

## MISSOURI ADOPTS MORE RIGOROUS STANDARD FOR ADMISSIBILITY OF EXPERT WITNESS TESTIMONY

On March 28, 2017, Missouri Republican Governor, Eric Greitens, signed House Bill 153 into law repealing Missouri's previous statute relating to the admissibility of expert witness opinion testimony and replacing it with more stringent requirements mirrored after the Federal *Daubert* standard.

Prior to the enactment of this new law, an expert's opinion was admissible in any civil action, if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue. A witness could be qualified as an expert by knowledge, skill, experience, training or education. When qualified under this standard, an expert witness could offer opinion testimony even as to the ultimate issue to be decided by the trier of fact. The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing and must have only been the type of facts or data reasonably relied upon by experts in the field. In practice, it was very difficult, if not impossible, for a defendant to challenge the opinions of a plaintiff's expert.

The Revised Statute, §490.065 provides that a witness who is qualified as an expert by knowledge, skill, experience, training or education may offer expert opinions if the following requirements are met:

- The expert's scientific, technical or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.
- The testimony is based on sufficient facts or data.
- The testimony is the product of reliable principles and methods.
- The expert has reliably applied the principles and methods to the facts of the case.

Similar to what is done in Federal Courts under the *Daubert* standard, under this new statute, trial courts will be required to evaluate with closer scrutiny the reliability of the methodology and principles employed by experts prior to admitting testimony into evidence. The intent is for judges to act as gatekeepers to insure that expert opinion testimony based only on sound scientific principles reaches the jury. It is anticipated that Missouri courts will implement the *Daubert* factors to assess whether an expert's methodology or principles are reliable, including assessing: (1) whether the methodology or principle can be, and has been, tested; (2) whether the methodology has been subject to peer review and publication; (3) known or potential error rates; (4) existence or maintenance of standards controlling its operation; and (5) whether the methodology or principle has attracted widespread acceptance within the relevant scientific community.

The new law takes effect August 28, 2017.

It remains to be seen how the courts will enforce this new expert witness statute. We can anticipate challenges to expert testimony by both sides, which will result in an increased number of pretrial Motions and hearings to bar, or at least restrict, expert opinion testimony. This may lead to fewer lawsuits being filed as it would require plaintiffs to retain legitimate experts whose opinions are widely accepted within the expert's field.

This law is just one of several anticipated changes as part of Missouri's trend toward tort reform legislation which has gained momentum in recent

years. It is expected that additional tort reform legislation will be sent to the Governor before the current Legislative session ends in May. Some provisions currently under consideration include modification to the collateral source rule, changes to the venue statute to reduce forum shopping, and more stringent standards for establishing certain employment-related claims.

For more information about this statute or Fox Galvin's Professional Liability Practice, please contact Thomas J. Smith at 314-588-7000, Ext. 104, or [tsmith@foxgalvin.com](mailto:tsmith@foxgalvin.com)

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