

IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI
43RD JUDICIAL CIRCUIT
STATE OF MISSOURI

F I L E D
OCT 27 2009
MOLLY LIVINGSTON
Clerk of Clinton Co. Circuit Court

MICHAEL O'LOUGHLIN,

Plaintiff,

v.

PRIME TANNING CORP., et al.,

Defendants.

Case No.: 08CN-CV00705

**PLAINTIFF'S SUGGESTIONS IN RESPONSE TO NATIONAL BEEF LEATHER'S
APPLICATION FOR CHANGE OF VENUE**

COMES NOW Plaintiff, Michael O'Loughlin, by and through his attorneys of record, and responds to Defendant National Beef Leather's ("NBL") Application for Change of Venue as follows:

Introduction

Plaintiff acknowledges that Defendant NBL is entitled to an application for change of venue as a matter of right pursuant to Rule 51.03 of the Missouri Rules of Civil Procedure, however, Livingston County is in no way a convenient location which would warrant sending this case, or any other related case, to that venue. There will almost assuredly be more than one hundred (100) similar claims filed against Defendant NBL and its Co-Defendants. Jackson County is the most convenient and best equipped venue to handle such volume.

Application for Change of Venue Pursuant to Mo. Ct. Rule 51.03

A case venued in a county with less than 75,000 residents can be transferred to another county under Mo. Ct. Rule 51.03 even though the first injury or exposure did not occur in the

other county. *State ex rel. Audrain Healthcare, Inc. v. Sutherland*, 233 S.W.3d 217 (Mo. 2007). The case is to be transferred to another county that is "convenient to the parties." NBL has in no way demonstrated that Livingston County is convenient to the parties in this case, and, in fact, Livingston County is not only ill-prepared to deal with a mass tort case, but has absolutely no connection to this case whatsoever.

This is a mass tort case in which 100 or more similar claims are likely to be filed against NBL and Co-Defendants. The case was originally filed in Dekalb County, Missouri, because tort reform venue rules mandate that this case and others be filed where the Plaintiffs are exposed to toxins. It is unlikely that a rural circuit court, like Livingston County, can handle the expected case load. Livingston County is not equipped in terms of resources or experience to handle litigation of this size and volume, and it is almost certain that its dockets would be overwhelmed by litigation of this magnitude. This will create a host of problems that, in the long run, will actually serve to *inconvenience* the parties to this litigation. An overload of the type considered by this litigation would lead to increased inefficiencies and added expense to all parties, not to mention the taxpayers of Livingston County. It is likely that the parties would suffer from increased inconsistencies in the handling of files and documents, increases in the amount of time necessary to conclude litigation due to a dearth of judges, and the necessity of hiring additional staff for the separate docket that will almost assuredly become necessary.

Add to this the fact that Livingston County does not possess a national airport, and the difficulty for experts, as well as Defendants' lawyers from outside of the State of Missouri to be conveniently presented at evidentiary hearings and at trial becomes a problem. And given the level of scientific evidence to be presented, and the stakes involved, these cases are likely to be

heavily contested through motion practice, again calling into question the level of "convenience" Livingston County actually provides.

Jackson County is simply best equipped to handle the case load involved in this litigation and there are no potential class members in Jackson County that would create problems for the separate class actions filed against NBL and Co-Defendants. For the same reasons, the 22nd Judicial Circuit - St. Louis City, would also be a suitable venue for this case. St. Louis City has the resources necessary to handle the case load; is removed from this litigation, its media attention and its potential class members; and has an international airport which makes it a convenient location for parties, attorneys and experts.

Jackson County has experience in mass tort matters. For example, a separate docket was created to handle the Hyatt skywalk disaster cases to a successful resolution. Further, many of the attorneys are headquartered in Jackson County, including lead Plaintiff attorneys and attorneys for National Beef Leathers and Co-Defendants Prime Tanning Corp. and Rick Ream. In addition, Jackson County has a large number of judges and a large jury pool that will mitigate any future concerns about pre-trial bias. This case and the other similar cases will be expert intensive and such experts will likely be located throughout the United States. It would be far more convenient for such experts and the parties if the case were tried in Jackson County, or alternatively in St. Louis City, with easy airport access and hotel accommodations.

There is nothing convenient about transferring this case to Livingston County or any other rural county for that matter. This is a mass tort case that will require a circuit equipped to handle a large number of cases and a large jury pool to ameliorate any concerns of jury bias or prejudice. Jackson County, or alternatively the 22nd Judicial Circuit - St. Louis City, is the most convenient venue to which this case should be transferred. Both Jackson County and St. Louis

City have the size, experience, and convenience to parties, counsel and witnesses that can accommodate this litigation.

The only proper inquiry under Mo. Ct. Rule 51.03 transfer as of right is convenience, and Jackson County is the most convenient venue to which this case should be transferred. Alternatively, the next most convenient (and equipped) venue is the 22nd Judicial Circuit - St. Louis City. There is nothing convenient about trying this case in Livingston County. This Court should not consider issues of prejudice in deciding which Circuit is best equipped to handle this mass tort litigation -- that is a question best addressed by the Circuit to which this case is transferred.

WHEREFORE, Plaintiff respectfully requests that the case be transferred to Jackson County, or in the alternative, to the 22nd Judicial Circuit - St. Louis City for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 27th day of October, 2009, a copy of the foregoing was transmitted via facsimile and first class U.S. mail, with proper postage affixed, to:

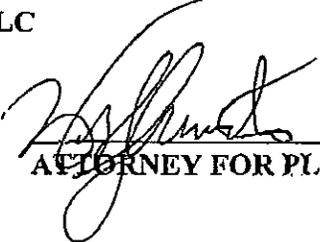
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