

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MIDWEST INDUSTRIAL SUPPLY, INC)	CASE NO: 5:08 CV 1374
)	
Plaintiff,)	JUDGE OLIVER
)	
vs.)	MAG. JUDGE BAUGHMAN
)	
SOILWORKS, LLC)	
)	
Defendant.)	

**PLAINTIFF’S MOTION FOR LEAVE TO FILE INSTANTER A SUR-REPLY IN
FURTHER SUPPORT OF ITS OPPOSITION TO DEFENDANT’S MOTION TO
DISMISS, OR, IN THE ALTERNATIVE, MOTION TO TRANSFER VENUE**

Plaintiff Midwest Industrial Supply, Inc. (“Midwest”) hereby moves for leave to file instant a sur-reply to *Soilworks LLC’s Reply to Midwest’s Opposition to Soilworks LLC’s Motion to Dismiss, or, in the Alternative, Motion to Transfer Venue and Consolidate* (ECF Docket No. 16) (“Reply Brief”). In its reply, Defendant Soilworks LLC asserts arguments not addressed in either its initial motion to dismiss or in Midwest’s initial opposition. As such, Midwest has not previously had an opportunity to respond to these arguments. Under such circumstances, courts routinely grant leave to file a sur-reply. *See Elliott Co. v. Liberty Mut. Ins. Co.*, 239 F.R.D. 479, 480 n. 1 (N.D. Ohio 2006) (granting leave to file a sur-reply to address issues raised for the first time in the reply); *Beckett v. Ford*, Slip Copy, No. 3:06 CV 1319, 2007 WL 2891122, *18 (N.D. Ohio Sept. 28, 2007) (same). Accordingly, Midwest seeks leave to file instant its concise sur-reply brief, which is attached hereto as “Exhibit A.”

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this PLAINTIFF'S MOTION FOR LEAVE TO FILE INSTANTER A SUR-REPLY IN FURTHER SUPPORT OF ITS OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, OR, IN THE ALTERNATIVE, MOTION TO TRANSFER VENUE is being filed electronically, on this 4th day of September, 2008. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ John M. Skeriotis
John M. Skeriotis

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