

SIGNIFICANT CHANGES COMING TO MISSOURI TRIAL PRACTICE: JOINDER AND VENUE

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Tag: [Missouri Trial Practice](#)



The Missouri Legislature concluded its 2019 session with the passage of two bills that, if signed by Governor Michael Parson, would limit Missouri's existing joinder and venue rules (Senate Bill No. 7) and limit discovery under the Missouri Supreme Court Rules (Senate Bill No. 224).

In the first of a multi-part series, we discuss Senate Bill No. 7 that revises Missouri law with regard to joinder and venue. The Missouri General Assembly expressly adopted the holding of State ex rel. Johnson & Johnson v. Burlison, No. SC96704, No. SC 96704, 2019 WL 581175 (Mo. banc Feb. 13, 2019), as it relates to joinder and venue.

Our litigation team previously [provided insight](#) on this Missouri Supreme Court decision wherein the Court held permissive joinder of separate claims cannot be used to establish venue in a county which otherwise would not be proper for each claim.

Significant Changes Coming to Missouri Trial Practice Series

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Proposed Changes of Joinder Law in Missouri

Under the proposed amendments, Section 507.040 would be revised to preclude joinder of "claims arising out of separate purchases of the same product or service, or separate incidents involving the same product or services...."

Joinder in these circumstances would be prohibited regardless of whether any questions of law or fact common to all of the claims will arise in the action. Under Section 507.050, parties improperly joined could be severed by the Court upon motion of any party or on the Court's own initiative, at any stage of the action.

Proposed Changes of Venue Law in Missouri

Section 508.010 would be amended to provide that if the county where the plaintiff's claim is filed is not proper venue, the plaintiff would have to be transferred to a county where proper venue could be established. If venue cannot be properly established in Missouri, the claim would be dismissed without prejudice. If a motion to transfer venue were denied in error, the denial must be reversed. No finding of prejudice under Missouri Supreme Court Rule 84.13(b) would be required for reversal.

Under the revised Section 508.012, a court would be required to transfer a case to a proper forum upon application of any party if a party is added to, removed, or severed from a petition which would have, if originally added to, removed, or severed from the original petition, altered the determination of venue under Section 508.010. This application must be made prior to the commencement of trial.

Application to Pending Litigation

These proposed revisions to Missouri's joinder and venue laws would apply to any action filed after February 13, 2019. A Missouri resident plaintiff could continue to trial in the venue as filed if the plaintiff had a case:

- pending in a Missouri court as of February 13, 2019;
- has proper jurisdiction in Missouri; and
- such case has or had been set at any time prior to February 13, 2019 for a trial date beginning on or before August 28, 2019.

For those actions pending as of February 13, 2019, a plaintiff whose claim has been found to have no county in Missouri in which venue exists could proceed in such venue in Missouri where such claim was dismissed without prejudice only when the court finds that the claim:

- was filed in the Missouri court within the statute of limitations applicable to the claim;
- has no proper venue in the state of Missouri; and
- cannot be maintained, as of August 28, 2019, in any state where the claim may be brought because of applicable statutes of limitations and lack of a savings statute or similar law.

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Implications on Missouri Litigation

Missouri has a reputation as a favored venue for plaintiffs in mass tort litigation. This has been due, in part, to the ability of the plaintiffs' bar to file lawsuits in the state with only a handful of individual plaintiffs being a resident of the venue, with multiple plaintiffs – including those who reside out-of-state – joining the lawsuit.

According to Bill's sponsor Senator Ed Emery, there are 13,252 mass tort plaintiffs involved in cases pending in St. Louis City courts but only 1,035 of them are Missouri residents and only 242 are from the City St. Louis. Senate Bill 7 represents an attempt of the Missouri Legislature to curb Missouri's favored status by prohibiting plaintiffs to join claims based solely on purchase of the same product or service and doing an end-run around venue requirements.

Governor Parson has indicated he intends to sign Senate Bill 7 into law. Once it is signed into law, the courts and parties will have to address application of the law to those cases filed after February 13, 2019. Either by motion of any party or on the court's own initiative, parties improperly joined to an action Section 507.040 can be severed. If a party's severed claim is not filed in the proper venue, it can be transferred to a county where proper venue can be established.

If venue cannot be properly established in Missouri, the claim must be dismissed without prejudice, provided however the claim is not barred by an applicable statute of limitations as of August 28, 2019, in any state where the claim could be brought. It remains to be seen whether this new law will have its intended effect of stopping the influx of mass tort litigation being filed in Missouri and in the St. Louis region in particular.

In the second installment of this series, Capes Sokol's Litigation Group will discuss Senate Bill No. 224 and its impact on discovery in Missouri.

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