
SC96710

IN THE MISSOURI SUPREME COURT

State ex rel. Imerys Talc America, Inc., Relator

v.

The Honorable Rex M. Burlison, Respondent

An Original Writ Proceeding arising from
the Circuit Court of the City of St. Louis, Missouri
Case Number 1422-CC09326-01/02
The Honorable Rex M. Burlison

Relator Imerys Talc America, Inc.'s Brief

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Jurisdictional Statement

Plaintiff Michael Blaes is one of dozens of plaintiffs joined in a single petition against Relators Imerys Talc America, Johnson & Johnson and Johnson & Johnson Consumer, Inc. filed in the Circuit Court of the City of St. Louis (*Swann v. Johnson & Johnson, et al.*, No. 1422-CC09326-01/02, hereinafter “*Swann*”). Respondent, The Honorable Rex M. Burlison, is the Circuit Court Judge assigned to preside over *Swann*.

On September 18, 2017, Respondent entered an order setting the wrongful death claim brought by Michael Blaes for trial to begin on October 16, 2017. The Blaes claim was set for trial separately from the other remaining plaintiffs in the underlying suit. Blaes alleges his wife developed ovarian cancer and died as a result of perineal application of talcum powder products in St. Louis County, not St. Louis City. Once Respondent ordered Blaes’ claims to be tried separately from the remaining plaintiffs’ claims, Relator Imerys Talc America, Inc. renewed its motion to sever Blaes’ claims and transfer venue to St. Louis County, the only proper venue for Blaes’ claims. Relator had previously filed motions to sever and transfer venue as to the original and each amended petition, but these requests had been denied. However, once the Blaes claim was set for trial separately from the other plaintiffs in this case, Relator renewed its request to have the Blaes claim severed and transferred to St. Louis County. On September 26, 2017, Respondent denied Relator’s renewed requests.

Relator filed a writ petition for prohibition on October 2, 2017 in the Missouri Court of Appeals for the Eastern District on the issues raised in this Petition. The

appellate court issued a Preliminary Order granting the writ on October 4, 2017, but before Respondent filed an Answer, subsequently denied the writ petition on October 6, 2017. That court possesses the power to issue and determine original remedial writs pursuant to Article V, Section 4.1, of the Missouri Constitution and Rules 84 and 97. The Circuit Court of the City of St. Louis is within the territorial jurisdiction of the Eastern District. § 477.050, RSMo.

Co-defendants Johnson & Johnson filed their writ petition before this Court on October 3, 2017, SC 96704, seeking relief on Respondent's denial of their renewed motion to sever and transfer venue of the Blaes claims. On October 10, 2017, Relator filed a writ petition in this Court seeking relief on Respondent's denial of their renewed motion to sever and transfer venue of the Blaes claims. A Preliminary Writ was issued on both Relator's and Johnson and Johnson's Writ Petitions on October 13, 2017. This Court possesses the power to issue and determine original remedial writs pursuant to Article V, Section 4.1, of the Missouri Constitution and Rules 84 and 97.

Statement of Facts

In a hearing on September 18, 2017, Respondent entered a scheduling order setting the claims of Missouri plaintiff Michael Blaes for trial beginning October 16, 2017 in the City of St. Louis. The order sets for trial the claims of Michael Blaes *separately* from the other plaintiffs' claims who remain pending in the underlying suit. (Exhibit A1-2.)

Plaintiff Michael Blaes is one of dozens of other plaintiffs from around the nation who have filed suit in the underlying action in *Swann, et al. v. Johnson & Johnson, et al.*, No 1422-CC09326, originally filed on July 31, 2014. (Exhibit B3-61.) In *Swann*, the plaintiffs from various states allege Johnson's Baby Powder® and Shower to Shower® baby powder allegedly caused them (or a family member) to develop ovarian cancer. (Exhibit B3-61.)

In his current petition (the Fourth Amended Petition), Blaes alleges he is a citizen of St. Louis County and that his deceased wife, Shawn Blaes, purchased and applied talcum powder in St. Louis County. (Exhibit B10, ¶ 6.) These facts have remained unchanged throughout all prior petitions. (Exhibit C71, ¶ 8; Exhibit D135 ¶ 8; Exhibit E199 ¶ 6.)

Relator has consistently requested severance and venue transfer as to the previously filed petitions as to all plaintiffs for the reason that venue is improper in the City of St. Louis, but all requests have been denied. (Exhibits F255-259, G260-264.)

However, in light of Respondent's order setting the Blaes claim for trial separately from the remaining plaintiffs who filed suit in the same underlying *Swann* action, Relator

renewed its motion to sever Blaes' claim and transfer venue as to his claims. (Exhibit H265-280; A1-8.) Relator made clear it was renewing both its motion to sever the Blaes claims and transfer venue of those claims to St. Louis County in light of Respondent's order setting the Blaes claims separately for trial and this Court's September 12, 2017 opinion of *Barron v. Abbott Laboratories, Inc.*, 529 S.W.3d 795 (Mo. banc 2017) (Exhibit H265-280; A1-8.).

Relator argued, that pursuant to *Barron*, the three-judge concurring opinion recognized that although multiple plaintiffs have joined in a single action, *once the trial court, as here, decides to have an individual plaintiff's claims tried separately, and a defendant then moves or renews a motion to sever that claim*, "The trial court has discretion to deny a subsequent or renewed motion to sever only in the rarest of circumstances. Moreover, an abuse of discretion in denying such a motion will be patently prejudicial under section 508.012, RSMO 2005." (Exhibit H265-280; A1-8.)

The concurring opinion reasoned: "A decision to sever each plaintiff's claims in a multi-plaintiff case 'removes' a plaintiff for purposes of section 508.012 and, therefore, doing so will require the trial court (on application of a party) to determine the proper venue for the various actions resulting from that severance. Where those venues are different from the original venue, section 508.012 requires the trial court to transfer those actions to their proper venues for trial." (Exhibit H265-280; A1-8.)

Relator moved for an order of severance because Respondent set the Blaes claim to be tried separately. As in *Barron*, though Respondent may have denied motions to

sever and transfer venue while discovery was ongoing, “once the trial court determined that each Plaintiff’s claims should be tried separately in this case, ... it was error not to sever them and transfer those for which venue was no longer proper under sections 508.012 and 508.010.” (Exhibit H265-280; A1-8.)

Relator argued the only proper venue for Blaes’ claims is St. Louis County¹ because the decedent was first injured in St. Louis County as alleged in the Fourth Amended Petition “[a]t all pertinent times” the decedent “purchased and applied talcum powder in St. Louis County, Missouri” and her ovarian cancer “developed in the State of Missouri.” (Exhibit H265-280; A1-8; Exhibit B 10, ¶ 6.)

In tort actions “in which the plaintiff was first injured in the state of Missouri, venue shall be in the county where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in the action. Section 508.010 (4) R.S.,Mo. (A13-15.) “In a wrongful death action, the plaintiff shall be considered first injured where the decedent

¹ Unlike Johnson & Johnson, Relator has also consistently moved to dismiss the claims of all plaintiffs (not just the non-Missouri plaintiffs) for lack of personal jurisdiction. (Exhibit J282-300.) This includes the claims of Missouri plaintiff Blaes. After Respondent set the Blaes claims for trial, Relator renewed its motion to dismiss and also moved to stay or continue the October 16, 2017 trial because Blaes was undertaking jurisdiction discovery against Relator, but it would not be completed before trial commenced. (Exhibit K301-308, M331-365.) Respondent refused to continue the trial and as part of this writ proceeding, Relator moved for a writ prohibiting Respondent from proceeding to trial before jurisdiction discovery was complete and a ruling was made on Relator’s request to be dismissed for lack of personal jurisdiction as to all plaintiffs, including Blaes. (Exhibit N366; A10.) This Court issued the preliminary writ as to the severance/change of venue issues. As this Court’s writ stopped the October 2017 trial, Relator continues to preserve its claim that Respondent lacks personal jurisdiction and will seek dismissal once jurisdiction discovery is completed.

was first injured by the wrongful acts or negligent conduct alleged in the action.” Section 508.010 (11) R.S.Mo. (A13-15.)

On September 26, 2017, without explanation, Respondent denied Relator’s motion to sever Blaes’ claims and transfer venue to St. Louis County. (Exhibit I281; A9.)

Relator filed a writ petition for prohibition on October 2, 2017 in the Missouri Court of Appeals for the Eastern District on the issues raised in this Petition, which was initially granted, but then subsequently denied by that Court on October 6, 2017. (Exhibit S444.)

Co-defendants Johnson & Johnson filed their writ petition before this Court on October 3, 2017, SC 96704, seeking relief on Respondent’s denial of their renewed motion to sever and transfer venue of the Blaes claims. On October 10, 2017, Relator filed a writ petition in this Court and a Preliminary Writ was issued on both Relator’s and Johnson and Johnson’s Writ Petitions on October 13, 2017.

Point Relied On

Respondent erred in denying Relator's renewed motions to sever and transfer venue and this Court's order of prohibition should be made permanent because Respondent acted in excess of his authority and abused his discretion in that venue was improper in St. Louis City as to Blaes' claims and once Respondent set the Blaes claims separately for trial, and Relator renewed its motions to sever and transfer venue on Blaes' claims, §508.012 R.S.Mo. required reassessing Relator's venue challenge and §508.010 R.S.Mo. required venue to be transferred to St. Louis County, where the alleged first injury occurred; joinder of claims of other plaintiffs' claims does not support Respondent's actions; and Relator lacks an adequate remedy by appeal and will suffer irreparable harm if the writ is not made permanent.

Barron v. Abbott Laboratories, Inc.,

529 S.W.3d 795 (Mo. banc 2017).

Mo. State Bd. of Registration for the Healing Arts v.

Hon. Thomas J. Brown,

121 S.W.3d 234 (Mo. banc 2003).

State ex rel. Turnbough v. Gaertner,

589 S.W.2d 290, 291, 292 (Mo. banc 1979).

§508.010 R.S.Mo.

§508.012 R.S.Mo.

Mo.R.Civ.Proc. 51.01.

Argument

Respondent erred in denying Relator's renewed motions to sever and transfer venue and this Court's order of prohibition should be made permanent because Respondent acted in excess of his authority and abused his discretion in that venue was improper in St. Louis City as to Blaes' claims and once Respondent set the Blaes claims separately for trial, and Relator renewed its motions to sever and transfer venue on Blaes' claims, §508.012 R.S.Mo. required reassessing Relator's venue challenge and §508.010 R.S.Mo. required venue to be transferred to St. Louis County, where the alleged first injury occurred; joinder of claims of other plaintiffs' claims does not support Respondent's actions; and Relator lacks an adequate remedy by appeal and will suffer irreparable harm if the writ is not made permanent.

Upon setting the claims of Michael Blaes for trial separately from the remaining *Swann* plaintiffs, Relator renewed its motions to sever Blaes' claims and transfer them to the proper venue of St. Louis County. Respondent denied Relator's motions without explanation. This Court's preliminary writ should be made permanent because Respondent's actions were in excess of his authority and constituted an abuse of discretion that cannot be adequately reviewed upon appeal. *Barron, et al., v. Abbott Laboratories, Inc.*, 529 S.W.3d 795 (Mo. banc 2017). Once Respondent ordered Blaes' claims to be tried separately from the remaining plaintiffs' claims, Respondent was

obligated to sever the Blaes claims, reassess venue, and transfer the Blaes claims to the proper venue of St Louis County.

A. Prohibition is warranted when venue is improper, Respondent acts in excess of his authority, and Relator has no adequate remedy on appeal.

A writ of prohibition is available in Missouri “(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. Ops. Co. v. Cook*, 353 S.W.3d 14, 17 n.3 (Mo. App. W.D. 2011); *see also State ex rel. Kinder v. McShane*, 87 S.W.3d 256, 260 (Mo. banc 2002) (holding that 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”).

A writ is proper where “there is no adequate remedy by appeal for the party seeking the writ, and ‘the aggrieved party may suffer considerable hardship and expense as a consequence of the erroneous decision [of the lower court].’” *Mo. State Bd. of Registration for the Healing Arts v. Hon. Thomas J. Brown*, 121 S.W.3d 234, 236 (Mo. banc 2003) (quoting *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 577 (Mo. banc 1994)).

Forcing Relator to trial in an improper venue with the idea that relief will be afforded on an appeal following final judgment is no longer an appropriate reason to deny

severance and venue motions. In *Barron*, this Court made clear venue improprieties should be handled by writ relief rather than on appeal following judgment, as review on appeal does not offer an adequate remedy. *Barron*, 529 S.W.3d at 799, n. 6. “Perhaps the difficulty in showing prejudice on appeal is why these types of claims [improper venue] are better raised in the pretrial writ context, which requires no showing of prejudice.” *Id.* A writ of prohibition is appropriate to correct a trial court that continues to act when venue is improper. *State ex rel. Green v. Neill*, 127 S.W.3d 677, 678 (Mo. banc 2004); *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140, 142 (Mo. banc 2002). A writ lies to prohibit the trial court from taking any further action except to transfer the case to a proper venue. *Id.* Absent writ relief, a defendant will have no remedy at all for trial in an improper venue in Missouri, making venue rulings essentially unreviewable and essentially abrogating the venue statutes. *Barron*, 529 S.W.3d at 801, 802 (when a defendant’s initial efforts to sever and transfer venue of the resulting separate actions to a proper venue fail, a defendant is “left without a remedy unless it can scale the nearly insurmountable hurdle of proving prejudice on appeal” and therefore, writ relief for an improperly denied renewed request to sever and transfer venue when a plaintiff’s claims are set separately for trial is proper and necessary as it “avoids creating the analytical dead-end of a prejudice requirement that seldom (if ever) can be met.”)

B. Venue is only proper in St. Louis County.

The determination of proper venue is determined solely by statute. *State ex rel. Harness v. Grady*, 201 S.W.3d 48, 50 (Mo. App. 2006); *State ex rel. Kinsey v. Wilkins*,

394 S.W.3d 446, 449 (Mo. App. 2013). Improper venue is a “fundamental defect” and when venue is improper, the trial court may not take any further action, except to transfer the case to a proper venue. *State ex rel. Kansas City. S. Ry. Co. v. Nixon*, 282 S.W.3d 363, 365 (Mo. banc 2009); *State ex rel. Green v. Neill*, 127 S.W.3d 677, 678 (Mo. banc 2004); *State ex rel. McDonald’s Corp. v. Midkiff*, 226 S.W.3d 119, 122 (Mo. banc 2007). Where, as here, a venue decision is based on interpretation of a statute, this Court applies *de novo* review. *Scherder v. Sonntag*, 450 S.W.3d 856, 861-62 (Mo. App. 2014).

Plaintiff Michael Blaes is one of dozens of other plaintiffs who filed suit in the underlying action in *Swann, et al. v. Johnson & Johnson, et al.*, No 1422-CC09326, alleging Johnson’s Baby Powder® and Shower to Shower® baby powder caused them (or a family member) to develop ovarian cancer. (Exhibit B3-61.)

In his current petition (the Fourth Amended Petition), Blaes alleges he is a citizen of St. Louis County and that his deceased wife, Shawn Blaes, purchased and applied talcum powder in St. Louis County. (Exhibit B, page 10, ¶ 6.) These facts have remained unchanged throughout all prior petitions, and are undisputed. (Exhibit C71, ¶ 8; Exhibit D135 ¶ 8; Exhibit E199 ¶ 6.)

In tort actions “in which the plaintiff was first injured in the state of Missouri, venue shall be in the county where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in the action.” §508.010 (4) R.S.Mo. (A13-15.) “In a wrongful death action, the plaintiff shall be considered first injured where the decedent was first injured by the wrongful acts or negligent conduct alleged in the action.” §508.010 (11)

R.S.Mo. (A13-15.) “A plaintiff is considered first injured where the trauma or exposure occurred rather than where symptoms are first manifested.” §508.010 (14), RSMo. (A13-15.)

The only proper venue for Blaes’ claims is St. Louis County. As alleged in the Fourth Amended Petition, “[a]t all pertinent times” the decedent “purchased and applied talcum powder in St. Louis County, Missouri” and her ovarian cancer “developed in the State of Missouri.” (Exhibit B10, ¶ 6.) Mrs. Blaes was “first injured” in St. Louis County and, pursuant to sections 508.010(4), (11), and (14), venue is proper in St. Louis County, not St. Louis City. Relator consistently requested severance and venue transfer for the claims of plaintiffs (including Blaes) for whom venue in St. Louis City was improper as to the previously filed petitions, but all requests have been denied. (Exhibits F255-259, G260-264.)

C. Once Respondent set Blaes’ claims separately for trial, severance was required, and joinder does not support Respondent’s actions.

In a hearing on September 18, 2017, Respondent entered a scheduling order setting the claims of Missouri plaintiff Michael Blaes for trial beginning October 16, 2017 in the City of St. Louis. The order sets for trial the claims of Michael Blaes *separately* from the other plaintiffs’ claims which remain pending in the underlying suit. (Exhibit A1-2.)

After Respondent’s order setting the Blaes claim for trial separately from the remaining plaintiffs who filed suit in the same underlying action, Relator renewed its motion to sever Blaes’ claim and transfer venue as to his claims. (Exhibit H265-280; A1-

8.) Relator made clear it was renewing both its motion to sever the Blaes claims and transfer venue of those claims to St. Louis County in light of Respondent's order setting the Blaes claims separately for trial and this Court's September 12, 2017 opinion of *Barron v. Abbott Laboratories, Inc.*, 529 S.W.3d 795, 803 (Mo. banc 2017). (Exhibit H265-280, A1-8.)

In *Barron*, the three-judge concurring opinion recognized although multiple plaintiffs may have joined in a single action, once the trial court, as here, decides to have an individual plaintiff's claims tried *separately*, and a defendant then moves or renews a motion to sever that claim:

the trial court necessarily has decided there are no further gains in efficiency or expeditiousness to be had from the joinder authorized by Rule 52.05(a). Once that decision has been made, therefore, the trial court has discretion to deny a subsequent or renewed motion to sever only in the rarest of circumstances. Moreover, an abuse of discretion in denying such a motion will be patently prejudicial under section 508.012, RSMo 2005.

Barron, 529 S.W.3d at 803. The concurring opinion reasoned: "A decision to sever each plaintiff's claims in a multi-plaintiff case 'removes' a plaintiff for purposes of section 508.012 and, therefore, doing so will require the trial court (on application of a party) to determine the proper venue for the various actions resulting from that severance. Where those venues are different from the original venue, section 508.012 *requires* the trial court to transfer those actions to their proper venues for trial." *Id.* (emphasis added).

Improper venue of a plaintiff's claims requires transfer to the appropriate venue and joinder with other plaintiffs' claims does not alter the venue analysis and outcome. Joinder here does not and cannot expand venue, which is created by statute. Rule 51.01

provides: “These Rules shall not be construed to extend or limit the jurisdiction of the courts of Missouri, or the venue of civil actions therein.” (A11.) See *State ex rel. Turnbough v. Gaertner*, 589 S.W.2d 290, 291, 292 (Mo. banc 1979); *State ex rel. Kinsey v. Wilkins*, 394 S.W.3d 446, 450 (Mo. App. 2013) (simply joining separate causes of action in a single petition does not create venue over both actions).

In response to the filing of each petition in the *Swann* case, Relator has consistently requested severance and venue transfer as to the previously filed petitions for the reason that venue is improper in the City of St. Louis in response to the filing of each petition, but these requests were denied. (Exhibits F, G.) Relator continues to maintain if venue is improper as to an individual’s claims, those claims must be transferred to where venue is proper.²

Although the separate opinion in *Barron* suggests judicial convenience might warrant joinder of claims for *discovery*, the suggestion was made in the context of a case where the claims of the various plaintiffs were set for separate trials. Respondent set

² Relator has also consistently moved to dismiss the claims of *all plaintiffs* for lack of personal jurisdiction. (Exhibit J.) *This is distinguishable from the plaintiff in Barron wherein jurisdiction was not contested. Barron*, 529 S.W.3d at 798. After Respondent set the Blaes claims for trial, Relator renewed its motion to dismiss and also moved to stay or continue the October 16, 2017 trial because Blaes was undertaking jurisdiction discovery, but it would not be completed before trial commenced. (Exhibit K, M.) Respondent refused to continue the trial (A10), and as part of this writ proceeding, Relator also moved for a writ prohibiting Respondent from proceeding to trial before jurisdiction discovery was complete and a ruling was made on Relator’s request to be dismissed for lack of personal jurisdiction. This Court issued the preliminary writ only as to the severance/change of venue issues. As this Court’s writ stopped the October 2017 trial, Relator continues to preserve its claim that Respondent lacks personal jurisdiction as

Blaes' claims *separately* for trial but refuses to transfer venue of his claims to St. Louis County, even though the venue statutes and rules require. Section 508.012 requires transfer of a claim if at any time prior to the commencement of a trial, if a party is either added or removed from a petition, which would have, if originally added or removed to the initial petition, altered the determination of venue under §508.010, then the judge, upon proper application, shall transfer venue to the case to a proper venue under §476.410.³ (A12, 16.)

D. This Court's preliminary writ should be made permanent.

Relator moved for an order of severance because Respondent set the Blaes claim to be tried separately. As in *Barron*, though Respondent may have denied motions to sever and transfer venue while discovery was ongoing, "once the trial court determined that each Plaintiff's claims should be tried separately in this case, ... it was error not to sever them and transfer those for which venue was no longer proper under sections 508.012 and 508.010." "Once that decision has been made [to try a plaintiff's claims separately] . . . the trial court has discretion to deny a subsequent or renewed motion to sever only in the rarest of circumstances." *Barron*, 529 S.W.3d at 803.

Venue is clearly lacking in St. Louis City as to the Blaes claims. In every amended petition he has alleged that "[a]t all pertinent times," his decedent purchased and applied

to the claims of plaintiff Blaes, as well as the remaining 47 plaintiffs, and will seek dismissal once jurisdiction discovery is completed.

³ Also improper and prejudicial to Relator, would be for Respondent to attempt to avoid the requirements of §508.012 by setting the "entire cause" for trial. Joinder of claims for

talcum powder in St. Louis County. (Exhibit B10, ¶ 6.) Pursuant to Missouri’s venue statute, § 508.010 (4), (11) and (14), venue is proper in St. Louis County and not St. Louis City. Respondent abused his discretion and acted in excess of his authority in refusing to sever and transfer venue of Blaes’ claims to St. Louis County, meaning that without action from this Court, Relator will be forced to bear the cost and inconvenience of a trial where venue is indisputably improper and where no subsequent action on appeal can remedy this prejudice. This is why this Court issued its admonishment for venue improprieties to be handled by pretrial writs. To do so otherwise would be to make trial court venue decisions essentially unreviewable after *Barron* and nullify the effect of this state’s venue statutes.

There is no proper venue as to Blaes’ claims in St. Louis City Circuit Court. Relief on appeal also could not undo the fact that Relators would have already incurred the burden, expense, and inconvenience of litigating the Blaes claims in an improper venue. Accordingly, this is precisely the sort of issue for which a writ is appropriate. *See State ex rel. Green v. Neill*, 127 S.W.3d 677, 678. This Court expressly recognized in *Barron* that proof of prejudice from improper venue is difficult, if not impossible on direct appeal, which is precisely “why these types of claims are better raised in the pretrial writ context,” in which there is no prejudice requirement as litigants forced to raise the issue in an end-of-case appeal will be “left without a remedy unless [they] can scale the nearly insurmountable hurdle of providing prejudice on appeal”). As Relator renewed its

discovery (under the guise of judicial economy) does not implicate and affect venue rights

motions to sever and transfer venue after Respondent set Blaes' claims separately for trial, Respondent abused his discretion and exceeded his authority in denying Relator's requests to sever and transfer venue. This Court should make its writ permanent.

Conclusion

Wherefore, for the above set-forth reasons, Relator Imerys Talc America, Inc. moves this Court make its preliminary writ of prohibition permanent directing Respondent to take no further actions with regard to the claims of plaintiff Michael Blaes except to sever and transfer those claims to St. Louis County Circuit Court and for whatever further relief this court deems fair and just.

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as significantly as does joinder for trial.

Appendix—electronically filed separately

Relator’s Renewed Motion to Sever and Transfer Venue
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Certificate of Service and Compliance

Susan Ford Robertson, of lawful age, first being duly sworn, states upon her oath that on January 4, 2018, a copy of Relator's Brief and Appendix was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system on all counsel of record. I also certify that the attached brief complies with the Supreme Rule 84.06(b) and contains 4,282 words, excluding the cover, the certification and the appendix as determined by Microsoft Word software.

/s/ Susan Ford Robertson
SUSAN FORD ROBERTSON, Attorney