

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

HENRY CZUBRYT : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
CONSOLIDATED RAIL CORP., :
Defendant. : No. 01-314

MEMORANDUM AND ORDER

J. M. KELLY, J.

FEBRUARY , 2002

Presently before the Court is Defendant's Motion to Transfer Pursuant to Title 28 U.S.C. § 1404 (1994), on the Basis of Forum Non Conveniens. Plaintiff, Henry Czubryt, a resident of Massachusetts, instituted this action in the Eastern District of Pennsylvania, seeking relief under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. §§ 51-60, for injuries sustained while he was working for Defendant, Consolidated Rail Corporation, in the District of Massachusetts. Defendant seeks to transfer this action to the United States District Court for the District of Massachusetts. For the reasons set forth below, Defendant's Motion is granted.

DISCUSSION

Section 1404(a) provides: "For the convenience of 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." In deciding whether to transfer a case under § 1404(a), district courts have broad discretion. See Plum Tree v. Stockment, 488 F.2d 754, 756 (3d Cir. 1973). The

threshold question is whether the alternative forum is a proper venue. See Sturm v. Consolidated Rail Corp., Civ. A. No.

90-4251, 1990 WL 131898, at *1 (E.D. Pa. Sept. 5, 1990). In the instant case, the parties concede that venue is proper in the District of Massachusetts since the cause of action arose there and Defendant conducts business there. See 45 U.S.C. § 56.

While "there is no definitive formula or list of the factors to consider" in deciding whether to transfer a case, courts weigh numerous variants, including the convenience of the parties, the plaintiff's choice of forum, the defendant's preference, whether witnesses will be unavailable in one of the fora, the expense of pursuing the case in each forum, court efficiency and administration, and local interests in the case. See Jumara v. State Farm Ins. Co., 55 F.3d 873, 879-80 (3d Cir. 1995); see also Jordan v. Delaware & Hudson Ry. Co., 590 F. Supp. 997, 998 (E.D. Pa. 1984).

In the instant case, Defendant has cited several factors that warrant a transfer: (1) the injuries were sustained in the District of Massachusetts; (2) Plaintiff lives and worked in the District of Massachusetts; (3) Plaintiff's health care providers are located in the District of Massachusetts; (4) all fact witnesses and sources of proof concerning Defendant's liability are located in the District of Massachusetts; (5) Defendant would prefer to litigate in the District of Massachusetts; and (6)

litigation will be less costly in the District of Massachusetts, since all evidence and witnesses are either located in the Districts of Massachusetts or subject to compulsory process there. In opposition, Plaintiff argues that the case should remain in the Eastern District of Pennsylvania for the following reasons: (1) Plaintiff chose to pursue the case in this District, (2) Plaintiff's counsel is located here; (3) Defendant's corporate headquarters and primary place of business is here; and (4) Plaintiff intends to call former officers of Defendant whom he presumes reside in the Eastern District of Pennsylvania.

Plaintiff's considerations, however, do not outweigh the factors supporting a transfer. Although a plaintiff's choice of forum is generally of paramount importance, see Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255-56 (1981), the plaintiff's choice is accorded less deference where, as here, the plaintiff does not reside in the forum chosen and no operative facts occurred in the forum. See id.; see also National Mortgage Network, Inc. v. Home Equity Ctr., Inc., 683 F. Supp. 116, 119 (E.D. Pa. 1988). In addition, the location of the plaintiff's attorney is not a crucial factor and must cede importance where other factors strongly favor a transfer. See Solomon v. Continental Am. Life Ins. Co., 472 F.2d 1043, 1047 (3d Cir. 1973). The location of Defendant's corporate headquarters within the Eastern District of Pennsylvania is not determinative in this matter. Most, if not

all of the fact witnesses are likely to be found in the District of Massachusetts. The site of the injury is in the District of Massachusetts, and most, if not all of the evidence in this matter is likely to be found in the District of Massachusetts.

The fact that Plaintiff may call some witnesses located in the Eastern District of Pennsylvania who were formerly employed at the Defendant's corporate headquarters does not change the conclusion that transfer is proper. Plaintiff has not indicated that he will definitely call these witnesses or of what importance these witnesses are to his case; he has stated only his intent to call them. Further, Plaintiff may simply have these witnesses travel to the District of Massachusetts to testify, videotape their testimony, or employ some other modern means of obtaining their testimony at trial. See Roberts v. Consolidated Rail Corp., Civ. A. No. 93-0855, 1993 WL 88286 (E.D. Pa. Mar. 25, 1993). Accordingly, Defendant's Motion to Transfer is granted.

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O R D E R

AND NOW, this day of February, 2002, in
consideration Defendant's Motion to Transfer Venue Pursuant to
Title 28 U.S.C. § 1404 (Doc. No. 14) filed by Defendant,
Consolidated Rail Corporation and the Response of Plaintiff,
Henry Czubryt, thereto, it is **ORDERED** that Defendant's Motion is
GRANTED. Civil Action No. 01-314 is hereby **TRANSFERRED** to the
United States District Court for the District of Massachusetts.

BY THE COURT:

JAMES MCGIRR KELLY, J.