

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

JOANNE LOWERY, as Wife and	:	
Personal Representative of the Estate of	:	
John Lowery, Deceased	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
GREAT LAKES DREDGE & DOCK CO.	:	01-CV-757
	:	
Defendant.	:	

STEPHEN DEAN	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
GREAT LAKES DREDGE AND DOCK CO.	:	01-CV-758
	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J.

July 18, 2001

Presently before the Court are Great Lakes Dredge and Dock Co.’s (“Defendant”) Motion to Consolidate and Motion to Transfer and Joanne Lowery and Stephen Dean’s (“Plaintiffs”) Response thereto. For the reasons stated below, Defendant’s Motion to Consolidate will be granted and Defendant’s Motion to Transfer will be denied.

I. BACKGROUND

On October 31, 1999, the Cavalier State, a work boat owned by Defendant, capsized in Florida territorial waters of the St. Mary's Entrance Channel while conducting a maintenance dredging project. John Lowery ("Lowery"), Joanne Lowery's husband, died in the accident while working for Defendant as the master of the Cavalier State. Stephen Dean ("Dean") was working for Defendant as the deckhand on the Cavalier State and alleges he was personally injured in the accident. Plaintiffs initiated two separate actions against Defendant, one on behalf of Lowery and one on behalf of Dean. Defendant asks the Court to consolidate these actions and transfer them to the Eastern District of North Carolina.

II. DISCUSSION

A. Motion to Consolidate

As mentioned above, there are currently two separate actions before the Court which Defendant has motioned to consolidate: the Lowery death action (01-CV-757) and the Dean personal injury action (01-CV-758). Federal Rule of Civil Procedure 42(a) provides:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in the issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delays.

Fed. R. Civ. P. 42(a).

Consolidation is at the discretion of the trial court and should be permitted where the consolidation of separate actions presenting common questions of law or fact will promote convenience and economy in judicial administration. See *Graphic Arts Int'l Union v. Haddon*

Craftsmen, Inc., 489 F. Supp. 1088, 1091 n. 1 (E.D. Pa. 1979); see also In re TMI Litigation, 193 F.3d 613, 724 (3d Cir. 1999) (“The purpose of consolidation is to streamline and economize pretrial proceedings so as to avoid duplication of effort, and to prevent conflicting outcomes in cases involving similar legal and factual issues.”) (internal quotation omitted).

In support of its motion, Defendant argues that the operative facts, issues of liability, liability witnesses, documentary evidence, and questions of law are the same for both civil actions. Similarly, Defendant has pleaded the defense of contributory negligence in each action. Only on the issue of damages does Defendant concede that the facts and law are somewhat unique to each plaintiff.

Plaintiffs have not opposed Defendant’s Motion to Consolidate. The Court agrees that the administration of justice would be best served by consolidation and will Order the cases consolidated.

B. Motion to Transfer

Defendant seeks to transfer these actions from the Eastern District of Pennsylvania to the Eastern District of North Carolina. Even when venue is proper, “[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). The moving party bears the burden of establishing the need for a transfer by demonstrating that (1) the case could have been brought initially in the proposed transferee forum; (2) the proposed transfer will be for the convenience of the parties; (3) the proposed transfer will be in the interest of the convenience of the witnesses; and (4) the proposed transfer

will be in the interest of justice. See Miller v. Consolidated Rail Corp., 196 F.R.D. 22, 24-25 (E.D. Pa. 2000); see also Jumara v. State Farm Ins., 55 F.3d 873, 879 (3d Cir. 1995).

As to the first of these elements, the Court believes venue would be proper in the Eastern District North Carolina since Plaintiffs are residents of the Eastern District of North Carolina and Defendant is currently performing dredging contracts there. Defendant must next show that the balance of conveniences weighs “strongly in favor” of transfer. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947). As to the remaining elements, the factors to be considered are the same as those relevant to a motion to dismiss for forum nonconveniens grounds, see Norwood v. Kirkpatrick, 349 U.S. 29, 32 (1955), which include the following:

1. plaintiff’s choice of forum;
2. relative ease of access to sources of proof;
3. availability of compulsory process for attendance of unwilling witnesses;
4. cost of obtaining attendance of willing witnesses;
5. possibility of viewing premises, if applicable;
6. all other practical problems that make trial of a case easy, expeditious, and inexpensive; and
7. “public interest” factors, including the relative congestion of court dockets, choice of law considerations, and the relative relationship of the community in which the courts and jurors are required to serve to the occurrences that give rise to the litigation.

Cain v. DeDonatis, 683 F. Supp 510, 512 (E.D. Pa. 1988) citing Gulf Oil Corp., 330 U.S. at 508-09.

In analyzing a motion to transfer venue, the plaintiff’s choice of forum is a paramount consideration and that choice should not lightly be disturbed. See Shuttle v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970). “The burden is on the moving party to establish that a balancing of proper interests weighs in favor of the transfer, . . . and unless the balance of

convenience of the parties is strongly in favor of the defendant, the plaintiff's choice of forum should prevail." Id. at 25 (internal quotations omitted).

Although Defendant has identified a number of witnesses and specified their supposed residences, Defendant has not asserted that these witnesses are expected to testify or are in fact unwilling to testify in Philadelphia. Defendant also has not specified the subject matter of their testimony, nor the cost of obtaining their testimony in this district. See Micheel v. Haralson, 586 F.Supp 169, 173 (E.D. Pa. 1983) citing Reyno v. Piper Aircraft Co., 630 F.2d 149, 160-61 (3d Cir. 1980), rev'd on other grounds, 454 U.S. 235 (1981) (denying transfer where the party seeking transfer failed to set out a general statement of what the testimony of the witnesses would cover). Additionally, because the potential witnesses identified by Defendant are its own employees, it is unlikely that compulsory process will be required to obtain their testimony. Moreover, the listed witnesses, with the exception of Dean and Olin Clyde Ivey, are not residents of North Carolina. The inconvenience of testifying in Philadelphia as compared to North Carolina is marginal at best and is insufficient to overturn Plaintiffs' choice of forum. Defendant does suggest that North Carolina jurors would be more interested in this dispute than Pennsylvania jurors. Even if true, such an allegation is insufficient, itself, to warrant transfer. Other considerations that Defendant raises, such as the location of Defendant's books and records, and Plaintiffs medical records, are also unpersuasive. Plaintiffs allege that Defendant is already in possession of their medical records, and Defendant's records, which are located in Florida, would have to be moved regardless of venue in Pennsylvania or North Carolina.

Upon consideration of Defendant's motion and Plaintiff's response and weighing the relevant factors in light of the facts of this case, the Court concludes that Defendant has not

sustained its burden of establishing a need for a transfer. Accordingly, the Court will deny Defendant's Motion to Transfer.

III. CONCLUSION

For the reasons set forth above, Defendant's Motion to Consolidate will be GRANTED and Defendant's Motion to Transfer will be DENIED.

An appropriate order follows.

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ORDER

AND NOW, this 18th day of July, 2001, upon consideration of Great Lakes Dredge & Dock Co.'s Motion to Consolidate and Motion to Transfer (Docket No. 5) and Joanne Lowery and Stephen Dean's Response thereto (Docket No. 7), it is **ORDERED** that Defendant's Motion to Consolidate is **GRANTED** and Defendant's Motion to Transfer is **DENIED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.