

IN THE CIRCUIT COURT OF DEKALB COUNTY, MISSOURI

MAYCEE GARDNER, a Minor, By Her Mother )  
 and Next Friend, CYNDEE GARDNER, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 PRIME TANNING CORP., et al., )  
 )  
 Defendants. )

Case No. 09DK-CC00056

**FILED**  
 JUN 15 2009  
 JULIE WHITSELL  
 Circuit Clerk & Ex-Officio Recorder  
 DE KALB COUNTY, MO

**DEFENDANT PRIME TANNING CORP.'S APPLICATION FOR CHANGE OF VENUE**

Defendant Prime Tanning Corp. (sometimes referred to as "this defendant"), by and through counsel, respectfully moves this Court for a change of venue as a matter of right pursuant to Mo. R. Civ. P. 51.03 and suggests that the matter be transferred to Livingston County, Missouri. Alternatively, this defendant moves for a change of venue for cause under Rule 51.04 on the basis that the residents of Clinton, DeKalb, Andrew, Buchanan, Jackson, Cass, Clay, and Platte counties are prejudiced against this defendant. Additionally, should the Court require further evidence respecting its alternative motion for change of venue for cause under Rule 51.04, Prime Tanning Corp. moves the Court for a four month period of time within which to conduct discovery to support its Rule 51.04 application for change of venue before its application for change of venue is ruled.

Prime Tanning Corp. is principally seeking a change of venue outside the counties of Clinton, DeKalb, Andrew, Buchanan, Jackson, Clay, Cass, and Platte due to the Plaintiff's position that harmful sludge was distributed in the first four counties, and due to the significant adverse press in all of these counties much of which has originated out of the Kansas City and St. Joseph media markets. This defendant moves for a change of venue as a matter of right under

Rule 51.03 and suggests Livingston County, Missouri because it is convenient to the parties but also because a transfer to Livingston County avoids the necessity of taking up and addressing the issue of prejudice in various other counties. Alternatively, Prime Tanning Corp. seeks a change of venue for cause and should the Court deem it necessary, Prime Tanning Corp. requests time to conduct discovery in order to determine the extent of the prejudice arising from the media blitz respecting this defendant and the resulting adverse publicity, and to determine "where the cause or causes do not exist." See Rule 51.04(c).

#### **Application for Change of Venue as of Right**

Prime Tanning Corp. seeks a change of venue as of right under Rule 51.03 because DeKalb County has 75,000 or less inhabitants. Rule 51.03 provides that a timely application for change of venue as of right "*shall* be ordered in a civil action triable by jury that is pending in a county having seventy-five thousand or less inhabitants . . . ." Rule 51.03(a) (emphasis added). Such an application is timely if made within "ten days after answer is due to be filed." Prime Tanning Corp. was served on May 6, 2009, making its answer due on June 5, 2009. Prime Tanning Corp.'s motion is therefore timely. In addition, the Court may take judicial notice that DeKalb County has 75,000 or less inhabitants. Thus, Prime Tanning Corp. is entitled to a change of venue as of right. Pursuant to Rule 51.03, the court is to transfer the case "to some other county convenient to the parties," and this defendant suggests that the matter be transferred to Livingston County, Missouri.

#### **Application for Change of Venue for Cause**

Alternatively, Prime Tanning Corp. requests a change of venue for cause under Rule 51.04(a). Under that rule, a change of venue may be granted if "the inhabitants of the county are prejudiced against the applicant." Rule 51.04(a)(1). In the instant case, the media blitz and town-hall meetings related to this defendant have resulted in substantial negative publicity,

which has only been heightened by the celebrity of Erin Brokovich who has been the spokesperson for various claims against this defendant. See Affidavit of Todd H. Bartels, ¶ 3, attached hereto as **Exhibit A**. This action has received considerable, widespread print and television news coverage not only in Clinton, DeKalb, Andrew, and Buchanan counties but also in the Kansas City and St. Joseph area media. *Id.*, ¶ 4. A sampling of just some of the news reports concerning this case are attached hereto as **Exhibit A-1**. Prime Tanning Corp. submits that such widespread, high profile, negative publicity, particularly when it carries the imprimatur of a well-known celebrity, substantially prejudices the community from which potential jurors will be drawn. See **Exhibit A**, ¶ 8.

Moreover, the media blitz has resulted in the filing of several related lawsuits in Clinton and DeKalb counties. **Exhibit A**, ¶ 5. Two of these actions seek to certify a plaintiff class of every single resident of Clinton, DeKalb, Andrew, and Buchanan counties with alleged damages against Prime Tanning Corp. *Id.*, ¶ 6. See Class Action Petition filed in the case styled *Ruth Nicholson et al. v. Prime Tanning Corp. et al.*, Case No. 09DK-CC00052, pending in the Circuit Court of DeKalb County, and proposed Amended Class Action Petition – Medical Monitoring in the case styled *Carol Helms v. Rockwool Industries, Inc. et al.*, Case No. 08CN-CV00693, pending in the Circuit Court of Clinton County, true and accurate copies of which are attached hereto as **Exhibits A-2 and A-3**, respectively.

A third class action seeks to certify a class of all property owners in Clinton, DeKalb, Andrew, and Buchanan counties seeking alleged damages for remediation and loss of property values. *Id.*, ¶ 7. See *Cyndee Gardner v. Rockwool Industries, Inc., et al.*, Case No. 08CN-CV00692, pending in the Circuit Court of Clinton County, a true and accurate copy of which is attached hereto as **Exhibit A-4**. The prospect of every resident of this county being a member of

a plaintiff class with alleged damages against Prime Tanning Corp. arising from the same core of facts as the instant case, obviously prejudices this defendant.

If the Court deems such evidence insufficient to grant its alternative motion under Rule 51.04 (for cause), Prime Tanning Corp. requests a four month time period during which to conduct such discovery as may bear on the issue of prejudice, including through written discovery, issuance of subpoenas, and depositions, and that a hearing be held upon completion of that discovery.

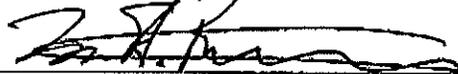
WHEREFORE, Prime Tanning Corp. respectfully requests this Court to:

- (a) grant it a change of venue as a matter of right to Livingston County, Missouri;
- (b) alternatively, grant it a change of venue for cause and if the Court deems it necessary, for a four month period of time within which to conduct discovery as to the prejudice against Prime Tanning Corp.; and
- (c) for such further relief as the Court deems just and proper.

Dated: June 12, 2009

Respectfully submitted,

**POLSINELLI SHUGHART PC**



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**ATTORNEYS FOR DEFENDANT  
PRIME TANNING CORP.**

**CERTIFICATE OF SERVICE**

I certify that on this 12<sup>th</sup> day of June, 2009, copies of the foregoing were transmitted via first class U.S. mail, postage prepaid, to:

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Scott S. Bethune  
Thomas C. Jones  
Timothy L. Brake  
Wes Shumate  
DAVIS BETHUNE & JONES, LLC  
1100 Main Street, Suite 2930  
Kansas City, MO 64105

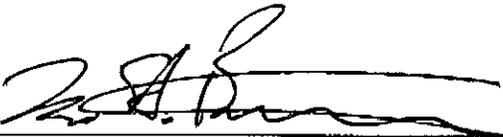
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\_\_\_\_\_  
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IN THE CIRCUIT COURT OF DEKALB COUNTY, MISSOURI

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AFFIDAVIT OF TODD H. BARTELS

STATE OF MISSOURI )  
 ) ss.  
 COUNTY OF BUCHANAN )

COMES NOW the Affiant, Todd H. Bartels, and after being duly sworn on his oath, states as follows:

1. My name is Todd H. Bartels. I am more than eighteen years of age and competent to testify.
2. I represent Prime Tanning Corp. in the above-styled matter and submit this Affidavit in support of its Application for Change of Venue.
3. Attached hereto as **Exhibit A-1** are true and accurate copies of press reports which have resulted from the filing of the instant case and similar actions, in addition to the town hall meetings related to Prime Tanning Corp. The resulting negative publicity to Prime Tanning Corp. has only been heightened by the celebrity of Erin Brokovich, who has been the spokesperson for the various claims against it.

**EXHIBIT A**

4. This action has received considerable, widespread television and newspaper coverage not only in Clinton, DeKalb, Andrew, and Buchanan counties, but also from the Kansas City and St. Joseph area media.

5. The media blitz has resulted in the filing of several related lawsuits in Clinton and DeKalb counties.

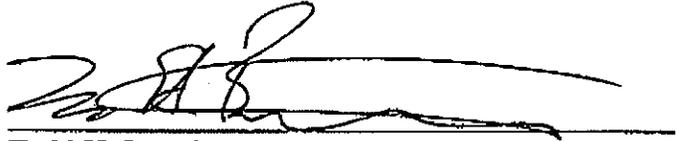
6. Two of these actions seek to certify a plaintiff class of every single resident of Clinton, DeKalb, Andrew, and Buchanan counties with alleged damages against Prime Tanning Corp. See Class Action Petition filed in the case styled *Ruth Nicholson et al. v. Prime Tanning Corp. et al.*, Case No. 09DK-CC00052, pending in the Circuit Court of DeKalb County, and proposed Amended Class Action Petition – Medical Monitoring in the case styled *Carol Helms v. Rockwool Industries, Inc. et al.*, Case No. 08CN-CV00693, pending in the Circuit Court of Clinton County, true and accurate copies of which are attached hereto as **Exhibits A-2 and A-3**, respectively.

7. A third class action seeks to certify a class of all property owners in Clinton, DeKalb, Andrew, and Buchanan counties seeking alleged damages from Prime Tanning Corp. for remediation and loss of property values. See *Cyndee Gardner v. Rockwool Industries, Inc., et al.*, Case No. 08CN-CV00692, pending in the Circuit Court of Clinton County, a true and accurate copy of which is attached hereto as **Exhibit A-4**.

8. Prime Tanning Corp. submits that the substantial adverse publicity, including that in the Kansas City and St. Joseph media markets, in addition to the fact that there are actions pending which seek to certify every resident of DeKalb County as part of a plaintiff class, substantially prejudices this defendant should this matter proceed in this county.

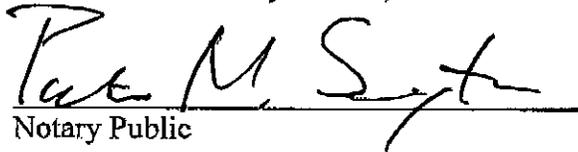
9. While Prime Tanning Corp. submits there presently exist sufficient grounds to grant its motion for change of venue for cause, should the Court disagree this defendant requests discovery on the issue of prejudice, including written discovery, issuance of subpoenas, and depositions.

Further Affiant sayeth not.



Todd H. Bartels

SUBSCRIBED AND SWORN TO before me this 12<sup>th</sup> day of June, 2009.

  
Notary Public

# **EXHIBIT A-1**

# Road projects planned

## Drivers should use caution

News-Press

After permitting, the Missouri Department of Transportation will start work on a number of road projects in Northwest Missouri. Speed limits will be reduced and motorists should use caution in work zones.

At the north end of the highway, crews continue pavement repairs in the eastbound lanes of U.S. Highway 36, between 22nd Street and Route 29, for about two weeks. Work will be done in various locations and the road will be

narrowed to one lane.

**Faucett** — Area road maintenance crews will be making pavement repairs in the northbound lanes of Interstate 29 between Missouri Route DD at Faucett and the Pigeon Creek Bridge. The road will be narrowed to one lane around the work zone for about two weeks.

**Faucett** — Area maintenance crews continue patching Tuesday in various locations from the intersection of Route DD and Missouri Highway

Please see ROAD/Page A10

# Tannery owner admits chromium 6 was used

Associated Press

KANSAS CITY, Mo.

The former owner of a St. Joseph tannery that is being sued over health concerns acknowledged that the plant used a cancer-causing chemical, but he said the tanning process posed no danger to the public.

The former Prime Tanning plant in St. Joseph has been sued over concerns that sludge it distributed to farmers to use for fertil-

izer contained chromium 6, a known carcinogen.

Grover Elliott, vice president and chief financial officer of Prime Tanning Co. in Maine, told *The Kansas City Star* that the company bought chromium 6, but it was converted to a safer form of chromium to tan the hides.

"We can't stress it strongly enough that chromium 6 was never used in the tanning process," Elliott said.

However, Prime Tan-

ning's use of chromium 6 at its St. Joseph plant surprised the Missouri Department of Natural Resources. The department gave the tannery an exemption from water pollution regulation five years ago after the company told regulators it would prohibit several hazardous chemicals, including chromium 6, at the plant.

"Based on their application (for the exemption),

Please see TANNERY/Page A8

## Y of the PAST

### His guard dog?



# Women of Excellence nominees announced

## Ceremony set for June 11

St. Joseph News-Press

The YWCA will honor 42 women and businesswomen at its 2009 Women of Excellence Awards, scheduled for 11:30 a.m. June 11 at Civic Arena.

Two women will be honored with Lifetime Achievement Awards: Julia Rupp for Woman in the Workplace and Barbara Sprong for Woman in Volunteerism.

Winners in the other categories are kept secret until revealed at the luncheon.

This year's keynote speaker is Cleveland TV personality, St. Joseph native and Benton High School graduate Robin

Swoboda. Ms. Swoboda became one of Cleveland's most respected personalities during her years anchoring the nightly news. She makes her home in Medina, Ohio, with her husband, former NFL punter Bryan Wagner, now a teacher and coach, and their three children.

Now in its eighth year, the YWCA Women of Excellence Awards has become the signature fundraiser of the organization, and one of the best-attended events in St. Joseph. Last year's attendance topped 1,000, and the YWCA is hoping for as many as 1,100 this year.

Please see WOMEN/Page A10

## PING!

OUR online poll and YOUR answers

Does the I-70 Series matter more than other Royals games?

Yes. Beat those stinking St. Louisans.

28%

No. The Royals need to win a series — any series.

71%

Total votes: 177

### New question:

Will the Mustangs receive more fan support than the Blacksnakes?



stjoenews.net

May 25, 2009  
St. Joseph News-Press

time after 2:00 Tuesday, St. Leo's Church, Horton, followed by family visitation.

may be made Mer Memorial odist Church, IO in care of meral Home, King City, Mo.,

**Bert R. Smith I**

1917-2009

**MOUND CITY, Mo.**  
— Bert Russell Smith I, 91, Mound City, passed from this life May 28, 2009, at Tiffany Heights Care Center in Mound City.

He was born Nov. 7, 1917, in St. Joseph, to Bert Salis and Jessie (Humphrey) Smith.

On April 2, 1937, he married Jean Marshall. To this union was born one son, Bert R. II.

Bert served in the U.S. Navy in World War II. He was an avid fisherman, loved his life at Big Lake, and loved square dancing. He retired from Crouse Milling in 1980.

Preceding him in death were his parents; two brothers, Claire and Kendall Smith; one sister, Catherine Irene; and his wife of 28 years, Leola (Peery) Smith.

Survivors include his son, Bert II and his wife,

homemaker.

daughters, Parker-Hale,

(on) Klawuhn,

all of St. James (Jackie) Blockow, Mo.;

via Schurlock,

everly Bledsoe,

ph Crematory Co.

**R BURRI**

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School; Hands

or to Heartland

condolences at

tsmithchapel.com

tel. 332-3355

That We Do!

# Tannery owner admits chromium 6 was used

CONTINUED FROM Page A7

we did not think they were using chrome 6," said Susanne Medley, a DNR spokeswoman.

But for the past three years, the tannery has reported to emergency agencies that it had at least 100,000 to 1 million pounds of sodium dichromate, a compound of chromium 6, according to records obtained by the Star. Records from previous years were not immediately available.

The sludge from the plant has been spread on thousands of acres of farmland in Northwest Missouri since 1968. Lawsuits filed last month claim that the sludge contained chromium 6, and linked it to brain tumors in the area.

Prime Tanning sold the plant in March to National Beef Leathers, which told the Star that it uses only the safer form of chromium — chromium 3 — in its tanning.

In an application for the exemption in 2004, the company told the DNR it would prohibit eight hazardous chemicals, including chromium 6, from the plant, according to records obtained by the Star.

"The procedure basically restricts certain kinds of substances from being used in the plant," according to the application. The plant would "endeavor to limit" the use of those chemicals.

The DNR granted the exemption, placing regu-

“We were diligent in testing each and every batch of chrome 3 to ensure proper conversion to chrome 3 took place.”

GROVER ELLIOTT,

vice president and chief financial officer of Prime Tanning Co. in Maimo

lation of the sludge under the University of Missouri fertilizer program, which does not test for hazardous chemicals.

"This determination is based upon the testing results and other information submitted to the department," wrote Curt Gateley, a DNR environmental specialist.

The St. Joseph plant was the last one in the country to convert chromium 6 to chromium 3, a tannery expert said. Most other plants now buy chromium 3 from suppliers.

Nicholas J. Cory, director of the Leather Research Laboratory at the University of Cincinnati, said converting chromium 6 to chromium 3 is a simple process, but other experts contend the process doesn't always completely convert chromium 6.

Many tanneries quit using chromium 6 by the end of the 1990s because of the environmental hazards. Others have closed or moved their operations overseas, where chromium pollution has become a big problem.

Elliott said the St. Joseph plant continued to buy chromium 6 and convert it to chromium 3

because it had the equipment and capacity to do the conversion.

"Chrome 6 was converted on a batch-by-batch basis to the benign chrome 3 in a separate process — before the tanning process began," Elliott said. "We were diligent in testing each and every batch of chrome 3 to ensure that proper conversion to chrome 3 took place."

The conversion process doesn't guarantee that all chromium 6 will become chromium 3, said Michael Baldwin, an associate professor in the chemistry department at the University of Cincinnati, the location of the Leather Research Laboratory.

George Baggett, a Kansas City environmental consultant who has sold lime to tanneries for the conversion process, said if an inadequate amount of reducing agents is used, an incomplete reaction could leave chromium 6 in the sludge.

Investigators for the law firms that filed the recent cancer lawsuit took samples of the tannery sludge and said in the lawsuit that the results showed dangerous levels of chromium 6.

**Late notice**

**Philip Henggeler**

**PICKERING, Mo.** — Philip Henggeler, 44, Pickering, passed away Sunday, May 24, 2009, at his home.

Arrangements are pending with Price Funeral Home, Maryville, Mo.

**Doyle M. Patton**

**GALLATIN, Mo** — Doyle M. Patton, 77, passed away Sunday, May 24, 2009, at the Daviess County Nursing and Rehabilitation Center in Gallatin.

Arrangements are pending with McWilliams Funeral Home, Gallatin.

*We are ready to help you in your hour of need!*

**RUPP FUNERAL HOME**

Pre-Arrangement Available

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# KansasCity.com

THE KANSAS CITY STAR

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Wednesday, May 27, 2009

Posted on Sat, May 23, 2009

## Tannery had chromium 6, now at the center of a cancer lawsuit

By KAREN DILLON  
The Kansas City Star

Five years ago, the state of Missouri gave a St. Joseph tannery an environmental pass to spread waste sludge on farmland.

The decision came after the company told regulators that several hazardous chemicals, including chromium 6, were "prohibited" at the plant.

But on Friday, the former owner of the plant acknowledged that it had been using chromium 6, maintaining the process was entirely safe.

The presence of chromium 6 — now at the center of a cancer lawsuit against the plant — came as a surprise to the Missouri Department of Natural Resources.

The department exempted the sludge produced by the tannery from water pollution regulations based on the tannery's reports to the state.

DNR spokeswoman Susanne Medley said she was unaware the tannery even had chromium 6.

"Based on their application (for the exemption), we did not think they were using chrome 6," Medley said.

But Grover Elliott, vice president and chief financial officer of Prime Tanning Co. in Maine, which owned the plant until March, said the use of chromium 6 was acceptable.

"We purchased chrome 6, but it was never used in our tanning process," Elliott said.

Instead, workers converted chromium 6 to a safer form of chromium to tan the hides, he said.

Elliott was responding to questions from The Kansas City Star, which found documents showing large amounts of chromium 6 at the plant.

"We can't stress it strongly enough that chromium 6 was never used in the tanning process," Elliott said.

The tannery was sued last month, accused of spreading sludge containing chromium 6 on thousands of acres of farmland. The chemical, the suit alleges, has caused brain tumors in at least two residents of the area.

National Beef Leathers, which has owned the plant since March, said Friday that it uses only the safer chromium 3.

A tannery expert said the St. Joseph operation was the last one in the country still to use a process that converted chromium 6 to chromium 3, which other tanneries now purchase.

Nicholas J. Cory, director of the Leather Research Laboratory at the University of Cincinnati, said he has worked with the St. Joseph tannery on projects and understands its operation.

The conversion process of chromium 6 to chromium 3 is a simple one, he said.

Some experts point out, however, that the process is not foolproof, and that some chromium 6 can remain.

A spokeswoman for Sen. Charlie Shields, a St. Joseph Republican and the Senate president pro tem, said Shields has told his legal counsel to track developments.

"We are monitoring this case," said spokeswoman Farrah Fite.

### Spreading sludge

Since 1983, the tannery has been giving away its waste sludge free to farmers. The company's ultimate goal was to sell the fertilizer, which it called Organic Plus.