

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

DANIEL A. ISENBERG, : CIVIL ACTION
 : NO. 98-4035
 v. :
 :
 CONSOLIDATED RAIL CORPORATION, :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

August 4, 2003

This is a motion to transfer a case pursuant to the Federal Employer's Liability Act, 45 U.S.C. §§ 51-60 ("FELA") to the Western District of Pennsylvania "for the convenience of the parties and witnesses, in the interest of justice." 28 U.S.C. § 1404(a).

The case involves an accident which occurred in Altoona, Pennsylvania, which is located within the Western District of Pennsylvania (the "Western District"). Plaintiff works and resides in that district. Defendant, a railroad company, with headquarters in the Eastern District of Pennsylvania, ("Eastern District") has moved to transfer the case to the Western District.

The burden to establish the need for transfer is on the moving party. See Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d. Cir. 1995). While it is true that ordinarily, "[u]nless the balance of convenience of the parties is strongly in favor of defendant, the plaintiff's choice of forum should prevail", see Shutte v. Aramco Steel Corp., 431 F.2d 22, 25 (3d. Cir. 1970) (citations omitted), cert. denied, 401 U.S. 910 (1971), such choice

is entitled to less deference when neither plaintiff resides in the forum district nor did any of the events occur there. See Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255 n.23 (1981).¹

The private-public dichotomy of factors relevant to the decision whether to transfer a case under 1404(a) is clear and has been stated often. See Gulf Oil Corp. v. Gilbert , 330 U.S. 501, 508-09 (1947); Jumara, 55 F.3d at 879-80. The private factors include: the relative ease of access to sources of proof, the ability to compel attendance of unwilling witnesses, the cost of compelling attendance of unwilling witnesses, the possibility of visiting the premises if viewing would be appropriate for the action and other practical problems that make trial of a case, easy, expeditious, and inexpensive. Gulf Oil 330 U.S. at 508-09. Relevant public factors include the administrative difficulties arising from court congestion, imposing jury duty on citizens with no relation to the litigation, and in cases that "touch the affairs of many persons", the desire to hold the trial in their view. Gulf Oil, 330 U.S. at 509. The Third Circuit has approved consideration of additional private factors such as plaintiff's choice of forum, the defendant's choice of forum, where the claim arose, the convenience of the parties as reflected by the relative physical

¹ The threshold issue is whether the Western District of Pennsylvania is the District where the case "might have been brought." 28 U.S.C. § 1404(a). Both parties agree that at the time the action was commenced venue would have laid in the Western District of Pennsylvania. See 45 U.S.C. § 56 (venue is proper in any district in which the defendant resides, in which the cause of action arose, or in which the defendant was doing business at the commencement of the action).

and financial condition, the convenience and availability of witnesses, and the unavailability of evidence in one of the fora. Jumara, 55 F.3d at 879-880.

While these factors have often been rehearsed in our court, the relative importance and weight each factor should be accorded under the circumstances of a specific case, remains a matter largely entrusted to the sound discretion of the trial court. Further, the case law teaches that no single factor predominates over the others and that, as in all forum non convenient litigation, each case turns "in its own unique facts." Bhatnagar v. Surrendra Overseas Limited, 820 F.Supp. 958, 959 (E.D. Pa. 1993) (citing Van Cauwenberghe v. Birid, 486 U.S. 517, 529 (1988) (other citations omitted)).

In the instant case, defendant proffers the following factors as favoring transfer: plaintiff resides in the Western District and it is there where the accident occurred; plaintiff's supervisors, who are expected to be called as witnesses at trial on central issues, work and reside in the Western District; medical providers can only appear live in the Western District and would have to appear by way of video tape deposition at an Eastern District trial; plaintiff has not identified any witness who reside in the Eastern District except for his expert; and it would be a burden to the citizens of the Eastern District, who according to defendant, have no interest in the outcome of the case, to be required to serve as jurors in this case. Defendant's Mem. of Law at 1-2.

On the other hand, plaintiff proffers the following facts opposing transfer: defendant's headquarters is located in the Eastern District, plaintiff's expert witness is located in the Eastern District of Pennsylvania, plaintiff's counsel is located in the Eastern District, and, contrary to defendant's contention concerning the interest of citizens in the Eastern District, plaintiff argues that these citizens have "a strong interest in the administration of [defendant]" because the defendant is a resident of the Eastern District of Pennsylvania and conducts substantial business within this district." Finally, plaintiff points to the median time of twenty three (23) months from filing to disposition in the Western District compared to thirteen (13) months in the Eastern District for the year 1997. Plaintiff's Mem. of Law at 2-3.

Although, the calculus is close, on very similar facts, this Court has previously ordered FELA cases transferred from the Eastern District to another district under 1404(a). See Jeter v. Consolidated Rail Corp., No. 98-1076, 1998 WL 175884 (E.D. Pa. Apr.13, 1998) (transferring case to Northern District of Ohio where the plaintiff did not reside nor did the accident occur in the Eastern District of Pennsylvania); Lynn v. Consolidated Rail Corp., No. 94-408, 1994 WL 185032 (E.D. Pa. May 13, 1994) (transferring case to Western District of Pennsylvania where the plaintiff did not reside nor did the accident occur in the Eastern District of Pennsylvania); see also Klein v. Consolidated Rail Corp., No. 94-6101 (E.D. Pa. Dec. 12, 1994) (transferring to Middle District of

Pennsylvania); Faivre v. Consolidated Rail Corp., 94-1878 (E.D. Pa. May 1993) (transferring to Western District of Pennsylvania). However, one additional public factor present here, and not present in those cases where transfer was directed, tilts the scales against transfer. Since mid 1998, at least ten judges from the Eastern District of Pennsylvania have agreed voluntarily to sit in the Western District to assist the Western District in adjudicating a backlog of cases. The Chief Judge of the Third Circuit has authorized these designations. In light of this temporary re-deployment of significant judicial resources from the Eastern District to the Western District, it would be inconsistent with public policy, to transfer a case to the Western District, where there is a backlog and where visiting judges are assisting local judges, from the Eastern District where there is no backlog and where there is an adequate number of Article III Judges ready, willing, and able to try this matter. Under the circumstances of this case, and given the presence of an important public factor not present in prior cases, the Court finds that the defendant has failed to demonstrate that the balance of factors strongly tilts in favor of transfer.

AND IT IS SO ORDERED.

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ORDER

AND NOW, this day of **December 1998**, upon consideration of plaintiff's motion for reconsideration (doc. no. 6) and no response from defendant, it is **ORDERED** that the motion is **GRANTED**.

It is further **ORDERED** that the motion to transfer the case to the Western District of Pennsylvania is **VACATED**.²

It is further **ORDERED** that the Deputy Clerk shall issue a notice of initial pretrial conference.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.

² The Court initially granted defendant's motion to transfer the case as unopposed. (Doc. No. 5) Subsequently, the Court recognized that it had granted the motion prior to the time the plaintiff's response was due. Thus, the plaintiff has filed this motion for reconsideration.