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With the 2011 legislative session under way, the Missouri General Assembly is considering a number of measures that could impact our clients' interests. Here are some of the most important.

**COMPARATIVE FAULT:** House Bill 364 and a companion bill in the Senate would modify Missouri's comparative fault scheme to eliminate joint and several liability so that each party could be held liable only for its own share of fault. The bills also provide that fault would be allocated even among non-parties. Neither bill addresses whether that should extend to parties who may bear some fault but are immune from liability, such as employers.

**WORKERS' COMPENSATION:** The Missouri House passed House Bill 162, which would modify Missouri's workers' compensation act to specifically provide that the exclusive remedies provisions of the act apply to co-workers as well as employers. In *Robinson v. Hooker*, 323 S.W.3d 418 (Mo.App. W.D. 2010), the Missouri Appellate Court held that the exclusive remedy provision of the act, which affords tort immunity to employers, does not apply to co-workers. Therefore, according to the holding in *Robinson*, employees are free to sue their co-employees in negligence for acts done in the course and scope of employment. Prior to the 2005 revisions to the workers' compensation act and the holding in *Robinson*, the law of Missouri had shielded co-workers unless it could be shown that the co-worker engaged in some affirmative negligent act, dubbed the "something more" standard. The pending bills would restore that principle to Missouri law. This bill is especially important for insurers because, while employers are probably still immune from tort liability arising from vicarious liability for their employees actions, the employer's liability insurer may well be on the hook for any judgment awarded against the co-employee.

**NEGLIGENCE:** A couple of bills will make slight modifications to Missouri tort law in narrow circumstances. House Bill 454 immunizes "good Samaritans" who render "any service to another individual" in the absence of gross negligence, or willful or wanton acts or omissions. Similarly, House Bill 200 specifies that a plaintiff must prove gross negligence in order to recover damages against a public or private jail, correctional center or detention center, for death by suicide of any inmate.

**PREMISES LIABILITY:** For the third year in a row, a House Bill has been introduced to define and limit a business owner's liability for damage caused by the criminal acts of third parties. House Bill 252 would require a plaintiff to prove that the business owner knew or had reason to know that the criminal acts that caused damage "are occurring or are about to occur on the premises." The criminal acts must "pose imminent probability of injury to a person." Alternatively, the plaintiff may prove that the "same criminal acts have occurred on the premises within the prior 24 months" and that they are "likely to occur again." House Bill 252 would make it considerably more difficult to recover against a business owner in such situations. Missouri law has expanded the scope of premises liability for business owners in recent years, going so far as to hold a business owner liable where there is a history of criminal or violent acts *in the vicinity* of the business premises. Arguably, these decisions stop just short of imposing liability simply for locating a business in a high crime area.

**CONSTRUCTION CONTRACTS:** By statute, Missouri law has long barred indemnity agreements in construction contracts as against public policy. The statute has a number of exceptions. Generally, however, the statute as it stands now prohibits agreements whereby one party agrees to indemnify the other for the other's own negligent acts. Senate Bill 290 would expand that prohibition to specifically bar agreements to indemnify another for the negligent acts of the others employees or agents. Senate Bill 290 would also modify the provisions of the statute that allow agreements to name another as an additional insured in an insurance policy. Senate Bill 290 would restrict those agreements to a requirement for an additional insured endorsement in a "project specific" insurance policy.

**PUNITIVE DAMAGES:** House Bill 606, if approved, will reduce the limit on punitive damages from its current cap of five times the net amount of the judgment or \$500,000, whichever is greater, to the greater of two times the net amount of the judgment or \$250,000.

We will continue to monitor the progress of these bills as the legislative session unfolds. Please feel free to contact me should you have any questions about the impact these proposed laws may have on your business or your insureds.