

STATE OF MINNESOTA  
COUNTY OF ST. LOUIS

IN DISTRICT COURT  
SIXTH JUDICIAL DISTRICT

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Harry R. Welty, Laurence J. Burda,  
Dean Davidson, Robert D. Serphon,  
and Art Johnston,

Court File No. 69DU-CV-09-758

Plaintiffs,

**DEFENDANT ISD #709's RESPONSE TO  
MOTION FOR A SEPARATE TRIAL**

vs.

Independent School District #709  
and Johnson Controls, Inc.,

Defendants.

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### INTRODUCTION

The Plaintiffs have moved the court for a "separate trial." The request is for an exception to the typical rule and process. The motion should be denied.

### ARGUMENT

The Plaintiffs refer to Minn. R. Civ. P. 42.02 and argue that there is narrow central issue to be resolved in a "separate trial". The Plaintiffs go on to state two issues for the separate initial trial. (Interestingly, these two issue statements are different from the stated issues for resolution in the Plaintiffs' Motion for Judgment on the Pleadings.)

The Plaintiffs again request the court issue an injunction. The terms of the injunction are not stated in the motion. No injunction motion is pending, and the Plaintiffs have not addressed the legal factors required for injunctive relief.

The two issues advanced for the initial “separate trial” contain a number of factual questions. Only if the court has jurisdiction and if Plaintiffs have stated a legal claim will the court reach these fact questions in any case. If so, the fact questions presented by Plaintiffs’ two issues will arguably require discovery. The issues will then be subject to dispositive motions under Rule 56, Summary Judgment.

The separation of the issues as requested would require two separate discovery processes and two sets of motions for summary judgment. This duplication will not promote convenience or avoid prejudice, nor will it be conducive to expedition and economy in any respect. Rather, the separation will simply require two courses of discovery, dispositive motions and trial.

Perhaps most importantly, the issues stated by the Plaintiffs in this motion clearly involve the costs of the LRFP (Long Range Facilities Plan.) The *reasonableness* of the exercise of the school board’s discretion, should it become a proper question for the court, would undoubtedly involve the details of the costs and savings related to the project. Thus, the financial issues cannot be separated from any other justiciable issue.

Separate trials should not be ordered if the issues are so interrelated that one may not stand alone as long as there is not prejudice or undue confusion. *United Air Lines, Inc .v. Weiner*, 286 F.2d 302 (9th Cir. 1961). Separation is not appropriate where evidence overlaps or where the liability closely intertwines with damage issues. *Id.*

### CONCLUSION

The Plaintiffs simply seek to have the court quickly declare that the JCI Contract is void and effectively issue injunctive relief. The motion is yet another attempt by the

Plaintiffs to halt a properly authorized public project without meeting the required legal standards and without supplying proper security. The motion should be denied.

Respectfully submitted,

Dated: May 14, 2009

KENNEDY & GRAVEN, CHARTERED

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