

Estop Me If You've Heard This One Before: When Judicial Integrity Is Not Protected by the Doctrine of Judicial Estoppel [Vacca v. Missouri Dep't of Labor & Indus. Relations, 2017 WL 5146154 (Mo. Ct. App. Nov. 7, 2017), transferred to Mo. S. Ct. (Mar. 6, 2018)].

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Matthew Vacca, Administrative Law Judge for the Workers' Compensation Division, filed for divorce and asked for maintenance from his wife because he was unable to work. He also filed a lawsuit against his employer for retaliation and wrongful termination where he stated he was capable of continuing to work with accommodations. The Missouri Court of Appeals ruled the doctrine of judicial estoppel, which prevents parties from making inconsistent statements to two courts, did not apply. However, the purpose of the doctrine is to promote judicial integrity. An Administrative Law Judge, who acts as an officer of the court, should not be able to abuse the same system he is charged with upholding by making contradictory statements to the court.

I. INTRODUCTION

A litigant “cannot have its cake and eat it too” by making contradictory arguments to different courts.¹ In an effort to promote the integrity of the judicial system, such contradictory statements are prohibited by the doctrine of judicial estoppel.² The integrity of the courts is diminished when a litigant takes contradictory positions in different cases, particularly when the litigant is an officer of the court, such as an administrative law judge.³ This is exactly what Administrative Law Judge Matthew Vacca did in *Vacca v. Missouri Department of Labor & Industrial Relations*.⁴

1. Nicole C. Frazer, *Reassessing the Doctrine of Judicial Estoppel: The Implications of the Judicial Integrity Rationale*, 101 VA. L. REV. 1501, 1543 (2015).

2. *Id.* at 1511

3. State Bd. of Accountancy v. Integrated Fin. Sols., LLC, 256 S.W.3d 48, 54 (Mo. 2008) (quoting Shockley v. Dir., Div. of Child Support Enforcement, 980 S.W.2d 173, 175 (Mo. Ct. App. 1998)).

4. *Vacca v. Missouri Dep't of Labor & Indus. Relations*, 2017 WL 5146154, at *1 (Mo. Ct. App. Nov. 7, 2017), transferred to Mo. S. Ct. (Mar. 6, 2018).

II. BACKGROUND

A. Case Description

The plaintiff in this case, Matthew Vacca, was employed as a workers' compensation administrative law judge ("ALJ") from 1992 to 2011.⁵ In 1996, he reported to the Division of Workers' Compensation ("Division") that he was diagnosed with muscular dystrophy.⁶ In 2008, as his chronic illness began to cause difficulties, Vacca asked for certain deviations from his current working conditions, including restroom upgrades to comply with the Americans with Disabilities Act ("ADA") and modifications to his working duties.⁷ His new schedule involved working from home three days per week and only presiding over trials and hosting office hours the other two days, while handling only a few daily dockets.⁸

In 2009, Judge Boresi was appointed as Chief Judge and completed a Performance Management Plan for all ALJs.⁹ Chief Judge Boresi gave Judge Vacca a "successful" rating.¹⁰ Vacca believed this was a mediocre review and felt he should have been rated "highly successful."¹¹ Accordingly, Judge Vacca alleged the negative performance review was linked to a complaint he filed with the Equal Employment Opportunity Commission ("EEOC").¹² Over the next two years, Vacca made many complaints against Chief Judge Boresi, the Division, and the Missouri Department of Labor and Industrial Relations, which conducted the human resources investigations.¹³ Meanwhile, Vacca filed formal charges with the Missouri Commission on Human Rights and the EEOC against Judge

5. *Id.*

6. *Id.* Muscular dystrophy is the result of a gene mutation that causes proteins to attack the muscles, resulting in a decrease in muscle mass. Muscular Dystrophy, MAYO CLINIC, (Feb. 6, 2018), <https://www.mayoclinic.org/diseases-conditions/muscular-dystrophy/symptoms-causes/syc-20375388> [<https://perma.cc/4QMW-JRKW>]. According to Vacca, "My disability is multifaceted. I suffer from an autoimmune muscular dystrophy . . . In essence, my body's immune system is hyperactive and attacks my organs and muscles." Brief of Respondent/Cross-Appellant at 10, *Vacca*, 2017 WL 5146154 (Dec. 5, 2016), 2016 WL 7335203.

7. *Vacca*, 2017 WL 5146154, at *1. The Division decided not to remodel the restrooms due to costs. *Id.* Vacca subsequently filed a complaint with the EEOC for violation of the ADA. *Id.* However, the Division upgraded the restroom the next year to comply with the ADA. *Id.*

8. *Id.* at *2.

9. *Id.* Additionally, in a later supplemental Performance Management Plan, Chief Judge Boresi included "allegations Vacca had yelled, used profanity, and called attorneys practicing before the Division 'trailer trash,' 'pathetic,' and 'scum' in a staff meeting; and, in a follow-up meeting with Judge Boresi, labeled the attorneys as 'bottom feeders' and 'pedophiles.'" *Id.* at *3.

10. *Id.* at *2.

11. *Id.* Boresi rated four of the ten ALJs as "successful," including herself. *Id.* Vacca believed the rating was "highly discriminatory" and was based on the "belief that a disabled person under a disability accommodation cannot be successful [or] highly successful." *Id.* (brackets in original).

12. *Id.*

13. *Vacca*, 2017 WL 5146154, at *2-4. The Missouri Department of Labor and Industrial Relations investigation concluded, "Vacca's claims of discrimination and retaliation against him by Judge Boresi were unsubstantiated." *Id.* at *3.

Boresi, as well as the director and an employee of the Missouri Department of Labor and Industrial Relations.¹⁴

During the dispute with his employer, Vacca also had supplemental conversations with Missouri's disability insurance carrier.¹⁵ In February 2011, he renewed his application for long-term disability, stating "[u]nfortunately, I am no longer able to work."¹⁶ He submitted two physicians' statements supporting his claim for long-term disability benefits because "he had a regressive condition with no expectation of improvement."¹⁷ In May, Vacca was granted long-term disability.¹⁸ Following the grant of benefits, Vacca was informed "he no longer worked at the Division based on his being granted long-term disability benefits and the determination pursuant to [a disability benefits statute] . . ."¹⁹ Vacca then amended his discrimination charge with the Commission and EEOC to include his termination.²⁰

On January 12, 2012, Vacca filed a counter-petition for divorce.²¹ He stated in his divorce petition that "he was permanently and completely disabled and was no longer capable of being employed."²² Further, he requested spousal maintenance, testifying he was unable to support himself due to his "total and permanent disability and he should not be required to seek employment outside the home."²³ However, in his divorce trial, before his discrimination trial, "Vacca amended his dissolution petition from asserting he was permanently and completely disabled and incapable of *any* employment to stating he was permanently and completely disabled and incapable of being employed *other than as an ALJ*."²⁴

In his September 28, 2012 petition claiming unlawful discrimination for his disability, Vacca claimed he was damaged because he could, in fact, perform the essential functions of an ALJ with reasonable

14. *Id.*

15. *Id.* at *2.

16. *Id.* at *3 (brackets in original). Vacca's first application in January was not completed because he was able to continue working. *Id.* The January application stated his last full day of work was December 7, 2010, he was unable to work as of January 1, 2011, and he continued "to work for [his] current employer to the extent of [his] abilities and to finish work [he had] begun." *Id.*

17. *Id.* at *4.

18. *Id.* at *5.

19. *Vacca*, 2017 WL 5146154, at *5. The disability benefits statute, Section 287.855, provides that "[a]ny administrative law judge or legal advisor who, while so employed, becomes disabled so that he or she is totally incapable of performing any duties of his or her office shall be entitled to disability benefits . . ." MO. REV. STAT. § 287.855 (2016). However, the court noted that the language of the statute did not support a finding that Vacca's award of long-term disability constituted a voluntary resignation. *Vacca*, 2017 WL 5146154, at *10.

20. *Vacca*, 2017 WL 5146154, at *5.

21. *Id.* at *18 (Richter, J., dissenting).

22. *Id.* at *5.

23. *Id.*

24. *Id.* at *6 (emphasis added).

accommodation.²⁵ Further, Vacca testified “he could have worked as an ALJ every day ‘virtually’ until his death and until he was at least 75 years old, and his total lost salary and benefits was more than \$2.8 million, based on an additional 20 years of working full-time.”²⁶ During Vacca’s trial, the Division unsuccessfully sought to keep out the evidence that Vacca was capable of performing the functions of an ALJ based on the doctrine of judicial estoppel.²⁷ The retaliation claim was the only issue submitted to the jury, asserting his disability was a continuing factor in his termination.²⁸ The jury found in favor of Vacca, awarding him \$4 million in compensatory damages, \$2.5 million in punitive damages against the Division, and \$500,000 in punitive damages against the Division’s Deputy Director, Brian May.²⁹ The trial court granted May’s request for remittitur and reduced the punitive damages award against him to \$5,000.³⁰

The Division and May appealed on multiple points.³¹ Of relevance here, they appealed based on the misapplication of judicial estoppel.³² They argued judicial estoppel should have precluded Vacca from stating he could perform his work duties when he previously testified in his divorce trial that he could not.³³

B. Legal Background

Courts have established many different principals for the purpose of estopping a litigant from “speaking against his acts or deeds,” one of which is judicial estoppel.³⁴ In order to protect the integrity of the judicial process, parties are not allowed to take contradictory positions in separate proceedings.³⁵ Judicial estoppel prevents a party from taking a position

25. *Id.* at *18 (Richter, J., dissenting).

26. *Vacca*, 2017 WL 5146154, at *6.

27. *Id.* at *8.

28. *Id.* at *6.

29. *Id.*

30. *Id.*

31. *Id.* at *6–7. The other points on appeal included: failure to apply the applicable law that Vacca could not claim discrimination when approval of long-term disability constituted a voluntary discharge, one point regarding compensatory damages and two regarding punitive damages, and finally a technicality on request for new trial. *Id.* Further, Vacca filed a cross appeal regarding the reduction of May’s punitive damages. *Id.* at *7.

32. *Vacca*, 2017 WL 5146154, at *6.

33. *Id.*

34. Rand G. Boyers, Comment, *Precluding Inconsistent Statements: The Doctrine of Judicial Estoppel*, 80 NW. U. L. REV. 1244, 1247 (1986). Other forms of estoppel include equitable estoppel and collateral estoppel. *Id.* Judicial estoppel is applied “where neither collateral estoppel nor equitable estoppel . . . would apply.” *Id.* (quoting *Allen v. Zurich Ins. Co.*, 667 F.2d 1162, 1166–67 (4th Cir. 1982)).

35. See e.g., *Edwards v. Durham*, 346 S.W.2d 90, 101 (Mo. 1961); *State v. Dillon*, 41 S.W.3d 479, 485–86 (Mo. Ct. App. 2000); *Shockley v. Dir., Div. of Child Support Enforcement*, 980 S.W.2d 173, 175 (Mo. Ct. App. 1998); *Jensen v. Jensen*, 877 S.W.2d 131, 135 (Mo. Ct. App. 1994); *Jeffries v. Jeffries*, 840 S.W.2d 291, 293–94 (Mo. Ct. App. 1992); *Vorhof v. Vorhof*, 532 S.W.2d 830, 832 (Mo. Ct. App. 1975).

which materially conflicts with their position in the original proceeding “thereby obtaining benefits from that position in that instance and later, in a second proceeding, taking a contrary position in order to obtain benefits.”³⁶

There are three factors to determine whether judicial estoppel will bar a position: “(1) the party’s two positions are clearly inconsistent; (2) the party succeeded in persuading a court to accept his earlier position; and (3) the party asserting the ‘inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.’”³⁷ The test uses factors that are not “fixed or inflexible prerequisites.”³⁸ Additionally, the determination to apply judicial estoppel is made on a case-by-case basis and invoked at the court’s discretion.³⁹

The doctrine is far-reaching and has some notable extensions. Even if the prior statements were not made under oath or in court at all, the doctrine of judicial estoppel may still be applied.⁴⁰ Further, the parties in the second suit need not be the same as the parties in the first suit.⁴¹ Finally, the two litigations need not be related.⁴²

III. COURT’S DECISION

A. Majority

In analyzing the Division and May’s appeal based on the misapplication of judicial estoppel, the Missouri Court of Appeals applied the three judicial estoppel factors, and held the second factor was not satisfied.⁴³ The second factor asks whether the “party succeeded in persuading a court to accept his earlier position.”⁴⁴ In his earlier position in his divorce action, Vacca was awarded spousal maintenance based on his disability; however, the Missouri Court of Appeals reversed the award in

36. *State Bd. of Accountancy v. Integrated Fin. Sols., LLC*, 256 S.W.3d 48, 54 (Mo. 2008) (quoting *Shockley*, 980 S.W.2d at 175).

37. *Vacca*, 2017 WL 5146154, at *8 (quoting *Vinson v. Vinson*, 243 S.W.3d 418, 422 (Mo. Ct. App. 2007)).

38. *In re Contest of Primary Election Candidacy of Fletcher*, 337 S.W.3d 137, 140 (Mo. Ct. App. 2011).

39. *Gray v. City of Valley Park, Mo.*, 567 F.3d 976, 981–82 (8th Cir. 2009) (citing *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001)).

40. *Primary Election Candidacy of Fletcher*, 337 S.W.3d at 144–45; *State ex rel. KelCor, Inc. v. Nooney Realty Trust, Inc.*, 966 S.W.2d 399, 403–04 (Mo. Ct. App. 1998).

41. *Nooney Realty Trust, Inc.*, 966 S.W.2d at 403 (quoting *Monterey Dev. Corp. v. Lawyer’s Title Ins. Corp.*, 4 F.3d 605, 609 (8th Cir. 1993)).

42. *See Primary Election Candidacy of Fletcher*, 337 S.W.3d at 145.

43. *Vacca v. Missouri Dep’t of Labor & Indus. Relations*, 2017 WL 5146154, at *8–9 (Mo. Ct. App. Nov. 7, 2017), *transferred to Mo. S. Ct.* (Mar. 6, 2018).

44. *Id.* at *8

Vacca v. Vacca because the divorce outcome was arbitrary.⁴⁵ The divorce was remanded for a new trial on the amount of maintenance, as well as other things, but the Court of Appeals in the discrimination case noted it was “unclear from the record” how the divorce concluded.⁴⁶

In reviewing the outcome of the discrimination lawsuit, the Missouri Court of Appeals held that because the divorce was vacated, there was no evidence “that an earlier court [had] accepted Vacca’s contrary position that he is completely incapable of working.”⁴⁷ Moreover, because the second element was not met, the court affirmed the lower court’s ruling and did not analyze the other judicial estoppel factors.⁴⁸

B. Dissent

Judge Roy Richter dissented, holding Vacca should have been precluded from taking the position that he was not completely disabled on the basis of judicial estoppel.⁴⁹ The majority’s holding that Vacca failed to persuade a court is inconsistent with the timeline of Vacca’s proceedings. The reversal of Vacca’s divorce outcome occurred after Vacca filed his complaint for discrimination.⁵⁰

Judge Richter continued to analyze the other two elements of judicial estoppel.⁵¹ He believed Vacca did receive an unfair advantage by arguing total disability in his divorce and subsequently arguing lack of total disability in his discrimination lawsuit.⁵² These contradictory statements allowed Vacca to benefit in both his divorce and discrimination lawsuit.⁵³

IV. COMMENTARY

Judicial estoppel should have precluded Vacca from stating he could perform the functions of an ALJ when he previously pleaded and testified

45. *Id.* at *9. The substantial amount awarded for spousal maintenance was a demonstration of the “arbitrariness” of the trial court’s judgment. *Id.* at *9 (citing *Vacca v. Vacca*, 450 S.W.3d 490, 492 (Mo. Ct. App. 2014)).

46. *Id.*

47. *Id.*

48. *Vacca*, 2017 WL 5146154, at *9. Further, the Missouri Court of Appeals held that Vacca applying for and receiving long-term disability benefits did not constitute a voluntary resignation. *Id.* at *10. Regarding the question of compensatory damages, the court found insufficient evidence to show \$4 million in compensatory damages was excessive. *Id.* at *12. Regarding the punitive damages, the court held the Division and May did not act with evil motive or reckless indifference in terminating Vacca per the evidence presented; thus, the award of punitive damages was reversed. *Id.* at *15. The award of post-judgment interest was also reversed. *Id.* at *17.

49. *Id.* at *17–18 (Richter, J., dissenting).

50. *Id.* at *17.

51. *Id.* at *18.

52. *Id.*

53. *Id.* Vacca benefited in his divorce trial by being awarded spousal maintenance, even if the benefit was later overturned. *Id.* at *17. Moreover, not only did Vacca benefit from his inconsistent stance in his discrimination lawsuit, it was his “sole reliance for damages.” *Id.* at *18.

that he was incapable of working. A ruling consistent with the promotion of integrity in the judicial system would defeat an essential element of Vacca's claim, and thus he would not have received such a favorable jury verdict.

In agreement with the dissenting opinion, Vacca was "successful in persuading a court to accept his earlier position."⁵⁴ The court in his divorce case accepted that he was completely disabled by awarding spousal maintenance and the court in his discrimination case accepted Vacca's contrary position that he was still capable of working by allowing the jury to find in his favor.⁵⁵ The reversal of the divorce order allegedly demonstrated the court of appeal's failure to accept the complete disability.⁵⁶ However, the district court's maintenance award demonstrated clear acceptance of Vacca's complete disability.⁵⁷ Further, the award of spousal maintenance was overturned *after* the jury had awarded Vacca \$7 million in his discrimination case.⁵⁸

Vacca was only able to prevail in both his divorce and discrimination cases by making clearly contradictory statements regarding his disability. A court should apply judicial estoppel if the party acted deliberately to make the contradictory statements.⁵⁹ The timing indicates that Vacca deliberately amended his divorce petition to make contradictory statements after filing his discrimination claim with the specific understanding the two claims were contradictory.⁶⁰ In January 2012, Vacca claimed permanent and complete disability and incapability of any employment.⁶¹ Then, before his September discrimination trial but after his divorce trial, Vacca amended his divorce petition to state that he was only "incapable of being employed *other than as an ALJ*."⁶² The only purpose of this amendment was to put himself in a better position in his discrimination case.⁶³ Moreover, although mistake is an exception to the doctrine of judicial estoppel for a "good-faith mistake born of misunderstanding, ignorance of legal procedures, lack of adequate legal advice, or some other innocent cause," that exception does not apply here.⁶⁴ Vacca's inconsistencies were deliberate as evidenced by his attempt to change his position in his divorce.⁶⁵ Additionally, his

54. *Vacca*, 2017 WL 5146154, at *17 (Richert, J., dissenting).

55. *See id.* at *4, *6.

56. *Id.* at *9.

57. *Id.* at *17 (Richert, J., dissenting).

58. *See generally* *Vacca v. Vacca*, 450 S.W.3d 490 (Mo. Ct. App. 2014).

59. *Cf.* *Strable v. Union Pac. R.R.*, 396 S.W.3d 417, 422 (Mo. Ct. App. 2013) ("[A] court should apply judicial estoppel if the party did not act 'inadvertently.'").

60. *Vacca*, 2017 WL 5146154, at *17 (Richert, J., dissenting).

61. *Id.* at *5.

62. *Id.* at *6 (emphasis added).

63. Appellants' Brief at 27, *Vacca*, 2017 WL 5146154 (Oct. 5, 2016), 2016 WL 5940329.

64. *Loth v. Union Pac. R.R.*, 354 S.W.3d 635, 640 (Mo. Ct. App. 2011).

65. *Vacca*, 2017 WL 5146154, at *6.

sophistication as an ALJ with advanced legal knowledge only highlights the deliberateness of the attempt to change his position.⁶⁶

Much like judicial estoppel, the doctrine of collateral estoppel promotes judicial efficiency.⁶⁷ Collateral estoppel is used to protect litigants and judicial estoppel is used to protect the integrity of the judicial system.⁶⁸ Thus, collateral estoppel presents a useful comparison to judicial estoppel.⁶⁹ One element of collateral estoppel requires the previous litigation to be finally decided on its merits.⁷⁰ Without a final decision, collateral estoppel cannot bar the same issue from being litigated.⁷¹ Vacca's divorce was appealed as a matter of right from a final order as a matter of law.⁷² Conversely, judicial estoppel does not require a final judgment, only two statements made in two different legal proceedings that are contradictory and for the benefit of the declarant.⁷³ Vacca's divorce and discrimination case were two separate legal proceedings.⁷⁴ Therefore, it should be immaterial that the divorce action was appealed and reversed on the issue of spousal maintenance. Because similar principles supporting collateral estoppel apply in this case, judicial economy should cause judicial estoppel to apply.

Even more similar to judicial estoppel is equitable estoppel, because both doctrines are applied to prevent parties from making inconsistent statements.⁷⁵ Since both judicial and equitable estoppel are applied in similar situations, courts are frequently confused about which doctrine to apply in what situation.⁷⁶ Equitable estoppel requires privity, reliance, and prejudice in an effort to promote fairness in the relationship between the parties.⁷⁷ But these requirements do not apply to judicial estoppel, where

66. *See id.*

67. Frazer, *supra* note 1, at 1509–12.

68. *Id.* at 1512.

69. *See Oates v. Safeco Ins. Co. of Am.*, 583 S.W.2d 713, 719 (Mo. 1979) (The four collateral estoppel factors are: “(1) whether the issue decided in the prior litigation was identical to the issue presented in the present action; (2) whether the prior adjudication resulted in a judgment on the merits; (3) whether the party against whom estoppel is asserted was a party or was in privity with a party to the prior adjudication; and” (4) whether the party “had a full and fair opportunity to litigate the issue” in the prior suit.)

70. *James v. Paul*, 49 S.W.3d 678, 682–83 (Mo. 2001).

71. *Id.*

72. *Vacca v. Vacca*, 450 S.W.3d 490, 492 (Mo. Ct. App. 2014); *see* MO. REV. STAT. § 512.020(5) (2004).

73. *Boyers, supra* note 34, at 1247.

74. *See generally Vacca*, 450 S.W.3d 490; *Vacca v. Missouri Dep't of Labor & Indus. Relations*, 2017 WL 5146154, at *1 (Mo. Ct. App. Nov. 7, 2017), *transferred to Mo. S. Ct.* (Mar. 6, 2018).

75. Frazer, *supra* note 1, at 1511. Equitable estoppel can be applied to prevent an opposing part from taking contradictory positions by proving the proponent, (1) was an adverse party in the previous proceeding; (2) detrimentally relied upon the opponent's previous position; and (3) would be prejudiced in the current proceeding if the proponent would be allowed to take the contradictory position. *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 598 (6th Cir. 1982).

76. *See id.*

77. *Id.*

the main focus is the integrity of the courts.⁷⁸ Accordingly, the analysis of the court should focus on whether the application of the doctrine would uphold or hinder judicial integrity.⁷⁹ And judicial integrity would only be upheld in this case if Judge Vacca was barred from presenting inconsistent positions.⁸⁰

Perhaps more so than any other litigant, an ALJ should not be the one to diminish the integrity of the courts by failing to abide by the doctrine of judicial estoppel. Judicial estoppel prevents the “perception that either the first or the second court was misled.”⁸¹ While judicial estoppel promotes honesty in the first court, it also helps the second court’s “ability to protect itself from manipulation.”⁸² It is ALJ Vacca’s “inconsistent position[s] that perverts the judicial machinery.”⁸³ This doctrine focuses on the relationship between the litigant and the judicial system, not the relationship between the two litigants; thus, it is relevant to look at who is the litigant.⁸⁴ Judge Vacca was an ALJ who served from 1992 through 2011—almost twenty years.⁸⁵ An ALJ generally has extensive knowledge of the law and procedure, serves as an officer of the court, and is required to be a licensed attorney in the state of Missouri.⁸⁶ It is this extensive knowledge that allowed for the perversion of judicial integrity when judicial estoppel was not applied in *Vacca*.

V. CONCLUSION

If the purpose of judicial estoppel is to promote the integrity of the judicial system, a member of the judiciary should not be able to abuse the system and “have [his] cake and eat it too” by prevailing on contradictory claims.⁸⁷ In *Vacca*, judicial estoppel should have applied. Vacca should have been prevented from arguing he was capable of continuing to work as an ALJ with reasonable accommodations after previously claiming he was incapable of working in any capacity. Therefore, he would not have been able to meet the required elements of his discrimination claim. Thus, the additional questions on appeal would have been irrelevant, Vacca’s \$7

78. Frazer, *supra* note 1, at 1509.

79. *See id.*

80. *See id.*

81. *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001) (quoting *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 599 (6th Cir. 1982)).

82. *Eastman v. Union Pac. R.R.*, 493 F.3d 1151, 1156 (10th Cir. 2007).

83. *Boyers, supra* note 34, at 1249 (citing *Aetna Life Ins. Co.*, 690 F.2d at 599).

84. *Id.* at 1248.

85. *Vacca v. Missouri Dep’t of Labor & Indus. Relations*, 2017 WL 5146154, at *1 (Mo. Ct. App. Nov. 7, 2017), *transferred to Mo. S. Ct.* (Mar. 6, 2018).

86. MO. REV. STAT. § 287.610 (2014).

87. *Duplan Corp. v. Deering Milliken, Inc.*, 397 F. Supp. 1146, 1177 (D.S.C. 1974).

million jury verdict would have been overturned, and the integrity of the judicial system would have been maintained.