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

MICHAEL O'LOUGHLIN,	)	
	)	
Plaintiff,	)	Case No. 08CN-CV00705
v.	)	
	)	
	)	
PRIME TANNING CORP., et al.,	)	
	)	
Defendants.	)	

FILED
JUN 07 2010
Clerk of Clinton Co. Circuit Court

PLAINTIFF'S SUPPLEMENTAL SUGGESTIONS REGARDING CHANGE OF VENUE PURSUANT TO MO. CT. RULE 51.03 AND SUGGESTIONS IN OPPOSITION TO DEFENDANT NATIONAL BEEF LEATHERS, LLC'S, PROPOSED WITHDRAWAL OF ITS APPLICATION FOR CHANGE OF VENUE

COMES NOW Plaintiff, by and through his attorneys of record, and for his Supplemental Suggestions Regarding Change of Venue Pursuant to Mo. Ct. Rule 51.03 and Suggestions in Opposition to Defendant National Beef Leathers, LLC's ("NBL"), Proposed Withdrawal of Its Application for Change of Venue states as follows:

Introduction

On October 13, 2009, NBL timely filed its Application for Change of Venue under Mo. Ct. Rule 51.03. On or about April 29, 2010, NBL filed a Withdrawal of Its Application for Change of Venue. NBL's proposed Withdrawal of Its Application for Change of Venue should be ignored, and this case should be venued in Jackson, Buchanan, Jasper, or Greene County.

NBL's Attempted Withdrawal of Its Automatic Venue Change Application 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. Therefore, this case is deemed transferred out of Clinton County, and the only remaining question is where this case is to be transferred. If NBL is allowed to withdraw its Application for Change of Venue now, after a full hearing and substantial briefing, Plaintiff 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 defendant's answer is due. NBL moved for change of venue under Mo. Ct. Rule 51.03, and Plaintiff conceded that transfer was appropriate in his response brief. Plaintiff cannot now move for transfer under Mo. Ct. Rule 51.03 because it is too late. NBL should not be allowed to play such games to the detriment of Plaintiff.

The cases that NBL relies upon do not support the propriety of allowing it to withdraw its Application for Change of Venue. 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 NBL do not support its 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 it was the criminal defendant that asked 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, Buchanan, Jasper, or Greene County

NBL first suggested that this case be moved to Livingston County, and now it seeks to withdraw its Application for Change of Venue and keep this case venued in Clinton County.

These counties do not have sufficient hotel and airport facilities to handle the expert and lay witnesses that will likely participate in this trial. There are now more than 100 companion personal injury and property damage cases filed against all of the Defendants herein that are making similar allegations as Plaintiff in this case. The majority of these similar lawsuits are venued in Buchanan County. Given the scope of the litigation, larger counties with a sufficient jury pool would be preferable for trial of this case.

As previously stated, Jackson County offers the most convenience to the parties and judge. More importantly, Jackson County has experience in mass tort cases such as this case. For example, Jackson County was able to handle the Hyatt skywalk and Robert Courtney drug dilutions lawsuits to completion. Also, Jackson County has courtroom space for visiting judges, and two full-time law clerks are available from Jackson County for visiting judges. Further, attorneys for Plaintiff 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, the parties, and lay witnesses if the case were tried in Jackson County with easy airport access and hotel accommodations.

If a county other than Jackson County is chosen, Plaintiff respectfully suggests that Buchanan, Jasper, or Greene County be chosen. These venues provide ample airport and hotel accommodations for witnesses, and the larger populations in such counties will allow a better opportunity for selecting a jury given the pretrial publicity this case has generated.

WHEREFORE, for the foregoing reasons, Plaintiff prays that the Court rule in favor of transferring this case to a venue in Jackson, Buchanan, Jasper, or Greene County, thereby

ignoring NBL's Withdrawal of Its Application for Change of Venue, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing PLAINTIFF'S SUPPLEMENTAL SUGGESTIONS REGARDING CHANGE OF VENUE PURSUANT TO MO. CT. RULE 51.03 AND SUGGESTIONS IN OPPOSITION TO DEFENDANT NATIONAL BEEF LEATHERS, LLC'S, PROPOSED WITHDRAWAL OF ITS APPLICATION FOR CHANGE OF VENUE was filed with the Court, and a copy of same was sent via U.S. Mail, postage prepaid, this 4th day of June, 2010, to:

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