence of duty "desirably recognizes the jury's role as factfinder and requires courts to articulate clearly the reasons, other than foreseeability, that might support duty or no-duty determinations." *Id.* (citing RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL HARM § 7 cmt. j (Proposed Final Draft No. 1, 2005)).

In *Thompson v. Kaczinski*, 774 N.W.2d 829 (Iowa 2009), a partially disassembled trampoline left unsecured on the defendants' property was blown onto an adjacent road by a passing storm. A motorist driving on the road lost control of his car when trying to avoid the trampoline and suffered injuries. The trial court held that the defendant property owners owed no duty to the motorist because the occurrence that caused the injury was unforeseeable. 774 N.W.2d at 835. The Iowa Supreme Court reversed, expressly adopting the approach to determining duty embraced by the third Restatement:

The drafters acknowledge that courts have frequently used foreseeability in no-duty determinations, but have now explicitly

disapproved the practice in the Restatement (Third) and limited no-duty rulings to “articulated policy or principle in order to facilitate more transparent explanations of the reasons for a no-duty ruling and to protect the traditional function of the jury as factfinder.” *Id.* at 98-99. We find the drafters' clarification of the duty analysis in the Restatement (Third) compelling, and we now, therefore, adopt it.

Id. The court added that no “principle or policy consideration exempts property owners from a duty to exercise reasonable care to avoid the placement of obstructions on a roadway.” *Id.* Thus, based on the Restatement’s approach to the duty issue, the court reversed the no-duty conclusion of the trial court. *Id.*

Similarly, the Nebraska Supreme Court adopted the third Restatement’s duty analysis in *A.W. v. Lancaster County. Sch. Dist. 0001*, 794 N.W.2d 907 (Neb. 2010). In that case, the mother of an elementary school student sued the school district after an intruder entered her son’s school and sexually assaulted him in the restroom. The trial court concluded that the assault was not foreseeable and granted summary judgment for the school district. But the Nebraska Supreme Court reversed. Applying “the reasoning of the Restatement (Third) and [its] fellow courts that have endorsed it,” the court held that “foreseeable risk is an element in the determination of negligence, not legal duty.” 794 N.W.2d at 917. Foreseeability, the court continued, “involves *factual* inquiries that should not be reframed as matters of law.” *Id.* (emphasis in original). Courts “should leave such

determinations to the trier of fact unless no reasonable person could differ on the matter.” *Id.*

Even those jurisdictions that have not expressly adopted the third Restatement’s approach to duty have recognized the very limited role that foreseeability plays in the duty analysis. In *B.R. ex rel. Jeffs v. W.*, 275 P.3d 228 (Utah 2012), healthcare providers prescribed a variety of prescription drugs to a patient, who then murdered his wife. The children of the patient and his wife sued the healthcare providers for negligence. The trial court dismissed the action, holding that the healthcare providers owed no duty to non-patients. The Utah Supreme Court reversed, finding “no basis for a rule excluding all healthcare providers from liability for carelessly prescribing medications that affirmatively cause their patients to harm third parties.” 275 P.3d at 233-34. Quoting from the third Restatement, the court emphasized that duty

should be articulated in “relatively clear, categorical, bright-line rules of law applicable to a general class of cases.” The duty factors are thus analyzed at a broad, categorical level for a class of defendants. In this case, for example, the duty question does not turn on the specific combination of pharmaceuticals that Nurse West prescribed or the particular injury that it allegedly caused. Rather, the duty analysis considers healthcare providers as a class, negligent prescription of medication in general, and the full range of injuries that could result in this class of cases.

Id. at 235 (quoting RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL & EMOTIONAL HARM § 7, cmt. a (2010)). Moreover, the court rejected the defendants’ reliance on the supposed lack of foreseeability of the harm in contending that they owed no duty to the plaintiffs. The defendants’ arguments, the court stated, “conflate the kind of foreseeability relevant to the duty analysis with the foreseeability inquiries significant to matters of breach and proximate cause.” 275 P.3d at 235. The appropriate foreseeability inquiry for duty analysis, in the court’s words, is “whether a category of cases includes individual cases in which the likelihood of some type of harm is sufficiently high that a reasonable person could anticipate a general risk of injury to others.” *Id.* at 235-36. The relevant category of cases “consists of healthcare providers negligently prescribing medications who the injure third parties.” *Id.* at 236. The foreseeability inquiry is “whether there are circumstances within that category in which a healthcare provider could foresee injury. We think so.” *Id.* In contrast, the foreseeability inquiry proposed by the defendants was “[w]hether—in this specific case—the drug interactions and psychological considerations at stake would lead a reasonable physician to take additional precautions because she could foresee that Mr. Ragsdale might become violent or dangerous.” *Id.* at 235. These questions “about the specific mechanism of injury fit within proximate cause, not duty.” *Id.*

Under both the third Restatement and California law as described in *Cabral*, the trial court erred in allowing its determination of the foreseeability of the particular harm sustained by plaintiffs, and the precise manner in which the

harm was sustained, to dictate disposition of the duty issue. That foreseeability issue is for the jury to decide in considering whether Monsanto breached its duty to plaintiffs. At most, the trial court was authorized to consider whether it is "generally foreseeable" that the widespread distribution of PCBs throughout the country might cause injury to bystanders exposed to them through their use or disposal. While the jury is free to determine that Monsanto could not reasonably foresee that its PCBs would cause plaintiffs' cancers in the manner that it did, the legal conclusion that "the *category* of negligent conduct at issue"--manufacture and distribution of PCBs--"is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed" (*Cabral*, 248 P.3d at 1175, emphasis added) should have been unavoidable.

CONCLUSION

The trial court erred in deciding that because the precise circumstances of plaintiffs' injuries were not foreseeable to Monsanto, Monsanto had no duty to exercise ordinary care to protect plaintiffs from injury. The Court should reverse the decision of the trial court and remand the case for trial on the merits.

Respectfully submitted,

Brent M. Rosenthal
Texas State Bar No. 17281075
LAW OFFICE OF BRENT M. ROSENTHAL, PC
5400 LBJ Freeway, Suite 1260
Dallas, Texas 75240
Phone: (214) 871-6602
Fax: (214) 871-6640
E-mail: brent@brentmrosenthallaw.com

Counsel for *Amici Curiae* Torts Professors

CERTIFICATE OF COMPLIANCE

Pursuant to Missouri Supreme Court Rules 84.06(B)-(C) and Eastern District Rule XXX, I certify that this brief contains 3853 words according to the word count function of Microsoft Word for Mac 2011 by which it was prepared.

Brent M. Rosenthal
Counsel for *Amici Curiae* Torts Professors

CERTIFICATE OF SERVICE

I certify that the foregoing brief was served by U.S. Mail and by e-mail to the following counsel of record:

Thomas M. Carney
Charles E. Merrell
Mark G. Arnold
Carol Rutter
Adam E. Miller
Julia T. Farrell
Robyn D. Buck
HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105