

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

MISSOURI ROUNDTABLE FOR LIFE, INC.,)	
and FREDERIC N. SAUER,)	
)	Cause No. 08AC-CC00517
Plaintiffs,)	
)	Division No. 1
vs.)	
)	
SARAH STEELMAN, in her official)	
capacity as Missouri Treasurer, et al.,)	
)	
Defendants.)	

**PLAINTIFFS’ MOTION TO STRIKE AFFIDAVIT OF ROB MONSEES AND
SUR-REPLY IN OPPOSITION TO DEFENDANTS’ MOTIONS TO DISMISS**

Plaintiffs Missouri Roundtable for Life, Inc. (“Missouri Roundtable” or “MRFL”) and Frederic N. Sauer (“Sauer”) respectfully move to strike the Affidavit of Rob Monsees, filed in support of State Defendants’ Motion to Dismiss, as follows:

1. Plaintiffs deposed Rob Monsees on October 23, 2008; the deposition revealed that Mr. Monsees’ Affidavit lacks proper foundation and therefore is inadmissible and cannot be considered by the Court on the Defendants’ Motions to Dismiss.

2. To be considered by the Court, affidavits must have a proper evidentiary foundation and be admissible in evidence. *Wood v. Procter & Gamble Mfg. Co.*, 787 S.W.2d 816, 820 (Mo.App. 1990) (requirement, under Rule 74.04(e), that affidavits must contain admissible evidence are applicable to affidavits under Rule 55.28). Further, “[l]egal conclusions [in an affidavit] are not admissible facts.” *Scott v. Ranch Roy-L, Inc.*, 182 S.W.3d 627, 635 (Mo.App. 2005) citing *Cardinal Glennon Children’s Hospital v. St. Louis Labor Health Institute*, 891 S.W.2d 560, 561 (Mo.App. 1995); *First Community Bank v. Western Surety Co.*, 878 S.W.2d 887, 890-91 (Mo.App. 1994).

3. In his Affidavit, Mr. Monsees makes several assertions of :

- a. what the members of the boards of the LSRB¹ and MTC² either do or do not believe;
- b. whether there is a legal conflict among RSMo § 196.1127, HB 2007, and Article III § 38(d) of the Missouri Constitution (“Article III §38(d)”); and
- c. legal conclusions about the applicability of various statutory provisions and restrictions to appropriations to the Life Sciences Research Trust Fund.

4. Mr. Monsees’ deposition testimony reveals that many of the assertions in his affidavit are not based on personal knowledge, are not based on legal opinions or analyses, and instead are speculation and conjecture or simply are legal conclusions. Plaintiffs incorporate by reference the transcript of the deposition of Mr. Monsees.³

5. As such, the Affidavit is inadmissible, cannot be considered by the Court on Defendants’ Motions to Dismiss, and should be stricken.

6. Mr. Monsees’ deposition testimony further demonstrates that the Court should deny Defendants’ Motions to Dismiss. Among other points, which Plaintiffs will expand upon at oral argument, Mr. Monsees testified that:

- a. Defendants’ supposed “agreement” that there is no conflict between RSMo.§ 196.1127 and Article III §38(d) is a personal position, not a legal position, and is not based on any opinion of counsel;
- b. Defendants’ supposed “agreement” that there is no conflict between HB 2007 and Article III §38(d) is a personal position, not a legal position, and is not based on any legal opinion;

¹ Defendant Life Sciences Research Board.

² Defendant Missouri Technology Co

³ Plaintiffs do not yet have the deposition transcript but will file the same as soon as possible upon receipt.

- c. Defendants' supposed "agreement" that there is no conflict among RSMo. § 196.1127, HB 2007, and Article III §38(d) is a personal position, not a legal position, and is not based on any legal opinion; and
- d. Defendants LSRB and MTC are *not* in a position to enter into a binding agreement that there is no conflict among RSMo. § 196.1127, HB 2007, and Article III §38(d).

7. As such, the fundamental premise of Defendants' motions – that there is no controversy as to whether there is a conflict among RSMo. § 196.1127, HB 2007, and Article III §38(d) – simply is false, as demonstrated by the deposition of Mr. Monsees.

8. The Court accordingly should deny Defendants' Motions to Dismiss.

WHEREFORE, Plaintiffs respectfully move the Court to strike the Affidavit of Rob Monsees, deny Defendants' Motions to Dismiss, and grant Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served via electronic mail, facsimile, and by U.S. Mail, postage pre-paid, on this _____ day of October, 2008, upon:

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