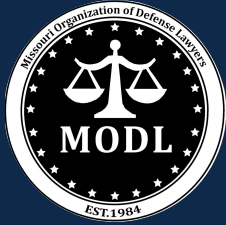


Spring, 2025

# MODL QUARTERLY REPORT

MISSOURI ORGANIZATION OF DEFENSE LAWYERS



## President's Message

### In this issue ...

- MODL President's Message ..... 1
- 2025 Missouri Legislative ..... 2  
Report
- Amicus Committee ..... 3  
Update
- Meet Judge Beth Phillips ..... 4  
Chief Judge of the Western  
District of Missouri
- Board Member Spotlight ..... 5  
Elizabeth Moeller
- Malice, Not Mere Negligence: ....6  
Missouri's Punitive Damages  
Reform and the Defense of  
Healthcare Providers
- Views from the Bench ..... 8  
Invitation
- Recent Missouri Appellate ..... 9  
Cases Regarding Insurance
- Amicus Committee ..... 10  
Assistance
- 2025 MODL Annual ..... 10  
Meeting Reminder
- Motion Document Bank ..... 10

***Amanda Allen Miller***  
***MODL 2024-25 President***

*Meridian Law LLC  
Columbia, MO*



Finally, spring is in the air! The days are longer, the sun is warmer, and along with spring break and summer vacation planning, I am eagerly anticipating the MODL Annual Meeting.

Some time ago, I told my daughter that in the impossibly distant year 2025, I would be the MODL President and would have some big responsibilities at the Annual Meeting. She's now age 12 and recently confessed to me that she thought I was referring to the United States presidency. It must be a testament to her great confidence in me that she didn't even question this turn of events. In all seriousness, I am looking forward to bringing both of my girls to our family-friendly event. They're old enough to enjoy some shopping along Branson Landing with Mom's credit card, but the Annual Meeting is a relaxing and fun time for younger kids and families of all ages, too.

This year's CLE program is full of great speakers and informative topics. Our keynote speaker, Matthew Keris, will present "RaDonda Vaught Lessons: The Ethical Challenges of Managing Dual Legal Investigations." Vaught was a nurse who mistakenly administered a medication that killed a patient in 2017. This event resulted in a medical negligence claim, as well as professional licensure consequences for Nurse Vaught and a controversial charge of criminally negligent homicide. Keris gives a great presentation on the complexities of managing the legal consequences on multiple fronts. We've lined up a joint MODL/MATA presentation that is sure to be informative and entertaining. We'll get a thorough and informative legislative update from Randy Scherr and Brian Bernskoetter. And, as has become a Saturday morning tradition, we are honored to have a Blended Judicial Panel consisting of Supreme, Appellate and Circuit Court judges from across the state.

I strongly encourage all MODL members, new and old, to book your trip to the 40th Annual MODL Meeting at Hilton Branson Landing May 29-31. I look forward to seeing you all there!

### QUARTERLY REPORT CO-EDITORS:

**Christopher Brackman**  
cbrackman@fsmllawfirm.com

**James Martin**  
jmartin@polsinelli.com





# 2025 Missouri Legislative Report

*by Randy Scherr and Brian Bernskoetter*

*RJ Scherr and Associates*

*Jefferson City, MO*

The Missouri General Assembly is now (Friday, March 14th) on their Legislative Spring Break, the traditional half-way point of the session. It has been a very productive start by any measure, but particularly compared to the gridlock that has gripped the Capitol in recent years.

This session has produced three bills for the Governor to sign already and has passed over 100 bills from the respective chambers. For comparison's sake, at this time last session the General Assembly hadn't passed a single bill for the Governor to sign and had only passed 54 bills through their respective legislative bodies.

In terms of bills of specific interest to MODL there are quite a few proposals moving through the process.

For the last few years, we along with other business and insurance groups have been supporting legislation to reduce the statute of limitation on personal injury claims from five years down to two. House Bill 68 filed by Rep. Matthew Overcast (R-Ava) which seeks to make this change has already been voted out of the House and has been referred to the Senate General Laws Committee.

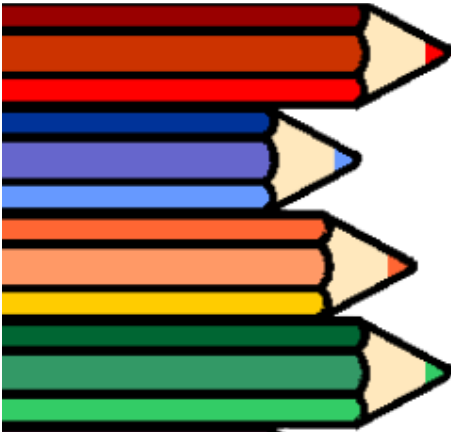
There has also been significant action on bills to reign in the plaintiff bar's practice of setting up a bad faith claim by amending the time limited demand statutes (HB 437 & SB 312) and a bill to rectify the collateral source rule (HB 69).

MODL has also been working on bills (HB 263 & HB 238) to adopt the updated Federal Rule 702 on admissibility of expert testimony. There are also bills that seek to adopt the federal civil procedure rule on certifying class actions (SB 47 & HB 534) that are moving well through the process and look primed to pass this session.

The progress on bills of interest to MODL has been remarkable compared to the amount of action we were able to generate on these topics last session but the real test will come when some of the more controversial provisions come to the Senate floor for debate. Senate Democrats are still mostly opposing many of these changes but their allies in the Missouri Freedom Caucus are very different this year and it's unclear if the new make-up of this coalition will be as effective at stifling these proposals as they have in the past.

The session is slated to end May 16th.





# MODL Amicus Committee Update

*by Christine Lesicko*  
*MODL Amicus Committee Chair*  
*Watters Wolf Bub Hansmann, LLC*

The MODL Amicus Committee provided support in two cases over the past few months, both of which are still pending before the Missouri Supreme Court. Those two cases are *Lange v. GMT Auto Sales, Inc.*, SC 100608, and *Moody v. Dynamic Fitness Management, Ltd.*, SC 100711.

In *Lange*, the plaintiff made a vehicle purchase and entered into two agreements with the dealership — a sales contract and a retail installment agreement. The installment agreement included an arbitration provision. The plaintiff subsequently filed a class action against the dealership and the dealership moved to dismiss for failure to state a claim. The motion to dismiss did not reference the arbitration agreement. The circuit court denied the motion. The plaintiff then moved for class certification, and the dealership moved to compel arbitration. The plaintiff asserted that the dealership waived its right to arbitrate by filing the motion to dismiss. The circuit court granted the motion to compel arbitration. The plaintiff appealed, arguing, in relevant part, that the dealership waived its right to arbitration by filing the motion to dismiss. The amicus brief submitted by MODL argued that a party does not waive its right to enforce an arbitration agreement by filing a motion to dismiss and that filing a motion to dismiss is consistent with the right to arbitrate and considerations of judicial economy. Thanks to Clark Cole, Paul Brusati, and Emily Goeke with Armstrong Teasdale LLP for preparing the amicus brief.

In *Moody*, the plaintiff attended a group fitness training class focusing on Olympic-style weightlifting led by a trainer employed by the defendant. After performing several successful repetitions of a push press, an exercise where a participant pushes a barbell over her head from a rack, the plaintiff felt a sharp pain in her neck and ultimately had surgery. The plaintiff sued the defendant for negligence and the defendant raised the affirmative defense of implied primary assumption of the risk, arguing that the plaintiff assumed the risk of becoming injured by the activity because muscular and skeletal injuries were inherent in weightlifting. The defendant sought judgment as a matter of law, which was denied by

the circuit court. A jury awarded the plaintiff damages but found that she was 70% at fault for her injury. The defendant appealed, and the Eastern District Court of Appeals reversed, holding that the implied primary assumption of the risk doctrine applied to preclude recovery by the plaintiff as a matter of law. The Missouri Supreme Court accepted transfer. The amicus brief argued that the existence and extent of a duty should be determined by the court, not the jury, and that the defendant in this case had no duty to protect the plaintiff against the inherent risks of weightlifting of which the plaintiff was aware. Thank you to James Ribaud with Gausnell, O’Keefe & Thomas, LLC for preparing the amicus brief.

In the Summer 2024 edition of this newsletter, two cases for which MODL provided amicus support were discussed, but those cases were still pending at the time of publication. Those cases have since been decided.

In *Trexler v. The Honorable Scot Lipke*, SC 100440, the Missouri Supreme Court quashed a writ of mandamus issued by the Eastern District that required a circuit court to order an insurer to produce discovery to a permissive driver in an insurance dispute. This ruling supported the argument made by MODL in the amicus brief that the Missouri Motor Vehicle Financial Responsibility Act did not redefine the word “insured” under the policy for purposes of coverage or benefits beyond the statutory mandates.

In *Schermerhorn v. GT Striping, LLC*, SC 100408, the Missouri Supreme Court re-transferred the case to the Western District Court of Appeals following argument and the Western District reinstated its opinion applying the Acceptance Doctrine. MODL’s amicus brief supported the continued application of the Acceptance Doctrine.

Thank you to our Committee for reviewing the amicus requests and to our volunteers for writing the briefs in support.



# Meet Judge Beth Phillips Chief Judge of the Western District of Missouri

by *Todd Moulder ♦ Morrow Willnauer Church, LLC ♦ Kansas City, MO*



I recently had the privilege of speaking with the Chief Judge for the Western District of Missouri, the Honorable Judge Beth Phillips. Judge Phillips had an early introduction to the legal world and the practice of law. Her father was an attorney located in Milan, Missouri, which is approximately 30 miles from Kirksville, Missouri. While in junior high and high school, Judge Phillips found herself working in her father's law office which required wearing various hats. This included anything from cleaning the office to secretarial work and, while in undergrad, doing paralegal work. While in law school she also performed research and writing for her dad. As a result of these experiences, going to law school and becoming a lawyer was a natural direction and next step for her to take.

Judge Phillips attended the University of Chicago, where she received her undergraduate degree and also a masters degree in public policy. Her interest in public policy led her to a stint on Capitol Hill where it became clear that nearly everyone working in public policy also had a law degree. This reinforced not only her desire to go to law school but the fact that a law degree could open doors to many different career opportunities. She then returned to Missouri and attended law school at the University of Missouri, where she graduated in 1996. She graduated early by taking advantage of summer programs and extra classes resulting in her graduating in December of 1996.

After law school, Judge Phillips began her career as an assistant prosecuting attorney in Jackson County, Missouri. At that time, the Chief Prosecutor for Jackson County was Claire McCaskill, who would later become Senator McCaskill. Judge Phillips worked in the prosecutor's office for five years, where she was given the opportunity to try numerous cases. During her work in the child abuse/sex crimes unit, she tried between 35 to 40 cases which equates to seven to eight jury trials per year. That type of prolific trial experience created a good, solid base of trial skills which easily translated to her next employment in the civil litigation world. After five years in the prosecutor's office, Judge Phillips worked at Bartimus Frickleton, a well-known plaintiffs firm located in Kansas City. During her approximately seven years of working there, she tried approximately one trial per year, resulting in about seven to eight civil trials. She found that her trial experience in the

prosecutor's office allowed her to easily deploy her skills in the civil arena by being able to get up to speed on cases quickly, including taking depositions, knowing that there were certain goals to achieve in each deposition that would support the theory of the case. She observed that trial experience at any level is like riding a bike and becomes second nature once an attorney has tried enough cases. While at Bartimus Frickleton, Judge Phillips primarily focused her practice on nursing home negligence and medical malpractice. She also was involved in trying other types of cases including product liability cases.

While practicing in the civil arena, an opening occurred in the United States Attorney's Office for the Western District of Missouri. That opening sought someone experienced in the kind of work she had previously done in the Jackson County Prosecutor's Office: child abuse/sex crimes cases. She prosecuted those types of crimes for approximately two more years before Senator McCaskill began to seek someone to recommend to be the U.S. Attorney for the Western District. Judge Phillips fit the bill for that recommendation and was recommended to President Barack Obama, who nominated her for that position. She was then confirmed by the Senate and became the U.S. Attorney for the Western District of Missouri on November 24, 2009.

Judge Phillips was nominated again by President Obama approximately two years later on June 7, 2011, for the judicial seat that was being vacated by Judge Ortrie Smith who was assuming senior status. She was confirmed by the United States Senate on March 6, 2012, and became Chief Judge of the Western District on January 3, 2019.

As a judge in the Western District for the State of Missouri, she primarily deals with criminal cases. She observed that at the federal level there is approximately one civil case per year that goes to trial in front of her. Most of those cases deal with business disputes, including contract interpretation and contract disputes. During her time as a judge on the federal bench, she has overseen approximately 10 to 12 civil trials, with the bulk of her trial work being comprised of criminal cases.

**Meet Judge Phillips >p5**

## Meet Judge Phillips *(from page 4)*

Judge Phillips does have some words of advice or tips for those lawyers appearing in front of her. First and foremost is, as with most judges, the importance of being prepared. Judge Phillips does not have a hearing on issues that have been briefed, if she does not have any questions or concerns regarding the facts or the case law cited. If she calls counsel in for a hearing, it is because she has very specific questions about certain aspects of the case, the briefing or applicable case law. Oral argument in front of Judge Phillips is not to provide counsel with an opportunity to rehash arguments previously made in their briefing or to tell her what they have already written. The purpose of an oral argument will be to answer questions about very specific topics and questions that Judge Phillips may have. She encourages all counsel appearing in front of her to treat such an appearance similarly to an appearance in front of an appellate court for an appellate argument. Prior to a hearing, she will advise counsel as to the specific questions that she wants to focus on during argument.

The second point Judge Phillips likes to emphasize to counsel appearing in front of her, and especially civil counsel, is that

while she obviously wants to hear the arguments and what counsel has to say, those points should be made with brevity. Repeatedly making the same point does not help their case. She has noticed this to be especially true in the civil jury trials that she has presided over. Many times in the civil arena attorneys make the same point repeatedly, even on issues that are agreed to by all parties. While the old adage applies that attorneys should tell the jury on more than one occasion the things they want them to remember, there are usually only two to three disputed facts, points or issues that need to be made and less is more on those items that are not in dispute.

Outside the court room, Judge Phillips enjoys the outdoors. She frequently spends time at the lake and also enjoys snow skiing and other outdoor activities. She is also a big fan of pop music. She has gone to numerous concerts, including Lady Gaga, Brittany Spears, Madonna and Beyonce. For all you concert goers out there, the next concert you go to look around, you may be sitting next to Judge Phillips.



## Board Member Spotlight



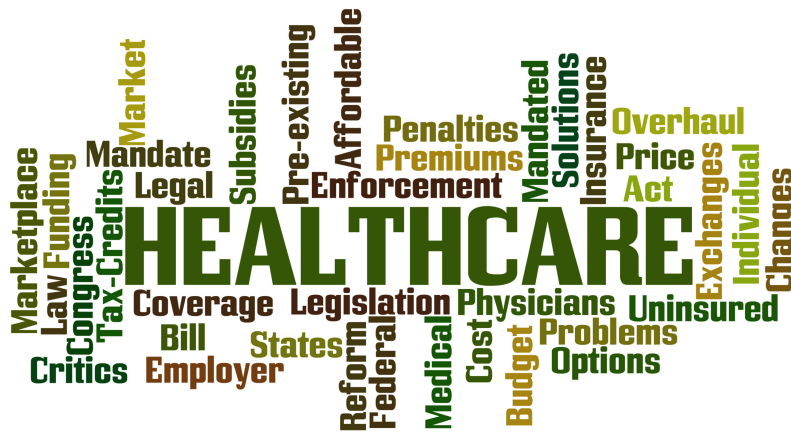
### ELIZABETH MOELLER

I am a shareholder with Sandberg Phoenix & von Gontard P.C., where I practice in the Health Law Practice Group in the Kansas City office. Prior to Sandberg Phoenix, I was fortunate to practice at Brown & Ruprecht, PC in Kansas City, Missouri for over seven years. My practice focuses on health care provider defense, particularly in the field of long-term care defense.

I grew up in Kansas City and attended Pembroke Hill School before moving to Minnesota and attending St. Olaf College, where I ran cross-country and earned Bachelor's degrees in Biology and Spanish. After a gap year living in the Seattle area, where I taught English in an ESL preschool program, I discovered that the Pacific Northwest was not for me and returned to the Midwest, where I attended law school at the University of Missouri-Columbia School of Law. I also completed my Master of Health Administration at the University of Missouri-Columbia School of Medicine's Department of Health Management and Informatics.

I have been beyond fortunate to have incredible mentors, including my father, a fellow Mizzou Law alumnus. I grew up being riveted by his stories and watching him work, including sitting under his desk at his office when I was very young and coloring while he worked. His passion for his practice and the legal field is truly unparalleled and directly informed my decision to attend law school. I was also so lucky to be hired immediately after law school by Matt Merrill, who has spent countless hours mentoring and training me and fielding way too many questions from me. We continue to work together nearly a decade later.

In my spare time, I spend time with my husband, John, and our two cats, Buster and Sassy. We split time between Kansas City and our cabin in the woods, where we catch up on rest, hike, cook, and are neighbors with my parents. When in Kansas City, we enjoy catching up with lifelong friends.



# Malice, Not Mere Negligence: *Missouri's Punitive Damages Reform and the Defense of Healthcare Providers*

by Parker S. Rahman and Brian D. Malkmus ♦ Malkmus Law Firm LLC ♦ Springfield, MO

In 2020, Missouri's legislature significantly changed both the substantive standards and procedural requirements for seeking punitive damages through Senate Bill 591. As of 2025, courts have not yet interpreted the new standard for healthcare providers under Chapter 538. This article examines the previous standards, how the 2020 amendment changed, when and how a party may seek punitive damages, and what the legislature likely intended through its choice of language.

## I. The Foundation: Punitive Damages Standards Before 2020

Before 2020, plaintiffs seeking punitive damages against healthcare providers needed to meet a substantive standard by showing the provider's actions were either willful, wanton, or constituted malicious misconduct. *See* MO. REV. STAT. §§ 538.210.8 (2017); 538.205.11 (2017). Courts interpreted this standard to mean a healthcare provider acted with "complete indifference to" or "conscious disregard for" patient safety. *Frost v. PCRMC Medical Group, Inc.*, 694 S.W.3d 103, 123 (Mo. App. S.D. 2024). These terms meant the provider knew there was a high probability their actions would injure the patient. *Id.*

Procedurally, common law required plaintiffs to demonstrate the provider's knowledge through "clear and convincing evidence." *See Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 111 (Mo. 1996). This level of proof required judges to immediately recognize that the fact finder could clearly see the provider acted contrary to patient safety. This immediate recognition occurred because punitive damage instructions were general, and

because "high degree of probability" was necessarily flexible, allowing fact finders to determine the threshold was met based on the injury itself. *Alcorn v. Union Pacific R.R. Co.*, 50 S.W.3d 226, 248 (Mo. 2001).

Therefore, before 2020, plaintiffs could begin actions against healthcare providers with punitive damages claims if they could show clear and convincing evidence that the provider acted with complete indifference to or conscious disregard for patient safety by knowing there was a high probability their actions would cause injury. This standard allowed plaintiffs to include punitive damage claims at the beginning of litigation without any preliminary evidence or court permission, essentially allowing such claims based on allegations that could be substantiated later through discovery and testimony. Further, the "high degree of probability" standard remained flexible enough that juries could sometimes infer the required mental state from the nature and severity of the injury itself, particularly in cases of apparently egregious negligence.

## II. The Transformation: Senate Bill 591's Impact on Punitive Damages

In response to widespread concerns about excessive punitive damage claims, Senate Bill 591 in 2020 eliminated the common law procedural approach and raised the substantive standard specifically for healthcare providers. The legislature accomplished this by amending Sections 538.210.8, 538.205.11, and implementing Section 510.261.

Malice, Not Mere Negligence >p7

### A. Procedural and Substantive Barriers: Analyzing the New Framework

Section 510.261.5 replaced the common law ability to plead punitive damages at any time during an action and created several statutory safeguards governing when such damages may be sought. This subsection establishes the first safeguard by requiring a party to seek leave from the court to include the claim. It further creates a time limitation whereby leave must be sought at least 120 days before the pretrial conference (or if there is no pretrial conference, 120 days before trial). Finally, the subsection maintains the common law requirement of clear and convincing evidence, but requires that evidence to be supported by affidavits, exhibits, or discovery materials, not simply ultimate facts that might be proven later.

Substantively, this Section also raises the standard the evidence must meet. Under subsection 510.261.1, the evidence must show the defendant "intentionally harmed...without just cause or acted with deliberate and flagrant disregard." *See* MO. REV STAT. § 510.261.1 (2020). However, the legislature indicated this is the general standard for punitive damages — it doesn't apply to all instances, as shown by the subsection's opening clause "[e]xcept as otherwise provided by statute."

Indeed, the legislature took a stricter approach for punitive damages against healthcare providers, where subsections 538.205.11 and 538.210.5 further raise the standard to require evidence clearly showing the jury that the healthcare provider intentionally damaged the patient or demonstrated malicious misconduct that damaged the patient. This is the specific standard the legislature chose for healthcare providers, clearly indicated by the opening clause "[a]ny provision of law or court rule to the contrary notwithstanding."

### B. Legislative Intent: What the Statute's Language Means

Given the significant changes to the mechanism for seeking punitive damages and the shift in required language, the legislature signaled that punitive damages against healthcare providers are only allowed when there exists a general or specific intent to harm a patient. This signal appears through the changed language itself, where the standards are now either "intentionally caused damage to the plaintiff" or "malicious misconduct that caused damage."

A plain reading of "intentionally caused damage to the plaintiff" means what it says: the healthcare provider's conduct must clearly show a specific intent to injure the patient. This standard isn't entirely new, as the previous term "willful" covered similar situations. However, the phrase "malicious misconduct" has not yet been interpreted.

On its face, "malicious misconduct" doesn't signal a change from the prior standard using the same phrase. When viewing the complete subsection, though, the legislature specifically included the clause "[e]vidence of negligence including, but not limited to, indifference to or conscious disregard for the safety of others" is insufficient to constitute malicious misconduct. Significantly, the statute eliminates the previous common law interpretation of what courts would consider when deciding whether to allow punitive damages claims. Therefore, we must examine the phrase through its commonly understood meaning.

The noun "malice," defined as a "desire to cause pain, injury, or distress to another," provides the foundation for the adjective "malicious," where the actor has or shows "a desire to cause harm to someone." *See Malice and Malicious*, Webster's Third New International Dictionary (2002). Similarly, "misconduct" is defined as intentional wrongdoing in this context. *See Misconduct*, *Id.* Together, when the legislature used "malicious misconduct," they envisioned intentional wrongdoing where the actor possesses a desire to cause harm.

Courts, however, will give meaning to each phrase rather than reading them as redundant. Here, the statute's use of "or" between the two phrases, as well as their different objects — "intentionally caused damage to the plaintiff" targets the plaintiff specifically, while "malicious misconduct that caused damage" is more general — suggests the legislature created two different paths to punitive damages: either a specific desire to harm the plaintiff, or a general desire to harm someone.

Accordingly, the 2020 amendment requires plaintiffs to demonstrate by clear and convincing evidence that the healthcare provider's conduct showed either a desire to harm the specific plaintiff or a desire to harm the public generally.

### C. Practical Implications: Strategic Considerations for Practitioners.

The 2020 amendment creates a substantial change to the defensive position in medical malpractice litigation. Section 510.261.5 gives defense attorneys procedural tools previously unavailable when facing punitive damage allegations. While plaintiffs previously could assert such claims through mere allegations, the current statutory framework imposes an evidence requirement that creates a contestable challenge at the pleading stage.

The statutory exclusion of negligence, indifference, and conscious disregard from "malicious misconduct" significantly limits the conduct that may lead to punitive liability. This legislative direction requires proof of intentionality, a standard largely unattainable in standard of care litigation. Defense counsel may therefore challenge punitive allegations through evidence addressing the intent element even when the underlying negligence claims present more complex factual questions. The court's gatekeeping function under Section 510.261.5 presents an opportunity for defense attorneys to eliminate punitive exposure through preliminary motions.

Given the restrictions on punitive recovery, economic and non-economic damage frameworks will become more important in litigation valuation. While non-economic damages remain subject to Section 538.210's statutory cap, the economic damages component requires particular attention from defense counsel. Thorough examination of plaintiffs' economic projections, including life care planning and future medical costs, becomes increasingly essential for liability assessment and mitigation. Expert testimony addressing causation, necessity, and reasonable cost may substantially reduce economic exposure despite the absence of statutory limitations.

Eliminating punitive exposure in most cases creates a more predictable valuation framework for settlement purposes. Defense counsel may therefore approach negotiations with greater certainty regarding maximum exposure, allowing more precise risk assessment and potentially more favorable resolution outcomes. The legislative move toward limiting punitive damages thus results in reduced overall exposure in healthcare provider litigation, consistent with the apparent legislative intent to restrict such damages to cases demonstrating verifiable intentional misconduct.



# You're Invited!

## "Views from the Bench"

### OUR SPEAKERS:

#### **Circuit Judges, 13th Judicial Circuit**

The Honorable Benjamin J. Miller

The Honorable Stephanie Morrell

### CLE's, COST, & REGISTRATION:

(1 HOUR CLE), \$ 45.00 per person, Please register on or before April 21st by credit card at [www.modllaw.com](http://www.modllaw.com) (3% service charge will apply)

### DATE & LOCATION:

#### **Thursday, April 24, 2025**

11:45 a.m. – 1:15 p.m.

*(Lunch will be served promptly starting at 12:00 noon)*

Shakespeare's South (Dodge Room)

3911 Peachtree Drive

Columbia, MO

***Come Lunch & Learn!***



## Recent Missouri Appellate Cases Regarding Insurance

by Carter Ross ♦ Shelter Insurance Companies  
Columbia, MO

### ***McCrackin v. Mullen and Safeco Ins. Co. of North America.*** Missouri Supreme Court, SC100578, December 23, 2024.

“Insurers with good faith coverage questions should file a declaratory judgment action simultaneous with the underlying tort action and seek a stay of the tort action until the declaratory judgment action is resolved.”

Decedent was killed in a shooting outside a pool hall. A wrongful death lawsuit was filed in Jackson County. Safeco filed a Declaratory Judgment (DJ) action in Federal Court.

Safeco filed a Motion to Intervene in Jackson County, for the limited purpose of staying the tort case until the DJ was resolved. The Trial Court overruled the Motion.

The Supreme Court vacated the Trial Court’s ruling. Safeco met the requirements of Missouri Court Rule 52.12(a)(2), entitling it, as a matter of right, to intervene in the wrongful death action for the limited purpose of seeking a stay. Rule 52.12(a) is to be construed liberally to permit intervention.

The Court noted that the “intervention-and-stay procedure” was first recognized by the Missouri Court of Appeals 40 years ago in *State ex. Rel. Mid-Century Insurance v. McKelvey*, 666 S.W.2d 457 (Mo. App. 1984). The Court itself, however, had never spoken on the issue.

The Court did not also hold that Safeco was entitled to a stay. On remand, the Trial Court is to decide that.

### ***McCarty v. Shelter Mut. Ins. Co., Missouri*** Court of Appeals, Western District, WD87167, December 10, 2024.

McCarty’s son died in a motor vehicle accident. The tortfeasor’s bodily injury insurance carrier paid McCarty \$35,000. McCarty had Underinsured Motorist (UIM) coverage with Shelter in the amount of \$50,000 per person.

McCarty filed a Motion for Summary Judgment (MSJ) in the Trial Court (Macon County), claiming that Shelter owed the full \$50,000 per person UIM limit. Shelter filed a MSJ asserting it owed \$15,000 (\$50,000 less \$35,000).

The Trial Court granted McCarty’s MSJ and denied Shelter’s MSJ. The Western District overruled the Trial Court’s grant of McCarty’s MSJ, and remanded the case with instructions for the Trial Court to grant Shelter’s MSJ, and enter Judgment that Shelter owed \$15,000.

The Western District rejected various “ambiguity” arguments advanced by McCarty. First, there was no ambiguity simply because the UIM Endorsement had “blanks” for the UIM coverage amounts, rather than exact amounts. That is because the Endorsement clearly refers the reader to the “Declarations,” and the Declarations plainly list the per person UIM limit as \$50,000. The Western District noted that in several prior cases it had rejected the “blank amounts” argument.

Additionally, the Western District held that the reduction of \$50,000 by \$15,000 (“set-off”) was proper, even though it was not discussed/“authorized” in the Declarations. “It is well-established that declarations in an insurance policy are introductory only and subject to refinement and definition in the body of the policy.” The Western District added, “The top of the UIM endorsement alerts the reader immediately that any UIM benefits will be reduced . . . by deducting payments received by the insured by other sources.”

Finally, the Western District found that Shelter’s \$50,000 UIM coverage was “supplemental” to the \$35,000 McCarty recovered from the tortfeasor, and not “excess.” “The Policy repeatedly states that it will provide supplemental, not excess, coverage less liability payments received by the tortfeasor by paying the difference between those payments and the UIM limit of \$50,000 per person.”

Recent Missouri Appellate Cases >p10

## Recent Missouri Appellate Cases *(from page 9)*

The Western District emphasized more than once that insurance policies (Declarations; Base Policy or Policy Form; and Endorsements), must be read as a whole, not in isolation.

***Coffin v. Farm Bureau Town & Country Ins. Co. of Missouri, et. al.***, Missouri Court of Appeals, Western District, WD87120, December 24, 2024.

Mr. Coffin, as a law enforcement officer in Cass County, was involved in a work-related accident with an uninsured motorist. Coffin had two UM Policies with Farm Bureau (FB). Each Policy had a \$100,000 per person limit.

Farm Bureau filed a MSJ in the Trial Court, asserting it owed Coffin \$25,000 under each Policy, for a “stacked” total of \$50,000. That’s because FB’s Policies contained a “Compensation Law” Exclusion that reduced FB’s UM coverage to \$25,000 per Policy (the minimum mandated by Missouri’s UM law). The Exclusion included, but was not limited to, workers compensation.

The Trial Court granted Farm Bureau’s MSJ. The Western District upheld, finding no ambiguities in Farm Bureau’s Policy. The Western District also cited several other appellate cases that upheld policy language similar to FB’s. Finally, the fact that Coffin had obtained a default judgment against the uninsured tortfeasor, which was well in excess of FB’s UM limits, did not preclude FB from litigating coverage through the filing of its MSJ.

***Escabusa v. Safe Auto Ins. Co.***, Missouri Court of Appeals, Western District, WD86688 consolidated with WD86695, December 3, 2024.

Safe Auto’s insured, Escabusa, was at-fault in an accident with Mueller. Less than two months after the accident, Safe Auto offered its \$25,000 per person bodily injury limit to Mueller.

After that, several other attorneys came forward and said they represented Mueller and numerous requests were made upon Safe Auto. Safe Auto continued to offer its limit (“no less than nine times,” according to the Western District).

The Trial Court (Johnson County) granted Safe Auto’s MSJ on Escabusa’s bad faith refusal to settle claim.

The Western District affirmed. A required element of bad faith refusal to settle is that the insurer has a reasonable opportunity to settle the claim within the policy limits. *Scottsdale Ins. Co. v. Addison Ins. Co.*, 448 S.W.3d 818 (Mo. banc 2014). The Western District held that Safe Auto never had such opportunity, at least once several attorneys on behalf of Mueller appeared and made assorted “demands” and requests for information. But Safe Auto had offered its policy limit shortly after the accident, without anyone requesting it do so.



### Amicus Committee

*If your firm would like to request MOLD amicus assistance for an appeal or writ, please go to [www.modllaw.com](http://www.modllaw.com), click on “Amicus Briefs,” and complete the Amicus Committee Request form.*

*Please contact the chair of the Amicus Committee, Christine Lesicko, [clesicko@wwbhlaw.com](mailto:clesicko@wwbhlaw.com), with any questions. Missouri Rule 84.05(f) governs the submission of Amicus Curiae briefs.*

### 2025 Annual Meeting

**May 29-31, 2025**

*Hilton Branson Convention Center  
200 East Main Street  
Branson, MO*

Watch your email for the full agenda and registration info.

To make your hotel reservations online, [click here](#), or call the hotel directly (866-994-8287). The group code is 96A. Discounted Hotel Rate of \$199 expires April 25, 2025.

### Motion Document Bank

Don’t forget this valuable resource for MODL members ... the Motion Document Bank!

You can search categorized motions other members have uploaded and upload yours to help other MODL members ... a win-win for everyone!

Check it out today at [www.MODLLAW.com](http://www.MODLLAW.com)!