

IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI

**FILED**  
JUN - 8 2009  
MOLLY LIVINGSTON  
CLERK OF CIRCUIT COURT

WILLIAM KEMPER, et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
PRIME TANNING CORP., et al., )  
 )  
Defendants. )

Case No. 09CV-CV0033

**NATIONAL BEEF LEATHERS' SUGGESTIONS IN SUPPORT OF APPLICATION FOR CHANGE OF VENUE AND CHANGE OF JUDGE**

National Beef Leathers, LLC ("NBL") has applied to the Court for a change of venue to Livingston County, Missouri as a matter of right under M.R.C.P. 51.03 and a change of judge under M.R.C.P. 51.05, with both requests set forth in its joint application pursuant to M.R.C.P. 51.06. NBL's suggestions in support of its application are as follows:

**SUGGESTIONS IN SUPPORT OF APPLICATION FOR CHANGE OF VENUE**

1. NBL is entitled to a change of venue as a matter of right under Rule 51.03 because Clinton County, the current venue, has fewer than 75,000 inhabitants.

Missouri Rule of Civil Procedure 51.03 mandates a change of venue from a county with less than seventy-five thousand inhabitants "upon the filing of a written application therefor not later than ten days after answer is due to be filed." M.R.C.P. 51.03 (2008). NBL's application is timely because NBL filed its answer to Plaintiffs' petition on May 29, 2009, and this application is filed with the Court on or before June 8, 2009, within the required ten day period. Furthermore, the application is proper because the population of Clinton County is 21,094, less than the 75,000 threshold set forth in the rule. NBL is therefore entitled to a change of venue from Clinton County as a matter of right.

2. Livingston County is the venue most convenient to the parties because it is in the same circuit as the current venue and, therefore, is proximately located to the potential witnesses and location of the of the alleged events set forth in plaintiffs' petition.

Upon timely application by a party, Rule 51.03(c) mandates that the Court shall immediately order the transfer, after giving the parties an opportunity to make suggestions for the new venue, based on convenience of the parties. M.R.C.P. 51.03(c) (2008). As to what is convenient for the parties, the Missouri Supreme Court requires a venue that will provide a logical and orderly forum for the litigation. State ex rel. Lebanon School District R-III v. Winfrey, 183 S.W.3d 232, 237 (Mo. banc 2006).

In this case, Livingston County is the most convenient alternative venue. Livingston County is in the 43rd Judicial Circuit, the same circuit as Clinton County. Plaintiffs, William Kemper and Janet Lasher, would not be inconvenienced by pursuing their lawsuit in the Livingston County courthouse in Chillicothe. Mr. Kemper lives at 1213 Aerie Lane in Cameron; Chillicothe is approximately nineteen miles further from his home than the Clinton County court. Ms. Lasher lives at 21992 State Highway 13 in Gallatin; Chillicothe is thirteen miles closer to her home than the courthouse in Clinton County.

Likewise, many of the potential witnesses in this case are likely to be located in proximity to Chillicothe, given Plaintiffs' allegations that Defendants' actions occurred in and around Buchanan, DeKalb, Andrew, and Clinton Counties, all of which are proximately located and within a reasonable driving distance from Chillicothe, where those witnesses may be called to testify at trial. Livingston County will, therefore, provide a convenient, logical, and orderly forum for the trial of this lawsuit.

#### **SUGGESTIONS IN SUPPORT OF APPLICATION FOR CHANGE OF JUDGE**

Missouri Rule of Civil Procedure 51.05 mandates that a party shall be granted a change

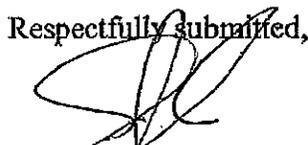
of judge upon timely application, which is sixty days from service of process or 30 days from designation of the trial judge, whichever is longer. M.R.C.P. 51.05 (2008). Judge Elliot was assigned to this case sometime after the April 22, 2009 filing date of the petition, and National Beef was served on May 1, 2009. The service date, therefore, provides the starting point for calculating the longer of the two periods set forth in the rule. This application is filed on or before June 8, 2009, well within the sixty day time period required by the rule. National Beef's application for change of judge is therefore timely and shall be granted pursuant to Rule 51.05.

### CONCLUSION

For the reasons stated above, NBL respectfully requests the Court to grant its application for change of judge from Judge Elliott and to subsequently transfer this lawsuit to Livingston County, and for such other relief as the Court deems proper.

Date: June 8, 2009

Respectfully submitted,



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W.C. Blanton #54125  
Stephen J. Torline #49483  
HUSCH BLACKWELL SANDERS, LLP  
4801 Main Street, Suite 1000  
Kansas City, MO 64112  
Telephone: (816)983-8000  
Facsimile: (816)983-8080  
wc.blanton@huschblackwell.com  
stephen.torline@huschblackwell.com

**ATTORNEYS FOR DEFENDANT NATIONAL  
BEEF LEATHERS, LLC**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies a true and correct copy of the above and foregoing was mailed, by regular, first-class mail, postage prepaid, this 8th day of June, 2009 to the following:

Thomas P. Cartmell  
Brian J. Madden  
Thomas L. Wagstaff  
WAGSTAFF & CARTMELL, LLP  
4740 Grand Avenue  
Suite 300  
Kansas City, MO 64112

Stephen Griffin  
W. Mitchell Elliott  
Troy Dietrich  
GRIFFIN DIETRICH ELLIOTT  
416 N. Walnut  
Cameron, MO 64429

Thomas V. Girardi  
GIRARDI KEESE  
1126 Wilshire Boulevard  
Los Angeles, CA 90017-1904

**ATTORNEYS FOR PLAINTIFFS**

Scott R. Ast  
SCHARNHORST AST & KENNARDS, PC  
1000 Walnut  
Suite 1550  
Kansas City, MO 64106

**ATTORNEYS FOR DEFENDANT  
RICK REAM**

R. Dan Boulware  
Todd H. Bartels  
Seth C. Wright  
Polsinelli Shughart PC  
3101 Frederick Avenue  
St. Joseph, Missouri 64506

Dennis J. Dobbels  
Polsinelli Shughart PC  
Twelve Wyandotte Plaza  
120 West 12<sup>th</sup> Street  
Kansas City, MO 64105

**ATTORNEYS FOR DEFENDANT  
PRIME TANNING CORP. AND  
PRIME TANNING CO., INC.**



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Stephen J. Torline  
HUSCH BLACKWELL SANDERS LLP  
4801 Main Street, Suite 1000  
Kansas City, MO 64112