

# MISSOURI SUPREME COURT HOLDS JOINDER CANNOT ESTABLISH VENUE

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The Missouri Supreme Court has held that permissive joinder of separate claims cannot extend venue to a county when, absent joinder, venue in that county would not be proper for each claim.

In *State ex rel. Johnson & Johnson v. Burlison*, No. SC 96704, 2019 WL 581175 (Mo. banc Feb. 13, 2019), the Missouri Supreme Court agreed with Defendants Johnson & Johnson and Imerys Talc America that plaintiff Michael Blaes' claims were improperly joined with other cases pending in St. Louis City. Blaes alleged his wife's death from ovarian cancer was caused by Defendants' talcum powder, which Blaes' wife purchased and used in St. Louis County.

## History

Although Blaes initially filed an individual suit against Defendants in St. Louis County, he voluntarily dismissed the case after a large talc-related jury verdict was rendered against Defendants in St. Louis City. Blaes subsequently joined his claims with 47 other plaintiffs in another talc action against Defendants already pending in St. Louis City. That joinder, Blaes argued, allowed his claims to proceed in the City, where venue would otherwise not have been appropriate had his case been

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filed alone.

Defendants were unsuccessful on their repeated motions to sever and transfer for improper venue. Defendants then sought writs of prohibition from the Court of Appeals, which were also denied. In a final attempt, Defendants sought writs of prohibition from the Missouri Supreme Court. On February 13, 2019, the Court issued permanent writs of prohibition and the circuit court was ordered to sever Blaes' claims and transfer them to St. Louis County.

## Legal Analysis

The central issue of the opinion decided whether venue could be established by means of Rule 52.05(a) when it would not have existed without such joinder. Judge W. Brent Powell, writing for the majority in the 4-3 split decision, unequivocally responded: "It cannot and does not."

Blaes argued venue in St. Louis City was appropriate because, pursuant to Rule 52.05(a), his claims were properly joined with other plaintiffs allegedly injured both inside and outside of Missouri. Since at least one joined plaintiff's injuries occurred in St. Louis City, Blaes asserted that venue was proper in St. Louis City pursuant to § 508.010.4.

In rejecting Blaes' argument, the Court clarified the interplay of Rules 52.05(a) and 51.01 of the Missouri Rules of Civil Procedure and Missouri's governing venue statute, § 508.010, RSMo.

While Rule 52.05(a) permits joinder of "two or more separate causes of action," Rule 51.01 expressly states that the rule "**shall not be construed to extend** or limit the jurisdiction of the Courts of Missouri **or the venue of civil actions therein.**" *State ex rel. Turnbough v. Gaertner*, 589 S.W.2d 290, 291-92 (Mo. banc 1979) (emphasis added).

Venue must be established through § 508.010 *before* determining whether joinder is proper under Rule 52.05. Accordingly, where venue is not established by the provisions of § 508.010, joinder through Rule 52.05 cannot create venue as to the counts so joined. *Turnbough*, 589 S.W.2d at 292. "Just as the cart cannot lead the horse, joinder cannot control venue," wrote Judge Powell in the February 13, 2019 opinion.

The Court ultimately held that the City of St. Louis is an improper venue for Blaes to pursue his claims. In every count and claim brought by Blaes against Defendants, Blaes alleged his wife was injured in St. Louis County. Therefore, "pursuant to § 508.010.4, venue is only proper in St. Louis County for Blaes' independent, separate claims against , and joinder of his claims in the petition with the other plaintiffs' claims as authorized by Rule 52.05(a) cannot establish venue in St. Louis city or any other county in Missouri." Blaes' claims must be severed and transferred to St. Louis County, where venue is proper.

## Implications

In recent years, it has been reported that fewer than 10% of plaintiffs in mass tort lawsuits filed in

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Missouri are actually State residents. This decision will deter potential forum shopping and inevitably reduce the number of mass tort plaintiffs in St. Louis City. However, this decision also comes with its fair share of criticism. In his dissent, Judge Paul C. Wilson noted that “numerous claims that previously could have been filed together in one action – and in one venue – must now be filed separately, wasting judicial resources and the time and money of all parties involved.” While the implications of this decision have yet to play out, there is little doubt that this decision will greatly impact the future of mass tort litigation in Missouri.

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