

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

STAMFORD HOLDING COMPANY,	:	
	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	NO. 02-269
	:	
MAUREEN CLARK, CHRISTOPHER PLUMMER,	:	
NEW ENGLAND EQUITY, INC., CHARLES J.	:	
IRVING, ESQ., RAMONA E. DeSALVO, ESQ. and	:	
MERRILL, LYNCH, PIERCE, FENNER & SMITH,	:	
INC.,	:	
	:	
Defendants.	:	
	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J.

MAY 23, 2002

Presently pending before this Court are the following motions: (1) Defendant DeSalvo's Motion to Dismiss Plaintiff's Complaint; (2) Defendant Merrill, Lynch, Pierce, Fenner & Smith's Motion to Dismiss Plaintiff's Complaint or, in the Alternative, Refer to Arbitration and for a Stay; (3) Defendant Maureen Clark's, Christopher Plummer's and New England Equity, Inc.'s Motion to Dismiss and for Other Relief and (4) Defendant Charles J. Irving, Esquire's Motion to Dismiss Plaintiff's Complaint and Motion for Federal Rule of Civil Procedure 41(d) Costs. The aforementioned Motions include various grounds for dismissing Plaintiff's Complaint including, *inter alia*, lack of personal jurisdiction, lack of subject matter jurisdiction, improper venue, failure to state a claim, pleading inadequacy, res judicata, collateral estoppel and statute of limitations. The Motions contain claims for relief including, *inter alia*, dismissal of Plaintiff's complaint, compelling Plaintiff to arbitration, legal fees and costs and

transfer of the action to a proper jurisdiction having both personal jurisdiction and proper venue.¹

For the following reasons, the Court has decided to transfer this action to the United States

District Court for the District of Connecticut.

I. FACTUAL BACKGROUND

Plaintiff's action involves claims under the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. § 1962(c) and (d), and various pendant state law claims of breach of contract, legal malpractice, breach of fiduciary duty, conspiracy to extort, malicious interference with business and scheme to defraud in order to procure and convert funds.²

¹ In Defendant Clark's, Plummer's and New England Equity, Inc's Memorandum of Law in Support of their Motion to Dismiss, they request that "if the plaintiff's claims are not dismissed on the other grounds alleged in this Motion, then the case should be transferred to the District of Connecticut." (Def. Clark's, Plummer's and New England Equity, Inc.'s Mem. Law Supp. Mot. to Dismiss at 17). This request for relief was included in the section of Defendants' Motion which deals with improper venue. (*Id.*). In Defendant Irving's Motion to Dismiss, he joined in and incorporated by reference Defendant Clark's, Plummer's and New England Equity, Inc.'s Motion to Dismiss Plaintiff's Complaint for Improper Venue. (Def. Irving's Mot. to Dismiss Plf.'s Compl. and Mot. for Rule 41(d) Costs at 3). While not mentioning transfer, Defendant DeSalvo's Motion to Dismiss states that this District is an improper forum for this matter and that the District Court for the District of Connecticut would be a more proper forum. (Def. DeSalvo's Mot. to Dismiss at 7). Defendant Merrill Lynch does not mention transfer, but chooses to focus on different grounds for dismissal. (See Def. Merrill Lynch's Mot. to Dismiss).

² Regarding subject matter jurisdiction, Plaintiff invokes federal question jurisdiction because of the federal RICO statute and supplemental jurisdiction over the state law claims. See 28 U.S.C. § 1331; 28 U.S.C. § 1367. (Compl., ¶ 1). All of the Defendants, except for DeSalvo, move for dismissal of Plaintiff's Complaint for Lack of Subject Matter Jurisdiction Pursuant to Federal Rule of Civil Procedure 12(b)(1). The District Court may "grant a Rule 12(b)(1) motion when the claim clearly appears to be immaterial and made solely for the basis of obtaining jurisdiction or is wholly unsubstantial and frivolous." Sun Co., Inc. v. Badger Design & Constructors, Inc., 939 F. Supp. 365, 368 (E.D. Pa. 1996)(citing Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1408-1409 (3d Cir. 1991)(citation omitted)). Without addressing the merits of Plaintiff's case, the Court finds that it does have subject matter jurisdiction since Plaintiff's claims are arguable and not so absolutely devoid of merit or frivolous to warrant dismissal for lack of subject matter jurisdiction.

As for personal jurisdiction, a majority of the Defendants claim that this Court lacks

Plaintiff is a Delaware business corporation with a registered office located at Corporate Agents, Inc., 1013 Center Road, Wilmington, Delaware, 19805. (Compl., ¶3). On or about July 18, 1995, Plaintiff was incorporated solely for the purpose of funding itself with: (1) the proceeds from the sale of two Bucks County, Pennsylvania, commercial properties owned by Edmund A. Massullo, M.D., F.A.C.S., and his wife, Anne Marie Massullo, and (2) the total assets contained in the existing Massullo Ohio pension plan from his Ohio medical practice. (Pl.’s Answer to Def. Clark’s, Plummer’s and New England Equity, Inc.’s Mot. to Dismiss at 1). In fact, Plaintiff was incorporated “in order to capitalize it with the proceeds from the sale of the Bucks County Massullo commercial properties in addition to the assets compiled by the Massullo Ohio pension plan.” (Id. at 1-2). Plaintiff has one sole shareholder, Dr. Massullo. (Id. at 2). Plaintiff was “formed with Dr. Massullo as sole (100%) shareholder for the express purpose of legally insulating it from the individual liabilities of the Massullos.” (Id.).

In order to fully understand the underpinnings of this action, one must look to the events preceding the formation of Plaintiff. On October 18, 1993, Dr. and Mrs. Massullo entered

personal jurisdiction. “A court can transfer a case even though it lacks personal jurisdiction.” Molnycke Health Care AB v. Dumex Med. Surgical Prods. Ltd., 64 F. Supp.2d 448, 454 n.7 (E.D. Pa. 1999)(citing Goldlawr, Inc. v. Heiman, 369 U.S. 463, 467 (1962); United States v. Berkowitz, 328 F.2d 358, 361 (3d Cir. 1964)); see also Novacare, Inc. v. Strategic Theracare Alliance, No. 98-6205, 1999 WL 259848, at *11 (E.D. Pa. Apr. 30, 1999)(stating that “an action may also be transferred under section 1404(a) to cure a defect in personal jurisdiction.”).

If this Court lacks jurisdiction, transfer would be appropriate under 28 U.S.C. § 1631, which “directs that a court which lacks jurisdiction ‘shall’ transfer an action if that is in the interest of justice.” Cobb v. Cobb, 1997 WL 602790, at *4 (E.D. Pa. Sept. 23, 1997); Gallant v. Trs. of Columbia Univ., 111 F. Supp.2d 638, 645 (E.D. Pa. 2000)(stating that Section 1631 “allows transfer when jurisdiction is lacking.”). “Section 1631 has been construed to encompass transfers for lack of personal, as well as subject matter, jurisdiction.” Id. (citations omitted). Under Section 1631, transfer to the District Court of Connecticut is appropriate because subject matter jurisdiction, personal jurisdiction and venue appear proper in the transferee district and transfer is in the interest of justice.

into an Agreement (“Agreement”) with Defendant New England Equity, Inc. (“New England Equity”).³ (Def. Clark’s, Plummer’s and New Eng. Equity, Inc.’s Mot. to Dismiss, ¶ 7).

According to the Agreement, “New England Equity, Inc. was to perform certain services relating to the financial restructuring and possible resolution of the Massullo’s severe financial problems, including debts in excess of \$12,000,000.” (Id.). In order to manage the Massullo’s financial and business affairs, all of the Defendants, except for Merrill, Lynch, Pierce, Fenner & Smith (“Merrill Lynch”), formed the Massullo Financial Group. (Pl.’s Mem. Law Contra Def. Clark’s, Plummer’s and New Eng. Equity, Inc.’s Mot. to Dismiss at 2). Defendants Maureen Clark (“Clark”) and Christopher Plummer (“Plummer”) acted as the financial advisors and managers, Defendant Charles J. Irving, Esq. (“Irving”) was the attorney of Defendant New England Equity and Defendant Ramona E. DeSalvo, Esq. (“DeSalvo”) acted as the stock escrow agent and counsel. (Id.).

The Massullo Financial Group submitted a plan calling for the creation of Plaintiff Stamford Holding Company. (Id.). The plan “was to fund the proposed Stamford corporation with the proceeds from the sale of the Bucks County, Pennsylvania[,] properties and the proceeds from the liquidation of the Massullo Pension Plan and gross up the funds with investment through Defendant Merrill Lynch.” (Id.). “On June 24, 1999, Defendant Irving, by and through Pacific Assets, Inc. obtained title to the Bucks County, Pennsylvania[,] Massullo properties at

³ On November 23, 1998, Dr. and Mrs. Massullo, not Plaintiff Stamford Holding Company, filed a Complaint in the United States District Court for the Northern District of Ohio against the same Defendants included in the instant action involving similar claims. (Def. Clark’s, Plummer’s and New Eng. Equity, Inc.’s Mot. to Dismiss, ¶ 14). That action has been resolved through voluntary dismissals of the various Defendants throughout the course of litigation. (Def. Irving’s Mot. to Dismiss, Ex. C (U.S. Dist. Ct. of N. Dist. Ohio Civil Docket Sheet)).

Bucks County Sheriff sale for \$2, 273.88.”⁴ (Id.). On August 27, 1994, the Massullo Financial Group, through Pacific Assets, Inc., sold the properties to GMR Restaurants PA, Inc. for the sum of \$2,400,00.00.” (Id.). As for the Massullo Pension Fund, it amounted to approximately \$3,000,000.00. (Id. at 3). On July 18, 1995, Plaintiff corporation was formed with Dr. Massullo as the sole (100%) shareholder, Clark as president/secretary and Plummer as vice-president. (Id.). “On August 8, 1995, the Massullo Financial Group opened two accounts with Defendant Merrill Lynch in the name of Stamford Holding Company.” (Id.). In 1995, Plaintiff was funded by the Massullo Financial Group in the amount of \$2,288,306.10. (Id.). In 1998, Plaintiff had a closing balance of \$5,838.24. (Id.). Plaintiff claims that it has suffered a monetary loss of \$2,282,467.86 due, in part, to the following contentions:

Defendants agreed, combined and conspired among themselves to, and so did, devise and participate in a dastardly concert of action to defraud by obtaining and converting money to their own use by laundering Plaintiff’s money through Equity, churning Plaintiff’s stock portfolio at Merrill Lynch, with speculative and unauthorized trades and with exorbitant fees for legal and consulting fabricated services. Defendants utilized a pattern of mail fraud, wire fraud and laundering with the joint and several establishment and maintenance of an illegal enterprise by and through the ostensible legal entity titled New England Equity, Inc.

(Compl., ¶ 11).

II. DISCUSSION

Upon review of Plaintiff’s Complaint, the various Motions to Dismiss and the

⁴ Defendant Irving denies any involvement in the sheriff sale and subsequent resale of the Pennsylvania properties. (Def. Irving’s Reply Br., Ex. A). Regarding this statement, another incertitude is the monetary amount of \$2,273.88. In light of the resell value of the properties, the Court is uncertain whether this monetary amount is correct. However, Plaintiff’s numerous responses and affidavits state \$2,273.88, therefore, the Court has employed this amount.

responses and replies thereto, the Court finds that this litigation would proceed more conveniently and the interests of justice would be better served by transferring this action to the District Court of Connecticut. Although Defendants have offered numerous grounds for dismissing this action, the Court has chosen to transfer this action to Connecticut, thereby allowing the Connecticut District Court to decide the various outstanding Motions because Connecticut is unquestionably the more proper and convenient forum.⁵

A. Transfer

In federal court, changes in venue are governed by either 28 U.S.C. § 1404(a) or 28 U.S.C. § 1406. Jumara v. State Farm Ins. Co., 55 F.3d 873, 878 (3d Cir. 1995). The standards for transfer of an action differ depending on whether venue has been properly laid. According to 28 U.S.C. § 1404(a), transfer is proper if venue is proper in both the original and requested venue. 28 U.S.C. § 1404(a). Specifically, 28 U.S.C. § 1404(a) states that transfer to another proper venue is appropriate “[f]or the convenience of parties and witnesses, in the interest of justice.” Id. Unlike § 1404(a), 28 U.S.C. § 1406 provides for either transfer or dismissal of an action where the original venue is improper. 28 U.S.C. § 1406. Specifically, 28 U.S.C. § 1406 states that “[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” Id. “The burden of establishing the need for transfer rests with the movant.” First Union Nat’l Bank v. United States, 55 F. Supp.2d 331, 332 (E.D. Pa. 1999). Since the standards for transfer depend upon whether venue

⁵ Since the Court will transfer this case, all of the current Motions will remain outstanding and will be transferred along with the rest of the case file to the United States District Court for Connecticut for resolution.

has been properly laid, the first step in determining whether transfer is appropriate is to decipher whether venue in the transferor and transferee districts is proper. The second step involves determining whether transfer would be appropriate in accordance with the factors enunciated by the applicable standard, Section 1404(a) or Section 1406.

1. Venue

In a civil action where jurisdiction is not based solely on diversity of citizenship, such as the present case, suit may be brought only in (1) the district where any defendant resides, if all reside in the same state; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred; or (3) a district where any defendant may be found, if there is no district in which the action may otherwise be brought. 28 U.S.C. § 1391(b).⁶ Plaintiff claims that this Court is the proper venue for this action under Section 1391(b)(2) because “in this federal eastern district occurred a substantial part of the events giving rise to the cause subjudice (sic) took place AND (sic) a substantial part

⁶ The current language of 28 U.S.C. § 1391(b) “reflects a 1990 amendment to the statute which ‘changed pre-existing law to the extent that the earlier version had encouraged an approach that a claim would generally arise in only one venue.’” Egervary v. Young, 159 F. Supp.2d 132, 150-151 (E.D. Pa. 2001)(quoting Cottman Transmission Sys., Inc. v. Martino, 36 F.3d 291, 294 (3d Cir. 1994)). That is, “the statute no longer requires a court to select the ‘best’ forum.” Id. (quoting Cottman, 36 F.3d at 294)(quotation marks omitted). “Under the amended subsection (2) . . . we are permitted to find venue proper in any number of districts, as long as each of the districts was host to ‘a substantial part of the events or omissions giving rise to the claim.’” Desouza v. Blender, No. 93-6706, 1994 WL 105536, at *2 (E.D. Pa. March 28, 1994)(citation omitted). Thus, Section 1391(a)(2) “does not require a majority of the events to take place here, nor that the challenged forum be the best forum for the lawsuit to be venued.” Park Inn Int’l v. Mody Enters., Inc., 105 F. Supp.2d 370, 376 (D.N.J. 2000)(citing Cottman, 36 F.3d at 294).

of the property that is the subject of the action is located.”⁷ (Pl.’s Answer to Def. Clark’s, Plummer’s and New Eng. Equity, Inc.’s Mot. to Dismiss at 13). Defendants seek dismissal of Plaintiff’s Complaint for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3) or, in the alternative, a transfer of the action to the District of Connecticut because, while Plaintiff generally alleged relevant events that took place in this District, a substantial part of the events giving rise to this action occurred in Connecticut. (Def. Clark’s, Plummer’s and New Eng. Equity, Inc.’s Mem. Law Supp. Mot. to Dismiss at 16-17).

The Complaint is vague regarding where a substantial part of the events giving rise to Plaintiff’s action occurred. In Plaintiff’s responses to Defendants’ various motions to dismiss, Plaintiff relies on the sale of the two Bucks County, Pennsylvania, properties to import proper venue in this District. Plaintiff’s argument apparently centers not only on the sale of the two properties, but on the circumstances of the sale and the subsequent activity with the sale proceeds. Defendants argue, through their various motions and affidavits, that virtually all relevant events occurred in Connecticut, that all Defendants, except for Merrill Lynch, had minimal and, at times, unrelated contact with the Eastern District of Pennsylvania and that the District of Connecticut would be a more proper forum.

⁷ In addition to 28 U.S.C. § 1391(b)(2), Plaintiff’s Complaint relies on the specific venue provision in RICO, 18 U.S.C.A. § 1965(a). (Compl., ¶ 1). RICO’s own venue provision is supplementary to the general venue statute found in 28 U.S.C. § 1391. Shuman v. Computer Assocs. Int’l, Inc., 762 F. Supp. 114, 116 (E.D. Pa. 1991)(citations omitted). The RICO venue provision provides, in pertinent part, that venue is proper in “any district in which [the defendant] resides, is found, has an agent, or transacts his affairs.” 18 U.S.C.A. § 1965(a). Under Section 1965(a), “a person transacts his affairs within a particular district when he regularly conducts business of a substantial and continuous nature within that district.” Shuman, 762 F. Supp. at 116 (citations omitted). Although Plaintiff’s Complaint asserted proper venue based, in part, on Section 1965(a), Plaintiff’s responses to Defendants’ challenges to venue centered exclusively on Section 1391(b)(2).

By way of showing that Connecticut is a proper forum for this action, Defendants have provided substantiation that all Defendants reside in Connecticut. Defendants have also provided copies of the two Merrill Lynch accounts in controversy which show Connecticut as Plaintiff's address and have provided two copies of Plaintiff's Requests for Taxpayer Identification Number and Certification which similarly list Connecticut as Plaintiff's address. In fact, Plaintiff's own exhibits support Defendants' contention that Connecticut is a proper forum. The following exhibits attached to Dr. Massullo's affidavit reveal that Connecticut was involved in this action: a copy of a check from Defendant DeSalvo (Ex. B), a copy of the Stamford Holding Corporation Agreement (Ex. C), a copy of a letter from Maureen Clark to Merrill Lynch (Ex. D), copies of the two relevant Merrill Lynch accounts (Exs. E and F) and copies of Plaintiff's Requests for Taxpayer Identification Number and Certification (Ex. G). Overall, Defendants have shown, with the assistance of Plaintiff, that a substantial part of the events giving rise to this action occurred in Connecticut.

In light of the aforementioned, the Court finds that Connecticut is a proper venue for this action. However, the Court finds that venue is also proper in this forum. At the beginning stage of this litigation, in which Plaintiff's claims have not been precisely parceled out and the evidentiary record is particularly sparse, the issue of whether venue is properly laid in this District has not been simple. In the instant case, it has been particularly difficult to decipher wherein proper venue lies because of conflicting accounts and affidavits submitted by both sides of the action. Although Defendants have shown that Connecticut is indisputably a proper venue for this action, Plaintiff's allegations regarding the sale of the Massullo's Bucks County, Pennsylvania, properties cannot be discounted. Since, under Section 1391(b)(2), venue may be

proper in more than one district, the Court concludes that venue is proper in the Eastern District of Pennsylvania, as well as the District of Connecticut.

Determining whether a Court is a proper venue is only the first step in ascertaining whether to transfer a case to another district. Since the Court concludes that this District is an appropriate venue, the appropriate statutory provision for transfer is 28 U.S.C. § 1404(a). 28 U.S.C. § 1404(a). Now, for the second step of the analysis, the Court must determine whether transfer to the District of Connecticut is appropriate under the auspices of Section 1404(a).

2. 28 U.S.C. § 1404(a)

Section 1404(a) provides for the transfer of a case to another district where it might have been brought in the “interest of justice” and “for the convenience of parties and witnesses.”⁸ 28 U.S.C. § 1404(a). The purpose of Section 1404(a) “‘is ‘to prevent the waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense.’” Pro Spice, Inc. v. Omni Trade Group, Inc., 173 F. Supp.2d 336, 339 (E.D. Pa. 2001)(quoting Van Dusen v. Barrack, 376 U.S. 612, 616 (1964); Cont’l Grain Co. v. Barge FBL-585, 364 U.S. 19, 26-27 (1960)). When ruling on a motion to transfer, “a court should consider ‘all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interest of justice be better served by the transfer to a different

⁸ Defendants’ requests for transfer rely upon the argument that Pennsylvania is an improper forum and that Connecticut is the best venue since it is the most convenient and where a substantial part of the events giving rise to this action occurred. Although the requests do not specifically refer to any relevant transfer statute, specifically 28 U.S.C. § 1404(a) or 28 U.S.C. § 1406, the Court analyzed Defendants’ claim under the applicable standard set forth in Section 1404(a).

forum.” Id. (quoting Jumara, 55 F.3d at 879).

When considering whether to transfer an action under Section 1404(a), courts should not solely limit their consideration to Section 1404(a)’s enumerated factors of convenience of the parties, convenience of the witnesses, or interests of justice, but should consider all relevant factors, including both private and public factors. Jumara, 55 F.3d at 879. The private factors relevant to a transfer analysis under Section 1404(a) include: the plaintiff’s forum preference; 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 books and records (similarly limited to the extent that they could not be produced in one of the fora). Id. at 879 (citations omitted). The public interests include: the enforceability of the judgment; 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 trial judge’s familiarity with applicable state law. Id. at 879-880.

The aforementioned factors are to be balanced and weighed. It is important to keep in mind that “unless the balance of convenience of the parties is *strongly* in favor of defendant, the plaintiff’s choice of forum should prevail.” Superior Precast, Inc. v. Safeco Ins. Co. of Am., 71 F. Supp.2d 438, 446 (E.D. Pa. 1999)(quoting Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970)(emphasis in original, internal quotations marks omitted)). Thus, “the defendant must show that its alternative forum is more convenient; if factors are in equipoise,

transfer is not proper.” Id. While performing their balancing analysis, courts must remember that “the purpose of transfer is not to shift the inconvenience from one party to the other.” Id. (citing Frontier Ins. Co. v. Nat’l Signal Corp., No. 98-4265, 1998 WL 778333, at *5 (E.D. Pa. Nov. 9, 1998); Elbeco Inc. v. Estrella de Plato, Corp., 989 F. Supp. 669, 679 (E.D. Pa. 1997)).

a. Balancing of Factors

1. Private Factors

Plaintiff’s forum preference is the Eastern District of Pennsylvania. “Plaintiff’s choice of forum is [a] significant consideration that should not be disturbed lightly.” Pro Spice, Inc., 173 F. Supp.2d at 341 (citations omitted). Although a plaintiff’s forum choice ordinarily carries significant weight, “when a plaintiff chooses a forum other than its home forum[] that choice receives less deference.” Am. Littoral Soc’y v. United States Env’tl. Prot. Agency, 943 F. Supp. 548, 551 (E.D. Pa. 1996)(citing Kielczynski v. Consol. Rail Corp., 837 F. Supp. 687, 689 (E.D. Pa. 1993))(stating that plaintiff’s choice of forum “should be given considerably less weight” when chosen forum is not plaintiff’s home forum.). Plaintiff is a Delaware corporation with a registered office in Delaware. As for Dr. Massullo, who is suing on Plaintiff’s behalf, he is a resident of the state of Ohio. Since neither Plaintiff nor Dr. Massullo are Pennsylvania residents, Plaintiff’s choice of forum receives less deference. Thus, given the circumstances of this case, the Court will accord Plaintiff’s choice of forum considerable but not overwhelming weight.

Regarding Defendants’ convenience, Defendants are in agreement that

Connecticut is the most convenient forum since all six defendants are residents of Connecticut.⁹ Through affidavits regarding the issue of personal jurisdiction, Defendants DeSalvo, Clark, Plummer, New England Equity and Irving aver that they are residents and are employed in the State of Connecticut. The various affidavits also reveal that the Defendants dealt with Plaintiff primarily in the state of Connecticut and rarely, if ever, had any contact with Pennsylvania. As mentioned earlier, even Plaintiff's own exhibits reveal that a substantial part of the events giving rise to this action occurred within Connecticut.

Regarding the private factors examining where the claim arose, the Court has already made clear that the state of Connecticut is a place where a substantial part of the events giving rise to Plaintiff's action occurred. Although the Court has concluded that Pennsylvania is a proper forum, the Court has similarly concluded that Connecticut is unquestionably a proper forum based on the significant amount of events that occurred there. As for the convenience of the parties, Connecticut is obviously convenient for the Defendants. Although Connecticut is not convenient for Dr. Massullo, it is also clear that the Eastern District of Pennsylvania is similarly inconvenient based on Dr. Massullo's residency in Ohio.

The private factor considering the convenience of the witnesses weighs in favor of Connecticut. Although neither side address the convenience of witnesses, for the reasons

⁹ 28 U.S.C. § 1391 authorizes "a corporation to be sued in any judicial district in which it is incorporated or licensed to do business or is doing business in that such judicial district is regarded as the residence of such corporation for venue purposes." Reed v. Weeks Marine, Inc., 166 F. Supp.2d 1052, 1055 (E.D. Pa. 2001)(citations omitted)). Thus, Merrill Lynch may be sued in any judicial district in which it is incorporated, is licensed to do business, or is doing business. Id. Since Merrill Lynch conducts business in both Pennsylvania and Connecticut it may be sued in either district.

enunciated above, it is presumable that a majority of the witnesses needed at trial in this action would come from the state of Connecticut. As a result, it is clear that Connecticut is a more convenient forum for Defendants' witnesses. The same result applies regarding the location of relevant books and records. Since all Defendants reside and do business within Connecticut and, in light of the fact that the Defendants have attested that their dealings with Plaintiff were conducted predominantly in Connecticut, there is no doubt that Connecticut is more convenient for Defendants. As for Plaintiff, although Connecticut may be an inconvenient forum, Pennsylvania is similarly inconvenient. Plaintiff has offered no evidence that being required to produce witnesses and documentary evidence in Connecticut is appreciably more inconvenient than producing them in the Eastern District of Pennsylvania. Since a majority of the parties, witnesses and records at issue in this case are located in Connecticut, it is clear that Connecticut is the most convenient forum regarding witnesses and the production of documentation.

2. Public Factors

The parties did not address the public factors. Due to the inconvenience of both venues to Plaintiff, Plaintiff is in no position to argue that the enforceability of a judgment would be more difficult in Connecticut than in Pennsylvania. Regarding practical considerations that could make the trial easy, expeditious or inexpensive, Connecticut is the better forum since all Defendants and the majority of the witnesses and relevant documentation are located there, as well as the fact that Dr. Massullo will need to travel a great distance wherever the action is venued. The Court will not apply the public factor weighing the relative administrative difficulty in the two fora resulting from court congestion since both parties are silent about this factor. However, the Court will point out that this factor is not "among the most important, particularly

when the argument is made to transfer to another district because this Court's own docket is heavier." Park Inn Int'l v. Mody Enters., Inc., 105 F. Supp.2d 370, 378 (D.N.J. 2000)(citations omitted). Since the Court has no evidence or statistics on which to base any decision on this public factor, the Court is unable to conclude that this factor favors either party.

As for the local interest in deciding local controversies at home and the public policies of the fora, the Court acknowledges that Pennsylvania would have a greater public interest in this action if Plaintiff was located in Pennsylvania. However, since Plaintiff is not a resident of Pennsylvania and since the central facts of this suit occurred in Connecticut, the Court concludes that these factors do not weigh in Plaintiff's favor. In fact, this public factor weighs in favor of Defendants because Connecticut has a strong interest in this action since Defendants are residents and most of the underlying events which formed the basis for this action occurred in Connecticut. Lastly, the public factor addressing the trial judge's familiarity with applicable state law weighs in Plaintiff's favor since trial judges in this District are far more familiar with the applicable Pennsylvania law than are those in the District of Connecticut.¹⁰ However, the Court concludes that courts in either district are capable of applying Pennsylvania law to the allegations implicated by the facts of this case.

3. Result of Balancing the Private and Public Factors

Having carefully considered and balanced the foregoing public and private interests of the respective parties, the Court concludes that the factors weigh heavily in favor of a

¹⁰ In the Complaint, Plaintiff fails to cite to any specific state law regarding its state law claims. (See Compl.) For purposes of this Memorandum, the Court assumes that Pennsylvania law applies to Plaintiff's state law claims since the Complaint was filed in Pennsylvania, the parties rely upon Pennsylvania law in their Motions and Responses and no party to the action has argued otherwise.

transfer. The inconvenience imposed upon witnesses and Defendants, the location of operative events, the location of relevant books and records and the practical considerations that could make trial easy, expeditious or inexpensive favor transfer and outweigh the importance of Plaintiff's original choice of forum and the increased inconvenience to be borne by Plaintiff. These factors, when combined with the interest of justice, make a compelling case for transfer under § 1404(a). As a result, Defendants have met their burden of showing that a balancing of the pertinent factors weighs in favor of transfer. Thus, transfer of this action to the District of Connecticut will best serve the interests of convenience and justice under 28 U.S.C. § 1404(a).¹¹

III. CONCLUSION

A review of the case indicates that the weighing of all the factors, both public and private, favors a finding that the case should be transferred. Not only would the litigation more conveniently proceed in Connecticut, but the interest of justice would be better served by a transfer to that forum. In accordance with 28 U.S.C. § 1404(a), for the reasons set forth above, Defendants' requests for transfer will be granted. The Court will enter an appropriate Order.

¹¹ If venue was improperly laid in this District, the Court would reach the same result under 28 U.S.C. § 1406(a) which provides for the transfer or dismissal of a case where the original venue is improper. If the Court determined that the original venue in this District was improper, the Court would transfer this action to the proper venue of Connecticut, the venue in which the action originally could have been brought that serves the interest of justice. 28 U.S.C.A. § 1406.

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

STAMFORD HOLDING COMPANY,	:	CIVIL ACTION
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v.	:	NO. 02-269
	:	
	:	
MAUREEN CLARK, CHRISTOPHER PLUMMER,	:	
NEW ENGLAND EQUITY, INC., CHARLES J.	:	
IRVING, ESQ., RAMONA E. DeSALVO, ESQ. and	:	
MERRILL, LYNCH, PIERCE, FENNER & SMITH,	:	
INC.,	:	
Defendants.	:	

ORDER

AND NOW, this 23 rd day of May, 2002, upon consideration of Defendant DeSalvo's Motion to Dismiss Plaintiff's Complaint (Dkt. No. 5); Defendant Merrill, Lynch, Pierce, Fenner & Smith's Motion to Dismiss Plaintiff's Complaint or, in the Alternative, Refer to Arbitration and for a Stay (Dkt. No. 8); Defendant Maureen Clark's, Christopher Plummer's and New England Equity, Inc.'s Motion to Dismiss and for Other Relief (Dkt. No. 12) and Defendant Charles J. Irving, Esquire's Motion to Dismiss Plaintiff's Complaint and Motion for Federal Rule of Civil Procedure 41(d) Costs (Dkt. No. 18), the Responses and Replies thereto, it is hereby ORDERED that:

1. This matter is TRANSFERRED to the United States District Court for the District of Connecticut. 28 U.S.C. § 1404(a).
2. The Clerk of the Court is directed to TRANSFER the entire file to the Clerk of the United States District Court for the District of Connecticut.
3. Defendants' Motions to Dismiss will remain outstanding, pending resolution by the District Court of Connecticut.

BY THE COURT:

Robert F. Kelly,

Sr. J.

