

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

ROYAL INSURANCE COMPANY : CIVIL ACTION  
: :  
v. : :  
: :  
PACKAGING COORDINATORS, INC., : :  
et al. : NO. 00-CV-3231

**MEMORANDUM**

**Padova, J.**

**September , 2000**

Plaintiff Royal Insurance Company (“Royal”) filed this action against Defendants Packaging Coordinators Incorporated (“PCI”) and Roche Diagnostics Corporation (“Roche”) on June 26, 2000. Royal seeks a declaration that it has no duty to defend PCI in a civil action filed on August 9, 1999, in the Circuit Court for Montgomery County, Maryland under the caption Roche Diagnostics Corporation v. Packaging Coordinators, Inc., Civil Action No. 202204 (“Maryland Action”). The Maryland Action involves claims for damages for PCI’s alleged mishandling of a shipment of Roche’s products. Before the Court is PCI’s Motion to Change Venue pursuant to 28 U.S.C. § 1404. The Motion has been fully briefed. The Court declines to hold oral argument. The matter, therefore, is ripe for decision. For the reasons that follow, the Court will deny PCI’s Motion.

**I. Legal Standard**

Section 1404(a) provides for the transfer of a case where both the original and requested venue are proper. Jumara v. State Farm Ins. Co., 55 F.3d 873, 878 (3d Cir. 1995). The party seeking transfer of venue bears the burden of establishing that transfer is warranted. Id. at 879. The moving

party may meet this burden through extrinsic documents including affidavits, depositions, and stipulations. Electro Medical Equip. Ltd. v. Hamilton Medical AG, No. Civ. A. 99-579, 1999 WL 1073636, at \*10 (E.D. Pa. Nov. 16, 1999).

Courts may transfer an action to any other district where venue is proper “for the convenience of parties and witnesses, [or] in the interest of justice.” 28 U.S.C. § 1404(a) (1994). Courts consider a host of factors reflecting both the interests of the public and of the individual litigants in addition to the three factors enumerated in section 1404(a) when determining whether transfer is appropriate.

Jumara, 55 F.3d at 879. The private interests include:

(1) the plaintiff’s forum preference; (2) the defendant’s preference; (3) whether the claim arose elsewhere; (4) the convenience of the parties as indicated by their relative physical and financial condition; (5) the convenience of the witnesses - but only to the extent that the witnesses may actually be unavailable for trial in one of the potential fora; [and] (5) the location of books and records (similarly limited to the extent that files could not be produced in the alternative forum).

Id. The public interests include:

(1) the enforceability of the judgment; (2) the relative administrative difficulty in the two fora resulting from court congestion; (3) the local interest in deciding local controversies; (4) the public policies of the fora; and (5) the familiarity of the trial judge with the applicable state law in diversity cases.

Id. at 879-80.

The decision whether to transfer an action rests in the district court’s sound discretion. Lony v. E.I. DuPont de Nemours & Co., 886 F.2d 628, 631-32 (3d Cir. 1989). In ruling on the defendant’s motion, however, the plaintiff’s choice of venue “should not be lightly disturbed.” Jumara, 55 F.3d at 879 (citation omitted). The court’s discretion, therefore, is tempered by the strong presumption in favor of the plaintiff’s choice of venue. See Mountbatten Surety Co. v. Reagerharris Inc., No. Civ.

A. 99-3052, 2000 WL 39063, at \*9 (E.D. Pa. Jan. 18, 2000).

## II. Discussion

On June 30, 2000, PCI and Cardinal Health, Incorporated (“Cardinal”), PCI’s parent company, filed suit in the Southern District of Ohio seeking a declaration that Royal has a duty to defend PCI in the Maryland action and damages for breach of insurance contract (“Ohio Action”). PCI requests the Court transfer this action to the Southern District of Ohio, presumably for consolidation with the Ohio Action. Assuming without deciding that venue would be proper in the Southern District of Ohio, the Court declines to transfer venue pursuant to section 1404(a) because Defendant has failed to produce any evidence supporting the necessity for transfer.

The Court is obligated to apply a presumption in favor of Plaintiff’s venue preference, the Eastern District of Pennsylvania. See Mountbatten, 2000 WL 39063, at \*9. The Court rejects PCI’s argument that the presumption in favor of Royal’s choice of venue does not apply because of the anticipatory nature of Royal’s claim and because PCI and Cardinal are the true plaintiffs to the Pennsylvania action. PCI cites no authority in support of its proposition that insured defendants in coverage disputes in which declaratory judgment is sought should be realigned as plaintiffs for the purposes of determining the propriety of transfer of venue.<sup>1</sup> The nature of the claims asserted in the actions is also irrelevant to the application of the presumption. Additionally, the claim disputed in the instant action arose within the Eastern District of Pennsylvania. Although the insurance policy may have been purchased by an Ohio entity from an Ohio insurance broker, the operative events

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<sup>1</sup>Federal Ins. Co. v. Safeskin Corp., No. 98 Civ. 2194(DC), 1998 WL 832706 (S.D. N.Y. Nov. 25, 1998) is distinguishable since it involves the realignment of parties in a declaratory action for a completely different purpose, namely to determine subject matter jurisdiction based on diversity of citizenship. Id. at \*1.

resulting in the Maryland Action and creating the insurance risk for which coverage is disputed occurred in Philadelphia. Accordingly, the Eastern District has a strong local interest in deciding whether Royal is required to defend PCI for an insurance risk arising out of PCI's activities in Philadelphia.

Furthermore, this action was filed before the Ohio Action. The "first-filed rule" provides that the court that "first has possession of the subject must decide it." Equal Employment Opportunity Commission v. University of Pennsylvania, 850 F.2d 969, 971 (3d Cir. 1988). This rule applies in declaratory actions, National Foam, Inc. v. Williams Fire & Hazard Control, Inc., No. Civ. A. 97-3105, 1997 WL 700496, at \*7 (E.D. Pa. Oct. 29, 1997), and is designed to avoid duplicative litigation and prevent the embarrassment of conflicting judgments, EEOC, 850 F.2d at 977. Departures from the rule are rare, and the subsequently-filed action should proceed in only exceptional circumstances demonstrating inequitable conduct, bad faith, or forum shopping. Id. at 972; Zelenkofske Axelrod Consulting, L.L.C. v. Stevenson, No. Civ. A. 99-3508, 1999 WL 592399 (E.D. Pa. Aug. 5, 1999)(publication page references unavailable).

PCI has not demonstrated the existence of any exceptional circumstances here. Contrary to PCI's assertion, the Ohio action has not developed significantly further than the instant case so as to warrant transfer. See EEOC, 850 F.2d at 976. Additionally, there is no evidence that Royal was motivated by the desire to forum shop when instituting suit in this District. See id. District courts may not dismiss a declaratory action merely because a suit alleging affirmative claims is subsequently filed elsewhere because declaratory suits are by their nature anticipatory and often followed by an affirmative suit. IMS Health, Inc. v. Vality Tech., 59 F. Supp. 2d 454, 463 (E.D. Pa. July 28, 1999). Given the extensive correspondence concerning coverage between Royal and

Cardinal, the short intervening time between filing of this action and the Ohio Action is not indicative of forum shopping or bad faith. Rather, the evidence indicates that Cardinal and PCI had advance notice of Royal's suit. Royal submits evidence that on June 23, 2000, Royal informed PCI and Cardinal by letter of its intent to file a declaratory judgment suit that Cardinal received on June 28, 2000. (Royal Ex. C). PCI admits receiving Royal's Complaint on the same date. (Mot. at 4). PCI adduces no evidence that Royal knew that PCI and Cardinal were going to file a separate action prior to either July 6, 2000, when Cardinal informed Royal of the pendency of the Ohio Action by letter, or service of the Ohio Action's complaint. Furthermore, there is no evidence that the Southern District of Ohio is a less-favorable forum for Royal. See EEOC, 850 F.2d at 976. In the absence of evidence indicating forum shopping or bad faith, the Court will apply the first-filed rule and retain jurisdiction over this action.

None of the remaining Jumara interests support transferring venue to the Southern District of Ohio. To the extent that witness testimony is actually necessary to resolve this action, PCI presents no evidence that any potential witnesses would in fact be unavailable in the Eastern District. Even if the majority of documents associated with the action are indeed located in Ohio, there is no evidence that such documents would be unavailable for production before this Court. The parties contest the law applicable to this action and the Court declines to decide a complex choice of law issue in the context of this Motion.

For the foregoing reasons, the Court denies PCI's Motion. An appropriate Order follows.

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**ORDER**

**AND NOW**, this      day of September, 2000, upon consideration of Defendant Packaging Coordinators Incorporated's Motion for Change of Venue and Stay of Proceedings (Doc. No. 7), and all responsive and supporting briefing, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

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John R. Padova, J.