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

MICHAEL CURRY	:	CIVIL ACTION
v.	:	
WEEKS MARINE, INC.	:	NO. 97-7540

M E M O R A N D U M

Padova, J. March , 1998

Plaintiff, Michael Curry, brings this action pursuant to the General Maritime Law of the United States, as modified by the Jones Act, 46 U.S.C.A. § 688, et seq. (West 1975 & Supp. 1997), seeking damages for personal injuries suffered during the course of his employment with Defendant Weeks Marine, Inc. Presently before the Court is Defendant's Motion to Transfer Venue to the District of New Jersey pursuant to 28 U.S.C.A. § 1404(a) (West 1993 & Supp. 1997). For reasons that appear below, the Motion will be denied.

I. BACKGROUND

Plaintiff is a seaman who was injured at sea while in the employ of Defendant. The accident occurred aboard Defendant's vessel on October 22, 1997. At that time, Defendant's vessel was in navigable waters at Manasquaw Inlet, New Jersey.

II. LEGAL STANDARD

Defendant moves pursuant to 28 U.S.C.A. § 1404(a), which provides in pertinent part:

> (a) 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.A. § 1404(a) (West 1993). The purpose of § 1404(a) "is to prevent waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." Kielczynski v. Consol. Rail Corp., 837 F.Supp. 687, 688 (E.D.Pa.1993) (citation omitted).

The district court enjoys wide latitude in this area. "[S]ection 1404(a) was intended to vest district courts with broad discretion to determine, on an individualized, case-by-case basis, whether convenience and fairness considerations weigh in favor of transfer." Jumara v. State Farm Ins. Co., 55 F.3d 873, 883 (3d Cir.1995) (citing Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 30-31 (1988)). See Weinstein v. Friedman, 859 F.Supp. 786, 788 (E.D.Pa.1994) (recommending that a district court "should analyze the issue according to an individualized, case-by-case consideration of convenience and fairness") (citation omitted); 15 Charles A. Wright, Arthur R. Miller, and Edward H. Cooper, Federal Practice and Procedure § 3847 (1986) ("[g]iven the statutory standards, the decision [of whether to transfer] is left to the sound discretion of the court . . . .

[Section 1404(a) motions require] the exercise of judgment by those in daily proximity to these delicate problems of trial litigation") (citations omitted).

III. DISCUSSION

Defendant claims that it will be inconvenient for it to defend this suit in Philadelphia. In support of its Motion, Defendant states, and Plaintiff does not dispute, the following: (1) Plaintiff resides in New Jersey; and (2) Defendant is a New Jersey Corporation with its principal place of business in New Jersey; (3) the accident took place in New Jersey; (4) two of the witnesses reside in New Jersey; (5) Plaintiff has been treated for his alleged injuries in New Jersey. Defendant also asserts that the only person to whom this action is convenient is Plaintiff’s counsel.

A party seeking change of venue pursuant to § 1404(a) bears the burden of demonstrating that: (1) the case could have been brought initially in the forum to which the defendant seeks transfer; (2) the proposed transfer will serve the convenience of the parties and witnesses; and (3) the proposed transfer will be in the interests of justice. 28 U.S.C.A. § 1404(a). As to the first of these elements, Plaintiff does not appear to dispute that he could have brought the case in the District of New Jersey and I find that he could have done so.

As to the second element in the transfer statute, Defendant must show that the balance of conveniences weighs “strongly in favor” of transfer. Gulf Oil v. Gilbert, 330 U.S. 501, 508 (1947). While there is no specific list of factors to balance, courts have considered the following private and public interests in making transfer determinations:

> The private interests have included:
> 1. plaintiff's forum preference as manifested in the original choice
> 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 witness may actually be unavailable for trial in one of the fora, and
> 6. the location of books and records (similarly limited to the extent that the files could not be produced in the alternative forum).
>
> On the public interest side of the equation, courts examine:
> 1. the enforceability of the judgment,
> 2. practical considerations that could make the trial easy, expeditious, or inexpensive,
> 3. the relative administrative difficulty in the two fora resulting from court congestion,
> 4. the local interest in deciding local controversies at home,
> 5. the public policies of the fora, and
> 6. the familiarity of the trial judge with the applicable state law in diversity cases.

Jumara, 55 F.3d at 879-880 (internal citations omitted). A lack of any definitive formula suggests that the Court need not rigidly adhere to the aforementioned factors and may consider all relevant facts and circumstances when making its assessment. Id., at 879.

Defendant claims it will be inconvenient for it to defend this suit in Philadelphia as opposed to New Jersey for four reasons. First, both parties reside in New Jersey. Second, the accident occurred in New Jersey. Third, two of the witnesses who filled out accident reports reside in New Jersey. Fourth, the medical care providers who treated Plaintiff are in New Jersey. As described more fully below, the balance of the factors does not establish such inconvenience in defending this suit in Philadelphia, as opposed to New Jersey, as would persuade the Court to disturb Plaintiff's choice of venue.

1. Plaintiff's Choice of Forum

"In assessing a transfer motion, a plaintiff's choice of forum is a paramount consideration which should not be lightly disturbed and thus the court should hold defendants to establishing a strong preponderance in favor of transfer." Weinstein, 859 F.Supp. at 788 (citation omitted); John Hancock Prop. & Casualty Co. v. Hanover Ins., 859 F.Supp. 165, 169 (E.D.Pa.1994) (noting "[a]lthough district courts have broad discretion to decide whether to transfer an action, the plaintiff's choice of forum is entitled to great weight and it is therefore the burden of the moving party to justify the transfer") (citation omitted); Kielczynski, 837 F.Supp. at 689 (proclaiming that "transfer is not to be liberally granted"). However, the "plaintiff's choice of forum is entitled to less

weight where none of the operative facts have occurred in the forum district." Edwards v. Texaco, Inc., 702 F.Supp. 101, 103 (E.D.Pa. 1988).

In this case, I find that Plaintiff's choice of forum deserves deference. The fact that Plaintiff's residence is in New Jersey is not compelling. If in fact it is inconvenient for Plaintiff to come to Philadelphia, he is entitled to inconvenience himself. See Austin v. Johns-Manville Corporation, 524 F.Supp. 1166, 1169 (E.D.Pa. 1981) ("plaintiffs have the option of choosing an inconvenient forum in order to obtain counsel or for other reasons"). Defendant asserts that it would prefer to try this case in New Jersey because it resides there, however, Defendant does not claim that to maintain the case in Philadelphia would be unfair or that the cost or burden of travel would be prohibitive. In fact, the Court gives great weight to the fact that there is a relatively short distance between the fora.[1] In addition, although Defendant's principal place of

[1] Courts have deviated from the "multi-factored balancing test where the transfer requested involves a forum which is a relatively short distance from the original forum. Instead, such courts have simply refused to consider transfer, arguing that the statute was not intended for these types of transfers." Jumara, 55 F.3d at 880. See 15 Charles A. Wright, Arthur R. Miller, and Edward H. Cooper, Federal Practice and Procedure § 3854 (1986) (noting the distance between the two fora is a factor which relates "primarily to the convenience of the parties and the witnesses . . . it has been held that Section 1404(a) should not be invoked for transfer between two courts if there is only a relatively short distance between them and it can be traveled easily") (citations omitted).

business is in New Jersey, since the accident happened at sea, "the location of a principal office, in itself, hardly ties that location to the accident." Clendenin v. United Fruit Co., Inc., 214 F.Supp. 137 (E.D.Pa. 1963). Thus, this factor weighs in favor of Plaintiff.

2. Convenience of Witnesses & Medical Care Providers

Courts consider the convenience of the witnesses, "but only to the extent that the witnesses may actually be unavailable for trial in one of the fora." Jumara, 55 F.3d at 879. They also consider the location of books and records that may be needed for trial, "similarly limited to the extent that the files could not be produced in the alternative forum." Id. Defendant argues that "New Jersey is a convenient forum . . . [because] two of the vessel's crew members who filled out accident reports . . . live in New Jersey. (No potential witnesses reside in Pennsylvania). New Jersey is also the state where plaintiff has received all of his medical treatment, thus making New Jersey a convenient forum for medical care providers who will testify at trial." (Def.'s Mem. of Law at 4.) Plaintiff does not argue that the witnesses who reside in New Jersey will not be able to attend trial if this case proceeds in Philadelphia, nor does Defendant contend that there are relevant records that could not be produced in Philadelphia. In fact, Defendant attaches all applicable accident reports to its Motion. As to the remaining

fact witnesses, according to Plaintiff, they reside in Kentucky, Delaware, Florida and Maryland. Certainly, such witnesses will be no more inconvenienced by appearing in Philadelphia than they would if the case were transferred to New Jersey. Furthermore, all of the Plaintiff's medical providers, although residents of New Jersey, are within the 100 mile subpoena range of this Court. Thus, I conclude that on balance, the convenience of witnesses and the relative ease of access to sources of proof, the availability of compulsory process of unwilling witnesses and the cost of attendance at trial by willing witnesses all weigh in favor of not disturbing Plaintiff's choice of forum.

3. The Public Interest Factors

Defendant makes no arguments that implicate the public interest factors. By noting only that "New Jersey is a convenient forum for the plaintiff and defendant," and little more, Defendant has not satisfied its burden of demonstrating that the balance of conveniences weighs "strongly in favor" of transfer and that transfer would be in the "interest of justice." Gulf Oil, 330 U.S. at 508. Accordingly, Defendant's Motion is denied.

An appropriate Order follows.

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O R D E R

AND NOW, this day of March, 1998, upon consideration of Defendant's Motion to Transfer Venue pursuant to 28 U.S.C.A. § 1404(a) (Doc. No. 3) and Plaintiff's Response thereto (Doc. No. 4), **IT IS HEREBY ORDERED** that the Motion is **DENIED**.

BY THE COURT:

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JOHN R. PADOVA, J.