



## **EASTERN DISTRICT ADDRESSES THE EFFECT OF THE 2005 AMENDED VENUE STATUTE ON PERMISSIVE JOINDER**

***STATE EX REL. ANTHONY M. KINSEY V. THE HONORABLE ROBERT G. WILKINS, --- S.W.3D ---, 2013 WL 682795 (Mo.App. E.D. FEBRUARY 26, 2013)***

In a case of first impression, the Missouri Court of Appeals for the Eastern District has addressed the very narrow issue of what effect the permissive joinder rule has on venue where a plaintiff suffers injuries from separate, successive accidents in different counties within the State of Missouri. The Court concludes the new venue statute, Section 508.010.4, RSMo. 2005, eliminates any ambiguity which might have existed pre-tort reform in terms of the interplay between the permissive joinder rules and the venue rules. According to the Court, Section 508.010.4 unambiguously confers venue in the county of the first injury for separate, yet successive accidents occurring in different counties.

This case arose from separate automobile accidents occurring in Greene and Jefferson Counties. On February 5, 2010, Plaintiff Anthony Kinsey was involved in an accident in Greene County with a vehicle driven by April Bledsoe. In November 2010, Kinsey filed suit against Bledsoe in Greene County. More than 11 months later, on January 27, 2011, Kinsey was involved in an accident in Jefferson County with a vehicle driven by Tricia Bieser. Both accidents involved injuries to the same parts of the body.

In April 2011, the Greene County circuit court allowed Kinsey to amend his Petition to add Bieser as a defendant and to allege he suffered indivisible injuries as a result of both accidents. Bieser then filed a Motion to Dismiss for Lack of Jurisdiction, or in the Alternative, to Transfer for Improper Venue. The circuit court granted the motion, severed the claims against Bieser, and ordered those claims transferred to Jefferson County. Once in Jefferson County, Kinsey moved to re-transfer the claims against Bieser back to Greene County. The Jefferson County circuit court denied the motion and Kinsey sought a writ of mandamus from the Eastern District.

The Eastern District, in making a preliminary writ of mandamus absolute, noted the relationship and interplay of the recently amended venue statute and the permissive joinder rule lies at the heart of this writ proceeding. Prior to the 2005 amendments to Section 508.010, the basic rule in Missouri was that an action could be brought in any Missouri County in which any defendant resided or where a cause of action sounding in tort accrued. Rule 52.05(a), Missouri's permissive joinder rule, permits joinder, as defendants, of all parties against whom (1) is asserted any right to relief jointly, severally, or in the alternative arising out of the same transaction, occurrences, or series of transactions or occurrences, and (2) if any question of law or fact common to all of them will arise in the action. The Court noted that pre-2005, the interplay of these two provisions – venue under Section 508.010 and permissive joinder under Rule 52.05(a) – caused some confusion and conflicting appellate court opinions, particularly in cases where venue as to one defendant was alleged to be proper, if at all, only by virtue of that defendant having been properly joined pursuant to Rule 52.05(a).

After analyzing several permissive joinder cases, the Eastern District found that Kinsey had properly joined his claims against Bledsoe and Bieser: (1) these two separate, yet successive automobile accidents comprise a “series of transactions or occurrences” as is contemplated by Rule 52.05(a), and (2) there is a common question of law or fact as to both (the question of fault as to one or the other or both of the defendants). According to the Court, however, this is only half the question because Kinsey must also satisfy venue, the issue being whether Greene County is the proper venue for Kinsey's cause of action against Bieser, which arose from the second accident in Jefferson County. Under the pre-2005 venue statute, venue against Bieser would have been proper only in Jefferson County and the permissive joinder rules could not have served to expand proper venue against Bieser to Greene County.



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With the 2005 amendments, however, Section 508.010.4 now provides, “Notwithstanding any other provision of law, in all actions in which there is any count alleging a tort and in which the plaintiff was first injured in the state of Missouri, venue shall be *in the county where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in the action.*” (Emphasis added). Venue is now appropriate only in the county of first injury. Couple this with the fact that the Missouri Supreme Court has previously held that all successive events in a “series of transactions” permit a plaintiff to invoke permissive joinder (*State ex rel. Nixon v. Dally*, 248 S.W.3d 615, 618-19 (Mo. banc 2008)), and the Eastern District ultimately concluded that there is no longer a conflict between the venue statute and Rule 52.05(a). With the new venue rule, Rule 52.05(a) is no longer the vehicle that expands or limits venue, which is impermissible under Rule 51.01. Thus, Section 508.010.4, the post-tort reform rule, unambiguously confers venue for separate, yet successive accidents occurring in different counties in the county of first injury, making venue proper against both Bledsoe and Bieser in Greene County.

*SUBMITTED BY*

*LISA A. LARKIN, PARTNER*  
*llarkin@wvslaw.com*  
*(314) 345-5014*

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