

## MISSOURI TORT REFORM AFFECTS YOU IN 2007

On March 29, 2005, Governor Matt Blunt signed into law **House Bill 393**, which applies to causes of action filed after August 28, 2005 alleging at least one tort. The statute incorporates changes to include:

- 1) limiting venue to the plaintiff's place of first injury;
- 2) changing the required percentage of fault for joint and several liability; and
- 3) limiting punitive damages.

The new law is designed to place the burden on the plaintiff in an effort to lessen the occurrence – and the affects – of venue shopping. The following are highlights from the article “Missouri Tort Reform” by Armstrong Teasdale Associate Brian E. Kaveney, which was published in the *Journal of the Missouri Bar* on December 9, 2006.

### VENUE

“Venue” refers to the location in which a court of competent jurisdiction may adjudicate an action. Formerly, the venue statutes provided various special rules for proper venue based on the defendant's status—as a motor carrier, a corporation, not-for-profit corporation, or railroad company—or on the defendant's residency. Under those rules, venue was proper even if the court was located in a county that had little contact with the plaintiff or the plaintiff's injury.

Today, the statute defines the plaintiff's place of first injury for certain specified torts, and the definition varies according to the type of tort involved. In latent injury cases, for example, the place of first injury is the location where the alleged trauma or exposure actually took place rather than where symptoms were first manifested.

Missouri businesses are rarely confined to doing business only within Missouri's borders, and as a result, House Bill 393 makes special note to address procedure for these case situations. If the plaintiff was first injured outside Missouri, venue depends on the nature of the defendant. In situations where the defendant is an individual and the location of first injury is outside Missouri, venue is determined by whether:

- 1) the county of the individual defendant's principal place of residence is in Missouri, or if the plaintiff's principal place of residence was in Missouri at the time of the first injury, or
- 2) in the county of the plaintiff's principal place of residence.

When the situation involves a corporation as the defendant, venue is proper (1) in any county where the defendant is a registered agent or (2) in the county of the plaintiff's principal place of residence at the time of the first injury. For example, assume the plaintiff is a Missouri resident who resides in Cole County, and the plaintiff alleges a personal injury tort where the first injury

occurred in Arkansas. The defendant is a corporation with an office in Warren County and is a registered agent in St. Louis County. The plaintiff may sue the defendant in one of two places: (1) St. Louis County, where the defendant's registered agent is located (location of the office does not affect the venue), or (2) Cole County, where the plaintiff had his residence at the time the first injury occurred.

In addition, it is important to note that if you wish to file a motion to transfer venue, it must be filed within sixty days after service on the party seeking transfer. Overall, the new venue provisions should provide more certainty regarding the proper forum for actions with at least one count alleging a tort. The new venue provisions prevent the use of a defendant with remote connections to the forum to establish venue. Instead, the amended venue statutes should limit the occurrence of venue shopping.

### **JOINT & SEVERAL LIABILITY**

Prior to the enactment of House Bill 393, a plaintiff could recover all or part of his or her damages from any defendant, regardless of the defendant's proportion of fault. The apportionment of fault between defendants had no effect on a plaintiff's right to collect the full amount of a judgment from any one of the defendants. The new law provides that joint and several liability applies to a defendant only if that defendant is at least fifty-one percent at fault. In such circumstances, the defendant is liable for the amount of the judgment rendered against the defendant(s). The new law eliminates joint and several liability for a defendant found by the trier of fact to be less than fifty-one percent at fault unless the other defendant is an employee or the party's liability arises out of the Federal Employer's Liability Act. Thus, if a defendant is found to be less than fifty-one percent at fault, then that defendant is only required to pay his proportionate share of liability.

The new joint and several liability provisions will significantly impact cases in which a plaintiff or co-defendant is attributed fault. For example, if a defendant is found twenty-five percent at fault, and others, including the plaintiff, are found seventy-five percent at fault, then that defendant is

responsible for only twenty-five percent of the judgment. The joint and several liability provisions of the new law protect a deep-pocketed defendant whose proportionate fault is relatively small and reduces the incentive to join such defendants.

### **PUNITIVE DAMAGES**

The new law adds an additional hurdle for a plaintiff seeking punitive damages by requiring, prior to any discovery of a defendant's assets, a preliminary finding by the court that the plaintiff is more than likely able to present a submissible case to the trier of fact on the plaintiff's claim of punitive damages. Additionally, the new law limits punitive damages to \$500,000 or five times the compensatory damages. As such, a defendant is now only liable for the percentage of punitive damages based on its percentage of fault. As in the case of actual damages, a defendant shall only be liable for the percentage of punitive damages that corresponds to the percentage of its fault.

However, there are some exceptions when the damages cap is not applicable, such as cases in which the defendant pled guilty to or was convicted of a felony arising out of the acts or omissions pled by the plaintiff.

### **CONCLUSION**

While the effects of House Bill 393 are already evident in Missouri courtrooms as attorneys argue motions to transfer for improper venue, the long-term consequences of tort reform will not be clear for some years. Although insurance companies, businesses, and politicians may anticipate this new legislation will reduce insurance rates and attract businesses to Missouri, it will likely take years to assess the impact in regards to the legal landscape on business interests. Additionally, the plaintiff's bar anticipates constitutional challenges to some of the provisions of House Bill 393. Yet, for now, business owners, managers, and employees must have a heightened awareness and understanding of these changes as they may (and should) affect the strategy and decision-making processes long before trial.

For further information, or a complete copy of the article “Missouri Tort Reform,” please contact Brian Kaveney, Jim Stockberger or Matt Reh:

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