

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

TRUSTEES OF THE NATIONAL ELEVATOR : CIVIL ACTION  
INDUSTRY PENSION, HEALTH BENEFIT :  
AND EDUCATIONAL FUNDS : NO. 98-5311  
: :  
v. :  
CONTINENTAL ELEVATOR CO., INC. :

M E M O R A N D U M

Broderick, J.

May 12, 1999

Plaintiffs, Trustees of the National Elevator Industry Pension, Health Benefit and Educational Funds ("Trustees"), are the administrators of a multi-employer benefit plan ("Plan") established and maintained according to the provisions of a collective bargaining agreement to which the defendant, Continental Elevator Co., Inc. ("Continental"), is a signatory. The Trustees have brought the instant action pursuant to §§ 502 and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1132 and 1145, and § 301(a) of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), seeking to enforce certain provisions of the collective bargaining agreement between Continental and the International Union of Elevator Constructors which sets the terms and conditions of employment of Continental's employees and requires Continental to make contributions to the Trustees on behalf of those employees. Specifically, the agreement allows the Trustees to order an audit

of Continental's books. The Trustees made such an audit in March, 1998 but, according to the allegations of the Trustees' complaint, were denied access to certain information necessary to complete the audit. The Trustees have not been able to obtain this information from Continental and have brought the instant action seeking an order compelling disclosure of those documents, an injunction against future breaches of the collective bargaining agreement, as well as an award of costs, interest, attorney's fees, and liquidated damages pursuant to 29 U.S.C. § 1132(g).

Presently before the Court is Continental's motion to dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) or, in the alternative, to transfer venue to the District of Nebraska, pursuant to 28 U.S.C. § 1404(a). In addition, Continental seeks an Order directing the Trustees to give a more definite statement of their claims pursuant to Federal Rule of Civil Procedure 12(e). The Trustees have filed a response and Continental has filed a reply. For the reasons stated below, Continental's motion will be denied in its entirety.

### **I. Personal Jurisdiction**

Continental is a Nebraska corporation with its sole place of business in Omaha, Nebraska. Continental argues that this Court cannot exercise personal jurisdiction over it in this matter because it does not have the sufficient minimum contacts with

Pennsylvania to satisfy the standard set forth by the United States Supreme Court in International Shoe Co. v. Washington, 326 U.S. 310 (1945). However, the Plan at issue in this case is governed by ERISA. ERISA contains its own jurisdictional provision which provides:

When an action under this subchapter is brought in a District Court of the United States it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district court where a defendant resides or may be found.

29 U.S.C. § 1132(e)(2). This section explicitly provides for nationwide service of process. Where a federal statute explicitly provides for nationwide service of process, the Court's exercise of personal jurisdiction is "not constrained by the 'minimum contacts' standard" established by International Shoe. Trustees of the Nat'l Elevator Indus. Pension, Health Benefit & Educ. Funds v. Ramchandani, No. Civ. A. 98-6108, 1999 WL 179748 at \*1 (E.D.Pa. Mar. 12, 1999) (Giles, C.J.). Although the "Supreme Court has never ruled on the issue of reconciling the minimum contacts doctrine with nationwide service of process authorized by federal statute, [] 'all the courts of appeals that have addressed the issue have applied a national contacts standard when process is served under an applicable federal service provision.'" Id. (quoting 4 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1067.1 at 311 (1987)). See also Trustees of the Nat'l Elevator Indus. Pension, Health Benefit & Educ. Funds v. Nordic Industries, Inc., No. Civ. A. 96-

5151, 1997 WL 83742 at \*4 (E.D.Pa. Feb. 14, 1997). Under a national contacts standard, the Court must judge the defendant's contacts with the United States as a whole as the pertinent forum rather than with any particular state. See, e.g. Trustees of the Nat'l Elevator Indus. Pension, Health Benefit & Educ. Funds v. Ramchandani, No. Civ. A. 98-6108, 1999 WL 179748 at \*1 (E.D.Pa. Mar. 12, 1999) (Giles, C.J.); Trustees of the Nat'l Elevator Indus. Pension, Health Benefit & Educ. Funds v. Nordic Industries, Inc., No. Civ. A. 96-5151, 1997 WL 83742 at \*4 (E.D.Pa. Feb. 14, 1997). The Third Circuit is in accord with this approach. See Max Daetwyler Corp. v. R. Meyer, 762 F.2d 290, 294 n.3 (3d Cir. 1985) ("The constitutional validity of national contacts as a jurisdictional base is confirmed by those statutes which provide for nationwide service of process ....").

Service of the complaint was made on Continental in Nebraska under ERISA's nationwide service provision. Continental does not contest the manner in which service of process was made. The Plan is administered in Newtown Square, Pennsylvania, which is in the Eastern District of Pennsylvania. Therefore, this action was properly brought in this district and Continental does not allege that venue in this District is improper. Continental is a Nebraska corporation which does all of its business in Nebraska. It is undisputed that Continental has sufficient minimum contacts with the United States and Continental's contacts with Pennsylvania are irrelevant in this ERISA action. Therefore, this Court has personal jurisdiction over Continental and

Continental's motion to dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) is denied.

## II. Change of Venue

Continental, while conceding that venue is proper in the Eastern District of Pennsylvania, next moves this Court for an Order transferring this action to the District of Nebraska pursuant to 28 U.S.C. § 1404(a). 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 determining whether a transfer of action would be for the convenience of parties and witnesses and in the interest of justice, a federal district court is vested with wide discretion. Plum Tree, Inc., v. Stockment, 488 F.2d 754 (3d Cir. 1973). When deciding whether to order a discretionary transfer, the Third Circuit requires this Court to consider the private and public interests protected by the language of § 1404(a). Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). The private interests include: plaintiff's forum preference as manifested in his original choice; the defendant's preference; whether the claim arose elsewhere; the convenience of the parties as indicated by their relative physical and financial condition; the convenience of the witnesses, but only to the extent that the witnesses may actually be unavailable for trial in one of the

fora; and the location of records, similarly limited to the extent that the files could not be produced in the alternative forum. Id. The public interests include: the enforceability of the judgement; practical considerations that could make the trial easy, expeditious or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; the local interest in deciding local controversies at home; the public policies of the fora; and the familiarity of the trial judge with the applicable state law in a diversity case. Id. The burden of establishing the need for a transfer rests on the defendant. Id.

In ruling on defendant's motion to transfer, "the plaintiff's choice of venue should not be lightly disturbed." Jumara, 55 F.3d at 879. The issue of venue "must be approached with the broad Congressional policy favoring free access to federal courts in mind." Trustees of the Nat'l Elevator Indus. Pension, Health Benefit & Educ. Funds v. Ramchandani, No. Civ. A. 98-6108, 1999 WL 179748 at \*1 (E.D.Pa. Mar. 12, 1999) (Giles, C.J.) (quoting Turner v. CF & I Steel Corp., 510 F. Supp. 537, 542 (E.D.Pa. 1981)). The weight given to a plaintiff's choice of forum is even greater when the plaintiff resides in the chosen forum. See, e.g. Trustees of the Nat'l Elevator Indus. Pension, Health Benefit & Educ. Funds v. Ramchandani, No. Civ. A. 98-6108, 1999 WL 179748 at \*1 (E.D.Pa. Mar. 12, 1999) (Giles, C.J.); DiMark Marketing, Inc. v. Louisiana Health Serv. and Indemnity Co., 913 F. Supp. 402, 408 (E.D.Pa. 1996).

Plaintiffs, The Trustees, have clearly expressed a strong preference for a federal court located in Pennsylvania. The Trustees are located in Pennsylvania. The Trustees administer numerous plans which require them to file hundreds of actions in this District to enforce the terms of the plans they administer.

Continental does not contest these facts. Rather, Continental argues that it is a small, Nebraska corporation whereas the Trustees manage a large, national fund with millions of dollars in assets. Continental argues that, because of the parties relative size and wealth, it would be a much greater hardship for Continental to litigate here than it would be for the Trustees to litigate in Nebraska. However, such a shifting of the inconvenience of litigating from Continental to the Trustees is "insufficient to warrant a transfer of venue under 28 U.S.C. § 1404(a)." Trustees of the Nat'l Elevator Indus. Pension, Health Benefit & Educ. Funds v. Ramchandani, No. Civ. A. 98-6108, 1999 WL 179748 at \*2 (E.D.Pa. Mar. 12, 1999) (Giles, C.J.).

Continental argues that all of the witnesses with knowledge concerning the documents that the Trustees seek, as well as the documents themselves, are in Nebraska. While this may be the case, the fact that Continental may be required to produce documents for a trial in this District does not necessitate a transfer of this action to Nebraska. It does not appear from the submissions of the parties that there are likely to be witnesses necessary to the adjudication of this matter who will be outside

the subpoena power of this Court. Rather, it appears that this case may be resolved largely by reference to documentary evidence, making the testimony of many witnesses unnecessary. Depositions may be used to present the testimony of witnesses who are unavailable in this district. See Trustees of the Nat'l Elevator Indus. Pension, Health Benefit & Educ. Funds v. Ramchandani, No. Civ. A. 98-6108, 1999 WL 179748 at \*2 (E.D.Pa. Mar. 12, 1999) (Giles, C.J.) While Continental has indicated a preference for the District of Nebraska as being more convenient for its witnesses and its documents, it does not appear that the necessary witnesses and documents would be "unavailable for trial" here in the Eastern District of Pennsylvania. See Jumara, 55 F.3d at 879. It also appears that Continental's likely witnesses are currently employed by Continental in Nebraska.

Finally, judicial considerations weigh in favor of allowing the case to remain here in the Eastern District of Pennsylvania. The public interest in having the plan administered correctly, as a national, multi-employer plan is just as great here in the Eastern District of Pennsylvania as it would be in Nebraska. The Trustees file a large number of these actions each year and the orderly administration of justice suggests that there may be advantages to having them adjudicated in one district to lessen the likelihood of inconsistent results. Finally, the 1998 Judicial Caseload Profile contained in the 1998 Federal Court Management Report demonstrates that the average time from filing to disposition on civil cases is shorter here in the Eastern

District of Pennsylvania than it is in the District of Nebraska.

In light of all of these factors, the Court will not exercise its discretion to transfer this case to the District of Nebraska. Continental's Motion for Transfer pursuant to 28 U.S.C. § 1404(a) will be denied.

### **III. More Definite Statement**

Finally, Continental moves this Court for a more definite statement pursuant to Federal Rule of Civil Procedure 12(e). Continental argues that the Trustees' complaint merely states that they seek information necessary to complete the audit but does not describe specifically what information is sought. The Trustees contend that the pleading is sufficiently specific for Continental to form a response and Continental, by its motion, has, in fact, demonstrated that it knows which documents the Trustees seek.

Rule 12(e) of the Federal Rules of Civil Procedure provides, in relevant part: "If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired." Motions under Rule 12(e) are not generally appropriate, rather "[t]he class of pleadings that are appropriate subjects for a motion under Rule 12(e) is quite small - the pleading must be sufficiently intelligible for

the court to be able to make out one or more potentially viable legal theories on which the claimant might proceed." Sun Co. v. Badger Design & Constructors, 939 F. Supp. 365, 368 (E.D.Pa. 1996) (quoting 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1376 (1990)). Only when the pleading is "so vague or ambiguous that the opposing party cannot respond, even with a simple denial, in good faith without prejudice to itself" is it appropriate for the Court to grant a motion under Rule 12(e). Id.

A review of the Trustees' complaint demonstrates that Continental's argument is without merit. The complaint alleges that Continental is in breach of its agreements by not allowing the Trustees full access to records needed to complete their audit. Although the complaint does not describe with specificity the records sought by the Trustees, such detail is not required. The Federal Rules of Civil Procedure require merely that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The Court is aware of no authority, and Continental has offered none, to suggest that something more is required of the Trustees here.

Since the Trustees' complaint clearly satisfies the notice pleading requirements of Federal Rule of Civil Procedure 8(a)(2) and provides a sufficient basis for Continental to frame a response, a Rule 12(e) motion is not appropriate. Therefore, Continental's motion for a more definite statement pursuant to

Rule 12(e) is denied.

An appropriate Order follows.

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AND EDUCATIONAL FUNDS	:	NO. 98-5311
	:	
v.	:	
	:	
CONTINENTAL ELEVATOR CO., INC.	:	

O R D E R

AND NOW, this 12th day of May, 1999; Defendant Continental Elevator Co., Inc. ("Continental") having filed a motion to dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) or in the alternative to transfer venue pursuant to 28 U.S.C. § 1404(a) and for a more definite statement pursuant to Federal Rule of Civil Procedure 12(e); Plaintiff having filed a response thereto and Continental having filed a reply; for the reasons stated in the Court's Memorandum of this date;

**IT IS ORDERED** that Defendant Continental Elevator Co., Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction or Alternatively to Transfer Venue to the United States District Court for the District of Nebraska and for a More Definite Statement (Document No. 3) is **DENIED**;

**IT IS FURTHER ORDERED** that Continental shall file an answer to Plaintiff's complaint on or before May 26, 1999.

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RAYMOND J. BRODERICK, J.