ORAL ARGUMENT REQUESTED

NO. 06-0372

IN THE
SUPREME COURT OF TEXAS

COLUMBIA RIO GRANDE HEALTHCARE, L.P. D/B/A
RIO GRANDE REGIONAL HOSPITAL,
Petitioner

v.

ALICE H. HAWLEY AND JAMES A. HAWLEY,
Respondents

On Petition for Review from the
Thirteenth District Court of Appeals at Corpus Christi, Texas
No. 13-03-00427-CV

HAWLEY'S RESPONSE TO PETITION FOR REVIEW

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5. The charge asked if the Hospital was negligent, and instructed that the Hospital "acts or fails to act only through its employees, agents, nurses, and servants." It did not mention Dr. Valencia or any of his conduct. It was undisputed that Valencia did not work for the Hospital and the Hawley's did not argue that the jury should consider Valencia's conduct. The court properly refused to instruct the jury not to consider Valencia's conduct. (Unbriefed)

6. The medical-malpractice statute's damage cap violates the open-courts provision of the Texas Constitution as applied to this case. Accordingly, the trial court properly refused to apply the cap in the judgment. (Unbriefed)

7. The amendments to the judgment interest statute do not apply to cases in which the judgment was signed and became subject to appeal before their effective dates. This is such a case. Accordingly, this case is governed by the pre-amendment statute, and its 10% interest rate. (Unbriefed)

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ISSUE

Briefed, Partially Briefed, and Unbriefed Issues

1. The charge comported with the Pattern Jury Charges and instructed the jury that Hawley had to prove her injuries would not have occurred but for the Hospital's negligence by a preponderance of the evidence. The evidence and argument repeatedly emphasized that this required Hawley to prove she had a greater than 50% chance of survival. The trial court did not abuse its discretion in refusing to submit an additional instruction to emphasize this requirement. (Briefed)

2. Even if Hawley's doctors were negligent in failing to obtain her pathology results, that negligence was not a superseding cause of Hawley's injuries, because it (i) was foreseeable to the Hospital and (ii) merely cooperated with (but did not cut off) the effects of the Hospital's preexisting negligence. So the court did not err in excluding the Hospital's offers of proof or refusing its new and independent cause instruction. (Briefed)

3. Hawley's doctors reliably testified she probably would have survived had she received timely treatment for her cancer. Other experts so testified without objection. Plus, there was reliable evidence Hawley was properly staged at Duke's C when she was first diagnosed, and that Duke's C patients have a greater than 50% survival rate. So there was sufficient evidence the Hospital's negligence was a proximate cause of Hawley's injuries. (Unbriefed)

4. The trial court properly excluded the Hospital's offers of proof about Hawley's doctors' alleged negligence in failing to discover the pathology report, because that testimony (tendered en masse) was unsupported by the pleadings, inadmissible on several grounds, cumulative, and insufficient to establish superseding cause anyway. (Unbriefed)

5. The charge asked if the Hospital was negligent, and instructed that the Hospital "acts or fails to act only through its employees, agents, nurses, and servants." It did not mention Dr. Valencia or any of his conduct. It was undisputed that Valencia did not work for the Hospital and the Hawley's did not argue that the jury should consider Valencia's conduct. The court properly refused to instruct the jury not to consider Valencia's conduct. (Unbriefed)

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TO THE HONORABLE SUPREME COURT OF TEXAS:

Statement of Facts

On November 23, 2000, Alice Hawley underwent surgery at the Hospital for perforated diverticulitis. [PX-14[1], p. 8-9] Dr. Armando Arechiga was Hawley's admitting physician, and Dr. Jesus Rodriguez was the surgeon who removed the affected portion of her colon. [PX-14, p. 2, 8] During the surgery, Rodriguez examined Hawley's liver and detected no abnormalities. [CX-8, p.31] After the surgery, pathologist Jose Valencia examined the excised portion of Hawley's bowel and discovered she had cancer. [PX-2] Valencia's pathology report staged Hawley's cancer at "Duke's C." [PX-2]

The Hospital had a notification policy relating to cancer-positive pathology reports. The policy required the pathologist to verbally notify the physicians of record, ***and*** the Hospital staff were to fax the report to the physicians, ***and*** send a copy by certified mail. [PX-1, p.2; 6 RR 72-74] (The statement in the dissenting opinion in the court of appeals and in the Hospital's petition that "by its plain terms the distribution policy does not require that notice be provided orally, and by fax, and by certified mail, *Petition for Review, p. 8, Diss. Op. at 8*, is incorrect.) The Hospital adopted this policy because physicians had complained they had not received pathology reports, even when the Hospital claimed it had sent them. [7 RR 50, 51, 56]

Neither Rodriguez nor Arechiga received notification of Hawley's pathology results.

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[1] "PX" refers to Plaintiffs' exhibits, "DX" to Defendant's exhibits, and " C X to Court Exhibits (primarily depositions that were played to the jury).

[CX-8, p. 48, 50, 57; CX-10, p. 16, 18-23] The Hospital produced a return receipt indicating that Arechiga's office had received a copy of the report [DX-8 & 9], but Arechiga testified that (i) he had not seen the report at the time; (ii) he would have seen the report if he had received it; (iii) the only copy of the report in his file was one faxed to him by the Texas Cancer Center over a year later; and (iv) the only certified letters he received from the Hospital related to his compliance with the Hospital's insurance requirements and the like, not pathology reports. [CX-10, p. 18-23, 53-54, 62]

Hawley and her doctors did not learn of her cancer until November of 2001. [CX-9, p. 28-29, CX-10, p. 53] By that time, Hawley had a huge, soft-ball sized tumor in her liver. [CX-5, p. 11-12, 22-23] She was treated with chemotherapy by Drs. Susan Escudier and Billie Marek, but by then the tumor was too large to be surgically removed. [CX-5, p. 5, p. 18] Though Hawley's tumor responded excellently to the chemotherapy [CX-5, p. 25-26], it was simply too large and had gone untreated too long to be eradicated. [CX-5, p. 26] At the time of trial, Hawley was expected to live about six more months. [CX-5, p. 21]

The court of appeals' opinion correctly states the nature of this case.

Summary of the Argument

This case involves concurring causes, because the physicians' failure to independently ascertain the pathology results was foreseeable and did not break the causal connection between the Hospital's negligence and Hawley's injury. The doctors' failure to independently discover the pathology report was foreseeable, because the Hospital adopted its redundant notification policy specifically because it foresaw that doctors might not discover their

patients had cancer unless the Hospital made *certain* they received that news. And it did not break the causal chain because it was not an independent act that brought about a different result than that which would have occurred in its absence. To the contrary, the Hospital's whole theory is that the doctors did *not interrupt* the consequences of the Hospital's negligence, so that the Hospital's negligence continued unimpeded to its predictable consequence. If ever a subsequent omission were a concurring cause, this is it. And in any event, the Hospital was not impeded in its defense by the absence of the new and independent cause instruction, because it was able to and did argue its theory aggressively under the charge as given.

Similarly, the trial court properly instructed the jury that Hawley had to prove it was more likely than not she would have avoided her injuries if the Hospital had acted prudently by including the standard instructions on proximate cause and preponderance of the evidence. An instruction that Hawley had to prove she had a greater than 50% chance of survival would have been redundant. Furthermore, the evidence and the arguments of counsel made it crystal clear to the jury that the standard instructions in the court's charge required Hawley to prove she had a greater than 50% chance of survival. Hawley never shied away from that burden of proof, but attacked it head-on. The jury was not misled.

In any event, this case does not present any of the factors that warrant consideration by this Court. With respect to the new-and-independent cause issue, the court of appeals merely applied settled law to the particular facts of this case, and its opinion did not add anything to Texas jurisprudence except a fact-specific application of established law. Though the court

of appeals did address a novel legal issue with respect to the "loss of chance" jury instruction, the court's opinion is unlikely to affect future cases. In fact, the court's opinion left the question of whether a lost-chance instruction is helpful or necessary to the discretion of trial courts, and merely held that this trial court did not abuse its discretion in refusing that instruction under the circumstances of this case. The court did not hold that such an instruction is never warranted, or even that it would have been an abuse of discretion to include it in this very case. In short, the court's opinion left this legal issue in the very same position it was in before the opinion. So there is no important error of law for this Court to correct.

ARGUMENT

1. This Court thoroughly explicated the contours of new-and-independent-cause just two months ago, and the court of appeals' opinion properly applied the law to the circumstances of this case.

The justices of the court of appeals disagreed with regard to the ***application*** of the law of new-and-independentcause to the facts of this particular case, but they did not disagree with respect to what that law was. Nor did the majority articulate any erroneous or unusual rule of law that requires comment or correction by this Court. Indeed, just two months ago this Court issued a thorough opinion elucidating the contours of concurring and superseding causes, and the court of appeal's opinion is in perfect harmony with that analysis.

In Dew v. Crown Derrick Erectors, Inc., No. 03-1128, 49 Tex. Sup. Ct. J. 851, 2006 WL 1792216 (June 30, 2006), this Court held the defendant was not entitled to a new-and-independent cause instruction. There, Crown had erected an oil derrick, but was unable to install a safety gate around an opening in the platform. Crown had cordoned off the opening

with two ropes, but after Crown left, a third party removed the ropes and the plaintiff fell through the opening. The trial court refused Crown's request for a new-and-independent cause instruction, and the court of appeals reversed. A plurality of this court held the third party's removing the rope was the very risk Crown's negligence had created in the first place, so it could not be a superseding cause. Dew, 49 Tex. Sup. Ct. J. at 854-55 ("Obviously the defendant cannot be relieved from liability by the fact that the risk, or a substantial and important part of the risk, to which the defendant has subjected the plaintiff has indeed come to pass."). The Plurality explained, "A superseding cause is one that alters the natural sequence of events and produces results that would not otherwise have occurred.... ***It must be one not brought into operation by the original wrongful act and must operate entirely independently of such original act."*** ***Id.*** at 853 (emphasis added). Accordingly, "[w]here the intervening act's risk is the very same risk that renders the original actor negligent, the intervening act cannot serve as a superseding cause," and "a superseding cause ordinarily involves the intervention of an unforeseen, independent force from a third party, causing injury different from that which might have been expected at the time of the original negligent act." *Id*. at 853, 855.

The concurring justices took a more practical approach, concurring because the trial demonstrated the absence of the new-and-independent cause instruction did not cause the rendition of an improper judgment, since the charge that was given permitted Crown to argue its actions were not a proximate cause of the event because the real cause of the event was somebody else's taking the rope down. Id. at 855-56 (Brister, J., concurring).

The court of appeals's opinion is in perfect harmony with Dew. As the court explained,

the Hospital's evidence showed at most that the Hospital's failure to follow its notification policy set in motion a force (Hawley's physicians' ignorance of her diagnosis) calculated to cause a delay in treatment that could lead to death, and Hawley's doctors' failure to independently discover the pathology report simply concurred in that same causal chain, ultimately leading to the same result the Hospital's negligence would have caused absent the physicians' omission. *Op. at* 36-37. And the court's recitation of the law was consistent with decades of established precedent, adding nothing to the state's jurisprudence.

The dissent did not quarrel with the majority's statement of the law. It simply claimed the evidence was sufficient to support an inference that the doctors' conduct superseded, rather than merely concurred with, the Hospital's original negligence. ***Diss.*** *Op. at 8-9.* Significantly, the dissenting opinion contained little explanation for how the physicians' failure to discover the pathology report operated to interrupt the causal chain between the Hospital's original negligence and the failure to treat Hawley's cancer. Instead, it marshaled evidence suggesting the Hospital complied with some of its notification requirements[2] and the doctors should have discovered the pathology results despite the Hospital's negligence ***Diss.*** Op. *at 8-9.* The dissent's only explanation for how the doctors' omission could be a superseding cause was "the time differential from notice to treatment is critical in cancer cases. Thus...the timing of notice would correlate with the question of a different harm...." ***Diss.*** *Op. at* ***6*** *n.3.* With all due respect, dying because your doctor doesn't learn you have cancer a week after

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[2] Again, the dissent's statement that "by its plain terms the distribution policy does not require that notice be provided orally, and by fax, and by certified mail, ***Diss.*** Op. *at* 8, is incorrect. [PX 1, p.2; ***6*** RR 72-74] This incorrect statement of the evidence is adopted in the Hospital's Petition. *Petition* for ***Review, p.*** *8.*

you're diagnosed is the same result as dying because your doctor doesn't learn you have cancer six months after you're diagnosed. The Hospital's omission created a continuing status quo — ignorance of Hawley's cancer — that led unimpeded to her death.

The majority properly applied well established legal principles to the facts of this case. The risk created by the Hospital's negligence was that the doctors would remain ignorant of Hawley's cancer and Hawley would not receive timely treatment. The doctors merely failed to interrupt the course of the Hospital's negligence and prevent the very harmful event the Hospital's negligence was calculated to cause. If the third party's removing the rope barrier in ***Dew*** was not a superseding cause, the physicians' mere failure to interrupt the course of the Hospital's negligence in this case is not a superseding cause, either.

In any event, the physicians' failure to learn of Hawley's diagnosis was foreseeable, because the Hospital adopted the redundant notification policy specifically because physicians might not learn of the diagnosis unless the Hospital made sure that they did. [3 RR 104, 4 RR 23, 28-29, 6 RR 75, 89-90, 7 RR 15-16, 119] Indeed, prior to the policy's adoption, physicians had complained they were not receiving reports — even when the Hospital claimed to have sent them. [7 RR 50-51, 56] Otis ***Elevator*** Co. ***v.*** Shows, 822 S.W.2d 59, 62-63 (Tex. App.—Houston [1st Dist] 1991, writ denied) (unavoidable accident instruction properly refused because escalator was manufactured with safety device designed to prevent this type of accident, so accident was foreseeable).[3]

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[3] When asked, "Is it foreseeable that the doctors would not follow up on the pathology reports," the Hospital's expert responded that it was the doctors' responsibility to independently seek out the pathology report, ***but*** did ***not testify it was unforeseeable that they might not do so.*** [6 ***RR*** **78-79**]

Finally, the failure to submit the instruction was harmless, because the court's charge permitted the Hospital to argue that the doctors, and not it, caused Hawley's injuries. Dew, 49 Tex. Sup. Ct. J. at 855-56 (Brister, J., concurring). This was the central theme of the Hospital's closing argument [8 RR 38, 40-43, 44, 45, 46-47], with counsel repeating over and over again "we can lead a horse to water but we can't make him drink" and "we can only give them the report; we can't make them read it." [8 RR 41, 42, 44, 45, 46-47]

The majority correctly stated and applied the law. And the dissent did not disagree with the majority about the law, but merely would have applied the law to the facts differently, based at least in part on an erroneous understanding of the notification policy. Further, the majority's opinion is in harmony with Dew. So there is no legal issue presented justifying the granting of the Petition.

2. The court of appeals' holding regarding a "probability of survival" instruction does not warrant this Court's review.

The necessity of establishing a probability of survival in wrongful-death cases is simply the result of applying the preponderance of the evidence burden of proof to the statutory requirement that the defendant's negligence caused the decedent's death. *Kramer* v. Lewisville Memorial Hospital, 858 S.W.2d 397,400 (Tex. 1993). Accordingly, the standard instructions on preponderance of the evidence and proximate cause [CR 379-81] fully and accurately instructed the jury that it must be more likely than not that Hawley would have avoided her injuries had the Hospital acted prudently. *E.g.*, Thomas v. *Oldham*, 895 S.W.2d 352,361-62 (Tex. 1995) (Enoch, J., concurring) (sudden emergency instruction duplicates standard

negligence and proximate cause instructions).

Indeed, though Kramer was decided in 1993, the Committee on Pattern Jury Charges of the State Bar of Texas has never suggested the Hospital's proposed instruction is mandatory, advisable or even proper. To the contrary, the Pattern Jury Charges track the language used by the trial court. STATE BAR OF TEXAS, Texas Pattern Jury Charges—Malpractice, Premises & Products, PJC 40.3, 50.2 (2003). Time-honored and well-accepted jury charges should not be embellished unless absolutely necessary to fairly instruct the jury, for "[j]udicial history teaches that broad issues and accepted definitions suffice and that a workable jury system demands strict adherence to simplicity in jury charges." Lemos *v.* Montez, 680 S.W.2d 798, 801 (Tex. 1984). Requiring trial courts to begin embellishing standard jury charges would invite the very proliferation of instructions that precipitated the shift to broad-form submission in the first place. Id. The majority properly concluded that the trial court did not abuse its discretion in utilizing the Pattern Jury Charge when no authority supported the requested instruction, which merely reiterated the standard instructions already in the charge. Op. at 41-43.

The Hospital's suggestion that proximate cause has an additional element in this type of case is false. Kramer simply explained what is required to prove proximate cause by a preponderance of the evidence, and specifically rejected "any effort to change the traditional proof requirements in medical malpractice cases." Kramer, 858 S.W.2d at 400,403.

Further, the jury was not misled by the absence of the instruction. During the trial, the jury could plainly see Hawley was striving to prove her chance of survival was more than 50%

[CX-5. p. 13, CX-11, p. 107], while the Hospital was trying to prove the odds were less than 50%. [CX-5, p. 17-18, 20, 25, 49; CX-6, p. 17-18, 20, 23; CX-11, p. 146, 154] Further, the Hospital presented the following testimony from Hawley's cross-examination of its expert, Dr. Raefsky:

> Q. You know, In Texas — I don't know what the law is in Tennessee, unfortunately, but in Texas *the lawyers have **to prove** that the impact was more than 50 percent on their survivability.*
> *A.* That's the same in Tennessee...I mean, my understanding of that is, is that if *somebody's prognosis went from zero percent to 30 percent, that it doesn't meet that criteria. But if it went from **45 percent** to 51 percent, it does.*
> *Q. ...So if the patient had a 40 percent chance of **survival** and due to the hospital's negligence they lost that 40 percent, the patient would have no claim?*
> A. That's my understanding of the law.
> Q. *That's the law, unfortunately.* [CX-11, *p.* 51-52]

Moreover, the lawyers for both parties openly acknowledged that 50%+ survivability was the critical hurdle. In his opening statement, the Hawleys' attorney stated, "[Dr. Escudier and Dr. Marek] are testifying here that Alice did not have a metastatic tumor in November. And if she had been treated at that time, she had a 60 to 70 percent chance of cure. *That is a preponderance of the evidence.* That's why you have to answer the question, yes;" and "Dr. Escudier and Dr. Marek, will tell you that if we had gotten her then instead of a year later, she would have had a 60 to 70 percent chance of cure. No guarantees. Cancer is tough. *But more likely than not,* she would have survived the disease." [3 RR 27,291 The Hospital's lawyer picked up on this theme by saying, "The reason these percentages are so important, and I know that we have got numbers all over and you heard all this. It is because of proximate cause.

That's why. Because if you can't find proximate cause, you have to answer 'no' to Question No. 1." [8 RR 36-37] Though the Hospital's lawyer inexplicably did not elaborate by reiterating the 50%+ threshold Hawley had to surpass, there can be no doubt the jury was well aware of it, and the Hospital could have emphasized it. After all, the Hawleys repeatedly conceded they had to cross that threshold. Accordingly, the charge adequately instructed the jury on proximate cause. Dew, 49 Tex. Sup. Ct. J. at 855-56 (Brister, J., concurring); Dillard *v.* Texas *Elec.* Coop., 157 S.W.2d 429,433 (Tex. 2005); *Reinhart v.* Young, 906 S.W.2d 471, 473-74 (Tex. 1995).

The Hospital's claim the court's charge permitted the jury to find for Hawley even if it believed Hawley's chance of survival was less than 50% is erroneous. If this were true, then any time the defendant failed to object to the standard jury charge on proximate cause and request an additional "50%+ chance of survival" instruction, the appellate court would have to affirm a plaintiffs verdict if there were evidence the defendant's negligence caused the plaintiff to lose a less-than-even chance of survival. After all, the Hospital is claiming the standard jury charge permits a finding of proximate cause based on a less-than-even chance of survival, and in the absence of objection, the sufficiency of the evidence is evaluated in light of the charge as given, even if incorrect. Osterberg v. Peca, 12 S.W.3d 31, 54-55 (Tex. 2000). But of course, the Hospital's contention is erroneous.

Moreover, the Hospital's arguments about the necessity of its requested instruction would be equally applicable to all tort cases. Any car-wreck defendant could argue the charge should include an instruction saying "in order for the defendant's negligence to be a proximate

cause of the plaintiffs damages, you must find that the plaintiff had a greater than 50% chance of avoiding those damages but for the defendant's negligence." Courts, practitioners and juries have muddled through trials for a century without requiring such an instruction, and there is no need to burden the charge with one now. The standard definitions and instructions in the charge are perfectly adequate to tell the jury not to find causation unless it is more likely than not.[4] *E.g.*, ***Webb v. CAI Wireless Sys., Inc.,*** 113 Fed. Appx. 21, 26-27 (5" Cir. 2004) (charge's instructions on proximate cause and preponderance of the evidence sufficient to prevent jury from awarding damages based on loss of less-than-even opportunity).

Finally, the Hospital's claim that this Court must correct an egregious error of law by the court of appeals greatly oversells the Hospital's case. If anything, the court of appeals' opinion ***encourages*** trial courts to submit an instruction similar to the one the Hospital requested. The majority wrote:

> We are unaware of any documented practice of instructing Texas juries on the loss-of-chance rule. This is not to say that the practice should be disparaged or discouraged or that it does not occur. Such instructions may be commonplace and have yet escaped documentation for myriad procedural and strategic factors that so often characterize modern trial and appellate practices.
>
> The question we must answer is not whether the loss-of-chance instruction should be rejected or endorsed. We must decide only whether the trial court abused its discretion in failing to include it in the jury charge in this case. The answer, in our opinion, rings clear from the absence of guiding precedent. We are loathe to hold that the trial court reached a decision so

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[4] Thus, the Hospital's argument that it was prevented from presenting its appellate argument by the absence of the additional instruction, ***Petition*** for ***Review,*** *p.* 14-15, is erroneous. The jury clearly found that Hawley probably would have survived absent the Hospital's negligence, because the charge required such a finding. Further, because everyone agrees the evidence must support that finding (i.e., there must be evidence that Hawley had a probability of survival), the absence of the additional instruction did not prevent the Hospital from presenting its legal sufficiency point of error on appeal, which it did.

> arbitrary and unreasonable as to amount to a clear and prejudicial error of law if no assistance was available to guide the trial court to the proper result.

Op. *at* 42. In light of this language, it is hardly arguable that the court "committed an error of law of such importance to the state's jurisprudence that it should be corrected." TEX. R. APP. P. 56.1(a)(5). To the contrary, this opinion essentially leaves trial courts right where it found them — with broad discretion to determine whether a "lost chance" instruction is advisable under all the facts and circumstances of the particular case.

Conclusion and Prayer

This case does not meet any of the factors that warrant the granting of a Petition for Review. The majority of the court of appeals did not disagree with the dissent regarding any issue of law; they merely disagreed about the ***application*** of the well-settled law of new and independent cause to the esoteric circumstances of this case. Furthermore, this Court has written a thorough opinion less than two months ago addressing these very issues, and the court of appeals's opinion is in perfect harmony with that recent opinion by this Court. There is little reason for the Court to re-plow that ground now.

Further, the dissent's single conclusory sentence that "The crux of the Hospital's argument regarding lost chance of survival on legal sufficiency and charge error grounds rests on the trial court's proximate cause instruction, which I would hold necessitated a further instruction," *Diss.* Op. *at* 12, is not a serious disagreement with the majority on an important issue of law. After all, the dissent does not even engage in any analysis of this issue or undertake to discuss the law, other than to recite the general proposition (acknowledged by the

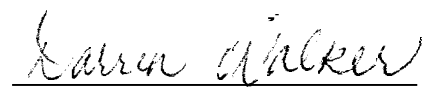
majority as being so clearly stated by this Court as to "leave no room for disagreement," Op. *at* 41) that Texas does not recognize a cause of action for loss of a less-than-even chance of cure. *Diss. Op. at* 12 n. 6. There was simply no significant clash between the majority and dissent over important legal issues in this case.

And what's more, the majority's opinion expressly signaled that a trial court in an appropriate case might be within its discretion to include an instruction like the one the Hospital requested. The Hospital implies that the jurisprudence of this state demands that it be clarified that a "loss of chance" instruction may be included in the charge, but the majority's opinion does not hold that the inclusion of such an instruction would be improper. It merely held that, because the trial court had no authority suggesting that such a charge was necessary, it did not abuse its discretion by submitting the time-honored Pattern Jury Charges, which were already adequate to instruct the jury and permit the Hospital to make its causation argument.

The court of appeals' opinion in this case was a run-of-the-mill and accurate application of well-established legal principles to the particular circumstances of this case. Even if this Court were an error-correction court and had the time and inclination to review every case appealed to it, this one would warrant a summary affirmation. Because this Court limits its review to legally significant cases, and this is not such a case, we respectfully urge the Court to deny the Petition for Review.

WHEREFORE, PREMISES CONSIDERED, Respondents Alice H. Hawley and James A. Hawley pray that the Court deny the Petition for Review; and for such other and further relief to which the Respondents may be justly entitled.

Respectfully Submitted,

By: 

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response to Petition for Review has been provided to the counsel listed below in the manner indicated on this the 28th day of August, 2006.

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