

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

| | | |
|-------------------------------------|---|--------------|
| DIACONU EURFROSINA, | : | |
| | : | |
| Plaintiff, | : | CIVIL ACTION |
| | : | |
| v. | : | No. 08-3633 |
| | : | |
| ROBERT GATES, Secretary of Defense, | : | |
| STEVE JOHNSON, Administrator, EPA, | : | |
| U.S. DEPARTMENT OF DEFENSE, | : | |
| U.S. ENVIRONMENTAL PROTECTION | : | |
| AGENCY, | : | |
| | : | |
| Defendants. | : | |

MEMORANDUM RE: MOTION TO REINSTATE CORRECT VENUE

Baylson, J.

November 24, 2008

I. Background and Procedural History

Presently before the Court is Plaintiff’s motion to reinstate correct venue. Plaintiff had previously filed her complaint in the District Court for the District of Columbia. (See Doc. 1.) In an Order on July 3, 2008, Judge Sullivan of that District dismissed the case for improper venue and transferred it, under the authority granted in 28 U.S.C. § 1406(a), to this District, as the Plaintiff resides in Pennsylvania and claims that the wrongful acts occurred in this state. (Doc. 1.)

Plaintiff’s claims arise from her employment with the Department of Defense’s (“DOD”) Logistics Agency, during which time she was allegedly exposed to toxic chemicals. (Doc. 1, Ex. B at 2). Nearly ten years ago, Plaintiff brought several related cases in the Eastern District of Pennsylvania, which were dismissed on statute of limitations grounds. See Diaconu v. Defense

Logistics Agency, 2007 WL 966506, at *2-3 (E.D. Pa. March 27, 2007). When Plaintiff discovered she had uterine cancer in 2006 and that the cancer was possibly due to exposure to the chemicals during her employment, Plaintiff moved this Court to reopen her earlier cases. See id. at *3-4. Judge Pollack of this Court denied the motion, as well as a motion to reconsider his denial, but then instructed Plaintiff she could file a new suit based on her recent discovery of a latent illness. Id. at *1. Plaintiff then filed the current suit in 2007 in the District of Columbia. (See Doc. 1.)

Judge Sullivan treated Plaintiff's complaint, which alleged multiple tort claims against the DOD, the Environmental Protection Agency ("EPA"), Secretary of Defense Gates, and EPA Administrator Johnson and sought money damages, as being brought under the Federal Tort Claims Act ("FTCA"). (Doc. 1, Ex. B at 3.) Based on the venue provisions in that Act, Judge Sullivan determined that venue was improper in the District of Columbia and properly transferred the case to this District. (Id. at 4.)

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ORDER

AND NOW, this 24th day of November 2008, for the reasons stated in the foregoing Memorandum, it is hereby ORDERED that Plaintiff’s Motion to Reinstate Correct Venue (Doc. 2) is DENIED.

As to Defendant’s Motion to Dismiss for lack of subject matter jurisdiction, based on Plaintiff’s failure to exhaust administrative remedies, it is hereby ORDERED that Plaintiff file a brief in opposition within 14 days.

BY THE COURT:

/s Michael M. Baylson
Michael M. Baylson, U.S.D.J.