

## **The Missouri Western District Court of Appeals comes out in support of police officers in pursuit case.**

### **- Christopher L. Heigele**

The Missouri Western District Court of Appeals recently rendered a decision which should be of interest to you and your organization. In *Dilley v. Valentine* the Court considered a case involving a person injured by a fleeing suspect at the conclusion of a police pursuit by an Independence, Missouri police officer. The Court affirmed summary judgment on behalf of the officer. In doing so the Court revisited the 1999 Supreme Court case of *Stanley v. Independence* and held again the pursuing officer's actions were not the cause of the collision between the fleeing suspect and the innocent plaintiff.

The Court rejected the argument that there were circumstances which made the officers actions actionable, including the roads were wet from rain earlier in the day, the officer was informed there were no warrants associated with the suspect's vehicle, the chase moved from Independence into Kansas City, the chase exceeded speeds of 65 mph, and the officer admitted he was unfamiliar with the area but knew several roads converged into the area where the accident occurred (and the officer had been involved in a prior chase resulting in a collision).

The Court found the following circumstances important to its analysis, the officer was pursuing a fleeing suspect, the cruiser's lights and sirens were activated, the officer's cruiser was not physically involved in the accident, the cruiser was approximately 120 feet behind the suspect when the accident occurred, and the pursuit lasted less than 2 minutes. The Court held the plaintiff's argument the collision would have been avoided had the officer abandoned the pursuit was based only on speculation.

The plaintiff had also raised a "recklessness" claim in addition to the negligence claim dismissed by the Court. Because the trial court and the Independence defendants did not specifically address the recklessness claim in its original decision, the Appeals Court remanded that claim so the trial court could determine the causation issue for the recklessness claim.

The Court also clarified its position about the statute of limitations in claims against police officers. Missouri Statue 516.130.1 imposes a 3-year statute of limitations in actions against a "sheriff, coroner or other officer ... by doing an act in his official capacity ... or by omission of an official duty..." No other appellate decision has ever decided whether a police officer is an "other officer" referenced in the statute. The Court found the Independence officer was a "public officer" performing a portion of the sovereign functions of the government for the benefit of the public. The Court also found the officer was acting in his official capacity when he pursued the suspect after observing several traffic violations. Therefore because the plaintiff filed her action more than 3 years after the accident, the Court held plaintiff's state law claims were barred. The Court however specifically noted that the Missouri general 5-year statute of

limitations would likely remain for federal actions under 42 USC § 1983, due to decisions by the US Supreme Court.