

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI**

WALTER WINSTON, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1822-CC00515
	)	
MONSANTO COMPANY,	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	

**DEFENDANT MONSANTO COMPANY’S  
RENEWED MOTION TO TRANSFER**

In *State ex rel. Johnson & Johnson v. Burlison*, No. SC 96704, 2019 WL 581175 (Mo. banc 2019) (“*J&J*”), the Missouri Supreme Court made clear that permissive joinder of parties cannot be used to extend venue. Therefore, Defendant Monsanto Company (“Monsanto”) respectfully renews its motion to transfer and prays that this Court transfer the claims of all plaintiffs, except Walter Winston, to St. Louis County or other county where venue is proper, pursuant to Missouri Rule of Civil Procedure 51.045 and §§ 508.010.4, 508.010.5(1), 508.010.14, RSMo. These plaintiffs do not allege first injury within the City of St. Louis, and Monsanto’s registered agent for service of process is located in St. Louis County. Thus, venue in the City of St. Louis is not proper for their claims. As grounds for this relief, Monsanto states:

1. On April 16, 2018, Defendant Monsanto Company filed a timely motion to sever improperly joined claims pursuant to Missouri Rules of Civil Procedure 52.05 and/or 52.06 and transfer venue of the claims brought by all Plaintiffs except Walter Winston pursuant to Missouri Rule of Civil Procedure

51.045 and §§ 508.010.4, 508.010.5, 508.010.14, RSMo. In opposition, Plaintiffs argued: “It is well established under Missouri law that if venue is proper as to one plaintiff and all plaintiffs are properly joined in an action, then venue is proper as to all plaintiffs in the action. Because venue is proper as to Mr. Winston, and all Plaintiffs were properly joined in this action, venue is proper as to all Plaintiffs in this action.” See Pls.’ 4/18/18 Opp. at 2.

2. On July 13, 2018, this Court entered an Order denying Monsanto’s motion to sever and transfer venue.

3. On February 13, 2019, the Supreme Court issued *State ex rel. Johnson & Johnson v. Burlison*, No. SC 96704, 2019 WL 581175 (Mo. banc 2019) (*J&J*), unequivocally rejecting the argument Plaintiffs advance here and holding that permissive joinder of parties cannot be used to extend venue.

4. In *J&J*, Michael Blaes alleged that his wife was first exposed to a toxic substance in St. Louis County. Pursuant to Rule 52.05, he joined his claim for wrongful death with a claim for personal injury by another plaintiff whose first exposure occurred in the City of St. Louis. The trial court held that venue for Blaes’ claim in the City was proper because it was joined with the City plaintiff’s claim.

5. The Supreme Court issued a permanent writ of prohibition, holding that venue for Blaes’ claim must be determined separately, and because Blaes’ “wife was first injured in St. Louis County . . . , venue [was] only proper in St. Louis County.” *Id.* at \*4. The Court further held that “joinder of [Blaes’] claims in the petition with the other plaintiffs’ claims . . . cannot

establish venue in St. Louis city or any other county in Missouri.” *Id.* Any other holding would be “contrary to the express provisions of Rule 51.01.” *Id.*

6. The Supreme Court additionally noted:

What Rule 51.01 and the holding in *Turnbough* make clear is joinder of Blaes’ claims with the other claims alleged in the petition cannot extend venue to a county where Blaes’ claims could not otherwise be brought and pursued. Because Blaes’ wife was first injured in St. Louis County, § 508.010.4 dictates the proper venue for Blaes’ claims is St. Louis County. The city of St. Louis is an improper venue for Blaes to pursue his claims.

*Id.* at \*6.

7. This case is *J&J*. Here, like there, multiple plaintiffs allege injury claims against Monsanto, but **only one plaintiff’s claims** are based on an alleged first injury in the City of St. Louis. The only basis for venue in the City of St. Louis for the other plaintiffs’ claims is joinder with the claims of Plaintiff Winston. As the Supreme Court held, “[t]his is a clear and direct violation of the express language of Rule 51.01...” *Id.* at \*5. Instead, the Court instructed that venue must be evaluated for each plaintiff’s claims.

8. Pursuant to § 508.010.5(1), in all actions in which there is any count alleging a tort and in which the plaintiff was first injured outside the state of Missouri, venue shall be proper in any county **where a defendant corporation’s registered agent is located**. Thus, St. Louis County, where Monsanto’s registered agent is located, is the proper venue for the claims of all plaintiffs who allege first injury against Monsanto outside the state of Missouri.

9. Similarly, pursuant to § 508.010.4, when plaintiff was first injured in the state of Missouri, venue is proper **in the county where plaintiff was**

**first injured.** Thus, venue is improper in the City of St. Louis for all plaintiffs alleging first injury within Missouri, but outside of the City of St. Louis.

10. “[W]hen venue is improper, the circuit court has a ‘ministerial duty’ to transfer the case to a county where venue is proper.” *J&J*, at \*6 (quoting *State ex rel. Heartland Title Servs., Inc. v. Harrell*, 500 S.W.3d 239, 243 (Mo. banc 2016)). Thus, for the foregoing reasons, this Court must transfer all claims against Monsanto by all plaintiffs not alleging first injury within the City of St. Louis to St. Louis County or other county where venue is proper.

11. Specifically, this Court must transfer all claims against Monsanto by plaintiffs alleging first injury outside of Missouri to St. Louis County, *except for* plaintiff Walter Winston, who alleges first injury in the City of St. Louis, and plaintiff Rhonda Johnson, who alleges first injury in Lawrence County, Missouri (specifically Monnet, Missouri). See 3/12/18 Petition, at ¶¶ 2, 58.

12. As to plaintiff Rhonda Johnson, this Court must transfer her claims against Monsanto to Lawrence County, Missouri, pursuant to § 508.010.4.

WHEREFORE, Monsanto respectfully requests that the Court grant its renewed motion to transfer and transfer the claims of all Plaintiffs, except Walter Winston, to St. Louis County or an otherwise proper venue.

DATED: March 5, 2019

By: /s/ Erik L. Hansell

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**CERTIFICATE OF SERVICE**

I further certify that on March 5, 2019 the foregoing was electronically filed with the Clerk of the Court for St. Louis City, Missouri using Missouri Case.net which sent notification to all persons listed in the Court's electronic notification system.

By: /s/ Erik L. Hansell  
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