

IN THE MISSOURI SUPREME COURT

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NO. SC85520

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STATE OF MISSOURI ex rel. CRAIG L. LEONARDI  
and CRAIG L. LEONARDI, M.D., P.C.,

Relators,

v.

THE HONORABLE THEA A. SHERRY,  
Judge of the Circuit Court of St. Louis County, Missouri

Respondent.

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PROCEEDING IN PROHIBITION  
CIRCUIT COURT OF ST. LOUIS COUNTY—CAUSE NO. 02CC-000533

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**RELATORS' SUBSTITUTE BRIEF**

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## **JURISDICTIONAL STATEMENT**

On June 17, 2003, the Missouri Court of Appeals, Eastern District, filed its opinion in this cause after dispensing with further briefing from the parties pursuant to Missouri Supreme Court Rule 84.24(j). Without dissent, the Court of Appeals made its preliminary order in prohibition absolute, holding that a jury trial on legal issues may not be denied before equity jurisdiction attaches merely because of the existence of equitable claims (in this case, a prayer for injunctive relief) for which there is no right to a jury. After the Court of Appeals denied a Motion for Rehearing or Application for Transfer filed on behalf of the plaintiff in the underlying action, the plaintiff filed an Application for Transfer to the Missouri Supreme Court pursuant to Missouri Supreme Court Rule 83.04. This Court granted the Application on September 30, 2003, and shall hear this proceeding in prohibition under its jurisdiction pursuant to the Missouri Constitution, Article V, Section 4 and Section 10.

## **STATEMENT OF FACTS**

### **I. Before the Circuit Court**

Craig L. Leonardi (“Leonardi”) resides in St. Louis County, and he is a medical doctor specializing in the practice of dermatology through his corporation and medical office, Craig L. Leonardi, M.D., P.C. (“Leonardi, P.C.”) (Leonardi and Leonardi P.C. are collectively referred to as “Dr. Leonardi”, “Defendants”, or “Relators”). (Answer of Radiant Research, Inc. to Relators’ Petition for Writ of Prohibition (hereinafter “Answer to Petition for Writ”), ¶ 1.) Radiant Research, Inc. (“Radiant” or “Plaintiff”), is a corporation that contracts with physicians, known in the industry as “investigators,” and pharmaceutical and biotechnology companies, known as “sponsors,” to perform medical evaluations and procedures on participating subjects as described in certain clinical trial protocols. (Answer to Petition for Writ, ¶ 2.)

On February 11, 2002, Radiant initiated the underlying action by filing a Petition for Injunctive Relief and Damages (“Petition”) in the Circuit Court of St. Louis County, Missouri, in a case styled Radiant Research, Inc v. Leonardi, et al., Case No. 02CC-000533 (the “Underlying Action”). (Defendants’ Petition for Writ of Prohibition, Exhibit 1.)<sup>1</sup> Radiant’s claims in the Underlying Action arise out of

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<sup>1</sup> Unless otherwise noted, all exhibit references are to the exhibits attached to Dr. Leonardi’s Petition for Writ of Prohibition filed in the Court of Appeals, Eastern

nine Clinical Trial Consulting Agreements (“CTCAs”) entered into between Dr. Leonardi and Radiant, some of which included a provision purporting to be a valid post-termination restrictive covenant.

Dr. Leonardi terminated the CTCAs by letter dated November 1, 2001. (“Answer to Petition for Writ”, ¶ 5.) Radiant’s Petition alleges the following causes of action: (I) Breach of Contract; (II) Anticipatory Repudiation; (III) Leonardi’s Tortious Interference With Contract; (IV) Leonardi P.C.’s Tortious Interference With Contract; (V) Civil Conspiracy; and (VI) a second count of Civil Conspiracy. (Petition, Counts I-VI.) In each and every count, Radiant prays for both damages and injunctive relief. (Petition, Counts I-VI.) Specifically, Radiant seeks “fair and reasonable compensatory damages in an amount to be proven at trial” in Counts I and II, compensatory and punitive damages in Counts II, IV, V and VI, and an injunction in Counts I through VI enjoining Dr. Leonardi from breaching the restrictive covenants in the CTCAs. (Petition, ¶ Counts I-VI.) Radiant never sought a temporary restraining order. (Answer to Petition for Writ, ¶ 7.)

On April 3, 2002, Dr. Leonardi filed counterclaims (“Counterclaims) sounding

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District, and subsequently transferred to this Court pursuant to this Court’s order dated September 30, 2003. Therefore, Dr. Leonardi has excluded these exhibits as a convenience to the Court.

in four counts, including: (I) Breach of Contract; (II) Action for Declaratory Judgment; (III) Breach of Implied Covenant of Good Faith and Fair Dealing (Contract Claim); and (IV) Breach of Implied Covenant of Good Faith and Fair Dealing (Tort Claim). (Exhibit 2, Counts I-IV.) Radiant filed a Motion to Dismiss the Action for Declaratory Judgment claiming such action was not supported by Missouri law, and Dr. Leonardi ultimately filed a voluntary dismissal of the Action for Declaratory Judgment on February 5, 2003. (Answer to Petition for Writ, ¶ 9.)

On November 14, 2002, Respondent entered a Notice (entitled “Amended Notice”) providing that “On the court’s own motion cause set for a Preliminary Injunction Hearing on December 16, 2000 [sic] @ 10:00 a.m.” (Exhibit 3.)

On December 16, 2002, over ten months after Radiant filed its Petition and request for injunctive relief, Respondent heard evidence on Radiant’s motion for preliminary injunction. (Answer to Petition for Writ, ¶ 11.) During the hearing, Respondent heard substantial testimony and reviewed documentary evidence submitted by the parties. Three witnesses testified live and the parties submitted a total of seven depositions, along with attached exhibits, to be read by the court outside of the hearing. (Answer to Petition for Writ, ¶ 11.) The testimony presented by the parties constituted the majority of depositions taken by the parties to date.

On the day of the hearing, Radiant filed its Memorandum in Support of its Motion for Preliminary Injunction (“Memorandum in Support”). (Exhibit 4.)

Radiant's Memorandum in Support sought an order preliminarily enjoining Dr. Leonardi from: (a) directly or indirectly accepting, conducting, participating in, or continuing to conduct or participate in any clinical trials unless the study is conducted through and with the participation of Radiant, with any of the following sponsors: Genentech, Biogen, Abgenix, Medimmune and Isis; and from (b) conducting or participating in, or continuing to conduct or participate in, clinical trials for protocol numbers 2390, 2243, 2600, and/or 2601 for the sponsor Genentech, without Radiant's participation. (Exhibit 4 at 13 and at Exhibit A, attached thereto.) On December 23, 2002, Leonardi filed a Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction. (Exhibit 5.)

On January 17, 2003, Respondent issued her Order denying Radiant's motion for preliminary injunction. (Exhibit 6; and in Relators' Appendix attached to this Brief ("App.") at A3.) In denying the request for a preliminary injunction, Respondent held that "It is well settled that injunctive relief is inappropriate where there appears to be an adequate remedy at law. From the evidence adduced, there is a viable cause of action for breach of contract and that damages are quantifiable and capable of being ascertained, all subject to further evidentiary hearing on the issues of liability and damages." (Exhibit 6 at 4; App. at A6.) Further, Respondent refused to enforce the alleged non-compete, holding that a covenant not to compete is enforceable "only if it serves a legitimate protectable interest and is reasonable in

scope, both as to place and time.” (Exhibit 6 at 2; App. at A4.) Respondent stated that it was “not entirely persuaded that the restrictive covenant serves a legitimate public interest.” (Exhibit 6 at 3; App. at A5.) Moreover, Respondent noted that the CTCAs and the subsequent letter agreement did not specify a geographic limitation. (Exhibit 6 at 2-3; App. at 4-5.) Respondent found that Radiant had failed to demonstrate a threat of irreparable harm, that an injunction would not have the necessary effect of reinstating Radiant as the site manager, and that “the status of these trials vis a vis The Food and Drug Administration and the public interest in continuing valuable medical research all support the conclusion of this Court that it not enjoin Leonardi and PC from continuing these trials without Radiant.” (Exhibit 6 at 3-4; App. at 5-6.) Respondent accordingly set this case for a status conference to “schedule trial in this matter on the issues of liability and damages.” (Exhibit 6 at 4; App. at A6.)

At the status conference on January 30, 2003, the parties disagreed regarding the availability of a jury trial in the instant case. Respondent entered an order providing as follows: “Case set for trial on May 14 and May 15, 2003, during certified jury week. Parties are to advise court by the preceding Friday if they will need a jury panel.” (Exhibit 7.)

On February 14, 2003, Dr. Leonardi filed a Motion for a Ruling on the Merits of Radiant Research Inc.’s Equitable Claims (“Motion for Ruling”). (Exhibit 8.) The



Motion for Ruling requested that Respondent: (1) set this matter for a trial on the merits of Radiant's equitable claims and deem all of the evidence it received at the preliminary injunction hearing to be before it at the trial on the merits; or, (2) in the alternative, and upon the consent of Radiant, deem all of the evidence it received at the preliminary injunction hearing to be before it at a trial on the merits of Radiant's equitable claims, and thereafter adopt its findings from the January 17, 2003 Order as its findings in the trial on the merits of Radiant's equitable claims. (Exhibit 8.) On February 28, 2003, Radiant filed its Opposition to Defendants' Motion for a Ruling on the Merits of Plaintiff's Equitable Claims. (Exhibit 9.)

On March 4, 2003, Respondent heard argument on the Motion for Ruling, along with argument on the applicability of the equitable clean-up doctrine and the availability of a jury trial. Respondent entered an order requesting that the parties submit memoranda of law on or before March 10, 2003, regarding the applicability of the equitable clean-up doctrine and the availability of a jury trial. (Exhibit 10.)

On March 10, 2003, Dr. Leonardi filed a Memorandum Regarding the Applicability of the Equitable Cleanup Doctrine and the Availability of a Jury Trial ("Memorandum Regarding Equitable Cleanup"). (Exhibit 11.) In the Memorandum Regarding Equitable Cleanup, Dr. Leonardi requested that Respondent: (a) find that the equitable clean-up doctrine is inapplicable and set this matter for a jury trial on all legal issues presented in the Petition and Counterclaims; and (b) set a hearing for the

trial on the merits of Radiant’s request for a permanent injunction for a date prior to the jury trial or, in the alternative, hear the evidence and argument for the trial on the merits of Radiant’s request for a permanent injunction at the same time that the jury hears and decides the legal issues presented in the Petition and Counterclaims. (Exhibit 11 at 10.)

On March 10, 2003, Radiant filed a Supplemental Briefing on Defendants’ Motion for a Ruling on the Merits of Plaintiff’s Equitable Claims (“Radiant’s Supplemental Briefing”). (Exhibit 12.) Radiant’s Supplemental Briefing requested that Respondent exercise her jurisdiction under the equitable clean-up doctrine to decide the equitable and legal claims remaining in this dispute.

On March 12, 2003, Dr. Leonardi filed a Reply to Radiant’s Supplemental Briefing (“Reply”), in response to Radiant’s misstatements and misinterpretations of law regarding the cases of Willman v. Beheler, 499 S.W.2d 770 (Mo. 1973), and State ex rel. Willman v. Sloan, 574 S.W.2d 421 (Mo. banc 1978). (Exhibit 13.)

On March 21, 2003, Respondent entered an Order and Judgment. (Exhibit 14 at 1; App. at A7.) Respondent held that “[t]he denial of Radiant’s request for a preliminary injunction does not dispose of its request for a permanent injunction. Therefore, Radiant’s request for equitable relief as well as a request for damages remains before the Court. . . . [T]his Court retains jurisdiction under the equitable cleanup doctrine. . . . [A] court of equity may retain jurisdiction to award damages

where equity requires this form of relief in the circumstances. This matter continues to be set for May 14 and 15, 2003 for further evidence on the equitable claims, as well as additional evidence on the legal issues. The Court finds that Defendants are not entitled to a jury trial.” (Exhibit 14 at 1; App. at A7.) On April 2, 2003, Respondent entered an order denying Dr. Leonardi’s Motion to Reconsider the Court’s March 21, 2003 Order and Judgment, and reaffirming its March 21, 2003 Order and Judgment. (Exhibit 15.)

## **II. Before the Appellate Court and Supreme Court**

Dr. Leonardi filed a Petition for Writ of Prohibition and Suggestions in Support with the Court of Appeals, Eastern District (Number ED82789), seeking to vacate Respondent’s March 21, 2003 Order and Judgment denying Dr. Leonardi the right to a jury trial. The Court of Appeals, Eastern District, dispensed with further briefing from the parties and filed its opinion, without dissent, on June 17, 2003. State of Missouri ex rel. Leonardi v. Sherry, No. ED82789, 2003 Mo. App. LEXIS 899 (Mo. Ct. App. June 17, 2003), a copy of which is included in the Appendix at A9. The Court of Appeals made the preliminary order in prohibition absolute, holding that a jury trial on legal issues may not be denied before equity jurisdiction attaches merely because of the existence of equitable claims, and directing the circuit court not to deny Relators a jury trial in the absence of a finding that there has been an equitable violation.

Radiant filed its Motion of Radiant Research, Inc. for Rehearing, or in the Alternative, to Transfer to the Supreme Court, and Incorporated Suggestions, on July 2, 2003 (“July Motion to Transfer”). On August 13, 2003, the Court of Appeals, Eastern District, denied the July Motion to Transfer. Radiant then filed an Application for Transfer to the Missouri Supreme Court (“Application to Transfer”) pursuant to Missouri Supreme Court Rule 83.04.

This Court granted the Application to Transfer on September 30, 2003.

## **POINTS RELIED ON**

- I. Relators are entitled to an order prohibiting Respondent from denying them the constitutional right of a jury trial in the absence of a finding that there has been an equitable violation, because where the only equitable claim is a request for injunctive relief, a trial court cannot deny a party a jury trial on legal claims when the court has not granted any equitable relief or resolved the equitable claims raised by the Plaintiff, in that Respondent has granted no equitable relief, and therefore equity has not attached and Respondent has no equitable jurisdiction over this matter.

Jaycox v. Brune, 434 S.W.2d 539 (Mo. 1968)

Krummenacher v. Western Auto Supply Co., 217 S.W.2d 473 (Mo. banc 1949)

Thornbrugh v. Poulin, 679 S.W.2d 416 (Mo. Ct. App. 1984)

Washington University Medical Center Redevelopment Corp. v. Wolfgram, 730 S.W.2d 289 (Mo. Ct. App. 1987)

II. Relators are entitled to an order prohibiting Respondent from denying them the constitutional right to a jury trial in the absence of a finding that there has been an equitable violation, because where the only equitable claim is a request for injunctive relief, the equitable cleanup doctrine is inapplicable when the trial court in the underlying action has not granted Plaintiff any equitable relief, in that Respondent denied Radiant's motion for a preliminary injunction and has not yet granted any equitable relief.

Krummenacher v. Western Auto Supply Co., 217 S.W.2d 473 (Mo. banc 1949)

Sapp v. Garrett, 284 S.W.2d 49 (Mo. Ct. App. 1955)

State ex rel. Willman v. Sloan, 574 S.W.2d 421 (Mo. banc 1978)

Thornbrugh v. Poulin, 679 S.W.2d 416 (Mo. Ct. App. 1984)

III. Relators are entitled to an order prohibiting Respondent from denying them the constitutional right to a jury trial in the absence of a finding that there has been an equitable violation, because where the only equitable claim is a request for injunctive relief, considerations of public policy support the proposition that the trial court should resolve all equitable claims prior to determining whether it has jurisdiction to proceed on the legal issues, in that Respondent denied Plaintiff's motion for a preliminary injunction and has not yet granted any equitable relief.

Jaycox v. Brune, 434 S.W.2d 539 (Mo. 1968)

Krummenacher v. Western Auto Supply Co., 217 S.W.2d 473 (Mo. banc 1949)

Washington University Medical Center Redevelopment Corp. v. Wolfgram, 730 S.W.2d 289 (Mo. Ct. App. 1987)

Missouri Supreme Court Rule 92.02

IV. Relators are entitled to an order prohibiting Respondent from denying them the constitutional right to a jury trial in the absence of a finding that there has been an equitable violation, because Relators have an inviolate right to a jury trial, and the general rule precluding the right to a jury trial in an equitable proceeding is inapplicable where the only equitable claim is a request for injunctive relief and the trial court has not found any equitable violation, in that Relators have not waived their right to a jury, Relators specifically requested a jury, and Respondent denied Plaintiff's motion for a preliminary injunction and has not granted any equitable relief.

Advanced Transmissions, L.C. v. Duff, 9 S.W.3d 743 (Mo. Ct. App. 2000)

Jaycox v. Brune, 434 S.W.2d 539 (Mo. 1968)

Grimes v. Bagwell, 809 S.W.2d 441 (Mo. Ct. App. 1991)

Mo. Const. art. I, § 22(a)

Missouri Supreme Court Rule 69.01

R.S.Mo. § 510.190



**STANDARD OF REVIEW FOR**  
**ISSUANCE OF WRIT OF PROHIBITION**

Prohibition is appropriate to remedy an excess of jurisdiction, or to prevent an absolute irreparable harm to a party. State ex rel. Director of Revenue, State of Mo. v. Gaertner, 32 S.W.3d 564, 566 (Mo. 2000). The purpose of a writ of prohibition is to prevent lower courts from acting without or in excess of their jurisdiction. State ex rel. Douglas Toyota v. Keeter, 804 S.W.2d 750, 752 (Mo. banc 1991). Prohibition is the proper remedy if a trial court improperly denies the right to a trial by jury. State ex rel. Diehl v. O'Malley, 95 S.W.3d 82, 84 n.2 (Mo. banc 2003); State ex rel. Estill v. Iannone, 687 S.W.2d 172, 175 (Mo. banc 1985). The Missouri Constitution provides “[t]hat right of trial by jury as heretofore enjoyed shall remain inviolate.” Mo. Const. art. I, § 22(a).

The instant proceeding in prohibition originated in the Court of Appeals, Eastern District, where the Court of Appeals issued a preliminary order in prohibition, dispensed with further briefing by the parties, and made its preliminary order absolute. (App. 9.) This Court granted Respondent’s application for transfer to the Supreme Court, and thus this Court must consider and decide this case as though Dr. Leonardi brought it as an original petition for prohibition in this Court. State v. Scott, 521 S.W.2d 448, 448 (Mo. banc 1975).

## **ARGUMENT**

At issue in this writ of prohibition is a procedural question that encompasses several interrelated and competing principles of law and equity, including a party's fundamental right to a jury trial, the proper resolution of both the legal and equitable claims presented in a petition and counterclaims when the trial court denies the plaintiff's request for a preliminary injunction (which request is the sole equitable claim), the appropriate application of the equitable clean-up doctrine, and judicial economy. The essential question is whether, where the only equitable claim is a request for injunctive relief, it is appropriate or constitutional for a trial court, pursuant to the equitable clean-up doctrine, to deny a party its right to a jury trial on legal claims when the court has not granted any equitable relief or found any equitable violation.

Dr. Leonardi seeks this writ of prohibition in order to protect his constitutional right to a jury trial on all legal issues raised in the Petition and Counterclaims. Counsel for Dr. Leonardi have found no appellate court decision where a court of equity has denied a defendant its right to a jury trial on legal claims when the only claim for equitable relief is a request for an injunction and the court has not granted any such equitable relief. More specifically, counsel for Dr. Leonardi have found no appellate court decision where the trial court did so after denial of the plaintiff's request for a preliminary injunction. Moreover, Respondent's reading of the equitable

clean-up doctrine would create a dangerous precedent whereby a party could deprive an opponent of its right to a jury trial by simply seeking an injunction, no matter how unlikely the prospect that such request would be granted or how frivolous the request, and without regard for whether the trial court denied the request at either the preliminary or final stages of the injunction proceedings.

Missouri law indicates that when a trial court denies a plaintiff's request for a preliminary injunction in a case concerning both equitable and legal claims, there are at least two options for proceeding: (1) the trial court could resolve the equitable issues first and determine whether a permanent injunction should issue before it determines whether it has jurisdiction to proceed with a trial on the legal claims presented in the petition and counterclaims; or (2) the trial court could hear the evidence and argument on the merits of the permanent injunction at the same time that a jury hears and decides the legal issues presented in the pleadings. In the Underlying Action, Respondent chose neither option and, pursuant to the misapplication of the equitable clean-up doctrine, ruled that she would conduct the hearing on the merits for the permanent injunction and the trial on the legal claims at the same time, thereby denying Dr. Leonardi his constitutional right to a jury trial.

In so ruling, Respondent stated that the issue of the permanent injunction remained before her despite her denial of Radiant's request for a preliminary injunction; thus, pursuant to the equitable clean-up doctrine, Respondent stated that

she would proceed to hear further evidence on the equitable claims, as well as additional evidence on the legal claims, without a jury. Moreover, Respondent held that Dr. Leonardi was not entitled to a jury trial. (Exhibit 14 at 1; App. at A6.)

Dr. Leonardi seeks a writ of prohibition because a reasonable interpretation of Missouri law does not support this procedure, or Respondent's application of the equitable clean-up doctrine. Respondent thus acted in excess of her jurisdiction by denying Dr. Leonardi the right to a jury trial on legal claims without granting any equitable relief or resolving the equitable claims raised by Radiant.

**I. Relators are entitled to an order prohibiting Respondent from denying them the constitutional right of a jury trial in the absence of a finding that there has been an equitable violation, because where the only equitable claim is a request for injunctive relief, a trial court cannot deny a party a jury trial on legal claims when the court has not granted any equitable relief or resolved the equitable claims raised by the Plaintiff, in that Respondent has granted no equitable relief, and therefore equity has not attached and Respondent has no equitable jurisdiction over this matter.**

After filing the Petition, Radiant did not seek a temporary restraining order, and Respondent did not hold a summary proceeding on Radiant's request for a preliminary injunction. (Answer to Petition for Writ, ¶7.) Instead, Radiant and Dr. Leonardi

engaged in ten months of discovery, including numerous depositions, document requests, and interrogatories. (Answer to Petition for Writ, ¶11.) After this comprehensive discovery period, Respondent conducted a full one-day hearing on the issue of Radiant's request for a preliminary injunction, at which hearing Respondent heard testimony and argument, received documentary evidence, and requested legal memoranda. (Id.) Moreover, the parties submitted numerous depositions for Respondent's consideration, which constituted the majority of the depositions conducted by the parties to date. (Id.)

When Respondent denied Radiant's request for a preliminary injunction, Respondent stated that Radiant had a viable cause of action for breach of contract and quantifiable damages, and set this matter for a hearing on the issues of liability and damages. (Exhibit 6 at 4.) Dr. Leonardi moved the Court to enter a ruling or conduct a hearing on the merits of Radiant's request for a permanent injunction prior to addressing the legal claims presented in the Petition and Counterclaims. (Exhibit 8.) Respondent requested briefing on the applicability of the equitable clean-up doctrine and the availability of a jury trial. (Exhibit 10.) Dr. Leonardi again requested that Respondent set a hearing for a trial on the merits of the request for a permanent injunction prior to a jury trial on the legal issues, or, in the alternative, hear the evidence and argument on the merits of the permanent injunction at the same time that

the jury hears and decides the legal issues. (Exhibit 11.) Respondent declined, as set forth in the March 21, 2003 Order and Judgment (Exhibit 14.)

**A.     Equitable jurisdiction does not attach in the context of a request for injunctive relief until a court grants some form of equitable relief.**

Under the equitable clean-up doctrine, once a court of equity gains jurisdiction over a matter, it will retain jurisdiction over the entire matter and may resolve only incidental legal issues without a jury in order to render full relief. Washington University Medical Center Redevelopment Corp. v. Wolfgram, 730 S.W.2d 289, 291 (Mo. Ct. App. 1987). In order for the equitable clean-up doctrine to apply, a plaintiff must establish its equitable cause of action both by the pleadings and evidence before a court may, in equity, proceed to consider and grant relief that would otherwise be legal. In other words, “equity jurisdiction must first attach both under the pleadings and the proof,” and the equitable clean-up doctrine does not apply “where the facts relied on to sustain the equity jurisdiction fail of establishment.” Jaycox v. Brune, 434 S.W.2d 539, 543 (Mo. 1968); see also State ex rel. Willman v. Sloan, 574 S.W.2d 421, 422 (Mo. banc 1978).

Equitable jurisdiction “attaches” when the pleading party is **entitled to the equitable relief it seeks** in its prayer for relief. Suburbia Pools, Inc. v. Fischer, 661 S.W.2d 823, 824 (Mo. Ct. App. 1983); Siesta Manor, Inc. v. Community Federal

Savings and Loan Assoc., 716 S.W.2d 835, 839 (Mo. Ct. App. 1986) (“When equitable jurisdiction attaches, the court, without aid of a jury, may determine the legal issues incident to the entire case.”). “The doctrine that equity, having once become possessed of a cause, will retain it for the purpose of administering full and complete relief, does not apply when the facts relied on to sustain the equity jurisdiction fail of establishment.” Jaycox, 434 S.W.2d at 543. In order to decide the legal issues, the court sitting in equity must first determine that some equitable right of the plaintiff has been violated. Thornbrugh v. Poulin, 679 S.W.2d 416, 418 (Mo. Ct. App. 1984); see also Krummenacher v. Western Auto Supply Co., 217 S.W.2d 473, 475 (Mo. banc 1949) (“A court of equity does not have jurisdiction to render a judgment for a plaintiff on legal issues in the absence of a finding that some equitable right of the plaintiff has also been violated.”)

The attachment requirement is necessary to prevent a litigant from utilizing a pretended or unsubstantiated claim for equitable relief to deprive an opponent of the constitutional rights attached to an action at law, such as the right of trial by jury. See Jaycox, 434 S.W.2d at 543 (“Otherwise, as the courts have frequently pointed out, a litigant, by a pretended claim for equitable relief, might deprive his opponent of advantages incident to an action at law.”); Krummenacher, 217 S.W.2d at 475 (“To hold otherwise would permit a plaintiff to ambush a defendant in that a plaintiff could plead a cause of action in equity and also seek legal damages and then fail to prove

that [it] was entitled to any equitable relief. [It] would thereby deprive defendant of a trial by jury.”); 27A Am. Jur. 2d Equity § 106.

In this case, Radiant’s only equitable claim is a request for injunctive relief, and there has been no finding of any equitable violation or granting of any equitable relief. Thus, equity jurisdiction has not attached. It is not enough that there are still equitable claims pending; namely, Radiant’s prayer for a permanent injunction in its Petition. A jury trial on legal issues may not be denied before equity jurisdiction attaches merely because there exist potential equitable claims for which there is no right to a jury. State ex rel. Wayside Waifs, Inc. v. Williamson, 3 S.W.3d 390, 395 (Mo. Ct. App. 1999).

At this point in the case, there is no basis for denying a jury trial on the legal claims. Simply put, Respondent exceeded her jurisdiction by ruling that all legal issues will not be tried to a jury, but rather to the Court sitting in equity, and a writ of prohibition is the only type of relief available to Dr. Leonardi.

**II. Relators are entitled to an order prohibiting Respondent from denying them the constitutional right to a jury trial in the absence of a finding that there has been an equitable violation, because where the only equitable claim is a request for injunctive relief, the equitable clean-up doctrine is inapplicable when the trial court in the underlying action has not granted Plaintiff any equitable relief,**



**in that Respondent denied Plaintiff's motion for a preliminary injunction and has not yet granted any equitable relief.**

In the Underlying Action, Radiant prayed for both legal relief and equitable relief in the form of an injunction. However, after the testimony of nine witnesses and the admission of numerous exhibits, Respondent determined that Radiant failed to establish a claim for injunctive relief, and thus denied Radiant's motion for preliminary injunction. (Exhibit 6 at 4; App. at A6.) The Court specifically stated that Radiant's damages were quantifiable and capable of being ascertained, and that Radiant therefore appeared to have an adequate remedy at law in its cause of action for breach of contract. (Exhibit 6 at 4; App. at A6.) Because Radiant failed to allege facts sufficient to support its claim for injunctive relief, the Court proceeded to set this matter for trial on the issues of liability and damages. (Exhibit 6 at 4; App. at A6.)

**A. Missouri case law illustrates the inapplicability of the equitable clean-up doctrine in the instant case.**

The holding of the court in Krummenacher v. Western Auto Supply Co. is instructive. 217 S.W.2d 416 (Mo. banc 1949). In that case, the plaintiff brought a claim in one count seeking both an injunction to abate a nuisance and damages by reason of the alleged nuisance. Id. at 473. The trial court refused to grant the injunction but awarded the plaintiff \$500 for actual damages and \$1 for punitive damages. Id. On appeal, the Missouri Supreme Court held that a court of equity does

not have jurisdiction to render a judgment for a plaintiff on legal issues in the absence of a finding that some equitable right of the plaintiff has also been violated. Id. at 475. “To hold otherwise would permit a plaintiff to ambush a defendant in that a plaintiff could plead a cause of action in equity and also seek legal damages and then fail to prove that he was entitled to any equitable relief. He would thereby deprive defendant of a trial by a jury.” Id.

Similarly, in Sapp v. Garrett, 284 S.W.2d 49, 50 (Mo. Ct. App. 1955), the plaintiffs brought a two-count petition seeking an injunction on the theory of private nuisance in Count I, and seeking damages to their property caused by the private nuisance in Count II. Id. After a trial on the issues, the trial court found for the defendant on Count I, and further found that Count II stated an action at law and should be tried as such. Id. The appellate court held that the trial court was correct in finding that Count II should be tried as an action at law. The appellate court held that:

The rule in this state is well settled that a court of equity does not have jurisdiction to render a judgment for the plaintiff on legal issues in the absence of a finding that some equitable right of the plaintiff has also been violated. . . . In the instant case the court found plaintiffs were not entitled to equitable relief, consequently the issue of damages became a law action and should be tried as

such. There was no agreement to waive a jury and submit the issue of damages to the court as in a jury waived case . . . . The court did not err in ordering a separate trial of Count II.

Id. at 52.

Finally, in the case of Thornbrugh v. Poulin, the Thornbrughs filed a five-count petition seeking an injunction to prevent defendants from interfering with the use of the Thornbrughs property by operating rock quarry, and seeking actual and punitive damages for damage to their property and interference with its use. 679 S.W.2d 416, 418 (Mo. Ct. App. 1984). The trial court granted the Thornbrughs' request for a preliminary injunction. Id. The Thornbrughs subsequently requested a jury trial on the damages issue, which request the trial court denied. Id. In the trial court's conclusions of law, it held that the defendant's operation of the quarry did not constitute a nuisance, and that the Thornbrughs were not entitled to damages. Id. But the trial court did permanently enjoin the defendants from blasting within 600 feet of the Thornbrughs' house, from throwing rocks or debris on their property, or from blasting when the wind was east to west. Id.

The Thornbrughs argued on appeal that the trial court violated their constitutional right to a jury trial. Id. at 418. The Court stated that "Their argument might have had some validity if their request for equitable relief had been denied, as was the case in Sapp v. Garrett." Id. In the Thornbrughs' case, however, the Court

stated that under the equitable clean-up doctrine a trial court sitting without a jury has jurisdiction to hear and decide the legal issues as well as the equitable ones, subject to a finding, as was the case here, that some equitable right of the plaintiffs had been violated. Id.

In the Underlying Action, Radiant sought both injunctive relief and legal relief in each of the six counts of its petition; however, Radiant has failed to show that any equitable right has been violated. Respondent denied Radiant's motion for preliminary injunction, and Radiant has thus failed to prove that it is entitled to any form of equitable relief. Moreover, Respondent held in its January 17, 2003 Order that Radiant appears to have an adequate remedy at law; namely, "a viable cause of action for breach of contract and that damages are quantifiable and capable of being ascertained, all subject to further evidentiary hearing on the issues of liability and damages." (Exhibit 6 at 4; App. at A6.) In addition, Respondent set the Underlying Action for trial "on the issues of liability and damages." (Exhibit 6 at 4; App. at A6.) The Underlying Action is now essentially an action for damages, despite the nominal existence of Radiant's claim for a permanent injunction. See State ex rel. Diehl v. O'Malley, 95 S.W.3d 82, 86 (Mo. banc 2003) (stating that "ordinarily, a suit that seeks only money damages is an action at law rather than equity."). Equity has therefore not attached, the equitable clean-up doctrine does not apply, and Respondent cannot deny Dr. Leonardi the constitutional right to have the legal claims heard by a

jury. Any contrary holding would allow Radiant, or any party, to deprive its opponent of the right to a jury trial simply by including in its prayer for relief a request for an injunction.

Moreover, the stated duration of the restrictive covenants at issue in the Underlying Action has long since expired, thus magnifying the point that the essence of Radiant's claim is now legal damages, as Respondent essentially acknowledged in the January 17, 2003 Order. (Exhibit 6 at 4; App. at A6.) Thus, Radiant's continued assertion of a claim for a permanent injunction is tantamount to a request for damages, and is now primarily a strategic device to deprive Dr. Leonardi of his constitutional right to a jury trial on the legal claims set forth in both the Petition and the Counterclaims.

**B. The cases that Respondent and Plaintiff have relied upon in support of their interpretation of the equitable clean-up doctrine are distinguishable.**

The primary cases upon which Respondent and Radiant relied below and in the Application for Transfer to this Court are inapposite to the issue of the applicability of the equitable clean-up doctrine in the Underlying Action because none of the cases involve the denial of a request for equitable relief, preliminarily or otherwise. Rather,

the trial courts in these cases ultimately granted injunctive relief prior to granting any legal relief.<sup>2</sup> Respondent's reliance on these cases is thus misplaced.

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<sup>2</sup>In addition to Willman II, all of the other cases upon which Radiant relies are similarly distinguishable — in each of them, the trial court had authority to award money damages or rule on other legal issues because there had already been a determination that an equitable right had been violated. See Custom Muffler and Shocks, Inc. v. Gordon Partnership, 3 S.W.3d 811, 817 (Mo. Ct. App. 1999) (holding that where a trial court granted a preliminary injunction to force the removal of barriers blocking a vacant lot, it retained equitable jurisdiction to determine without a jury the legal claims regarding easements related to the vacant lot); Kopp v. Franks, 792 S.W.2d 413, 416 (Mo. Ct. App. 1990) (holding that the trial court's finding that the defendants had acted contrary to a contract, upon which the plaintiff's claim for specific performance was based, was sufficient to attach equity jurisdiction for purposes of awarding money in lieu of ordering specific performance); Straatman v. Straatman, 780 S.W.2d 709, 710-11 (Mo. Ct. App. 1989) (holding that the trial court's granting of equitable relief gave it jurisdiction to dismiss related incidental legal claims, but that the jury must try the unrelated legal issues); Siesta Manor, Inc. v. Community Federal Savings & Loan Ass'n, 716 S.W.2d 835, 839 (Mo. Ct. App. 1986) (holding that the trial court's

The case of State ex rel. Willman v. Sloan, 574 S.W.2d 421 (Mo. banc 1978) (“Willman II”) was an original prohibition proceeding brought before the Missouri Supreme Court to prohibit a trial judge from empanelling a jury to determine damages suffered as a breach of a covenant not to compete. Willman II, 574 S.W.2d at 422. The trial court in the underlying litigation (Willman v. Beheler, 499 S.W.2d 770 (Mo. 1973) (“Willman I”)) had previously found, after a bench trial, that the restrictive covenant in the parties’ contract was not enforceable, and thus had denied injunctive relief. The Supreme Court, on direct appeal, disagreed and found that the covenant was enforceable. Id. (citing Willman I). The Supreme Court thus remanded the case to the trial court for a determination of damages due to the breach, stating as follows:

In [Willman I], this court **ruled in favor of relator in his suit to enjoin defendant Beheler from breach of his covenant not to compete** with plaintiff Willman, his former medical partner, within a twenty-mile radius of St. Joseph, Missouri for a five-

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finding that a foreclosure sale was inequitable was sufficient to attach equitable jurisdiction to award relief in the form of damages); Dunning v. Alfred H. Mayer Co., 483 S.W.2d 423, 427 (Mo. Ct. App. 1972) (holding that the trial court’s finding that a defendant failed to perform a contract gave the trial court jurisdiction to grant damages in lieu of ordering specific performance of a contract).

year period. However, because only a few months of the five-year period remained at the time of our decision, we concluded that enforcement of the covenant would not be sufficient or proper equitable relief. **Because equity will not permit a wrong to go without a remedy**, and because ‘[o]nce having **acquired jurisdiction equity will retain it**, under a prayer for general relief . . . to administer full and complete justice, within the scope of the pleadings and evidence . . . ’ we remanded for a determination of damages due to the breach.

Willman II, 574 S.W.2d at 422 (quoting Willman I) (emphasis added).

The essential difference between Willman II and the instant case is that in Willman II the Supreme Court **ruled in favor of the plaintiff/relator on his suit in equity**, and specifically found that the plaintiff/relator was entitled to enforce the covenant in equity. Willman II, 574 S.W.2d at 422. The Supreme Court’s ruling in favor of plaintiff/relator in his suit to enjoin the defendant constituted an exercise of the Court’s equitable power and, therefore, provided the basis for the Court’s equitable jurisdiction and the granting of damages pursuant thereto; thus, equitable jurisdiction clearly attached. Id. at 423 (“In [Willman I], we further determined that since an injunction would be ineffective, the best manner by which the restrictive covenant could alternatively be enforced was damages . . . . The



clear implication was that the court on remand was to retain equity jurisdiction.”). Even though the court in Willman II decided to grant damages rather than issue an injunction, the damages were nonetheless an equitable remedy granted subsequent to a finding of an equitable violation. Willman II, 574 S.W.2d at 422 (“Although damages are usually a legal remedy, a court of equity may decree them where they are the relief necessary to do equity.”). The Respondent in the instant case, however, has specifically denied Radiant’s motion for preliminary injunction and Radiant’s only equitable claim is a request for injunctive relief. Equitable jurisdiction has therefore not attached.

Furthermore, the Supreme Court in Willman II stated that “this court found in [Willman I] that **there was merit to relator’s claim**, and that **he was entitled to enforce the covenant in equity**. **The cases cited by respondent in which equity lost jurisdiction because plaintiff’s equitable claims were denied are thus inapposite.**” Id. at 423 (emphasis added). In the instant case, however, the Respondent has not found that there is any merit to Radiant’s equitable claims, and has not found that it is entitled to enforce the restrictive covenants in equity. In fact, the only ruling on the issue so far suggests that Radiant’s equitable claims to enforce the restrictive covenants do **not** have merit. (Exhibit 6 at 4; App. at A6.) (denying Radiant’s motion for preliminary injunction and specifically finding that Radiant is not entitled to equitable relief because, *inter alia*, Radiant has an

adequate remedy at law for damages on its breach of contract claim). Thus, the facts in Willman II are completely contrary to the facts in this case, and it is clear that equity has not attached.

The timing of the request for a jury trial also establishes a drastic distinction between Willman II and the instant case. In Willman II, the defendant did not request a jury trial until after remand of the Willman I case, and just days prior to a hearing on the damages. Willman II, 574 S.W.2d at 422. Thus, the trial court in Willman I had already issued a decision, the Supreme Court had already found that the plaintiff/relator was entitled to enforce the covenant not to compete in equity, the Supreme Court had already ordered a hearing on the damages in the alternative to the issuance of an injunction, and the only issue before the trial court on remand was the issue of plaintiff/relator's damages. In the instant case, however, Dr. Leonardi specifically demanded a jury trial after the Respondent's denial of Radiant's motion for preliminary injunction and well before any trial on the merits. Moreover, the issues involved in the instant case include the legal issues presented in Dr. Leonardi's Counterclaims, which consist of claims sounding in both breach of contract and tort. Dr. Leonardi should not be denied a jury trial on his legal claims against Radiant simply because Radiant has sought an injunction but failed to prove it is entitled to one. This Court should reject Radiant's attempt to use its

failed claim for injunctive relief to deprive Dr. Leonardi of the right to a jury trial, and instead this Court should issue a writ of prohibition.

**C. The equitable clean-up doctrine does not apply to Relators' Counterclaims because the issues raised therein are not incidental to Plaintiff's request for equitable relief.**

In addition, the equitable clean-up doctrine only applies to legal issues that are incidental to the request for equitable relief. State ex rel. Wayside Waifs, Inc. v. Williamson, 3 S.W.3d 390 at 394 (stating that, under the equitable clean-up doctrine, “a court may decide **incidental** issues where the principal claims are in equity and involve the **same factual issues**”) (emphasis added); Washington University Medical Center Redevelopment Corp. v. Wolfgram, 730 S.W.2d at 291 (stating that when a court of equity gains jurisdiction over a matter, “it will retain jurisdiction over the entire matter and may resolve **incidental** legal issues without a jury in order to render full relief.”) (emphasis added).

In determining whether the equitable clean-up doctrine should apply, Missouri Courts have engaged in an analysis of the various claims asserted by the parties to determine if the issues set forth in the legal claims are identical to the issues in the equitable claims. For example, in Wolfgram, the appellate court stated that the issues set forth in the counterclaim were **identical** to the issues in the petition. 730 S.W.2d at 291. The court thus proceeded to hear the equity claim and, upon granting

equitable relief, dismissed the legal counterclaim. Similarly, in Hunt v. Smith, the plaintiff brought a petition for equitable relief in the form of a declaratory judgment, and the defendant filed a counterclaim seeking legal damages. 992 S.W.2d 303, 304 (Mo. Ct. App. 1999). The court held that where a plaintiff's affirmative defense to a legal counterclaim raised issues **identical** to those involved in the plaintiff's own equitable action, the plaintiff was not entitled to a jury trial on the legal issues. Id. at 307. See also Meyer v. Lofgren, 949 S.W.2d 80, 85 (Mo. Ct. App. 1997) (holding that the equitable clean-up doctrine would apply because the legal issue of whether a partnership existed was incidental to the plaintiff's equitable claim for an accounting).

In the Underlying Action, however, the issues raised in Dr. Leonardi's counterclaim are not identical to the issues set forth in Radiant's Petition; while Radiant seeks injunctive relief and damages due to Dr. Leonardi's termination of a contract and alleged breach of a restrictive covenant, Dr. Leonardi's Counterclaims seek legal damages based on Radiant's breaches of the covenant of good faith and fair dealing. Rather than being "incidental" to Radiant's claims, the legal issues raised in Dr. Leonardi's Counterclaims constitute entirely separate claims with a distinct factual basis. Thus, the equitable clean-up doctrine cannot apply to deprive Dr. Leonardi of the constitutional right to a jury trial on the legal issues in Dr. Leonardi's Counterclaims.

**III. Relators are entitled to an order prohibiting Respondent from denying them the constitutional right to a jury trial in the absence of a finding that there has been an equitable violation, because where the only equitable claim is a request for injunctive relief, considerations of public policy support the proposition that the trial court should resolve all equitable claims prior to determining whether it has jurisdiction to proceed on the legal issues, in that Respondent denied Plaintiff's motion for a preliminary injunction and has not yet granted any equitable relief.**

Missouri law provides that a party should not be able to use an unsuccessful claim for injunctive relief to prevent an opponent from exercising the right to a jury trial. See Jaycox v. Brune 434 S.W.2d 539, 543 (Mo. 1968); Krummenacher v. Western Auto Supply Co., 217 S.W.2d 473, 475 (Mo. banc 1949). If a petition seeks both legal and equitable relief, and the equitable claims are later dismissed, the litigant may then seek a jury for trial of its legal claims. See Washington University Medical Center Redevelopment Corp. v. Wolfgram, 730 S.W.2d at 291; Jaycox, 434 S.W.2d at 543 (holding that when the trial court dismissed a party's equity claim, it should grant the party's request for a jury trial on the remaining legal issues). Moreover, the Missouri Supreme Court Rules indicate the general policy of preserving any rights the parties may have to a trial by jury. See Missouri Supreme Court Rule 92.02(c)(3)

(dealing with the consolidation of the preliminary injunction hearing and the final hearing on the merits, and stating that “This 92.02(c)(3) shall be so construed and applied to preserve any party’s right to trial by jury.”) (App. at A20.)

Although the case of Washington University Medical Center Redevelopment Corp. v. Wolfgram concerns a petition for specific performance instead of a request for injunctive relief, it is nonetheless instructive. 730 S.W.2d at 291. In Wolfgram, the plaintiff sued for specific performance of a contract, and the defendant filed a counterclaim seeking damages for breach of contract and demanded a jury trial on the legal issues. Id. The appellate court stated that the proper procedure in such a case is for the trial court to stay the jury demand until after the determination of the equitable claims; then, if such equitable claims are decided adversely to the plaintiff, the trial court should order a jury trial. Id. (citing Krummenacher, 217 S.W.2d at 475).

In the Underlying Action, Radiant’s only claim for equitable relief is a request for an injunction. Respondent has not yet granted any equitable relief, and has set the Underlying Action for a hearing on the issue of liability and damages. Instead of proceeding to hear the legal issues presented in the Petition and Counterclaims, Respondent should resolve the remaining equitable issues and hold a hearing on the merits of Radiant’s request for a permanent injunction. If Respondent denies the

request for a permanent injunction, she should proceed to empanel a jury to hear the remaining legal issues presented in the Petition and Counterclaims.

Radiant would have this Court believe that such a procedure dooms the system of equity and destroys the equitable clean-up doctrine. To the contrary, this procedure ensures the proper application of both the equitable clean-up doctrine and the inviolate right to a jury trial, instead of prematurely and unnecessarily denying a party the right to a jury trial. In any event, any considerations of judicial economy cannot take precedence over constitutional rights such as the right to a jury trial.

Dr. Leonardi essentially requests that this Court direct Respondent not to deny Dr. Leonardi a jury trial in the instant case in the absence of a finding that there has been an equitable violation. Contrary to what Radiant would have this Court believe, this does not mean that all cases involving claims for permanent injunction and attendant claims would go to a jury, or that a trial court would have to act immediately to either decide equitable claims on the merits or to decline equitable jurisdiction without benefit of a full and fair presentation by the parties. Rather, if a trial court denies a preliminary injunction, it can resolve the remaining equitable issues and hold a hearing on the merits of the plaintiff's request for a permanent injunction. If the trial court finds that a permanent injunction is not warranted, it must empanel a jury to hear the legal claims. See Washington University Medical Center Redevelopment Corp. v. Wolfgram, 730 S.W.2d at 291; Jaycox, 434 S.W.2d at 543.

Similarly, if a party decides to forego requests for a temporary restraining order or a preliminary injunction and instead proceed to trial for the permanent injunction, or if a trial court decides to consolidate a preliminary injunction hearing with a hearing on the merits, equity has not yet attached. Since it is improper for a trial court to deny the opposing party the right to a jury trial in the absence of a finding that there has been an equitable violation, the trial court could hold a hearing on the permanent injunction. If such an injunction is not warranted, the opposing party is entitled to a jury trial on all remaining issues.

In the context of a request for a temporary restraining order, a trial court would not lose equity jurisdiction by refusing to grant the temporary restraining order. Rather, the trial court would simply proceed to hear a party's subsequent requests for a preliminary injunction and permanent injunction before it could deny the opposing party the right to a jury trial. If the party seeking injunctive relief loses at each step of the way or decides to abandon its claim for injunctive relief, the opposing party would thus still not be denied its constitutional right to a jury trial.

The fundamental unfairness of Radiant's position in this case is revealed in the fact that, under Radiant's view of the equitable clean-up doctrine, a party can always deprive an opposing party of the right to a jury trial by simply including a request for injunctive relief in its petition. If equity attaches the moment a party files a claim that includes a request for injunctive relief, then a party can keep a lawsuit and any legal



claims away from a jury even if the party never brings any motions seeking a temporary restraining order or preliminary injunction. And if a party does bring such motions before the trial court, the party's failure to obtain any preliminary injunctive relief would be of no effect, and any legal claims would remain before the court of equity. Any preservation of judicial resources or avoidance of litigants' expenses brought about by such a unique view of the equitable clean-up doctrine clearly takes a back seat to a party's constitutional right to a jury trial.

**IV. Relators are entitled to an order prohibiting Respondent from denying them the constitutional right to a jury trial in the absence of a finding that there has been an equitable violation, because Relators have an inviolate right to a jury trial, and the general rule precluding the right to a jury trial in an equitable proceeding is inapplicable where the only equitable claim is a request for injunctive relief and the trial court has not found any equitable violation, in that Relators have not waived their right to a jury, Relators specifically requested a jury, and Respondent denied Plaintiff's motion for a preliminary injunction and has not granted any equitable relief.**

The Missouri Constitution provides "[t]hat right of trial by jury as heretofore enjoyed shall remain inviolate." Mo. Const. art. I, § 22(a) (App. at A21); see also

Missouri Supreme Court Rule 69.01 (App. at A16); R.S.Mo. § 510.190 (App. at A14). In other words, unless a specific statute says otherwise or the parties have waived their right, each party has a right to have its circuit court case heard by a jury. Advanced Transmissions, L.C. v. Duff, 9 S.W.3d 743, 744 (Mo. Ct. App. 2000). Unlike Federal Rule of Civil Procedure 38, Missouri law does not require a demand for a jury. Rather, Missouri Supreme Court Rule 69.01 and R.S.Mo. § 510.190 guarantee the right to trial by jury unless waived, and set forth the exclusive ways in which the right to a jury can be waived by a party.<sup>3</sup> (App. at A16, A14.) “Absent that right being waived by a party, a trial court may not deny [a party’s] right to a jury trial in a civil case otherwise triable by a jury.” Grimes v. Bagwell, 809 S.W.2d 441, 443 (Mo. Ct. App. 1991). A trial court commits reversible error if it denies the party a jury trial under such circumstances. Id. at 444.

In the Underlying Action, Dr. Leonardi has not waived his right to a jury trial, and in fact specifically requested a jury trial on all legal issues presented in the

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<sup>3</sup> Parties shall be deemed to have waived the right to a jury trial by: (1) failing to appear at the trial; (2) filing with the clerk written consent in person or by attorney; (3) oral consent in court, entered on the minutes; (4) entering into trial before the court without objection. Rule 69.01(b); R.S.Mo. § 510.190(2). (App. at A16, A14.)

Petition and Counterclaims in the Memorandum Regarding Equitable Cleanup. (Exhibit 11.) Moreover, the general rule of equity that typically precludes a jury trial is inapplicable in the instant case because Radiant has failed to establish a right to equitable relief and equity has not attached.

There is generally no right to a jury trial in equity. Willman II, 574 S.W.2d at 422. Thus, a party's right to a jury trial depends on whether the claims are legal or equitable. Id. Normally, whether an action is legal or equitable is determined by the nature of the relief sought. Hammons v. Ehney, 924 S.W.2d 843, 846 (Mo. banc 1996). A plaintiff is normally entitled to a jury trial in an action for monetary judgment involving factual issues. Jaycox, 434 S.W.2d at 542. Moreover, equity will not intercede if a plaintiff's injury can be redressed by an award of damages. Harris v. Union Elec. Co., 766 S.W.2d 80, 86 (Mo. 1989). If a petition seeks both legal and equitable claims, and the plaintiff fails to establish its right to equitable relief, the parties may seek a jury trial on the legal claims. See discussion supra at Section I.

In the instant case, Respondent denied Radiant's motion for preliminary injunction and set this case for trial on the issues of liability and damages. (Exhibit 6 at 4; App. at A6.) As discussed above, equitable jurisdiction has therefore not attached, and the equitable clean-up doctrine should not apply. Respondent, by thus acting in excess of her jurisdiction, has effectively deprived Dr. Leonardi of the

constitutional right to a jury trial. A writ of prohibition is therefore appropriate in this case.

## **CONCLUSION**

Dr. Leonardi respectfully requests that this Court make absolute the preliminary writ of prohibition issued in this case; that this Court thereby preclude Respondent from taking any further action in this case other than to vacate the March 21, 2003 Order and Judgment, resolve all equitable claims currently pending before the court prior to deciding whether Respondent has jurisdiction to hear evidence on the legal claims set forth in the Petition and Counterclaims, and set all legal claims for trial before a jury in the event that Respondent denies Radiant's request for a permanent injunction; that this Court direct Respondent not to deny a jury trial in the absence of a finding that there has been an equitable violation; and that this Court grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

This is to certify that two copies of the foregoing and one copy of the disk were served by (\_\_\_\_) U.S. Mail, postage prepaid; (\_\_\_\_) fax; (\_\_\_\_) Federal Express; and/or (\_\_\_\_) hand delivery this \_\_\_\_ day of November, 2003, to

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**CERTIFICATE OF COMPLIANCE WITH**  
**RULE 84.06(C) AND RULE 84.06(G)**

The undersigned certifies that the foregoing brief includes the information required by Missouri Supreme Court Rule 55.03; that it complies with the limitations contained in Missouri Supreme Court Rule 84.06(b); and that according to the word count function on Microsoft Word by which it was prepared, it contains 10,264 words of proportional type, excluding the cover, signature block, Certificate of Service, this Certificate of Compliance, and the appendix.

The undersigned further certifies that the diskette filed herewith containing the Relator's Brief in electronic form complies with Missouri Supreme Court Rule 84.06(g), and that it has been scanned for viruses and is virus free.

Respectfully submitted,

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