

IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI

F I L E D
MAY 10 2010
MOLLY LIVINGSTON
Clerk of Clinton Co. Circuit Court

BEVERLY LONG, et al.)
)
Plaintiffs)
)
v.)
)
PRIME TANNING CORP., et al.)
)
Defendants.)

Case No. 09CN-CV00422

**PLAINTIFFS' SUPPLEMENTAL SUGGESTIONS REGARDING
CHANGE OF VENUE PURSUANT TO MO. CT. RULE 51.03 AND
SUGGESTIONS IN OPPOSITION TO DEFENDANTS' PROPOSED
WITHDRAWAL OF THEIR MOTIONS TO CHANGE VENUE**

Introduction

In July of 2009, defendants Prime Tanning Corp. and National Beef Leathers, LLC filed their timely applications for automatic change of judge and venue under Mo. Ct. Rule 51.03. Defendant Prime Tanning Corp. concurrently moved for a change of venue for cause under Mo. Ct. Rule 51.04(a), arguing that pretrial publicity prohibited a fair trial in Clinton County. The defendants' motions were heard by Judge Conley on or about March 10, 2010, at which time Judge Conley stated that he would reserve ruling on the location of trial until discovery is complete. On or about April 29, 2010, defendants Prime Tanning Corp. and National Beef Leathers filed proposed withdrawals of their applications for change of venue. Defendants' proposed withdrawals of their applications for change of venue should be ignored and this case should remain with Judge Conley until discovery is complete, after which the case should be sent to Jackson County for trial.

**Defendants' Attempted Withdrawals of Their Automatic
Venue Change Motions Should Be Ignored**

Mo. Ct. Rule 51.03, on its face, does not allow defendants to withdraw their applications for change of venue. The rule states: "If a timely application is filed, the court *immediately*

shall order the case transferred to some other county convenient to the parties” Mo. Ct. Rule 51.03 (c). As one can see, once the application is filed, transfer shall be immediate. This case is deemed transferred out of Clinton County now, the only remaining question is where the case is to be transferred. If defendants are allowed to withdraw their motions to transfer now, after a full hearing and substantial briefing, plaintiffs will be greatly prejudiced. Mo. Ct. Rule 51.03 allows either plaintiff or defendant to apply for automatic change of venue 10 days after the defendants’ answers are due. Defendants moved for change of venue under Mo. Ct. Rule 51.03, and plaintiffs conceded that transfer was appropriate in their response briefs. Plaintiffs can not now move for transfer under Mo. Ct. Rule 51.03 because it is too late. Defendants should not be allowed to play such games to the detriment of plaintiffs.

The cases that defendants rely upon do not support the propriety of allowing them to withdraw their venue motions. Both cases are criminal cases, and the criminal automatic venue rule only applies to defendants – not both parties as with Mo. Ct. Rule 51.03. There is, therefore, not the potential for prejudice with allowing a criminal defendant to withdraw his automatic venue change motion because the prosecution has no such option. Further, the criminal cases cited by defendants do not support their position. In State v. Smith, 293 S.W.3d 149 (Mo. App. 2009), the Court merely held that the criminal defendant waived his right to complain about the return of his case to its original venue because the criminal defendant asked that the case be returned to its original venue. State v. Cummins, 92 S.W.2d 605 (Mo. Banc 1936) is a 1936 case regarding a criminal venue statute that bears no similarity to Mo. Ct. Rule 51.03.

This Case Should Be Venued In Jackson County When Discovery is Complete

Jackson County offers the most convenience to the parties and judge here. Jackson County has experience in mass tort cases such as this. Jackson County was able to handle the

Hyatt skywalk and Robert Courtney drug dilutions lawsuits to completion. Jackson County has courtroom space for visiting judges, and two full time law clerks are available from Jackson County for visiting judges. Jackson County also has sufficient judges to hear this case should that be required by Mo. Ct. Rule 51.14(a). Further, attorneys for plaintiffs and defendants are headquartered in Jackson County. In addition, Jackson County has a large jury pool that will mitigate any concerns about pretrial bias. This case will be expert intensive, and experts will likely be located throughout the United States. It would be far more convenient for such experts and the parties and lay witnesses if the case were tried in Jackson County with easy airport access and hotel accommodations.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on this 6th day of May, 2010, copies of the foregoing were transmitted via first class U.S. mail, with proper postage affixed, to:

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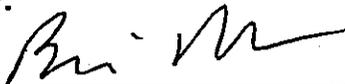
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