

IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI

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

Case No. 09CN-CV00333

**F I L E D**  
MAY 05 2010  
MOLLY LIVINGSTON  
Clerk of Clinton Co. Circuit Court

**PLAINTIFFS' SUPPLEMENTAL SUGGESTIONS REGARDING  
CHANGE OF VENUE PURSUANT TO MO. CT. RULE 51.03 AND  
SUGGESTIONS IN OPPOSITION TO DEFENDANTS' PROPOSED  
WITHDRAWAL OF THEIR MOTIONS TO CHANGE VENUE**

**Introduction**

On June 8, 2009, nearly one year ago, defendants Prime Tanning Corp. and National Beef Leathers, LLC filed their timely applications for automatic change of judge and venue under Mo. Ct. Rule 51.03. Defendants concurrently moved for a change of venue for cause under Mo. Ct. Rule 51.04(a), arguing that pretrial publicity prohibited a fair trial in Clinton County. The defendants' motions were heard and evidence was taken via PolyCom on or about January 5, 2010, and Judge Perigo took the decision under advisement. On April 21, 2010, Judge Perigo wrote the parties and asked for supplemental suggestions regarding the following venues: Barton, Cass, Greene, Jackson, Jasper and Lawrence Counties. On or about April 29, 2010, defendants Prime Tanning Corp. and National Beef Leathers filed proposed withdrawals of their applications for change of venue. Defendants' proposed withdrawals of their applications for change of venue should be ignored and this case should be venued in Jackson, Jasper or Greene County.

**Defendants' Attempted Withdrawals of Their Automatic  
Venue Change Motions Should Be Ignored**

Mo. Ct. Rule 51.03, on its face, does not allow defendants to withdraw their applications for change of venue. The rule states: "If a timely application is filed, the court *immediately shall order the case transferred* to some other county convenient to the parties ...." Mo. Ct. Rule 51.03 (c). As one can see, once the application is filed, transfer shall be immediate. This case is deemed transferred out of Clinton County now, the only remaining question is where the case is to be transferred. If defendants are allowed to withdraw their motions to transfer now, after a full hearing and substantial briefing, plaintiffs will be greatly prejudiced. Mo. Ct. Rule 51.03 allows either plaintiff or defendant to apply for automatic change of venue 10 days after the defendants' answers are due. Defendants moved for change of venue under Mo. Ct. Rule 51.03, and plaintiffs conceded that transfer was appropriate in their response briefs. Plaintiffs can not now move for transfer under Mo. Ct. Rule 51.03 because it is too late. Defendants should not be allowed to play such games to the detriment of plaintiffs.

The cases that defendants rely upon do not support the propriety of allowing them to withdraw their venue motions. Both cases are criminal cases, and the criminal automatic venue rule only applies to defendants – not both parties as with Mo. Ct. Rule 51.03. There is, therefore, not the potential for prejudice with allowing a criminal defendant to withdraw his automatic venue change motion because the prosecution has no such option. Further, the criminal cases cited by defendants do not support their position. In State v. Smith, 293 S.W.3d 149 (Mo. App. 2009), the Court merely held that the criminal defendant waived his right to complain about the return of his case to its original venue because the criminal defendant asked that the case be returned to its original venue. State v. Cummins, 92 S.W.2d 605 (Mo. Banc 1936) is a 1936 case regarding a criminal venue statute that bears no similarity to Mo. Ct. Rule 51.03.

**This Case Should Be Venued In Jackson, Jasper or Greene County**

Barton, Cass and Lawrence counties are rural counties that may not be able to handle this litigation. These counties do not have sufficient hotel and airport facilities to handle the expert and lay witnesses that will likely participate in this trial. Further, these counties do not have enough judges to handle this extra case load as may be required by Mo. Ct. Rule 51.14(a). There are now more than 100 companion personal injury and property damage cases filed against defendants making the same allegations plaintiffs make in this case. Given the scope of the litigation, larger counties with a sufficient jury pool and judges would be preferable for trial of this case.

Jackson County offers the most convenience to the parties and judge here. Jackson County has experience in mass tort cases such as this. Jackson County was able to handle the Hyatt skywalk and Robert Courtney drug dilutions lawsuits to completion. Jackson County has courtroom space for visiting judges, and two full time law clerks are available from Jackson County for visiting judges. Jackson County also has sufficient judges to hear this case should that be required by Mo. Ct. Rule 51.14(a). Further, attorneys for plaintiffs and defendants are headquartered in Jackson County. In addition, Jackson County has a large jury pool that will mitigate any concerns about pretrial bias. This case will be expert intensive, and experts will likely be located throughout the United States. It would be far more convenient for such experts and the parties and lay witnesses if the case were tried in Jackson County with easy airport access and hotel accommodations. Further, plaintiff decedent Karen Kemper received her principal medical treatment in the Kansas City Metropolitan area (KU Hospital), so Jackson County provides much easier access to treating physician witnesses.

If a county other than Jackson County is chosen, plaintiffs respectfully suggest that either Jasper or Greene counties should be chosen. These venues provide ample airport and hotel

accommodations for witnesses, and the larger populations in such counties will allow a better opportunity for selecting a jury given the pretrial publicity this case has generated.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that on this 4<sup>th</sup> day of May, 2010, copies of the foregoing were transmitted via first class U.S. mail, with proper postage affixed, to:

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