

**Summary of SC93516 consolidated with SC93517, SC93520, SC93521, SC93522, SC93523
and SC93524, *State ex rel. Schwarz Pharma Inc. v. The Honorable David L. Dowd***

Proceedings originating in the St. Louis circuit court, Judge David L. Dowd

Argued and submitted February 4, 2013; opinion issued June 10, 2014

Attorneys: In all seven consolidated cases, Schwarz was represented by Henninger S. Bullock and Andrew J. Calica of Mayer Brown LLP in New York, (212) 506-2500; and Gerard T. Noce, Larry E. Hepler and Beth A. Bauer of HeplerBroom LLC in St. Louis, (314) 241-6160. In all seven consolidated cases, the plaintiffs were represented by Jeffrey J. Lowe and Jacob A. Flint of Carey, Danis & Lowe in St. Louis, (314) 725-7700.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A corporation petitions this Court to issue a writ prohibiting the trial court from taking any action in seven related actions but to grant the corporation's motions to transfer venue from St. Louis city to St. Louis County, which it argues were timely. In a unanimous opinion written by Judge Laura Denver Stith, the Supreme Court of Missouri makes permanent its preliminary writs. The trial court was required by law to sustain the corporation's timely filed motions to transfer venue of the case and lacked authority to do anything to the contrary.

Facts: In February 2012, 90 plaintiffs filed a products liability action in St. Louis city against 27 defendants, including Schwarz Pharma Inc. The plaintiffs twice amended the petition to include six additional plaintiffs. Though the plaintiffs served all other defendants, they failed to serve Schwarz with the original or either amended petition. The defendants moved to sever the plaintiffs' suits for being misjoined, and the trial court severed the 95 other plaintiffs' suits from that of the first-named plaintiff. The writ proceedings at issue involve only seven of these individual actions. On October 2, 2012, Schwarz was served for the first time with the amended original petition and, on October 4, 2012, Schwarz was served with the individual severed petitions. Schwarz and the other defendants filed joint motions to transfer venue on November 15, 2012 – 44 days after Schwarz was served with the amended original petition and 42 days after Schwarz was served with the individual severed petitions. The plaintiffs opposed the motions as untimely. The trial court held a hearing on the motions in January 2013. The trial court did not rule on the motions immediately, and, in April 2013, Schwarz and the other defendants filed motions to enforce transfer under section 508.010.10, RSMo. Two days later, the trial court ruled that the motions were untimely because they were not filed within 60 days of service of process of the original petition. It also found that section 508.010.10 is inconsistent with Rule 51.045 to the extent it could be read to require a court to grant a motion to transfer venue after 90 days regardless of whether the motion was timely or whether venue was improper in the initial jurisdiction and proper in the proposed jurisdiction. Schwarz and one other defendant now seek relief in this Court, which issued preliminary writs of prohibition as to Schwarz only.

PRELIMINARY WRITS MADE PERMANENT AS MODIFIED.

Court en banc holds: The trial court had no authority except to sustain Schwarz's motions to transfer venue. Schwarz did not become a party in any of these actions until either October 2, 2012, when it was served with the joint second amended petition, or October 4, 2012, when it was served with the individual actions. Once it became a party, Schwarz was entitled to move the trial court to transfer venue, so long as it did so within 60 days of service. Fewer than 60 days later, on November 15, 2012, Schwarz filed its motions to transfer venue. Because these motions were timely filed and it is uncontested that they showed venue was improper in St. Louis city and proper in St. Louis County, the trial court had no authority but to sustain the motions to transfer venue. The Court rejects the plaintiffs' arguments that Schwarz was required to explain affirmatively in its written motions that the motions were timely, and that, by not doing so, Schwarz is precluded from arguing here that its motions were timely or that it is entitled to writ relief. This Court's rules make no such requirement. Likewise, the Court rejects the plaintiffs' argument that Schwarz waived its arguments in support of transfer by not raising them in its joint replies to the plaintiffs' oppositions to transfer. The Court therefore makes permanent its preliminary writs as modified. The trial court is not authorized to take any action other than to sustain Schwarz's motions to transfer venue.