

Index

ABANDONMENT

Dismissal Motions, this index

ABUSE

Child, intentional, judgment on the pleadings, § 2:41

ABUSE OF DISCOVERY

Strike, motion to, § 1:5

ABUSE OF DISCRETION

Discovery, Misuse of, this index
Prosecution, delay in, § 4:66

ADMISSIONS

Summary judgment, §§ 3:61, 3:69, 3:124

AFFIDAVITS

Summary judgment, §§ 3:37, 3:59, 3:68, 3:118, 3:139

AFFIRMATIVE DEFENSES

Strike, motion to, § 1:49
Summary judgment, burden of proof where defendant brings motion, §§ 3:47, 3:111

AMENDMENT OF PLEADINGS

Strike, Motion to, this index
Summary Judgment, this index

ANSWERS

Strike, motion to, §§ 1:11, 1:27
Summary judgment, § 3:51

APPEAL AND REVIEW

Commencement of action within year of dismissal, failure regarding, § 4:103
Improperly granted, breach of contract claim, failure to move, § 3:161
Judgment on the pleadings, briefs on appeal, §§ 2:50 to 2:52
Summary judgment, §§ 3:77, 3:78, 3:133, 3:160

APPEARANCE

Forum non conveniens, § 4:12

ARBITRATION

Prosecution, delay in, §§ 4:61, 4:76

ASSAULT

Judgment on the pleadings, § 2:37

ATTORNEYS

Fees. Attorneys' Fees, this index
Malpractice, summary judgment, §§ 3:15, 3:89

ATTORNEYS' FEES

SLAPP lawsuits, §§ 4:166, 4:173, 4:174
Strike, motion to, § 1:25

AUTOMOBILES AND HIGHWAY TRAFFIC

Liability, vehicle lessor, lessee driver, §§ 2:45 to 2:47

BRIEF ON APPEAL

Judgment on the pleadings, sample documents, §§ 2:50 to 2:52
Summary judgment, sample document, § 3:160

BURDEN OF PROOF

Presumptions and Burden of Proof, this index

CIVIL RIGHTS

Summary judgment, §§ 3:11, 3:85

CLEAN HANDS

Discovery, misuse of, § 4:126

COLLATERAL ESTOPPEL

Wrongful death claim barred, § 3:153

COMPETITION

Covenants not to compete, judgment on the pleadings, § 2:53
Implementation of, Federal Telecommunications Act, § 3:156

MISSOURI SUMMARY JUDGMENT AND RELATED MOTIONS

CONCLUSORY STATEMENTS

Summary judgment, § 3:126

CONJECTURE

Summary judgment, §§ 3:70, 3:122

CONSTITUTIONAL CASES

Summary judgment, §§ 3:16, 3:91

CONSTRUCTION CONTRACT ACTION

Summary judgment, support of motion, § 3:140

CONTINUANCES

Commencement of action within year of dismissal, failure regarding, § 4:100

Summary Judgment, this index

CONTRACTS

Summary judgment, §§ 3:13, 3:87

COSTS

Dismissal Motions, this index

SLAPP lawsuits, §§ 4:173, 4:174

Summary judgment, imposition on party requesting continuance, § 3:39

COUNSEL

Attorneys, this index

CREDIBILITY

Summary judgment, § 3:120

CROSS COMPLAINTS

Strike, motion to, § 1:27

DANGEROUS CONDITION OF PROPERTY

Summary judgment, §§ 3:9, 3:83

DATE

Time and Date, this index

DECLARATIONS

Summary judgment, §§ 3:59, 3:68, 3:118

DECLARATORY RELIEF

Judgment on the pleadings, §§ 2:7, 2:41, 2:53

DEFENDANT

Motion to strike claims permitted in product liability action, § 1:52

Motion to strike ERISA claims, § 1:53

DESCRIPTION

Forum non conveniens, § 4:5

Summary judgment, § 3:4

Summons, failure to serve, § 4:24

DILIGENCE

Prosecution, delay in, §§ 4:59, 4:74

DISCOVERY

Misuse. Discovery, Misuse of, this index

Prosecution, delay in, § 4:69

Strike, motion to, § 1:5

Summary Judgment, this index

DISCOVERY, MISUSE OF

Generally, §§ 4:116 to 4:136

Abuse of discretion

generally, §§ 4:131 to 4:135

court order to comply, absence of, §§ 4:134, 4:135

inability of plaintiff to comply, §§ 4:132, 4:133

monetary sanctions, failure to pay, § 4:131

motion to compel, absence of, § 4:135

Burden of plaintiff to show failure not willful, § 4:121

Court order to comply, absence of, §§ 4:134, 4:135

Discretion. Abuse of discretion, above

Dismissal as drastic sanction, § 4:125

Inability of plaintiff to comply, §§ 4:132, 4:133

Monetary sanctions, failure to pay, § 4:131

Notice of motion, § 4:130

Opposition citations, §§ 4:124 to 4:136

Order to compel compliance, § 4:129

Prerequisites to dismissal, §§ 4:128 to 4:130

INDEX

DISCOVERY, MISUSE OF—Cont'd

- Primary authorities, §§ 4:118 to 4:121
- Prior order not necessary, § 4:123
- Procedural considerations, §§ 4:122, 4:123, 4:136
- Sanctions, failure to pay, § 4:131
- Substantial justification or excuse, § 4:127
- Supporting citations, §§ 4:118 to 4:123
- Unclean hands of party seeking dismissal, § 4:126
- Willfulness, §§ 4:120, 4:121, 4:128

DISCRETION

- Abuse of Discretion, this index
- Discovery, Misuse of, this index
- Forum non conveniens, § 4:6
- Indispensable party, failure to join, § 4:148
- Prosecution, delay in, §§ 4:52, 4:65, 4:66
- Summary judgment, continuances, §§ 3:38, 3:96

DISCRIMINATION

- Summary judgment, §§ 3:11, 3:85

DISMISSAL MOTIONS

- Generally, §§ 4:1 to 4:196
- Abandonment of case or mootness of controversy
 - generally, §§ 4:111 to 4:115
 - opposition citations, §§ 4:114, 4:115
 - primary authority, § 4:113
 - supporting citations, § 4:113
- Commencement of Action Within Year of Dismissal, Failure Regarding, this index
- Discovery, Misuse of, this index
- Forum Non Conveniens, this index
- Indispensable Party, Failure to Join, this index
- Inherent authority of court
 - generally, §§ 4:154 to 4:157
 - opposition citations, § 4:157
 - primary authorities, § 4:156
 - supporting citations, § 4:156

DISMISSAL MOTIONS—Cont'd

- Insufficient process, § 4:184
- Judgment on the pleadings, compared, § 2:5
- Local rules, violation of
 - generally, §§ 4:149 to 4:153
 - notice requirement, § 4:152
 - opposition citations, § 4:153
 - primary authorities, § 4:151
 - procedural considerations, § 4:152
 - supporting citations, §§ 4:151, 4:152
- Prosecution, Delay in, this index
- Sample documents, generally, §§ 4:176 to 4:196
- Security for costs, failure to furnish
 - generally, §§ 4:107 to 4:110
 - opposition citations, § 4:110
 - primary authorities, § 4:109
 - supporting authorities, § 4:109
- SLAPP Lawsuits, this index
- Summons, Failure to Serve, this index

DRIVING WHILE INTOXICATED

- Punitive damages, motion to strike, §§ 1:24, 1:40, 1:45

DUE PROCESS

- Prosecution, delay in, § 4:70

DUPLICATE COUNT

- Motion to strike, sample, § 1:51

EMPLOYMENT

- Judgment on the pleadings, municipal liability for wrongful discharge, sample briefs on appeal, §§ 2:50 to 2:52
- Motion to strike ERISA claims, §§ 1:53, 1:54
- Summary judgment, §§ 3:11, 3:85, 3:150, 3:151

EQUITY

- Indispensable party, failure to join, § 4:142

ESTOPPEL

- Waiver or Estoppel, this index

MISSOURI SUMMARY JUDGMENT AND RELATED MOTIONS

EVIDENCE AND WITNESSES

Judgment on the pleadings, §§ 2:21 to 2:23, 2:33
Judicial Notice, this index
Presumptions and Burden of Proof, this index
SLAPP lawsuits, §§ 4:162, 4:172
Strike, motion to, §§ 1:13, 1:31
Summary Judgment, this index

EXHIBITS

Summary judgment, § 3:63

EXTENSION OF TIME

Commencement of action within year of dismissal, failure regarding, §§ 4:91, 4:106
Prosecution, delay in, § 4:62
Summons, failure to serve, §§ 4:35, 4:43

FEDERAL TELECOMMUNICATIONS ACT

Implementation is anticompetitive, § 3:156
Summary judgment, order for entry of, vacating orders of state agency, § 3:145

FEES

Attorneys' Fees, this index
Summary judgment, imposition on party requesting continuance, § 3:39

FIDUCIARY DUTY

Motion to strike immaterial or impertinent matter, § 1:47

FORUM NON CONVENIENS

Generally, §§ 4:2 to 4:19
Appearance, § 4:12
Burden of proof, § 4:13
Description, § 4:5
Discretionary motion, § 4:6
Factors weighed by court, § 4:7
Forum selection clauses, §§ 4:14, 4:17
Lack of jurisdiction, memorandum of law in opposition to motion to dismiss, § 4:190

FORUM NON CONVENIENS

—Cont'd

Opposition citations, generally, §§ 4:15 to 4:19
Presumptively convenient forum, § 4:16
Primary authorities, § 4:4
Procedural considerations, §§ 4:10 to 4:13
Purpose, § 4:5
Responsive pleading, motion made simultaneous to, § 4:11
Sample documents
 affidavit of plaintiff in opposition to motion to dismiss, § 4:187
 improper venue
 motion to dismiss for, § 4:183
 plaintiff's response to motion to dismiss for, § 4:185
 memorandum of law in opposition to motion to dismiss, § 4:190
 opposition to motion to dismiss, § 4:186
Stay of action in alternative, §§ 4:9, 4:18
Suitability of forum, §§ 4:8, 4:15
Supporting citations, generally, §§ 4:4 to 4:14
Timing of motion, § 4:10
Waiver, § 4:19

FRIVOLOUS MOTIONS

SLAPP lawsuits, § 4:174

FUTILITY

Commencement of action within year of dismissal, failure regarding, §§ 4:89, 4:99
Summons, failure to serve, §§ 4:32, 4:42

IMPOSSIBILITY OR IMPRACTICABILITY

Commencement of action within year of dismissal, failure regarding, §§ 4:89, 4:99
Summons, failure to serve, §§ 4:32, 4:42

IMPROPER VENUE

Motion to dismiss for, § 4:183

INDEX

IMPROPER VENUE—Cont'd

Plaintiff's response to motion to dismiss for, § 4:185

INCORPORATION BY REFERENCE

Summary judgment, § 3:65

INDISPENSABLE PARTY, FAILURE TO JOIN

Generally, §§ 4:137 to 4:148

Arbitrary or burdensome provision, § 4:143

Discretionary motion, § 4:148

Equity, § 4:142

Grounds, §§ 4:141, 4:142

Judgment on the pleadings, §§ 2:9, 2:26

Jurisdictional defects, § 4:146

Non-indispensable parties, § 4:147

Opposition citations, §§ 4:143 to 4:148

Primary authorities, §§ 4:139, 4:140

Risk of multiple obligations, § 4:145

Statutory factors, § 4:141

Substantial interest, § 4:144

Supporting citations, §§ 4:139 to 4:142

INFERENCES

Summary judgment, §§ 3:62, 3:125

INFLECTION OF EMOTIONAL DISTRESS

Judgment on the pleadings, § 2:37

INHERENT AUTHORITY OF COURT

Dismissal Motions, this index

INSUFFICIENT PROCESS

Motion to dismiss for, § 4:184

INSURANCE

Claim for insurance benefit, sample motion for judgment, § 2:42

Claim for wrongful death, support motion for judgment, § 2:44

Summary judgment, §§ 3:14, 3:88

INTOXICATED DRIVERS

Punitive damages, motion to strike, §§ 1:24, 1:40, 1:45

JOINDER OF PARTIES

Indispensable Party, Failure to Join, this index

JUDGMENT ON THE PLEADINGS

Generally, §§ 2:1 to 2:53

Appeals

brief on appeal, sample documents, §§ 2:50 to 2:52

opposition citations, § 2:34

Bankruptcy filing, sample brief on appeal, estoppel of respondent, § 2:50

Brief on appeal, sample documents, §§ 2:50 to 2:52

Cause of action, failure to state, §§ 2:10, 2:27, 2:52

Covenants not to compete, § 2:53

Declaratory relief, compared, § 2:7

Defense, failure to state, §§ 2:11, 2:28

Dismissal motion, compared, § 2:5

Entire pleading or cause of action, § 2:12

Equitable foreclosure for failure by homeowner to pay maintenance assessments, plaintiff entitled to, § 2:43

Estoppel of bankruptcy respondent, sample document, § 2:50

Evidence on motion, §§ 2:21 to 2:23, 2:33

Face of pleadings, appearance of grounds on, §§ 2:22, 2:23

Flooding of property as municipal appropriation, §§ 2:48, 2:49

Grounds

generally, §§ 2:8 to 2:13, 2:26 to 2:31

cause of action, failure to state, §§ 2:10, 2:27, 2:52

defense, failure to state, §§ 2:11, 2:28

entire pleading or cause of action, § 2:12

JUDGMENT ON THE PLEADINGS

—Cont’d

Grounds—Cont’d
 face of pleadings, appearance of grounds on, §§ **2:22, 2:23**
 indispensable party, failure to join, §§ **2:9, 2:26**
 res judicata, § **2:30**
 splitting causes of action, § **2:31**
 statute of limitations, § **2:29**
 statutory grounds, §§ **2:8 to 2:13**
 sua sponte relief, § **2:13**
 Indispensable party, failure to join, §§ **2:9, 2:26**
 Insurance benefit, claim for, § **2:42**
 Insurer duty to defend, declaratory judgment, § **2:41**
 Intentional child abuse, § **2:41**
 Judicial notice, §§ **2:15, 2:23, 2:39**
 Late filing of motion, discretion allow, § **2:17**
 Leave to amend
 generally, §§ **2:18 to 2:20, 2:32**
 entry of judgment where no timely amendment filed, § **2:19**
 motion to strike untimely amendment or violation of order after grant, § **2:20**
 Liability, vehicle lessor, lessee driver, §§ **2:45 to 2:47**
 Liberal construction of pleadings, § **2:25**
 Maintenance assessments, plaintiff entitled to equitable foreclosure for failure by homeowner to pay, § **2:43**
 Matters outside pleadings, consideration of, § **2:22**
 Municipal appropriation, flooding of property as, §§ **2:48, 2:49**
 Municipal liability for wrongful discharge, sample briefs on appeal, § **2:52**
 Opposition citations, generally, §§ **2:23 to 2:34**
 Procedural requirements, generally, §§ **2:14 to 2:20, 2:32**
 Relationship to other motions or actions, §§ **2:5 to 2:7**

JUDGMENT ON THE PLEADINGS

—Cont’d

Res judicata, § **2:30**
 Sample documents
 generally, §§ **2:35 to 2:50**
 assault, § **2:37**
 bankruptcy filing, sample brief on appeal, estoppel of respondent, § **2:50**
 briefs on appeal, supporting and opposition, §§ **2:50 to 2:52**
 cause of action, failure to state, § **2:52**
 counterclaims, judgment on, § **2:37**
 covenants not to compete, § **2:53**
 declaratory relief, §§ **2:41, 2:53**
 equitable foreclosure for failure by homeowner to pay maintenance assessments, plaintiff entitled to, § **2:43**
 estoppel of bankruptcy respondent, sample document, § **2:50**
 flooding of property as municipal appropriation, §§ **2:48, 2:49**
 infliction of emotional distress, § **2:37**
 insurance benefit, claim for, § **2:42**
 insurer duty to defend, declaratory judgment, § **2:41**
 intentional child abuse, § **2:41**
 judicial notice in support of motion, request for, § **2:39**
 liability, vehicle lessor, lessee driver, §§ **2:45 to 2:47**
 maintenance assessments, plaintiff entitled to equitable foreclosure for failure by homeowner to pay, § **2:43**
 memorandum of law in opposition to motion, § **2:40**
 memorandum of law in support of motion, § **2:38**
 motion, § **2:36**
 municipal appropriation, flooding of property as, §§ **2:48, 2:49**
 municipal liability for wrongful discharge, sample briefs on appeal, § **2:52**

INDEX

JUDGMENT ON THE PLEADINGS

—Cont'd

- Sample documents—Cont'd
 - opposition to motion, § 2:40
 - punitive damages, § 2:37
- Splitting causes of action, § 2:31
- Statute of limitation precludes wrongful death claim, § 2:44
- Statute of limitations, § 2:29
- Statutory authority and grounds, §§ 2:3, 2:8 to 2:13
- Strike, comparison to motion to, §§ 1:10, 2:5
- Sua sponte relief, § 2:13
- Summary judgment, compared, § 2:6
- Supporting authorities, generally, §§ 2:3 to 2:23
- Timing of motion, §§ 2:16, 2:17
- Use of motion, § 2:4

JUDICIAL NOTICE

- Judgment on the pleadings, §§ 2:15, 2:23, 2:39
- Summary judgment, §§ 3:64, 3:128

JURISDICTION

- Indispensable party, failure to join, § 4:146
- Lack of, memorandum of law in opposition to motion to dismiss, § 4:190

LAWYERS

- Attorneys, this index

LEGAL MALPRACTICE

- Summary judgment, §§ 3:15, 3:89

LIMITATION OF ACTIONS

- Commencement of action within year of dismissal, failure regarding generally, §§ 4:79 to 4:106
- appeal pending, tolling, § 4:103
- applicability, § 4:86
- commencement, defined, §§ 4:82, 4:95
- congestion of court, tolling, § 4:102
- continuance, tolling, § 4:100
- default of defendant, tolling, § 4:104

LIMITATION OF ACTIONS

—Cont'd

- Commencement of action within year of dismissal, failure regarding—Cont'd
 - estoppel, § 4:92
 - excuses for delay, §§ 4:87 to 4:92, 4:97 to 4:106
 - extension agreement, §§ 4:91, 4:106
 - futility, tolling, §§ 4:89, 4:99
 - grounds for motion, § 4:84
 - impossibility, tolling, §§ 4:89, 4:99
 - impracticability, tolling, §§ 4:89, 4:99
 - mistake, tolling, § 4:90
 - notice, § 4:85
 - opposition authorities, §§ 4:93 to 4:106
 - policy to try cases on merits, § 4:94
 - primary authorities, §§ 4:81 to 4:83
 - procedural considerations, §§ 4:85, 4:86, 4:96
 - purpose, § 4:83
 - sample documents
 - affidavit of defendant in support of motion to dismiss, § 4:182
 - memorandum of law in support of motion to dismiss, § 4:181
 - motion to dismiss, § 4:180
 - notice of motion to dismiss, § 4:180
 - order to dismiss action, § 4:193
 - settlement, tolling, § 4:105
 - stay of proceedings, tolling, § 4:101
 - stipulations, §§ 4:91, 4:106
 - supporting citations, generally, §§ 4:81 to 4:92
 - tolling, §§ 4:88 to 4:90, 4:98 to 4:105
 - waiver, § 4:92
- Judgment on the pleadings, § 2:29

LOCAL RULES

- Dismissal Motions, this index

MALICIOUS PROSECUTION

Summary judgment, sample documents, § 3:149

MALPRACTICE

Summary judgment, §§ 3:15, 3:89, 3:160

MISTAKE

Commencement of action within year of dismissal, failure regarding, § 4:90

Summary judgment, §§ 3:8, 3:82

MOOTNESS

Dismissal Motions, this index

NOTICE

Commencement of action within year of dismissal, failure regarding, § 4:85

Judicial Notice, this index

Summary judgment, § 3:22

Summons, failure to serve, § 4:26

OBJECTIONS

Summary judgment, evidence, §§ 3:71 to 3:73, 3:130

ORAL ARGUMENT

Summary judgment, §§ 3:40, 3:100

PARTIES

Indispensable Party, Failure to Join, this index

Summons, failure to serve, § 4:27

PENALTIES

Sanctions, this index

PERSONAL INJURIES

Summary judgment, §§ 3:10, 3:84

PERSONAL KNOWLEDGE

Summary judgment, § 3:119

PRAYER FOR RELIEF

Strike, Motion to, this index

PREJUDICE

Prosecution, delay in, § 4:64

PREMISES LIABILITY

Summary judgment, §§ 3:12, 3:86

PRESUMPTIONS AND BURDEN OF PROOF

Discovery misuse, burden of plaintiff to show failure not willful, § 4:121

Forum non conveniens, §§ 4:13, 4:16
SLAPP lawsuits, §§ 4:164, 4:170, 4:171

Summary Judgment, this index

PROSECUTION, DELAY IN

Generally, §§ 4:47 to 4:78

Abuse of discretion by court, § 4:66

Administration of justice, § 4:50

Arbitration, tolling after, §§ 4:61, 4:76

Conditional rulings, § 4:56

Date. Time and date, below

Diligence, §§ 4:59, 4:74

Discovery, § 4:69

Discretion of court, §§ 4:65, 4:66

Discretionary motion, § 4:52

Due process, § 4:70

Estoppel, §§ 4:77, 4:78

Excuses for delay, §§ 4:58 to 4:62, 4:73 to 4:78

Extension, agreement for, § 4:62

Factors, §§ 4:54, 4:67 to 4:69

Fault of plaintiff, lack of, § 4:68

Grounds, §§ 4:53, 4:54

Inference of prejudice, § 4:64

Opposition citations, generally, §§ 4:63 to 4:78

Policy of trying cases on merits, §§ 4:51, 4:63

Prejudice, inference of, § 4:64

Primary authorities, § 4:49

Procedural considerations, §§ 4:55 to 4:57, 4:70 to 4:72

Purpose, §§ 4:50, 4:51

Sample documents

affidavit of defendant in support of motion to dismiss, § 4:179

affidavit of plaintiff in opposition to motion to dismiss, § 4:189

memorandum of law in opposition to motion to dismiss, § 4:188

memorandum of law in support of motion to dismiss, § 4:178

INDEX

PROSECUTION, DELAY IN **—Cont'd**

Sample documents—Cont'd
motion to dismiss, § 4:178
notice of motion to dismiss,
§ 4:177
order to dismiss, § 4:192
Sua sponte motion, § 4:71
Supporting citations, generally,
§§ 4:49 to 4:62
Time and date
filing of motion, § 4:78
motion, §§ 4:57, 4:72
service of complaint, § 4:53
Tolling, §§ 4:60, 4:61, 4:75, 4:76
Waiver, §§ 4:77, 4:78

PUNITIVE DAMAGES

Claim permitted
product liability action, § 1:52
Judgment on the pleadings, § 2:37
Opposition briefs
intoxicated driver, §§ 1:40, 1:45
prayer for relief, § 1:39
sample memorandum, § 1:52
sample reply to motion in opposi-
tion, § 1:54
summary judgment, § 3:148
Strike, motion to
generally, § 1:23
intoxicated driver, § 1:24
sample motion, § 1:48

REDUNDANT MATTER

Strike, motion to, §§ 1:14, 1:15,
1:34, 1:35

REPLIES

Strike, motion to, § 1:27

RES JUDICATA

Judgment on the pleadings, § 2:30
Wrongful death claim barred, § 3:153

REVIEW

Appeal and Review, this index

SANCTIONS

Discovery, failure to pay, § 4:131
Summary judgment, §§ 3:73 to 3:76,
3:131, 3:132

SCANDALOUS MATTER

Strike, motion to, §§ 1:14, 1:15,
1:34, 1:35

SECURITY

Dismissal Motions, this index

SEPARATE STATEMENT

Summary Judgment, this index

SETTLEMENT

Commencement of action within year
of dismissal, failure regarding,
§ 4:105

SHAM PLEADINGS

Strike, motion to, §§ 1:15, 1:35

SIGNATURES

Strike, motion to, § 1:26

SLAPP LAWSUITS

Generally, §§ 4:158 to 4:174
Activities subject to motion,
§§ 4:161, 4:168
Attorneys' fees, §§ 4:166, 4:173,
4:174
Burden of proof, §§ 4:164, 4:170,
4:171
Costs, §§ 4:173, 4:174
Description of SLAPP lawsuits,
§ 4:159
Evidence on motion, §§ 4:162, 4:172
Frivolous motions, § 4:174
Opposition citations, §§ 4:167 to
4:175
Policy underlying motion, §§ 4:160,
4:169
Procedural requirements, § 4:165
Sample documents
memorandum of law on motion to
dismiss, § 4:195
notice of hearing on motion to
dismiss, § 4:194
opposition to motion to dismiss,
§ 4:196
SLAPP-back actions, § 4:175
Statutory authority, §§ 4:158 to
4:161
Stay of discovery, § 4:165
Supporting citations, §§ 4:158 to
4:166

SLAPP LAWSUITS—Cont’d

Timing of motion, § 4:163

SPECULATION

Summary judgment, §§ 3:70, 3:122

SPLITTING CAUSES OF ACTION

Judgment on the pleadings, § 2:31

STANDING

Parties, this index

STATE OF MIND

Summary judgment, § 3:121

STATUTE OF LIMITATIONS

Judgment on the pleadings, § 2:29

Precludes wrongful death claim,
§ 2:44

STAY OF PROCEEDINGS

Commencement of action within year
of dismissal, failure regarding,
§ 4:101

Forum non conveniens, §§ 4:9, 4:18

SLAPP lawsuits, stay of discovery,
§ 4:165

Summons, failure to serve, § 4:41

STIPULATIONS

Commencement of action within year
of dismissal, failure regarding,
§§ 4:91, 4:106

Summary judgment, § 3:66

Summons, failure to serve, §§ 4:33,
4:35, 4:43

STOCKHOLDER ACTIONS

Breach of contract and other claims,
§§ 3:152 to 3:154

Memorandum of law in opposition to
motion for summary judgment,
§§ 3:152 to 3:154

STRIKE, MOTION TO

Generally, §§ 1:1 to 1:55

Abuse of discovery, § 1:5

Affirmative defenses, sample motion,
§ 1:49

Allegation, improper, §§ 1:18, 1:19

Amendment of pleadings

generally, § 1:11

ability to amend pleading, § 1:33

STRIKE, MOTION TO—Cont’d

Amendment of pleadings—Cont’d
expiration of time for amendment,
§ 1:6

improper amendment, §§ 1:20,
1:21

Answer, §§ 1:11, 1:27

Arguments, immaterial or
impertinent, § 1:46

Attorneys’ fees, § 1:25

Cause of action, §§ 1:17, 1:36, 1:37

Claims

permitted in product liability
action, § 1:52

sample memorandum in opposi-
tion, § 1:52

Cross complaint, § 1:27

Date. Time and date, below

Default, effect on, § 1:12

Discovery abuse, § 1:5

Duplicate count, § 1:50

Duplicate count, sample motion,
§ 1:51

Emotional distress

ERISA claims, §§ 1:53, 1:54

sample reply to motion in opposi-
tion, § 1:54

ERISA claims

sample reply to motion in opposi-
tion, § 1:54

Evidence, §§ 1:13, 1:31

Expiration of time for amendment,
§ 1:6

Form, pleading defective only in,
§ 1:37

Grant of motion, § 1:11

Grounds, § 1:7

Immaterial allegation, § 1:19

Immaterial matter, §§ 1:14, 1:15,
1:34, 1:35

Immaterial or impertinent

arguments, § 1:46

matter, sample motion, § 1:47

Impertinent matter, §§ 1:14, 1:15,
1:34, 1:35

Intoxicated drivers, punitive dam-
ages, §§ 1:24, 1:40, 1:45

Judgment on the pleadings,
compared, §§ 1:10, 2:5

INDEX

STRIKE, MOTION TO—Cont'd

- Jury demand
 - memorandum of law in support of motion to strike, § 1:44
 - sample reply to opposition, § 1:55
- Liberal construction, § 1:30
- Mental anguish
 - ERISA claims, §§ 1:53, 1:54
 - sample reply in opposition, § 1:54
 - sample reply to motion in opposition, § 1:54
- Opposition citations, generally, §§ 1:29 to 1:40
- Pleading, striking all or part of, § 1:16
- Prayer for relief
 - generally, §§ 1:22 to 1:25, 1:38 to 1:40
 - attorneys' fees, § 1:25
 - intoxicated drivers, punitive damages, §§ 1:24, 1:40, 1:45
 - punitive damages, §§ 1:23, 1:24, 1:39, 1:40, 1:45
- Procedural requirements, §§ 1:8 to 1:12
- Punitive damages
 - ERISA claims, §§ 1:53, 1:54
 - opposition citations, prayer for relief, §§ 1:39, 1:40
 - sample memorandum in opposition, § 1:52
 - sample motion, § 1:48
 - sample opposition to motion, § 1:45
 - sample reply to motion in opposition, § 1:54
 - supporting citations, §§ 1:23, 1:24
- Redundant matter, §§ 1:14, 1:15, 1:34, 1:35
- Reply, § 1:27
- Sample documents
 - generally, §§ 1:41 to 1:51
 - jury demand, memorandum of law in support of motion to strike, § 1:44
 - memorandum of law in support of motion to strike portions of complaint, § 1:43

STRIKE, MOTION TO—Cont'd

- Sample documents—Cont'd
 - opposition to motion to strike portions of complaint, §§ 1:45, 1:46
 - portions of complaint, motion to strike, §§ 1:42, 1:43
- Sample memorandum in opposition defendants', § 1:52
- Sample reply
 - ERISA claims, § 1:54
 - jury demand, reply to opposition to motion to strike, § 1:55
 - reply to opposition to motion to strike, § 1:54
- Scandalous matter, §§ 1:14, 1:15, 1:34, 1:35
- Sham pleadings, §§ 1:15, 1:35
- Signature, absence of, § 1:26
- Statutory authority, § 1:3
- Supporting citations, generally, §§ 1:3 to 1:28
- Time and date
 - amendment of complaint or answer, expiration of time, § 1:6
 - motion, §§ 1:9, 1:10, 1:32
 - pleadings, § 1:28
- Use of motion, §§ 1:4 to 1:6
- Verification, absence of, § 1:26

SUA SPONTE RELIEF

- Judgment on the pleadings, § 2:13
- Prosecution, delay in, § 4:71

SUBSTANTIAL INTEREST

- Indispensable party, failure to join, § 4:144

SUBSTANTIAL JUSTIFICATION OR EXCUSE

- Discovery, misuse of, § 4:127

SUMMARY JUDGMENT

- Generally, §§ 3:1 to 3:161
- Admissions, §§ 3:61, 3:69, 3:124
- Affidavits, §§ 3:37, 3:59, 3:68, 3:118
- Affirmative defenses, burden of proof where defendant brings motion, §§ 3:47, 3:111

MISSOURI SUMMARY JUDGMENT AND RELATED MOTIONS

SUMMARY JUDGMENT—Cont’d

Amendment of pleadings
generally, §§ 3:33, 3:34, 3:101 to 3:103
continuances, § 3:98
liberal granting of amendment, § 3:103
request, necessity of, §§ 3:34, 3:102
Answer, defect in, § 3:51
Appeals, §§ 3:133, 3:160
Authority for motion, §§ 3:3 to 3:5
Brief on appeal, sample document, § 3:160
Burden of proof where defendant brings motion
generally, §§ 3:43 to 3:48, 3:108 to 3:112
affirmative defenses, §§ 3:47, 3:111
discovery, use to support or oppose motion, § 3:112
negation of plaintiff’s case, §§ 3:46, 3:110
shifting based on deficient discovery, § 3:45
shifting burden to plaintiff, § 3:48
Burden of proof where plaintiff brings motion
generally, §§ 3:43, 3:49 to 3:52, 3:108, 3:113
answer, defect in, § 3:51
elements of cause of action, proof of, § 3:50
shifting burden to defendant, § 3:52
Conclusory statements, § 3:126
Conflicting inferences, § 3:125
Conflicts between local rules, §§ 3:20, 3:104
Conjecture, §§ 3:70, 3:122
Constitutional cases, §§ 3:16, 3:91
Construction contract action, support of motion, § 3:140
Content of motion. Format and content of motion, below
Continuances
generally, §§ 3:35 to 3:39, 3:94 to 3:99

SUMMARY JUDGMENT—Cont’d

Continuances—Cont’d
affidavits, § 3:37
amendments, § 3:98
discovery, additional, § 3:97
discretion of court, §§ 3:38, 3:96
fees and costs imposed on requesting party, § 3:39
liberal posture of court, § 3:95
opposing continuance, § 3:36
separate statement, filing of, § 3:99
Contracts, §§ 3:13, 3:87
Contradictory admissions, § 3:124
Costs imposed on party requesting continuance, § 3:39
Credibility, § 3:120
Damage to property, §§ 3:10, 3:84
Dangerous condition of property, §§ 3:9, 3:83
Date. Time and date, below
Declarations, §§ 3:59, 3:68, 3:118
Description, § 3:4
Discovery and discovery responses
generally, § 3:60
continuances, § 3:97
use to support or oppose motion, § 3:112
Discretion of court, continuances, §§ 3:38, 3:96
Discrimination, §§ 3:11, 3:85
Drastic remedy, §§ 3:5, 3:80
Elements of cause of action, proof of, § 3:50
Employment, §§ 3:11, 3:85, 3:150, 3:151
Evidence
generally, §§ 3:53 to 3:73, 3:114 to 3:130
admissions, §§ 3:61, 3:69, 3:124
affidavits, §§ 3:59, 3:68, 3:118
argument vs. evidence, § 3:127
burden of proof where defendant brings motion, above
burden of proof where plaintiff brings motion, above
conclusory statements, § 3:126
conflicting inferences, § 3:125
conjecture, §§ 3:70, 3:122

INDEX

SUMMARY JUDGMENT—Cont'd

Evidence—Cont'd

- contradictory admissions, § 3:124
- credibility, § 3:120
- declarations, §§ 3:59, 3:68, 3:118
- discovery and discovery responses, § 3:60
- exhibits, § 3:63
- format and content of motion, § 3:32
- genuine issues of material fact, §§ 3:7, 3:55, 3:116
- inadmissible evidence, § 3:123
- incompetent affidavits and declarations, §§ 3:68, 3:118
- incorporation by reference, § 3:65
- inferences, §§ 3:62, 3:125
- judicial notice, §§ 3:64, 3:128
- liberal construction of opposition evidence, § 3:115
- objections, §§ 3:71 to 3:73, 3:130
- opposition evidence, attacks on, §§ 3:67 to 3:70
- personal knowledge, lack of, § 3:119
- pleadings, use of, §§ 3:56, 3:57
- reference to evidence, improper, § 3:129
- ruling on objections, § 3:72
- speculation, §§ 3:70, 3:122
- state of mind, § 3:121
- stipulated facts, § 3:66
- strict construction of movant's evidence, § 3:54
- supporting evidence, §§ 3:58 et seq., 3:117 to 3:129
- waiver of objections, §§ 3:73, 3:130

Exhibits, § 3:63

Fact issues, §§ 3:6, 3:7

Failure to file opposition, § 3:106

Federal Telecommunications Act

- implementation is anticompetitive, § 3:156
- vacating orders of state agency, §§ 3:145, 3:156

Fees imposed on party requesting continuance, § 3:39

SUMMARY JUDGMENT—Cont'd

Format and content of motion

- generally, §§ 3:29 to 3:32
- evidence, § 3:32
- moving papers, § 3:29
- opposition papers, § 3:30
- separate statement, §§ 3:27, 3:31

Genuine issues of material fact, §§ 3:7, 3:55, 3:116

Incompetent affidavits and declarations, §§ 3:68, 3:118

Incorporation by reference, § 3:65

Inferences, §§ 3:62, 3:125

Insurance, §§ 3:14, 3:88

Joinder of motion of others, §§ 3:41, 3:105

Judgment on the pleadings, compared, § 2:6

Judicial notice, §§ 3:64, 3:128

Legal malpractice, §§ 3:15, 3:89

Liberal construction of opposition papers, § 3:81

Local rules, conflicts between, §§ 3:20, 3:104

Malpractice, §§ 3:15, 3:89, 3:160

Mistake, §§ 3:8, 3:82

Notice of motion, § 3:22

Objections to evidence, §§ 3:71 to 3:73, 3:130

Opposition citations, generally, §§ 3:79 to 3:133

Oral argument, §§ 3:40, 3:100

Order, §§ 3:42, 3:107

Personal injuries, §§ 3:10, 3:84

Personal knowledge, lack of, § 3:119

Plaintiff

- flooding of property
 - constitutes municipal appropriation, § 3:155

Pleadings, use of, §§ 3:56, 3:57

Premises liability, §§ 3:12, 3:86

Procedural considerations, generally, §§ 3:19 to 3:42, 3:92 to 3:107

Property damage, §§ 3:10, 3:84

Property, dangerous condition of, §§ 3:9, 3:83

Punitive damages, § 3:148

Purpose, § 3:4

SUMMARY JUDGMENT—Cont’d

Reference to evidence, improper,
§ 3:129

Request for amendment of pleadings,
necessity of, §§ 3:34, 3:102

Review of motion, §§ 3:77, 3:78

Ruling on objections to evidence,
§ 3:72

Sample documents
generally, §§ 3:134 to 3:158
affidavit in support of motion,
§ 3:139
brief on appeal, § 3:160
discrimination in municipal
employment action, §§ 3:150,
3:151
hostility, removal of defendant as
co-trustee due to, § 3:159
judgment, § 3:147
judicial notice in support of
motion, request for, § 3:138
malicious prosecution, § 3:149
medical malpractice and battery
claims, § 3:160
memorandum of law in opposition
to motion, §§ 3:141, 3:148
memorandum of law in support of
motion, §§ 3:136, 3:149
motion by defendant, §§ 3:135 to
3:140
municipal appropriation, flooding
as, §§ 3:157, 3:158
notice of motion, § 3:135
objections to evidence submitted in
support of motion, § 3:143
opposition of plaintiff to motion,
§§ 3:141 to 3:143
orders
denial of, § 3:146
entry of, §§ 3:144, 3:145
plaintiff stockholder memorandum
of law in opposition to motion
for summary judgment,
§ 3:152
separate statement of undisputed
material facts in opposition to
motion, § 3:142
separate statement of undisputed
material facts in support of

SUMMARY JUDGMENT—Cont’d

Sample documents—Cont’d
motion, § 3:137
stockholder action for breach of
contract and other claims,
§ 3:152
vacating orders of state agency,
Federal Telecommunications
Act, §§ 3:145, 3:156

Sanctions, §§ 3:73 to 3:76, 3:131,
3:132

Separate statement
generally, §§ 3:24 to 3:28, 3:92,
3:93
appropriate response from opposi-
tion, failure regarding, § 3:93
continuances, § 3:99
failure to include separate state-
ment, § 3:28
format and content of motion,
§§ 3:27, 3:31
moving party, § 3:25
opposition separate statement,
§ 3:26

Speculation, §§ 3:70, 3:122

Standard of review of motion, § 3:78

State of mind, § 3:121

Statement of court’s ruling, § 3:42

Stipulated facts, § 3:66

Strict construction of movant’s evi-
dence, § 3:54

Supporting citations, generally,
§§ 3:3 to 3:78

Time and date
generally, §§ 3:21 to 3:23
bringing motion, § 3:21
notice of motion, § 3:22
opposition and reply, § 3:23

Unlawful detainer, § 3:17

Vacating orders of state agency,
Federal Telecommunications
Act, §§ 3:145, 3:156

Waiver of objections to evidence,
§§ 3:73, 3:130

Wrongful death, §§ 3:10, 3:84

Wrongful death claim barred by res
judicata and collateral estoppel,
§ 3:153

INDEX

SUMMONS, FAILURE TO SERVE

- Generally, §§ 4:20 to 4:46
- Alternative to quash motion, § 4:25
- Amenability to process, tolling, § 4:31
- Description, § 4:24
- Estoppel, §§ 4:37, 4:45, 4:46
- Excuses for delay, generally, §§ 4:30 to 4:37, 4:40 to 4:46
- Expiration of time, determination of, § 4:28
- Extension of time, stipulation, §§ 4:35, 4:43
- Futility, tolling, §§ 4:32, 4:42
- General appearance, §§ 4:34 to 4:36, 4:44
- Impossibility, tolling, §§ 4:32, 4:42
- Impracticability, tolling, §§ 4:32, 4:42
- Mandatory provision, § 4:23
- Notice requirement, § 4:26
- Opposition citations, generally, §§ 4:38 to 4:46
- Order to dismiss action, sample document, § 4:191
- Participation in litigation, general appearance, § 4:36
- Policy to try cases on merits, § 4:38
- Primary authorities, § 4:22
- Procedural considerations, §§ 4:26 to 4:30
- Purpose, § 4:24
- Standing to bring motion, § 4:27
- Stay, § 4:41
- Stipulations, §§ 4:33, 4:35, 4:43
- Supporting citations, generally, §§ 4:22 to 4:37
- Time not yet expired, § 4:39
- Timing of motion, § 4:29
- Tolling, §§ 4:30 to 4:32, 4:40 to 4:42
- Waiver, §§ 4:37, 4:45, 4:46

TIME AND DATE

- Extension of Time, this index
- Forum non conveniens, timing of motion, § 4:10
- Judgment on the pleadings, timing of motion, §§ 2:16, 2:17
- Prosecution, Delay in, this index

TIME AND DATE—Cont'd

- SLAPP lawsuits, timing of motion, § 4:163
- Statute of limitations, judgment on the pleadings, § 2:29
- Strike, Motion to, this index
- Summary Judgment, this index
- Summons, failure to serve, §§ 4:29, 4:39
- Tolling, this index

TOLLING

- Commencement of action within year of dismissal, failure regarding, §§ 4:88 to 4:90, 4:98 to 4:105
- Prosecution, delay in, §§ 4:60, 4:61, 4:75, 4:76
- Summons, failure to serve, §§ 4:30 to 4:32, 4:40 to 4:42

TRUSTS AND TRUSTEES

- Hostility, removal of defendant as co-trustee, § 3:159

UNCLEAN HANDS

- Discovery, misuse of, § 4:126

UNLAWFUL DETAINER

- Summary judgment, § 3:17

VERIFICATION

- Strike, motion to, § 1:26

WAIVER OR ESTOPPEL

- Commencement of action within year of dismissal, failure regarding, § 4:92
- Forum non conveniens, § 4:19
- Judgment on the pleadings, bankruptcy, estoppel of respondent, § 2:50
- Prosecution, delay in, §§ 4:77, 4:78
- Summary judgment, objections to evidence, §§ 3:73, 3:130
- Summons, failure to serve, §§ 4:37, 4:45, 4:46

WILLFULNESS

- Discovery, misuse of, §§ 4:120, 4:121, 4:128

WITNESSES

- Evidence and Witnesses, this index

MISSOURI SUMMARY JUDGMENT AND RELATED MOTIONS

WRONGFUL DEATH

Claim barred by res judicata and col-
lateral estoppel, § **3:153**

WRONGFUL DEATH—Cont'd

Summary judgment, §§ **3:10, 3:84**