

IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI

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

Case No. 09CV-CV00333

**F I L E D**  
 OCT 14 2009  
 MOLLY LIVINGSTON  
 Clerk of Clinton Co. Circuit Court

**NATIONAL BEEF LEATHERS' SUPPLEMENTAL  
 BRIEFING ON ITS APPLICATION FOR CHANGE OF VENUE**

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 provides the following supplemental authority on the issue:

**A. The Purpose Of Rule 51.03 Supports Transfer Within The 43rd Judicial Circuit To Livingston County.**

The Supreme Court of Missouri has recently explained the purpose of M.R.C.P. 51.03 ("the Rule"). In State ex rel. Lebanon School Dist. R-III v. Winfrey, 183 S.W.3d 232 (Mo. banc 2006), the court noted the Rule addresses the problem when the selected venue becomes inappropriate due to the small number of persons in a county or other reasons. Id. at 237. The court then explained The Rule's purpose:

Allowing an automatic change of venue upon timely application thus saves judicial resources that would otherwise be spent in determining whether a party could get a fair trial in the county in light of the prejudice that may have arisen in a particular case due to publicity or familiarity with the parties or the issues involved. This avoids any potential unfairness yet protects the convenience of the remaining parties by expressly providing that the new venue must be convenient and by giving the parties input into the new location for trial.

Id. (citations omitted). Moreover, the court clarified that the Rule “does *not* permit the transfer of a case to counties ‘all over the state.’” Id. at 236. The Rule limits the locations to another county convenient to the parties. Id. at 236-37. “Further, Rule 51.03 in no manner suggests that the transferee county must have more than 75,000 inhabitants, and indeed that is not the case.” Id. at 237 (emphasis added).

Additionally, in considering the criminal counterpart to the Rule (Missouri Rule of Criminal Procedure 32.03 (“Rule 32.03”)) in Moss v. State, 10 S.W.3d 508, 513 (Mo. 2000), the Supreme Court of Missouri noted these change of venue rules recognize that “a [party’s] ability to secure a fair trial in small counties is often contested and affords the defendant the right to change venue as a matter of convenience.” As Defendant Prime Tanning Corp. noted in its Application For Change Of Venue (“Tanning Corp. Application”), this case principally involves counties in Northwest Missouri and alleged conduct that occurred in Northwest Missouri. As such, the merits of this case should be decided by the residents of Northwest Missouri. Clinton, DeKalb, Andrew, and Buchanan Counties do not provide an appropriate and convenient alternative venue due to Plaintiffs’ allegations that harmful sludge was distributed in those counties. Moreover, as detailed in the Tanning Corp. Application, Jackson, Clay, Cass, and Platte Counties are all metropolitan counties from which there has been significant adverse publicity that has originated out of Jackson County and other metropolitan area counties. Thus, those counties do not provide an appropriate and convenient alternative venue. As explained in NBL’s Suggestions In Support Of Application For Change of Venue and reiterated in its Reply To Plaintiffs’ Response To Application For Change of Venue, a transfer of this case to Livingston County provides the most convenient alternative venue for this case.

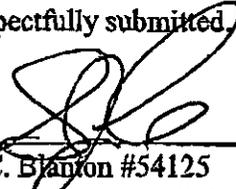
**B. The 43rd Judicial Circuit Has A Precedent Of Transferring Venue Under The Rule To Another County Within The Same Circuit.**

The 43rd Judicial Circuit has a precedent of transferring cases under the Rule and its criminal counterpart to another county within the same judicial circuit. For example, in Thiel v. Miller, 164 S.W.3d 76, 79 (Mo. Ct. App. 2005), the plaintiffs filed a legal malpractice claim in the Circuit Court of DeKalb County. The court sustained an application under the Rule, and transferred the case to the Circuit Court of Daviess County. Id. at 80. Another example is seen in the criminal context in State ex rel. Davis v. Lewis, 893 S.W.2d 817 (Mo. 1995). In Davis, the defendant was arraigned in the Circuit Court of Daviess County and filed for a change of venue under Rule 32.03. Id. at 818. The court granted the motion and transferred the case to Livingston County. Id. Thus, transferring this case to Livingston County is the most appropriate and convenient decision.

WHEREFORE, for the reasons set forth here, in its Application for Change of Venue, Suggestions In Support Of Application For Change of Venue, and Reply To Plaintiffs' Response To Application For Change of Venue, NBL respectfully requests the Court to transfer this lawsuit to Livingston County and to grant NBL such further relief as this Court deems appropriate.

Date: October 14, 2009

Respectfully submitted,



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**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 14th day of October, 2009 to the following:

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