

IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI

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

**F I L E D**  
 DEC 23 2009  
 MOLLY LIVINGSTON  
 Clerk of Clinton Co. Circuit Court

Case No. 09CN-CV00333

**PRIME'S REPLY TO PLAINTIFFS' SUGGESTIONS IN OPPOSITION TO  
PRIME'S MOTION FOR CONTINUANCE**

Plaintiffs' opposition to Prime's Motion for Continuance fails to address the reasons necessitating a continuance. First, Plaintiffs argue that the Court can grant Plaintiffs' Motion to Amend to Add Additional Parties prior to the January 5, 2010 hearing. The problem, of course, with this argument is that even if the Court were to immediately grant the motion to amend parties', service must be obtained and those new parties are not required to appear until, at the earliest, thirty days after service. It goes without saying that the new parties will not have the ability to meaningfully participate in a full blown evidentiary hearing on venue issues. Given that the new parties would not even be required to enter their appearances by the January 5, 2010 hearing, they could file their own motions for change of venue after the Court addresses the issues with the existing parties. For the sake of judicial efficiency, the motion to continue should be granted.

Second, Plaintiffs fail to address why their refusal to produce discovery on venue issues necessitates a continuance of the hearing. At the last telephonic hearing, the undersigned attempted to take up and have the Court address its Motion to Compel on venue issues. Defendants argued that the Court should delay this ruling and the Court directed the parties to

attempt to work out the dispute and should they not be able to do so, contact the Court in November for a hearing date in advance of the hearing on venue issues. Subsequently, Plaintiffs continued to refuse to produce the requested information or even provide a privilege log which is clearly required under Missouri law. It is Prime's position that Plaintiffs and their counsel attempted to try their case in the media and thereby prejudiced certain jury pools, by communicating with various media outlets and employing high profile celebrity activist, Erin Brokovich. The Prime Defendants are entitled to this discovery in advance of any evidentiary hearing on venue issues, and the undersigned has requested such a hearing since November. To date, no hearing date has been scheduled.

In sum, judicial economy necessitates that all parties be in this action and have a meaningful opportunity to participate in any ultimate evidentiary hearing. Otherwise, once those parties have entered their appearances, they may attempt to re-litigate the exact same issues. Moreover, Prime is also entitled to a ruling on its motion to compel and the documents sought therein, in advance of the evidentiary hearing date as contemplated at the original telephonic hearing.

WHEREFORE, the Prime Defendants respectfully request that this Honorable Court continue the January 5, 2010 hearing until such time as the new defendants have entered their appearance and the Court has fully addressed Prime's Motion to Compel.

Dated: December 23, 2009

Respectfully submitted,

**POLSINELLI SHUGHART PC**



R. Dan Boulware MO #24289

DBoulware@polsinelli.com

Todd H. Bartels MO #45677

TBartels@polsinelli.com

Seth C. Wright MO #51830

SCWright@polsinelli.com

3101 Frederick Avenue

St. Joseph, MO 64506

Phone: (816) 364-2117

Fax: (816) 279-3977

Dennis J. Dobbels MO #32378

DDobbels@polsinelli.com

Twelve Wyandotte Plaza

120 West 12<sup>th</sup> Street

Kansas City, MO 64105

Phone: (816) 421-3355

Fax: (816) 374-0509

Melissa A. Hewey

**DRUMMONDWOODSUM**

84 Marginal Way, Suite 600

Portland, ME 04101

Phone: (207) 772-1941

Fax: (207) 772-3627

mhewey@dwmlaw.com

**ATTORNEYS FOR DEFENDANTS  
PRIME TANNING CORP. and  
PRIME TANNING CO., INC.**

**CERTIFICATE OF SERVICE**

I certify that on this 23<sup>rd</sup> day of December, 2009, copies of the foregoing were transmitted via first class U.S. mail, postage prepaid, to:

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

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

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

**ATTORNEYS FOR PLAINTIFFS**

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

**ATTORNEYS FOR DEFENDANT  
NATIONAL BEEF LEATHERS CO. LLC**

Scott R. Ast  
Todd A. Scharnhorst  
SCHARNHORST AST & KENNARD, P.C.  
1000 Walnut, Suite 1550  
Kansas City, MO 64106

**ATTORNEYS FOR DEFENDANT  
RICK REAM**



Attorneys for Defendants Prime Tanning Corp.  
and Prime Tanning Co, Inc.