

4. Over the last two years, Lead Counsel, who has now ceased all work on this case, managed all aspects of this litigation on behalf of Defendants.

5. During that time, Lead Counsel has availed himself of the assistance of other attorneys only on limited issues and tasks in the case. Therefore, there is no other attorney who can acquaint himself or herself with all of the work Lead Counsel has done on this case in time to argue pre-trial motions on February 20, 2018 or try the case on March 5, 2018.

6. For those reasons, Defendants would be significantly prejudiced if pre-trial motions were to be argued on February 20, 2018 and if this matter were to be tried on March 5, 2018.

7. Under such circumstances, the Missouri Rules of Civil Procedure allow this Court to grant a continuance. MO. R. CIV. P. 65.03.

8. Based upon the procedural history of the relevant case law, it is evident that many courts – both state and federal – have long granted continuances due to illness of counsel. *See, e.g., Robinson v. Robinson*, 128 S.W.3d 543, 549 (Mo.Wpp. W.D. 2003) (discussing court’s previous declaration of a mistrial in which defendant’s attorney was allowed to withdraw for medical reasons after trial had already begun); *McGray v. U.S.*, 1982 WL 594718, *1 (D.Minn. 1982) (discussing prior continuance of trial due to illness of third-party defendant’s attorney); *State v. Devorss*, 120 S.W 75,

77 (Mo. 1909) (discussing multiple prior continuances, one of which was due to illness of one of defendant's attorneys); *State v. Hedgepeth*, 28 S.W. 160, 161 (Mo. 1894) (same); *Souder v. Owens-Corning Fiberglas Corp.*, 939 F.2d 647, 651–52 (8th Cir. 1991) (discussing trial court's accommodations for attorney's illness for 2 years).

9. Defendants' counsel certifies that Defendants have been consulted regarding these unfortunate and unexpected circumstances, they are aware of the contents of this motion, and they consent to this continuance.

10. Defendants' counsel has informed Plaintiffs' counsel of this matter but was not able to provide specific details regarding Lead Counsel's serious health condition due to privacy concerns regarding Lead Counsel. Plaintiffs' counsel has indicated that, in light of these developments, he will consent to continuing the pre-trial hearing and argument on pre-trial motions for seven days, pending the Court's ruling on the instant motion. Counsel for the parties have agreed to continue the filing of pre-trial materials to February 23, 2018, pending the Court's ruling on this motion. Counsel for the parties have further agreed to argue the instant motion telephonically on February 20, 2018 at 1:00 p.m. Plaintiffs' counsel has indicated that he cannot consent to a continuance of the March 5, 2018 trial setting at this time without knowing more about the underlying circumstances.

11. The deposition of Anne Precythe, the Director of the Missouri Department of Corrections, is currently scheduled for February 22, 2018. Should the Court grant the instant motion, Defendants request that an Order be entered continuing the deposition of Director Precythe to a later mutually agreeable date. This will allow new lead counsel to enter on the case and have sufficient time to get up to speed on the case and adequately prepare for and defend the deposition.

12. Undersigned counsel has attached an affidavit verifying the facts upon which this motion is based. Exhibit A.

WHEREFORE, for the foregoing reasons, Defendants respectfully request that the Court grant their Motion for Continuance; enter its Order accordingly; and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

JOSHUA D. HAWLEY
Attorney General

/s/Andrew D. Kinghorn

Andrew D. Kinghorn, #66006

Post Office Box 899

Jefferson City, MO 65102

Tel: (573) 751-3321

Fax: (573) 751-9456

Email: Andrew.Kinghorn@ago.mo.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2018, the foregoing was filed via the Court's electronic filing system to be served on all counsel of record, and was sent by email to Plaintiffs' counsel at: gary@burgerlaw.com.

/s/Andrew D. Kinghorn