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IN THE SUPREME COURT OF MISSOURI

SCHWARZ PHARMA, INC., n/k/a UCB, INC.,	)	
Relator,	)	**Case No. SC93524**
v.	)	**Missouri Court of Appeals, Eastern District No. ED99889**
THE HONORABLE DAVID L. DOWD, JUDGE, CIRCUIT COURT OF ST. LOUIS CITY, MISSOURI	)	**Circuit Court of St. Louis City Cause No. 1222-CC10215 (Stewart)**
Respondent.	)	

BRIEF OF RELATOR
SCHWARZ PHARMA, INC., n/k/a UCB, INC.

HEPLERBROOM LLC
Gerard T. Noce, #27636
gtn@heplerbroom.com
Larry E. Hepler, #21753
leh@heplerbroom.com
Beth A. Bauer, #49981
bab@heplerbroom.com
211 N. Broadway, Suite 2700
St. Louis, MO 63102
314/241-6160/Fax: 314/241-6116

MAYER BROWN LLP
Henninger S. Bullock
hbullock@mayerbrown.com
Andrew J. Calica
acalica@mayerbrown.com
1675 Broadway
New York, NY 10019
Tel: 212/506-2500
Fax: 212/262-1910

ORAL ARGUMENT REQUESTED

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Jurisdictional Statement

Upon application of Schwarz Pharma, Inc., n/k/a UCB, Inc. ("Schwarz"), this Court issued a Preliminary Writ of Prohibition on August 13, 2013. This Court has jurisdiction to hear this Writ pursuant to Article V § 4.1 of the Missouri Constitution. Relator Schwarz seeks a Permanent Order of Prohibition to prevent the Honorable David L. Dowd from enforcing his order of April 5, 2013 (**A1**), denying Relator's Motion to Transfer for Improper Venue. The record before Respondent demonstrated that 1) the Motion to Transfer was timely filed, 2) Plaintiff cannot satisfy Missouri's requirements for establishing venue in St. Louis City Circuit Court, and 3) venue is proper in the Circuit Court of St. Louis County.

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Statement of Facts

The following paragraph describes developments that occurred in this litigation before Relator Schwarz was served with any Petition or filing related to this matter. On February 22, 2012, Plaintiffs Linda and Richard Stewart, residents of New York, along with 88 other plaintiffs, including an alleged resident of St. Louis City, filed a products liability action in St. Louis City against 27 defendants captioned *Jannett Anderson, et al., v. Wyeth LLC, et al.*, No. 1222-CC00910 (Circuit Court of St. Louis City) (the "*Anderson* Petition"). The *Anderson* plaintiffs sued Schwarz as well as Wyeth LLC (formerly Wyeth, Inc.), Wyeth Pharmaceuticals Inc., Pfizer Inc., Schwarz Pharma, Inc. n/k/a UCB, Inc. and Alaven Pharmaceutical LLC (together with Schwarz, the "Brand Defendants"). **A4-A61.** Plaintiffs did not serve Schwarz with the *Anderson* Petition. The defendants who were served filed a Motion to Drop Misjoined Plaintiffs Pursuant to Rules 52.06 and 52.05. **A62-A66.** The *Anderson* plaintiffs subsequently amended their Original Petition on two separate occasions. **A67-A167.** At that time, Plaintiffs did not serve Schwarz with either of these amended Petitions.

On August 8, 2012, the St. Louis City Circuit Court found it "manifestly apparent" that the *Anderson* plaintiffs were misjoined under Missouri law. Accordingly, the court: (1) severed the claims of the *Anderson* plaintiffs; and (2) ordered each plaintiff (or plaintiff-family) to file an individual petition. **A168-**

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A172. These actions rendered the Second Amended *Anderson* Petition inoperative.

On October 2, 2012, 55 days **after** the circuit court had severed the 96-plaintiff *Anderson* Petition, and before filing an individual petition as required by the circuit court's order, Plaintiffs served the by-then inoperative Second Amended *Anderson* Petition on Schwarz and filed a Memorandum Filing Return of Service. **A173-A175.** This was the first time that Schwarz was served with any petition related to Linda and Richard Stewart's claims. On October 3, 2012, Plaintiffs Linda and Richard Stewart filed their Individual Petition in accordance with the severance order. **A176-A216.** Schwarz and the other Defendants were served with Linda and Richard Stewart's Individual Petition on October 4, 2012. **A176-A216.**

On November 15, 2012—44 days after Schwarz was first served with any petition relating to this litigation and 42 days after Plaintiffs Linda and Richard Stewart filed their Individual Petition and served it on all other Defendants—Schwarz and the Brand Defendants filed a Motion to Transfer for Improper Venue under RSMo. §§ 508.010 and 347.069(a) and Missouri Rule of Civil Procedure 51.045.[1] **A217-A222.** All other defendants named in the *Stewart* Individual Petition joined in the motion. **A420-A433.**[2]

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[1] Schwarz and the other Brand Defendants also filed Motions to Transfer for Improper Venue to St. Louis County in the following related cases: *Bryan v. Wyeth*

On December 6, 2012, Plaintiffs Linda and Richard Stewart filed an opposition to Schwarz's and the other Defendants' Motion to Transfer for Improper Venue. **A234-A358.** They raised a single argument—the August 8, 2012 Severance Order (rather than the filing of their Individual Petition on October 3, 2012) triggered the running of the 60-day under Rule 51.045, making the Motion to Transfer Venue untimely. Plaintiffs did not address their failure to serve Schwarz with any petition in this matter until, at the very earliest, October 2, 2012.

LLC, et al., 1222-CC10178; *Fuller v. Wyeth LLC, et al.*, 1222 CC-10195; *Harker v. Wyeth LLC, et al.*, 1222-CC10204; *Howell v. Wyeth LLC, et al.*, 1222-CC10177; *Krischke v. Wyeth LLC, et al.*, 1222-CC10168; *Mifsud v. Wyeth LLC, et al.*, 1222-CC10190; *Pullen v. Wyeth LLC, et al.*, 1222-CC10229 *Quayyum v. Wyeth LLC, et al.*, 1222-CC10226; *Simmons v. Wyeth LLC, et al.*, 1222-CC10223; 1222-CC10214; *Wilcox v. Wyeth LLC, et al*., 1222-CC10205. **A359-A419.**

[2] Schwarz was not served with any petition in this or the multi-plaintiff *Anderson* case before October 2, 2012. **A173.** Therefore, Schwarz's November 15, 2012 Motion to Transfer was clearly filed within the 60-day limit, regardless of the date of filing or service against any other defendant. Missouri Rule of Civil Procedure 51.045(a). Schwarz hereby incorporates the additional arguments made in Relator's Brief filed today in *Schwarz Pharma, Inc. v. Dowd*, SC93516, including the arguments pertaining to the timeliness of the motion to transfer.

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Schwarz and the other Defendants filed a Reply to Plaintiffs' Opposition on January 10, 2012. **A223-A233**.

As of January 2013, the Linda and Richard Stewart's case was one of the 12 cases related pending in St. Louis City. On January 8, 2013, Defendants called up for hearing Schwarz's and the other Brand Defendants' Motion to Transfer in *Stewart*, and the five other cases pending before Judge Dierker.[3] **A434-A451.** On January 10, 2013, Plaintiffs called up for hearing Schwarz's and Brand Defendants' Motions to Transfer before Respondent in the six cases pending before Respondent. **A452-A468.** On January 15, 2013, Plaintiffs filed an Amended Notice of Hearing for each of those cases. The Amended Notice called up the hearings for Brand Defendants' Motion to Transfer before Respondent on January 25, 2013. **A469-A485.** On January 25, 2013, Respondent heard oral argument on Defendants' Motions to Transfer Venue in all twelve cases, including Schwarz and the other Brand Defendants' Motion to Transfer Venue in the *Stewart* case. **A486.**

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[3] Before these motions were heard, Plaintiffs took a change of judge and the cases, including *Stewart*, were transferred to Respondent. **A487-A522.** Plaintiffs called up for hearing Brand Defendants' Motions to Transfer in these six cases, including *Stewart*. **A523-A541.** These motions were heard on January 25, 2013.

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During argument on the motions to transfer for improper venue, Schwarz and the other Defendants argued that transfer was timely because Schwarz was not even a party to the *Anderson* case until October 2, 2012 at the earliest, when it was first served with the inoperative Second Amended *Anderson* Petition. Accordingly, Defendants argued, Rule 51.045 gave Schwarz had until Monday, December 3, 2012 to file a motion to transfer. The Motion to Transfer filed by Schwarz and the other Brand Defendants thus was timely filed on November 15, 2012.

On April 3, 2013, more than 135 days after Schwarz and the other Brand Defendants moved to transfer, the circuit court still had taken no action on the Motion to Transfer. Accordingly, Schwarz and the other Defendants submitted a Motion to Enforce Transfer Pursuant to RSMo. 508.010.10, which provides that, "[a]ll motions to dismiss or to transfer based upon a claim of improper venue shall be deemed granted if not denied within ninety days of filing." **A542.**

Two days later, Respondent denied the Motion to Transfer and the Motion to Enforce Transfer on the lone ground that, "Defendants' motion to transfer was not called up for hearing by Defendants at any time within ninety days after it was filed." **A2.** Respondent further held that because the motion was not called up for hearing, Defendants waived any claim that the motion was granted under RSMo. § 508.010.10. **A2.** Respondent's Order Denying Transfer further states, "[i]t is well

settled that the Court may transfer a case only upon a finding that venue is not proper in this court." **A2.** Respondent's Order does not state that venue is proper in the City of St. Louis.

Schwarz and the other Defendants then filed a Petition for Writ of Prohibition, Suggestions in Support, and Exhibits with the Missouri Court of Appeals, Eastern District. **A543-A595**. Judge Clifford H. Ahrens, Presiding Judge of the Writ Division III, ordered Respondent to file suggestions in opposition to the Petition for Writ of Prohibition. **A596**. Counsel for Plaintiff, on behalf of Respondent, filed suggestions in opposition to the Petition for Writ of Prohibition. **A597-A612**. On May 29, 2013, the Court of Appeals denied Schwarz's and the other Defendants' Petition for Writ of Prohibition in a split decision. Judge Gary M. Gaertner, Jr., Writ Division II, signed the order and Judge Lawrence E. Mooney concurred. Judge Clifford H. Ahrens dissented. **A613.**

This Petition for Writ of Prohibition followed. **A614-A700**. On August 13, 2013, this Court issued a Preliminary Writ of Prohibition. **A701.** The Preliminary Writ instructed Respondent to file a written return and show cause "why a writ of prohibition should not issue prohibiting [Respondent] from doing anything other than vacating [Respondent's] order of April 5, 2013, overruling Relator's Motion to Transfer for improper venue, in cause No. 1222-CC10215, entitled Linda and

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Richard Stewart, Plaintiff v. Wyeth LLC, et al., Defendants." **A701.** On September 12, 2013, Respondent filed a return to the Petition. **A702-A720.**

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POINTS RELIED ON

I. RELATOR IS ENTITLED TO A PERMANENT ORDER PROHIBITING RESPONDENT FROM ENFORCING HIS ORDER DENYING RELATOR'S MOTION TO TRANSFER, BECAUSE THAT ORDER EXCEEDED RESPONDENT'S JURISDICTION AND AUTHORITY GIVEN THAT (1) RELATOR'S MOTION TO TRANSFER WAS CALLED UP FOR HEARING AND HEARD, AND (2) IN ANY EVENT, SECTION 508.010.10 DOES NOT REQUIRE A DEFENDANT TO NOTICE A MOTION FOR HEARING WITHIN 90 DAYS OF FILING.

State ex rel. Green v. Neill, 127 S.W.3d 677 (Mo. banc 2004).

State ex rel. Linthicum v. Calvin, 57 SW.3d 855 (Mo. banc 2001)

State ex rel. Etter, Inc. v. Neill, 70 S.W.3d 28 (Mo. App. E.D. 2002).

RSMo. § 508.010(5)(1)

II. RELATOR IS ENTITLED TO A PERMANENT ORDER PROHIBITING RESPONDENT FROM ENFORCING HIS ORDER DENYING RELATOR'S MOTION TO TRANSFER, BECAUSE THAT ORDER EXCEEDED RESPONDENT'S JURISDICTION AND AUTHORITY, IN THAT UNDER SECTION 508.010.5(1), R.S.MO., VENUE IN THIS TORT ACTION IS PROPER ONLY IN ST. LOUIS

COUNTY, WHERE DEFENDANTS' REGISTERED AGENTS ARE LOCATED, GIVEN THAT PLAINTIFFS' FIRST INJURIES WERE LIKELY SUSTAINED IN NEW YORK, AND PLAINTIFFS ARE NOT MISSOURI RESIDENTS.

State ex rel. Green v. Neill, 127 S.W.3d 677 (Mo. banc 2004)

State ex rel. Selimanovic v. Dierker, 246 S.W.3d 931 (Mo. 2008)

Ex parte Haley, 99 Mo. 150, 12 S.W. 667 (1889)

RSMo. § 508.010

RSMo. § 347.069

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ARGUMENT

I. RELATOR IS ENTITLED TO A PERMANENT ORDER PROHIBITING RESPONDENT FROM ENFORCING HIS ORDER DENYING RELATOR'S MOTION TO TRANSFER, BECAUSE THAT ORDER EXCEEDED RESPONDENT'S JURISDICTION AND AUTHORITY GIVEN THAT (1) RELATOR'S MOTION TO TRANSFER WAS CALLED UP FOR HEARING AND HEARD, AND (2) IN ANY EVENT, SECTION 508.010.10 DOES NOT REQUIRE A DEFENDANT TO NOTICE A MOTION FOR HEARING WITHIN 90 DAYS OF FILING.

A. Introduction

The parties agree that the Motion to Transfer was called up for hearing and heard on January 25, 2013, yet the circuit court ruled that Schwarz's and the other Brand Defendants' Motion to Transfer venue should be denied because it was not called up and heard. That decision is clear error and Relator is therefore entitled to a permanent writ of prohibition.

B. Relator has Met the Standard For Issuance of a Permanent Writ of Prohibition

A writ of prohibition is available "(1) to prevent an usurpation of judicial power when the trial court lacks authority or jurisdiction; (2) to remedy an excess

of authority, jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted." *State ex rel. KCP & L Greater Mo. Operations Co. v. Cook*, 353 S.W.3d 14, 17 (Mo. App. W.D. 2011). Additionally, "[p]rohibition may be appropriate to prevent unnecessary, inconvenient, and expensive litigation." *Id.* A writ of prohibition should issue to prevent "an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent an abuse of extra-jurisdictional power." *State ex rel. Kinder v. McShane*, 87 S.W.3d 256, 260 (Mo. banc 2002).

Under Missouri law, it is well-established that a writ of prohibition is an appropriate remedy to correct a trial court's wrongful denial of a motion to transfer venue—the exact issue here. *See, e.g.*, *State ex rel. Green v. Neill*, 127 S.W.3d 677, 678 (Mo. banc 2004); *State ex rel. Linthicum v. Calvin*, 57 SW.3d 855, 859 (Mo. banc 2001) (suggesting that "St. Louis city-county maneuvers" account for much of the case law on venue); *State ex rel. Etter, Inc. v. Neill*, 70 S.W.3d 28 (Mo. App. E.D. 2002). Here the writ of prohibition should be made permanent because the Respondent's failure to recognize that Relator's Motion to Transfer was called up for hearing and heard constitutes an abuse of judicial discretion and permanent writ is necessary to avoid irreparable harm to Relator and to prevent an abuse of extra-jurisdictional power.

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C. The Basis for Respondent's Order, that Defendants Failed to Call Their Motion for Hearing, Is Belied by the Record, Has Now Been Refuted by Respondent's Suggestions in Opposition to the Petition For Writ of Prohibition, and, In Any Event, Does Not Supply a Reason For Denying the Motion.

Respondent's Order Denying Transfer states that the Motion to Transfer was not called up for hearing within 90 days of filing. **A1.** That inexplicable finding is belied by the record.

On January 8, 2013 the Stewart Motion to Transfer was called up for hearing—well within 90 days of its November 15, 2012 filing. **A446-A448.** On January 10, Plaintiffs moved for a change of judge. That motion was granted and the *Stewart* case was transferred to Respondent. **A508-A512, A521.** The *Stewart* case was again called up for hearing on January 16, 2013. **A536-A538.** Respondent has since admitted, in Respondent's Suggestions in Opposition to the Petition for Writ of Prohibition and Respondent's Suggestions in Opposition to Preliminary Writ of Prohibition (filed by Plaintiff's counsel on Respondent's behalf) that the motion was called up for hearing and was heard on January 25, 2013. **A602, A657.** Therefore, the circuit court's denial of the Motion to Transfer Venue was in error.

But even if Schwarz and the other Brand Defendants had not called their Motion to Transfer Venue within 90 days of its filing, there is simply no requirement in section 508.010.10 that the court must deny a defendant's motion unless the defendant notices the motion for hearing within 90 days of filing. The plain language of section 508.010.10 in no way links application of the statute to whether a defendant notices its motion for hearing, or whether the motion is heard at all. Instead, section 508.010.10 provides that "all motions to dismiss or to transfer based upon a claim of improper venue [] be deemed granted if not denied within ninety days of filing of the motion." Tellingly, the circuit court did not cite any authority for his interpretation of this statute. And there is none. Failure to call a motion for hearing within a 90 day time period simply is not a basis on which a motion can be denied under Missouri law.

For these reasons, a permanent writ must issue to require the court to grant Schwarz's and the other Brand Defendants' Motion to Transfer. *See State ex rel. Green v. Neill*, 127 S.W.3d 677, 678 (Mo. banc 2004); *see also State ex rel. Linthicum v. Calvin*, 57 SW.3d 855, 859 (Mo. banc 2001) (suggesting that "St. Louis city-county maneuvers" account for much of the case law on venue); *State ex rel. Etter, Inc. v. Neill*, 70 S.W.3d 28 (Mo. App. E.D. 2002).

II. RELATOR IS ENTITLED TO A PERMANENT ORDER PROHIBITING RESPONDENT FROM ENFORCING HIS ORDER

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DENYING RELATOR'S MOTION TO TRANSFER, BECAUSE THAT ORDER EXCEEDED RESPONDENT'S JURISDICTION AND AUTHORITY, IN THAT UNDER SECTION 508.010.5(1), R.S.MO., VENUE IN THIS TORT ACTION IS PROPER ONLY IN ST. LOUIS COUNTY, WHERE DEFENDANTS' REGISTERED AGENTS ARE LOCATED, GIVEN THAT PLAINTIFFS' FIRST INJURIES WERE LIKELY SUSTAINED IN NEW YORK, AND PLAINTIFFS ARE NOT MISSOURI RESIDENTS.

A. Introduction

There are no facts in the record upon which Respondent could find venue proper in St. Louis City and, indeed, the Court did not so find. Plaintiffs Linda and Richard Stewart, residents of New York, alleged no facts to show that they were first injured in the City of St. Louis, as required by RSMo. § 347.069(2), or they was injured in or have any connection to Missouri. Instead, this case is properly venued in St. Louis County because Defendants' registered agents are located there. *See* RSMo. § 508.010(5)(1).

Accordingly, a Writ of Prohibition must issue instructing the St. Louis City Circuit Court to transfer this case to St. Louis County Circuit Court.

B. Relator has Met the Standard For Issuance of a Permanent Writ of Prohibition

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A writ of prohibition is available "(1) to prevent an usurpation of judicial power when the trial court lacks authority or jurisdiction; (2) to remedy an excess of authority, jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted." *State ex rel. KCP & L Greater Mo. Operations Co. v. Cook*, 353 S.W.3d 14, 17 (Mo. App. W.D. 2011). Additionally, "[p]rohibition may be appropriate to prevent unnecessary, inconvenient, and expensive litigation." *Id.* A writ of prohibition should issue to prevent "an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent an abuse of extra-jurisdictional power." *State ex rel. Kinder v. McShane*, 87 S.W.3d 256, 260 (Mo. banc 2002).

Under Missouri law, it is well-established that a writ of prohibition is an appropriate remedy to correct a trial court's wrongful denial of a motion to transfer venue—the exact issue here. *See, e.g.*, *State ex rel. Green v. Neill*, 127 S.W.3d 677, 678 (Mo. banc 2004); *State ex rel. Linthicum v. Calvin*, 57 SW.3d 855, 859 (Mo. banc 2001); *State ex rel. Etter, Inc. v. Neill*, 70 S.W.3d 28 (Mo. App. E.D. 2002). Here, the Writ of Prohibition should be made permanent because the Respondent's failure to transfer a case that has no connection to St. Louis City, but has significant connection to St. Louis County, constitutes an abuse of judicial discretion. And a permanent writ is necessary to avoid irreparable harm to Relator and to prevent an abuse of extra-jurisdictional power.

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C. Respondent Erred by Failing to Transfer a Case with No Connection to St. Louis City to a Proper Jurisdiction.

"A court that acts when venue is improper acts in excess of its jurisdiction." *State ex rel. Green v. Neill*, 127 S.W.3d 677, 678 (Mo. banc 2004). St. Louis County is the proper venue for Plaintiffs Linda and Richard Stewart's case based on two Missouri statutes. *See State ex rel. Selimanovic v. Dierker*, 246 S.W.3d 931, 932 (Mo. 2008) (noting that in Missouri venue is determined only by statute).[4]

Missouri's general venue statute states that venue is proper where a plaintiff was first injured. *See* RSMo. § 508.010. Plaintiffs Linda and Richard Stewart are residents of New York, and they do not allege any connection to Missouri. The only reasonable inference is that their alleged injury first occurred outside of Missouri.

Section 508.010 states that when a plaintiff was first injured outside of Missouri, venue is proper only where a defendant corporation's registered agent is located. *See* RSMo. § 508.010(5)(1) ("[I]n all actions in which there is any count alleging a tort and in which the plaintiff was first injured outside the state of Missouri … If the defendant is a corporation, then venue shall be in any county

[4] Approximately 13 cases, involving nearly identical allegations against many of the same Defendants named in this case, are already pending in St. Louis County, coordinated for pre-trial matters before the Honorable Richard C. Bresnahan.

where a defendant corporation's registered agent is located."). This case is properly venued in St. Louis County because none of the Defendants has a registered agent in St. Louis City and Defendants have registered agents in St. Louis County.

Venue is also proper in St. Louis County pursuant to section 347.069(2), Missouri's venue statute relating to limited liability companies. *See* § 347.069(2), RSMo. ("Proceedings against a limited liability company shall be commenced either in the county where the cause of action accrued or in any county where such limited liability company shall have or usually keep an office or agent for the transaction of its usual and customary business, or in the county in which the office of the registered agent of the limited liability company is maintained."). Both Defendants Wyeth and Alaven are organized as LLCs. This cause of action did not accrue in the City of St. Louis and Wyeth and Alaven both have registered agents in St. Louis County. **A5-A6**. Thus, as under section 508.010, venue is proper in St. Louis County under section 347.069.

Respondent has suggested that this Court has already considered and rejected this argument because the Court declined to grant the application for writ of prohibition that was filed by the other Defendants in this case. **A712.** However, a court's decision not to issue a Preliminary Writ of Prohibition in no way equates to a ruling on the merits of the issues raised in the Petition for Preliminary Writ of

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Prohibition. In fact, a review of the Court's Order makes it clear that the Court never addressed whether or not venue was proper in the City of St. Louis. **A1-A3.** Respondent's argument is therefore without merit.

D. Given Relator's Timely Motion to Transfer, This Entire Matter Must Be Transferred

In its Order Granting Preliminary Writ of Prohibition, this Court made it clear that Respondent was to show cause why "cause No. 1222-CC10204" should not be transferred. **A701.** The Order specifically, and on numerous occasions, refers to the entire cause of action and not individual claims or parties. **A701.** Therefore, should the Court make this Writ permanent, Respondent must take no further action other than to transfer the **entire cause of action** to the Circuit Court for St. Louis County.

Inexplicably, Respondent suggests that if this Writ is made permanent then Plaintiff's claims against Schwarz will be severed and transferred to St. Louis County Circuit Court while Plaintiff's claims against the other Defendants will remain in St. Louis City Circuit Court. **A712-A713.** Respondent is simply wrong. The Missouri Rules provide that "[w]hen a transfer of venue is ordered, the ***entire civil action shall be transferred*** unless a separate trial has been ordered." Sup. Ct. R. 51.045(c) (emphasis added). Indeed, Missouri courts have long held that: "[t]he transfer of [a] cause by change of venue ***[takes] with it the whole cause***, and every

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incident belonging thereto … just the same as if the cause had originated in that court." *See Ex parte Haley*, 99 Mo. 150, 12 S.W. 667 (1889) (emphasis added). No separate trial has been ordered or requested in this case. Moreover, throughout this proceeding, there has been no suggestion that the claims in this case be severed. The Preliminary Writ of Prohibition on its face applies to the entire cause of action. Thus, should the Writ be made permanent, the entire cause of action must be transferred to St. Louis County Circuit Court.

Conclusion

This Court should make permanent its Preliminary Writ, as the uncontested factual allegations show that Relator timely moved to transfer this case and venue is not proper in St. Louis City. Otherwise, Relator will be forced to engage in unnecessary and burdensome litigation and Respondent will be allowed to exert extra-jurisdictional power over this matter. This Court should order Respondent to take no further action in this case other than transfer this entire matter to St. Louis County Circuit Court.

Respectfully Submitted,

HEPLERBROOM LLC

By: /s/ Gerard T. Noce

Gerard T. Noce, #27636
gtn@heplerbroom.com
Larry E. Hepler, #21753
leh@heplerbroom.com

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Beth A. Bauer, #49981
bab@heplerbroom.com
211 N. Broadway, Suite 2700
St. Louis, MO 63102
314/241-6160/Fax: 314/241-6116
Attorney for Schwarz Pharma, Inc. (n/k/a UCB, Inc.)

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RELATOR SCHWARZ PHARMA, INC.'S CERTIFICATION

Signature of this filing certifies the foregoing Brief complies with the limitations contained in Rule 84.06(b). This brief contains approximately 4,547 words.

/s/ Gerard T. Noce
Gerard T. Noce, #27636
gtn@heplerbroom.com
Larry E. Hepler, #21753
leh@heplerbroom.com
Beth A. Bauer, #49981
bab@heplerbroom.com
211 N. Broadway, Suite 2700
St. Louis, MO 63102
314/241-6160/Fax: 314/241-6116
Attorneys for Schwarz Pharma, Inc.

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RELATOR SCHWARZ PHARMA, INC.'S
CERTIFICATE OF SERVICE

Signature of this filing certifies the foregoing Brief and Appendix were served this 15th day of October, 2013 as indicated below.

/s/ Gerard T. Noce
Gerard T. Noce, #27636
gtn@heplerbroom.com
Larry E. Hepler, #21753
leh@heplerbroom.com
Beth A. Bauer, #49981
bab@heplerbroom.com
211 N. Broadway, Suite 2700
St. Louis, MO 63102
314/241-6160/Fax: 314/241-6116
Attorneys for Schwarz Pharma, Inc.

THE HONORABLE DAVID L. DOWD (via electronic mail)
Circuit Court of the City of St. Louis
10 N. Tucker Blvd, Div. 2
St. Louis, Missouri 63101
Phone : 314/622-4372
DDowd@courts.mo.gov
RESPONDENT

ATTORNEYS FOR PLAINTIFF (via the ECF/CM filing system)
Jeffrey J. Lowe, Jacob A. Flint
Carey, Danis & Lowe
8235 Forsythe, Suite 1100
St. Louis, MO 63105
Phone: 314/678-3400
jeff@jefflowepc.com
jflint@jefflowepc.com

ATTORNEYS FOR DEFENDANTS TEVA PHARMACEUTICAL USA, INC. (via ECF/CM system)

Andrew D. Ryan, Natalie J. Kussart
Sandberg Phoenix & VonGontard P.C.
600 Washington Ave. – 15th Floor
St. Louis, MO 63101-1313
Phone: 314/231/3332
Aryan@sandbergphoenix.com
nkussart@sandbergphoenix.com

Richard A. Oetheimer, Jonathan I. Price, Jennifer Kennedy Gellie
Goodwin Procter, LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
Phone: 212/813-8800
roetheimer@goodwinprocter.com
jprice@goodwinprocter.com
jgellie@goodwinprocter.com

ATTORNEYS FOR DEFENDANTS PLIVA, INC., BARR PHARMACEUTICALS, INC. n/k/a BARR PHARMACEUTICALS LLC, BARR LABORATORIES, INC. (via ECF/CM system)

Sandra J. Wunderlich
Stinson Morrison Hecker, LLP
7700 Forsythe Blvd., Suite 1100
St. Louis, MO 63105
Phone: 314/863-0800
swunderlich@stinson.com

Matthew V. Brammer
Ulmer & Berne LLP
600 Vine Street, Suite 2800
Cincinnati, OH 45202
Phone: 513/698-5000
mbrammer@ulmer.com

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