

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

AGROTORS, INC., : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
BELL HELICOPTER TEXTRON, INC., :  
and AUTO VALVE, INC., :  
Defendants. : No. 03-4345

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.**

**MARCH , 2004**

Presently before the Court is Defendant Bell Helicopter Textron, Inc.'s ("Bell") Motion to Transfer Venue Pursuant to Title 28 U.S.C. § 1404(a) ("Motion to Transfer"), on the basis of forum non conveniens, with which Defendant Auto Valve, Inc. ("Auto Valve") concurs, Plaintiff Agrotors, Inc.'s ("Plaintiff") Response, and Bell's Reply thereto. The Court will also consider the following papers that were filed without leave of Court: Plaintiff's Sur-Reply to the Motion to Transfer, Bell's Response to Plaintiff's Sur-Reply, Plaintiff's Supplemental Response, and Bell's Reply thereto.

Plaintiff, with its principal place of business in Gettysburg, Adams County, located in the Middle District of Pennsylvania (the "Middle District"), instituted this action in the Court of Common Pleas of Philadelphia County, located in the Eastern District of Pennsylvania (the "Eastern District"). Auto Valve, with Bell's consent, timely removed this action to the United States District Court for the Eastern District of

Pennsylvania on the ground of diversity jurisdiction pursuant to 28 U.S.C. § 1332.

This action arises from a claim for property damage allegedly caused by the failure of a valve and the surrounding screws manufactured by Auto Valve, that were sold by Bell to Plaintiff and installed in the engine of Plaintiff's helicopter. As a result of this failure, Plaintiff alleges that the helicopter suffered from "oil starvation," which caused the helicopter pilot to perform an emergency landing while on a firefighting mission in Arizona. Defendants Bell and Auto Valve (collectively, "Defendants"), seek to transfer this action for the convenience of the parties and the witnesses and in the interest of justice to the United States District Court for the Middle District of Pennsylvania. In support of its motion, Defendants state that there are no connections between the Eastern District and any of the facts and circumstances giving rise to this cause of action, with the exception of Plaintiff's counsel who is located in Philadelphia. For the reasons set forth below, Bell's Motion is **DENIED**.

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." 28 U.S.C. § 1404(a). 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 this action could have been filed in the United States District Court for the Middle District.

While "there is no definitive formula or list of the factors to consider" in deciding whether to transfer a case, courts weigh numerous factors, including: the convenience of the parties, the defendant's preference, whether witnesses will be unavailable in one of the fora, whether the claim arose elsewhere, the expense of pursuing the case in each forum, local interests, court efficiency and administration, and the plaintiff's choice of forum in the case. Jumara v. State Farm Ins. Co., 55 F.3d 873, 879-80 (3d Cir. 1995); see Jordan v. Delaware & Hudson Ry. Co., 590 F. Supp. 997, 998 (E.D. Pa. 1984). Defendants bear the burden of showing "that in the interests of justice and convenience" a transfer is warranted. See Wojtunik v. Kealy, Civ. A. No. 02-8410, 2003 WL 22006240, at \*7 (E.D. Pa. Sept. 30, 2003).

In considering the convenience of the parties and the Defendants' preference, all parties in this matter reside outside the Eastern District. Despite having its principal place of

business within the Middle District, in Gettysburg, Plaintiff opposes Bell's Motion to Transfer this case from the Eastern District to the Middle District. While Defendants concur that this case should be heard in the Middle District, neither defendant has its principal place of business in either the Middle or Eastern District, and neither defendant asserts that it has contacts beyond this matter with the Middle District. However, it is undisputed that Bell maintains a registered agent in Philadelphia, in the Eastern District, a fact the Court views as a significant contact with this district. The existence of a registered agent in this district shows that Bell was prepared to do business here and to be sued here.

Despite Bell's contentions, the Court is not persuaded that any party will be more inconvenienced in the Eastern District over the Middle District. Most of the witnesses in this matter are outside both the Eastern and Middle Districts. Defendants contend that a trial in the Eastern District is more inconvenient for witnesses than a trial in the Middle District. Two of Plaintiff's employees have first-hand knowledge of the alleged "oil starvation" incident in Arizona that forms the basis of Plaintiff's claims. These employees, Jim Halfman and Maurice Messersmith, reside in Colorado and Pennsylvania, respectively. While Maurice Messersmith will be traveling from the Middle District, as he works and resides there, there is no evidence

that he would be unwilling or inconvenienced in traveling to Philadelphia. Further, as Plaintiff repeatedly emphasizes in its papers before the Court, this is a products liability case and, as such, will be built around the testimony of expert witnesses from outside the Middle District. Other potential witnesses are employees of Bell and Auto Valve, who are located in Texas and Ohio, respectively, and employees of Consolidated Heliflight, who allegedly inspected Plaintiff's helicopter after the incident and is located in Oklahoma. Generally, witnesses' inconvenience shall be considered by the Court upon allegations of unavailability, but we need not give weight to this factor in the instant matter because no one here alleges that witnesses will be unavailable in the either of the fora.<sup>1</sup> See Emquschowa v. New York Steak & Seafood, Civ. A. No. 96-6252, 1997 WL 27103, at \*2 (E.D. Pa. Jan. 22, 1997) (explaining that the inconvenience of a lay witness is only considered to the extent that the witness may be unavailable for trial in one of the fora).

Further, considering the various means of transportation, the close proximity of the two districts minimalizes most of Defendants' convenience arguments in our analysis of factors that aid our decision regarding a transfer of venue in this case. See

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<sup>1</sup> Plaintiff has shown that there are direct flights from each of Bell, Auto Valve, and Consolidated Heliflight's places of business to Philadelphia, whereas there are no such direct flights to Harrisburg, Pennsylvania, in the Middle District.

Boyd v. C & M Carriers, Inc., Civ. A. No. 01-6971, 2003 U.S. Dist. LEXIS 7763, at \*2 (E.D. Pa. Apr. 7, 2003) (addressing convenience, the distance between Scranton, located in the Middle District, and Philadelphia, located in the Eastern District, was "an almost negligible factor").<sup>2</sup> In either district, the parties and witnesses would, at most, bear the additional inconvenience of a two-hour car ride.

The expense of litigation in this district over and above the expense in the Middle District, if this case were to be transferred, is de minimis. Defendants contend that relevant documents relating to this action, including flight logs, maintenance records, inspection records, and helicopter ownership documents, are located at Plaintiff's place of business in the Middle District and that it would be inconvenient bring them to this district. Defendants do not, however, assert that Plaintiff's documents and records will be unavailable in this forum. To the contrary, Plaintiff represents that its documents are not voluminous, and may easily be produced, transported and shipped to the Eastern District, thereby making their physical location in the Middle District inconsequential to disposing of this motion. See Jumara, 55 F.3d at 879 (stating that the

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<sup>2</sup> The distance from Scranton to Philadelphia is further than the distance at issue here, from Harrisburg to Philadelphia, which is the route anyone located in the Middle District would have to travel for this matter.

location of books and records only supports a transfer of venue when they cannot be produced in another forum). Whereas Plaintiff contends that the helicopter's component parts at issue to this litigation are already with its counsel in the Eastern District, there is also no measurable expense to calculate in that regard.

There is no question that Bell is subject to personal jurisdiction in the Eastern District. In addition to maintaining a registered agent here, Bell conducts business, by virtue of its customer service facilities, in the Eastern District. Bell has service repair facilities within the Eastern District, and, while Bell contends these facilities are independently operated, Bell admits that these facilities are permitted to use Bell's trademark to advertise themselves as Bell service centers as they provide maintenance, repair and overhaul services, and sell spare parts to operators of Bell helicopters in the Eastern District.

The Eastern District has an interest in this case because Bell, through its customer service facilities, circulates Bell helicopter parts in the Eastern District, and may have even circulated identical helicopter parts to the ones at issue. This district has an interest in the quality of Bell's products.

The Middle District has a local interest in the case because the events leading up to the alleged "oil starvation" incident occurred there. Specifically, the communications and

transactions between the respective parties relating to the sale of the allegedly defective valve, including shipment of the actual valve to Plaintiff, occurred between Plaintiff's office in the Middle District and Defendants' offices outside of Pennsylvania. An analysis of the remaining facts of this case, however, reveals that neither district has a very strong interest in this matter. The transactions between the respective parties in the Middle District are tangential to this action because the operative facts giving rise to this cause of action took place outside the Middle District. As this is a products liability case, the operative facts occurred in Ohio, where Auto Valve manufactured the allegedly defective product, and in Arizona, where the helicopter was allegedly damaged.

We find that both the United States District Courts for the Eastern District and for the Middle District of Pennsylvania are on equal footing to efficiently adjudicate this matter under the laws of this or another state. In this matter, court efficiency and administration is no better served in either district.

Any slight weight in favor of transfer is counterbalanced by the deference which must be paid to Plaintiff's choice of forum and the significance this Court puts on Bell maintaining a registered agent and conducting business in the Eastern District. We are mindful that a plaintiff's choice of forum, while usually of paramount importance, 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 Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255-56 (1981); see also National Mortgage Network, Inc. v. Home Equity Ctr., Inc., 683 F. Supp. 116, 119 (E.D. Pa. 1988). However lessened, the importance of Plaintiff's choice of forum should not be lightly disturbed. See Boyd, 2003 U.S. Dist. LEXIS 7763, at \*4 (E.D. Pa. Apr. 7, 2003) (denying transfer to the Eastern District where the defendants were subject to personal jurisdiction in the Middle District, and the Middle District was both the domicile of the plaintiffs and the location of the events that gave rise to the action because a plaintiff's choice of forum should not be "lightly disturbed"); see also Bretz v. Exel Logistics, Inc., Civ. A. No. 92-2067, 1992 WL 212343, at \*2 (E.D. Pa. Aug. 26, 1992) (finding that a non-resident plaintiff's choice of forum is paramount). Under these facts, the deference given to Plaintiff's choice of forum is lessened, but Defendants fail to show that this forum is so inconvenient that a disturbance of Plaintiff's preference is warranted.

As to the location of the helicopter, the accident occurred in Arizona, and while the helicopter may or may not now be found in the Middle District, the parties have not indicated that an in-person inspection of the entire helicopter will be necessary, so this Court is not persuaded that the parties will be

inconvenienced should they choose to employ the more common practice of transporting the component parts, or submitting photographs, videos, diagrams or models to adequately depict the helicopter or the alleged defective valve and surrounding screws at issue.

Accordingly, Bell's Motion to Transfer is **DENIED**.

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BELL HELICOPTER TEXTRON, INC.,	:	
and AUTO VALVE, INC.,	:	
Defendants.	:	No. 03-4345

O R D E R

**AND NOW**, this                    day of March, 2004, in consideration of Defendant Bell Helicopter Textron, Inc.'s ("Bell") Motion to Transfer Venue Pursuant to Title 28 U.S.C. § 1404(a) ("Motion to Transfer"), with which Defendant Auto Valve, Inc. concurs, Plaintiff Agrotors, Inc.'s Response, and Bell's Reply thereto, and in further consideration of the papers filed without leave of Court, including Plaintiff's Sur-Reply to the Motion to Transfer, Bell's Response to Plaintiff's Sur-Reply, Plaintiff's Supplemental Response, and Bell's Reply thereto, Bell's Motion to Transfer (Doc. No. 6) is **DENIED**.

BY THE COURT:

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JAMES MCGIRR KELLY, J.