

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TORIBIO MANZANO, JR.	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 99-4999
THE MID-ATLANTIC COCA-COLA BOTTLING COMPANY, INC.	:	
and	:	
COCA-COLA ENTERPRISES, a/k/a COCA-COLA ENTERPRISES, INC.	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

March 6, 2000

Presently before the Court is the Defendant's Motion to Transfer Venue. For the reasons stated below, the Motion is Denied.

I. FACTUAL BACKGROUND

This action arises from an accident which occurred October 9, 1997 at the Mid Atlantic Coca-Cola Bottling Company's, Baltimore Production Center, located at 701 North Kresson Street, Baltimore, Maryland ("Facility"). Plaintiff Toribio Manzano, Jr. ("Plaintiff"), a resident of Pennsylvania and an employee of EF Lea Electrical Contractors, Inc. ("EF Lea"), was performing work at the Facility when he claims to have been struck by a forklift operated by an employee of the Defendant Coca Cola Enterprises, Inc. d/b/a Mid Atlantic Coca-Cola Bottling Company ("Defendant"). The employee, Anthony Parker, ("Parker") is a resident of Baltimore.

The accident occurred in Baltimore and Plaintiff's initial medical care took place in Maryland. However, Plaintiff received significant medical care upon his return to the Philadelphia area.

II. LEGAL STANDARD

A district court may transfer the venue of any civil action for the convenience of parties and witnesses or in the interests of justice, to any other district where it might have been brought. 28 U.S.C. § 1404(a). The purpose of this section is “to prevent the waste of ‘time, energy and money’ and ‘to protect litigants, witnesses and the public against unnecessary inconvenience and expense’” Van Dusen v. Barrack, 376 U.S. 612, 616 (1964) (quoting Continental Grain Co. v. Barge FBL-585, 364 U.S. 19, 26-27 (1960)). Although § 1404(a) gives a district court the discretion to decide a motion based on an individualized case by case basis consideration of convenience and fairness, such motions are not to be liberally granted. Stewart Organization, Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1987).

In ruling on a motion to transfer, the Court should consider “all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum. See, Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). The first step in a court's analysis of a transfer motion is to determine whether venue would be proper in the transferee district. If the first prong of the inquiry is satisfied, the court then should determine whether a transfer would be in the interests of justice. Id. at 879. It is important to note that the party moving to transfer a case on grounds of inconvenience has the burden of showing that the existing forum is inconvenient. Britamco

Underwriters v. Raymond E. Wallace Productions, Inc., 56 F.Supp.2d 542, 545 (E.D. Pa. 1999)
(Joyner, J.).

III. DISCUSSION

A. Could the action have been brought in the District of Maryland?

Any civil action wherein jurisdiction is not found solely on the diversity of citizenship may be brought in a district in which a substantial part of the events or omissions giving rise to the claim occurred. 28 U.S.C. §1391(b)(2). The accident giving rise to this claim occurred in Baltimore, Maryland. Therefore, the case could have been initially brought in the District of Maryland.

B. Would a transfer to the District of Maryland be in the interests of justice and for the convenience of witnesses and parties?

The second part of the transfer analysis requires a balancing of the interests of justice and the convenience of witnesses and parties. A court considers both private and public interests when deciding such a motion. Such factors include (1) the convenience and preference of the parties, including the plaintiff's choice of forum, (2) the convenience of witnesses, (3) access to sources of proof such as books and records, (4) practical considerations that make litigation easy, expeditious or inexpensive, (5) the relative calendar congestion of the two competing districts, (6) where the events at issue took place and the interest of the respective courts in deciding local controversies (7) the enforceability of any judgment and (8) the familiarity of the trial judge with the applicable law. See, Jumara, 55 F.3d at 879-880. The factors listed above, that are relevant to this case and were argued by the parties, will be discussed in turn.

1. Convenience of Parties and Plaintiff's Choice of Forum

The plaintiff's choice of forum is a paramount consideration that should not lightly be disturbed. See, First Union National Bank v. United States, 55 F.Supp. 2d 331, 332 (E.D. Pa. 1999) (*quoting* Sovereign Bank, F.S.B. v. Rochester Community Savings Bank, 907 F.Supp. 123, 126 (E.D. Pa. 1995) (denying motion to transfer even though plaintiff filed in a district which was not his home nor the situs of events in contention). Moreover, unless the balance of convenience of the parties is strongly in favor of defendant, the plaintiff's choice of forum should prevail. See Affymetrix, Inc. v. Synteni, Inc., 28 F.Supp.2d 192, 197 (D.Del. Nov 18, 1998), (*quoting* Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970). When considering a motion to transfer, a court may consider the "convenience of the parties as indicated by their relative physical and financial condition." Jumara, 55 F.3d at 879.

In the present action, the Plaintiff has chosen to bring suit in the district of his residence. Looking at the relative financial conditions of the parties, it would be less of a burden for the Defendant corporations to incur the cost of litigating in Philadelphia than it would be for Plaintiff to litigate in Baltimore. Therefore, this factor weighs against granting the transfer.

2. Convenience of Witnesses

There are few witnesses in this case. The Defendant only mentions Parker and the medical personnel who gave Plaintiff his initial treatment as possible witnesses who have Maryland residence. Plaintiff counters with a witness list including himself, family members and medical personnel who treated him upon his return to Pennsylvania. All those mentioned by Plaintiff reside within or near the Eastern District of Pennsylvania. Since Parker is an employee

of the Defendant, it would not be particularly inconvenient for Defendant to pay for his travel to Philadelphia. This factor, therefore, weighs against transfer.

3. Where the events at issue took place

Since, the accident occurred in Maryland, this factor weighs in favor of transfer. However, the Defendant has not convincingly argued why it would be much more convenient to try the case near where the accident occurred. This factor shall not be accorded great weight.

4. Interests of the State

Defendant argues that this a local issue for Maryland citizens to decide. It claims that a Pennsylvania jury should not have to decide an issue that will have no effect in its community. Plaintiff counters that Pennsylvania does have an interest in the outcome of this case. Plaintiff is currently receiving public assistance from the Commonwealth. If Plaintiff were to recover from Defendant, the state's workers' compensation carrier may have subrogation rights. Also, Plaintiff is currently involved in litigation concerning his right to additional workers' compensation benefits. This factor weighs against transfer.

IV. CONCLUSION

The Defendant must meet a stringent burden in order for the Court to grant a transfer of venue. Defendant has not done so here. The circumstances of his case do not warrant such a transfer.

An appropriate Order follows.

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	:	
Defendants.	:	

ORDER

AND NOW, this 6th day of March, 2000, upon consideration of Defendant's Motion to Transfer Venue (Docket No. 8), and the Plaintiff's Response thereto (Docket No. 9), it is hereby **ORDERED** that Defendant's Motion is **DENIED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.