

## Missouri Tort Reform 2020 Update

Missouri's 2020 legislative session came to a close on May 15. Despite a strong start, the session ended with few items ticked off the majority's tort reform to-do list. Efforts to shorten Missouri's five-year statute of limitations for most tort claims, to eliminate joint and several liability, to clean up Missouri's years-long effort to limit recoverable medical expenses, and to make needed changes to our state's infamous R.S.Mo. 537.065 (a/k/a the license to collude) all failed to advance. One bright spot, Senate Bill 591, which changes the standard and procedures for punitive damages and amends the Missouri Merchandising Practices Act, is on its way to the governor. We expect he will sign the measure, and it will become effective on August 28, 2020.

### Punitive Damages

Under current law, to recover punitive damages in Missouri, a plaintiff must prove "complete indifference to or conscious disregard for the safety of others." SB 591 enhances the burden of proof for punitive damages, requiring a plaintiff to prove by clear and convincing evidence that defendant "intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others." With respect to health care providers, plaintiffs must meet an even higher standard. By clear and convincing evidence, plaintiff must show that the provider "intentionally caused damage or demonstrated malicious misconduct." The bill also changes the procedure for pleading punitive damages. As it stands, Missouri law allows plaintiffs to claim punitive damages at the outset of a case. Under the new statute, plaintiffs must move for leave before punitive damages can be pled, no later than 120 days before trial or the final pre-trial conference. In order to grant leave, the trial court must conclude, based on affidavits, exhibits and discovery materials supporting the motion, that a trier of fact could reasonably conclude, based on clear and convincing evidence, that the standards for a punitive damage award have been met.

### Merchandising Practices Act

The Missouri Merchandising Practices Act is commonly pled as an "add-on" claim in construction, property damage and products liability lawsuits because it allows for the recovery of attorneys' fees. For this reason, it is often stretched beyond its original intent, and efforts to reign in its abuse have been at the top of the business community's wish list for many years. Among the more important revisions made by SB 591 to the MMPA, the new law exempts new home sales from the purview of the statute if specific disclaimer and warranty language is

included in the sales contract. The revised statute also requires a plaintiff to prove that he or she acted as a reasonable consumer; that the defendant's complained-of conduct would cause a reasonable consumer to enter into the transaction at issue; and that the plaintiff suffered individual damages that can be calculated with a reasonable degree of certainty. Finally, the revised MMPA will be expressly inapplicable to personal injury claims. Assuming SB 591 is signed by the governor, the enacted changes will apply only to claims filed after August 28, 2020.

**Stephen Moore, Director**

*Licensed in Connecticut, Louisiana, Missouri, and Illinois*

E-mail: [smoore@gallowaylawfirm.com](mailto:smoore@gallowaylawfirm.com)