

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 546

AN ACT

To repeal sections 507.040, 507.050, 508.010, 508.012, and 537.762, RSMo, and to enact in lieu thereof five new sections relating to civil procedure.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 507.040, 507.050, 508.010, 508.012, and
2 537.762, RSMo, are repealed and five new sections enacted in lieu
3 thereof, to be known as sections 507.040, 507.050, 508.010,
4 508.012, and 537.762, to read as follows:

5 507.040. 1. All persons may join in one action as
6 plaintiffs if they assert any right to relief jointly, severally,
7 or in the alternative in respect of or arising out of the same
8 transaction, occurrence, or series of transactions or occurrences
9 and if any question of law or fact common to all of them will
10 arise in the action. All persons may be joined in one action as
11 defendants if there is asserted against them jointly, severally,
12 or in the alternative, any right to relief in respect of or
13 arising out of the same transaction, occurrence, or series of
14 transactions or occurrences and if any question of law or fact
15 common to all of them will arise in the action. Notwithstanding
16 any other provision of law to the contrary, for any action in
17 which a plaintiff was injured outside the state of Missouri,
18 claims arising out of separate purchases of the same product or

1 service, or separate incidents involving the same product or
2 services shall not satisfy this section. A plaintiff or
3 defendant need not be interested in obtaining or defending
4 against all the relief demanded. Judgment may be given for one
5 or more of the plaintiffs according to their respective rights to
6 relief, and against one or more defendants according to their
7 respective liabilities.

8 2. In addition to the requirements of subsection 1 of this
9 section, in any civil action in which there is a count alleging a
10 tort, two or more plaintiffs may be joined in a single action
11 only if each plaintiff could have separately filed an action in
12 that venue, independently of the claims of any other plaintiff.
13 Two or more defendants may be joined in a single action only if:

14 (1) Personal jurisdiction is proper for each defendant,
15 independently of the claims against any other defendant; and

16 (2) Each plaintiff can establish proper venue against each
17 defendant, independently of the claims against any other
18 defendant. Except that, if there is no venue in which the
19 plaintiff can establish proper venue against each defendant
20 independently of the claims against the other defendants, then
21 venue as to all defendants shall be in the county where the
22 plaintiff was first injured.

23 3. All parties for which proper personal jurisdiction or
24 venue cannot be independently established shall be deemed
25 misjoined. Misjoined parties may be joined only where all
26 parties to the action, including parties later added to the
27 action, waive objection to the misjoinder. Proceedings against
28 any misjoined parties shall otherwise be governed by the

1 provisions of section 507.050.

2 4. Notwithstanding any other provision of law to the
3 contrary, if two or more plaintiffs were first injured in a state
4 of the United States, other than the state of Missouri, as a
5 result of a single occurrence in which injuries occurred
6 simultaneously, the plaintiffs may be joined in one action in
7 Cole County, in addition to any other proper venue as established
8 by this section.

9 5. The court may make such orders as will prevent a party
10 from being embarrassed, delayed, or put to expense by the
11 inclusion of a party against whom he asserts no claim and who
12 asserts no claim against him, and may order separate trials or
13 make other orders to prevent delay or prejudice.

14 507.050. 1. Misjoinder of parties is not ground for
15 dismissal of an action. Parties may be dropped [or], added, or
16 severed by order of the court on motion of any party or of its
17 own initiative at any stage of the action and on such terms as
18 are just. Any claim against a party may be severed and proceeded
19 with separately. If a plaintiff or defendant is deemed misjoined
20 pursuant to subsection 3 of section 507.040, all claims brought
21 by that plaintiff or against that defendant shall be severed from
22 the action and those claims shall be transferred to a county in
23 which venue exists upon the motion of any party. If there is no
24 county in Missouri in which venue exists, those claims shall be
25 dismissed without prejudice.

26 2. A motion to drop or add parties may be made at the same
27 time as other motions provided for in section 509.290, and if so
28 made, the provisions of section 509.340 with reference to the

1 consolidation of motions and waiver of objections shall also
2 apply. If said motion is made at any other time, the hearing and
3 determination thereof shall not delay the trial. Objections on
4 account of misjoinder or nonjoinder of parties may also be raised
5 by answer or reply.

6 508.010. 1. There shall be only one principal place of
7 residence for each party to an action. As used in this section,
8 "principal place of residence" shall [mean the county which is
9 the main place where an individual resides in the state of
10 Missouri. There shall be a rebuttable presumption that the
11 county of voter registration at the time of injury is the
12 principal place of residence. There shall be only one principal
13 place of residence.] be determined as follows:

14 (1) For an individual person, there shall be a rebuttable
15 presumption that the county of voter registration at the time of
16 injury is the principal place of residence;

17 (2) Notwithstanding subdivision (1) of this subsection, for
18 an individual whose conduct at issue was alleged in at least one
19 count to be in the course and scope of his or her employment with
20 a corporation, the individual's principal place of residence for
21 venue purposes shall be deemed to be the applicable corporation's
22 principal place of residence;

23 (3) For a corporation, the county where the corporation has
24 its registered agent is the principal place of residence;

25 (4) For a domestic insurance corporation, the county where
26 the corporation has its registered office is the principal place
27 of residence;

28 (5) For a foreign insurance corporation, the county where

1 the foreign corporation has its registered office is its
2 principal place of residence; if such a foreign corporation does
3 not have a registered office in any county in Missouri, the
4 principal place of residence shall be Cole County.

5 2. In all actions in which there is no count alleging a
6 tort, venue shall be determined as follows:

7 (1) When the defendant is a resident of the state, either
8 in the county within which the defendant resides, or in the
9 county within which the plaintiff resides, and the defendant may
10 be found;

11 (2) When there are several defendants, and they reside in
12 different counties, the suit may be brought in any such county;

13 (3) When there are several defendants, some residents and
14 others nonresidents of the state, suit may be brought in any
15 county in this state in which any defendant resides;

16 (4) When all the defendants are nonresidents of the state,
17 suit may be brought in any county in this state.

18 3. The term "tort" shall include claims based upon improper
19 health care, under the provisions of chapter 538.

20 4. Notwithstanding any other provision of [law] this
21 section to the contrary, in all actions in which there is any
22 count alleging a tort or a claim for uninsured or underinsured
23 motorist benefits, and in which the plaintiff was first injured
24 in the state of Missouri, venue shall be in the county where the
25 plaintiff was first injured by the [wrongful] acts or [negligent]
26 conduct alleged in the action. In all actions in which there is
27 any count against an insurer, whether in tort or contract,
28 regarding the rights, benefits, or duties under an insurance

1 contract or any action arising from an insurance contract, other
2 than claims for uninsured or underinsured motorist coverage,
3 venue shall be determined as described in subsection 6 of this
4 section.

5 5. Notwithstanding any other provision of law, in all
6 actions in which there is any count alleging a tort or a claim
7 for uninsured or underinsured motorist benefits and in which the
8 plaintiff was first injured outside the state of Missouri, venue
9 as to that individual plaintiff shall be determined as follows:

10 (1) If the defendant is a corporation, then venue shall be
11 in [any] the county where [a] the defendant [corporation's
12 registered agent is located] has its principal place of residence
13 or, if the plaintiff's principal place of residence was in the
14 state of Missouri on the date the plaintiff was first injured,
15 then venue may be in the county of the plaintiff's principal
16 place of residence on the date the plaintiff was first injured;

17 (2) If the defendant is an individual, then venue shall be
18 in any county of the individual defendant's principal place of
19 residence in the state of Missouri or, if the plaintiff's
20 principal place of residence was in the state of Missouri on the
21 date the plaintiff was first injured, then venue may be in the
22 county containing the plaintiff's principal place of residence on
23 the date the plaintiff was first injured;

24 (3) Notwithstanding subdivisions (1) and (2) of this
25 subsection, if the plaintiff was first injured in a foreign
26 country in connection with any railroad operations therein and
27 any defendant is a:

28 (a) Corporation that, either directly or through its

1 subsidiaries, wholly owns or operates the foreign railroad; or

2 (b) Wholly owned subsidiary of a corporation that, either
3 directly or through its subsidiaries, wholly owns or operates the
4 foreign railroad;

5
6 then venue shall exclusively be in the county where any such
7 defendant corporation's registered agent is located, regardless
8 of venue as to any other defendant or, if the plaintiff's
9 principal place of residence was in the state of Missouri on the
10 date the plaintiff was first injured, then venue may be in the
11 county of the plaintiff's principal place of residence on the
12 date the plaintiff was first injured.

13 6. Notwithstanding any other provision of this section to
14 the contrary, in all actions in which there is any count against
15 an insurer, whether in tort or contract, regarding the rights,
16 benefits, or duties under an insurance contract or any action
17 arising from an insurance contract, including but not limited to
18 claims of bad faith, refusal to settle, claims under section
19 375.296, or claims under section 375.420, venue shall be in the
20 county either of the insurer's principal place of residence or if
21 the insured was a resident of Missouri at the time the insurance
22 contract was issued, the insured's principal place of residence
23 at the time the insurance contract was issued, or the county
24 where the injury occurred that resulted in the underlying claim
25 against the insured. Venue shall be determined by this
26 subsection even if the insured's rights or claims under the
27 policy have been assigned or otherwise transferred to another
28 party. However, intervention by an insurer in an action pursuant

1 to section 537.065 shall not affect the venue of the action. The
2 provisions of this subsection shall not apply to any action
3 against an insurer relating to uninsured motorist coverage or
4 underinsured motorist coverage, including any action to enforce
5 such coverage.

6 7. Any action, in which any county shall be a plaintiff,
7 may be commenced and prosecuted to final judgment in the county
8 in which the defendant or defendants reside, or in the county
9 suing and where the defendants, or one of them, may be found.

10 [7.] 8. In all actions, process shall be issued by the
11 court in which the action is filed and process may be served in
12 any county within the state.

13 [8.] 9. In any action for defamation or for invasion of
14 privacy, the plaintiff shall be considered first injured in the
15 county in which the defamation or invasion was first published.

16 [9.] 10. In all actions, venue shall be determined as of
17 the date the plaintiff was first injured.

18 [10.] 11. All motions to dismiss or to transfer based upon
19 a claim of improper venue shall be deemed granted if not denied
20 within ninety days of filing of the motion unless such time
21 period is waived in writing by all parties.

22 [11.] 12. In a wrongful death action, the plaintiff shall
23 be considered first injured where the decedent was first injured
24 by the wrongful acts or negligent conduct alleged in the action.
25 In any spouse's claim for loss of consortium, the plaintiff
26 claiming consortium shall be considered first injured where the
27 other spouse was first injured by the wrongful acts or negligent
28 conduct alleged in the action.

1 [12.] 13. The provisions of this section shall apply
2 irrespective of whether the defendant is a for-profit or a
3 not-for-profit entity.

4 [13.] 14. In any civil action, if all parties agree in
5 writing to a change of venue, the court shall transfer venue to
6 the county within the state unanimously chosen by the parties.
7 If any parties are added to the cause of action after the date of
8 said transfer who do not consent to said transfer then the cause
9 of action shall be transferred to such county in which venue is
10 appropriate under this section, based upon the amended pleadings.

11 [14.] 15. A plaintiff is considered first injured where the
12 trauma or exposure occurred rather than where symptoms are first
13 manifested.

14 16. Notwithstanding any other provision of law to the
15 contrary, in any civil action in which there is any count
16 alleging a tort, each plaintiff shall establish that the court
17 where the action is filed is a proper venue against each
18 defendant, independent of the claims brought by any other
19 plaintiff or against any other defendant. Venue for each
20 plaintiff and each defendant cannot be established by joinder or
21 intervention. Except that, if there is no venue in which the
22 plaintiff can establish proper venue against each defendant
23 independently of the claims against the other defendants, then
24 venue as to all defendants shall be in the county where the
25 plaintiff was first injured.

26 17. If the county where the plaintiff's claim is filed is
27 not a proper venue, that plaintiff shall be transferred to a
28 county where proper venue can be established. If no such county

1 exists in the state of Missouri, the claim shall be dismissed
2 without prejudice.

3 18. Denial of a motion to transfer venue pursuant to
4 sections 507.040, 507.050, or this section, if denied in error,
5 requires reversal, and no finding of prejudice under Missouri
6 supreme court rule 84.13(b) is required for reversal.

7 19. For the purposes of this section, a domestic insurance
8 company shall be deemed to reside in, and be a resident of, the
9 county where its registered office is maintained. A foreign
10 insurance company shall be deemed to reside in, and be a resident
11 of, the county where its registered office is maintained. If a
12 foreign insurance company does not maintain a registered office
13 in any county in Missouri, the foreign insurance company shall be
14 deemed to reside in, and be a resident of, Cole County.

15 508.012. At any time prior to the commencement of a trial,
16 if a plaintiff or defendant, including a third-party plaintiff or
17 defendant, is either added [or] to, removed, or severed from a
18 petition filed in any court in the state of Missouri which would
19 have, if originally added [or] to, removed [to], or severed from
20 the initial petition, altered the determination of venue under
21 section 508.010, then the judge shall upon application of any
22 party transfer the case to a proper forum [under section
23 476.410].

24 537.762. 1. A defendant whose liability is based solely on
25 his status as a seller in the stream of commerce may be dismissed
26 from a products liability claim as provided in this section.

27 2. This section shall apply to any products liability claim
28 in which another defendant, including the manufacturer, is

1 properly before the court and from whom total recovery may be had
2 for plaintiff's claim.

3 3. A defendant may move for dismissal under this section
4 within the time for filing an answer or other responsive pleading
5 unless permitted by the court at a later time for good cause
6 shown. The motion shall be accompanied by an affidavit which
7 shall be made under oath and shall state that the defendant is
8 aware of no facts or circumstances upon which a verdict might be
9 reached against him, other than his status as a seller in the
10 stream of commerce.

11 4. The parties shall have sixty days in which to conduct
12 discovery on the issues raised in the motion and affidavit. The
13 court for good cause shown, may extend the time for discovery,
14 and may enter a protective order pursuant to the rules of civil
15 procedure regarding the scope of discovery on other issues.

16 5. Any party may move for a hearing on a motion to dismiss
17 under this section. If the requirements of subsections 2 and 3
18 of this section are met, and no party comes forward at such a
19 hearing with evidence of facts which would render the defendant
20 seeking dismissal under this section liable on some basis other
21 than his status as a seller in the stream of commerce, the court
22 shall dismiss without prejudice the claim as to that defendant.

23 6. [No order of dismissal under this section shall operate
24 to divest a court of venue or jurisdiction otherwise proper at
25 the time the action was commenced. A defendant dismissed
26 pursuant to this section shall be considered to remain a party to
27 such action only for such purposes.

28 7.] An order of dismissal under this section shall be

1 interlocutory until final disposition of plaintiff's claim by
2 settlement or judgment and may be set aside for good cause shown
3 at anytime prior to such disposition.