CHANGES TO MISSOURI CIVIL PROCEDURE RULES

BY: JOHN GALVIN

For years, the State of Missouri and the City of St. Louis in particular have been seen as jurisdictions that are challenging for corporate defendants. Plaintiffs have identified this and invested great effort into filing cases in Missouri. For example, a St. Louis jury recently made history by returning a $4.69 billion verdict against Johnson & Johnson linking asbestos in talcum powder products to cancer. Part of this is due to the Missouri Rules of Civil Procedure, which were perceived as generally favoring plaintiffs. The Missouri legislature has seen that verdicts such as this prove to be anomalies at the national level and has now attempted to address the situation by implementing changes to these rules. The state legislature did this by passing SB 224 which alters the state's civil procedure rules on discovery. The new rules mirror the Federal Rules of Civil Procedure in many ways. Here are the major provisions:

- Historically, Missouri courts looked at whether discovery was "reasonably calculated to the discovery of admissible evidence." Often, this standard led to nearly unfettered discovery requests directed to corporate defendants regardless of the burden imposed or the tenuous connection to the importance of the information sought. Now, under the new rules, discovery must be "proportional to the needs of the case considering the totality of the circumstances." This rule will give courts the opportunity to weigh factors such as relevance of the information to the case, the importance of the case itself, and the parties' resources. Judges can cut off discovery if it is cumulative, duplicative or can be obtained from some other source that is "more convenient, less burdensome, or less expensive."

- Parties will typically be limited to 25 written interrogatories and 10 depositions of no more than seven hours, although more extensive inquiries can be stipulated through a court order or discussion between the parties. Our office is involved in a fairly small commercial case in which the opposing party has served over 400 discovery requests. Under the new rules, such tactics can be avoided.

- A limit may be placed on discovery of electronically stored information if it is "not reasonably accessible because of undue burden or cost."

These new provisions should give each party a fair chance in a lawsuit. Attorneys around Missouri are hopeful that the changes will allow a more reasonable, efficient, and cost-effective discovery process for all those involved. There are a few provisions in the Federal Rules, however, that are not adopted under the new Missouri scheme. For example, Federal Rule 26 provides for automatic disclosure of discoverable information by both sides shortly after a case is filed. The same Rule requires an initial discovery and scheduling conference, at which the judge sets the parameters of appropriate discovery in the case. These further changes would help make Missouri courts even more efficient, reduce time cases are pending before trial, and avoid unnecessary expense in discovery.

FOX GALVIN, LLC,
One S. Memorial Drive, 12th Floor, St. Louis, MO 63102