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

PENNSYLVANIA MACHINE WORKS, INC., Plaintiff,	:	
v.	:	CIVIL ACTION
NORTH COAST REMANUFACTURING CORPORATION, Defendant.	:	NO. 04-1731

MEMORANDUM & ORDER

YOHN, J. November ____, 2004

This case arises out of a contract between plaintiff Pennsylvania Machine Works ("Penn Machine") and defendant North Coast Remanufacturing ("North Coast") for repair of an industrial machine. Penn Machine brought this diversity suit against North Coast, alleging breach of contract, unjust enrichment, and breach of warranty. Presently before the court is North Coast's motion to dismiss the complaint for lack of personal jurisdiction and improper venue pursuant to Federal Rules of Civil Procedure 12(b)(2) and (3) or, alternatively to transfer the case to federal court in Ohio pursuant to 28 U.S.C. §§ 1404(a) or 1406(a).

The court has considered North Coast's motion to dismiss or transfer. For the reasons set forth below, I will deny the motion.

I. FACTUAL BACKGROUND

Plaintiff Penn Machine is a Pennsylvania corporation that manufactures forged pressure fittings and branch outlet connections for industrial use. (Aff. of Ron Lafferty ("Lafferty Aff.")

at ¶ 2; Pl.'s Mem. of Law in Opp. Def.'s Mot. Dismiss at 2.) North Coast is an Ohio corporation formerly in the business of rebuilding and retrofitting industrial machinery.[1] (Decl. of Richard Reed ("Reed Decl.") at ¶ 3.) North Coast has never maintained offices, assets, or employees outside of Ohio. However, it has periodically conducted business in Pennsylvania since 1997, generating over $1 million in revenue from these accounts.

Penn Machine alleges that its relationship with North Coast began long before the agreement at issue here. For several years, North Coast regularly solicited Penn Machine at its Aston, Pennsylvania plant. (Lafferty Aff. at ¶ 4.)

In 1999, Penn Machine purchased an Apex Rotary Transfer Machine for its pipe fitting manufacturing operations. (*Id*. at ¶ 8.) The machine weighs over 200,000 pounds and it must be disassembled before it can be transported. (*Id*. at 21.) When Penn Machine purchased the machine, it needed repair work. Penn Machine interviewed North Coast about performing the necessary repairs. (*Id*. at ¶ 8–9.) Before submitting its bid, North Coast communicated with Penn Machine by phone and mail and inspected the machine in Pennsylvania. (*Id*. at ¶ 10.) In October 1999, North Coast submitted a proposal to Penn Machine's Pennsylvania offices. (*Id*. at ¶ 11.) Subsequently, North Coast's president and vice president traveled to Pennsylvania to the negotiate the contract. (*Id*. at ¶ 12.) After the meeting, the parties continued their negotiations. North Coast directed its communications to Penn Machine's Pennsylvania offices. (*Id*. at ¶ 13.)

On November 19, the parties reached an agreement for repair of the machine. (*Id*. at ¶ 14.) Under the contract, North Coast agreed to repair the machine at its offices in Ohio and upon

[1]On August 2, 2002, North Coast sold its assets to MV Acquisition. (Br. Supp. Def.'s Mot. Dismiss at 13–14.) Pursuant to the sale, MV Acquisition acquired the Penn Machine contract and performed all work on the machine after that date. (*Id*. at 14.)

completion, deliver it back to Penn Machine in Pennsylvania. (*Id*. at ¶ 15; Reed Decl. at ¶ 11.) North Coast also agreed that one of its senior alignment mechanics would supervise reassembly of the machine in Pennsylvania. (Lafferty Aff. at ¶ 16.) Reassembly can take several months to complete. (*Id*. at ¶ 16.)

In 2000, North Coast began work on the machine in Ohio. (Reed Decl. at ¶ 11.) Throughout the project, North Coast spoke with Penn Machine employees in Pennsylvania to provide status reports. (Lafferty Aff. at ¶ 17.) According to the complaint, North Coast never completed the repairs. (Pl.'s Compl. at ¶ 12.) Today, the machine is back in Pennsylvania. (*Id*. at ¶ 12.)

II. DISCUSSION

A. Personal Jurisdiction

In a diversity case, a district court must apply the law of the forum state to determine whether personal jurisdiction over a non-resident defendant is proper. Fed. R. Civ. P. 4(e). Pennsylvania's long-arm statute is coextensive with the limits of the federal constitution and thus the court may exercise personal jurisdiction over North Coast so long as it does not violate the constitution. 42 Pa. Cons. Stat. Ann. § 5322(b); *see also Vetrotex Certainteed Corp. v. Consol. Fiber Glass Prods. Co.*, 75 F.3d 147, 150 (3d Cir. 1995).

The Due Process clause of the Fourteenth Amendment of the federal constitution limits the power of a state to assert personal jurisdiction over a non-resident defendant. *See Pennoyer v. Neff*, 95 U.S. 714 (1878). A state may entertain a suit involving such a defendant in two types of situations. If the foreign party maintains "continuous and systematic" contacts with a state, the

state has general personal jurisdiction over the party and the non-resident may be sued in that state on any claim. *See Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 445 (1957); *IMO Indus. v. Kierkert AG*, 155 F.3d 245, 259 n.2 (3d Cir. 1998.). When there are no such contacts, courts may assert personal jurisdiction if the litigation is "related to or arises out of the defendant's contacts with the forum." *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977). This is known as specific jurisdiction. *See Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 n.8 (1984); *IMO Indus*., 155 F.3d at 259. Where the defendant challenges personal jurisdiction, "the burden falls upon the plaintiff to come forward with sufficient facts to establish that jurisdiction is proper." *Mellon Bank PSFS, Nat'l Ass'n v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992). Courts must "accept the plaintiff's allegations as true, and . . . construe disputed facts in favor of the plaintiff." *Toys "R" Us, Inc., v. Step Two, S.A*, 318 F.3d 446, 457 (3d Cir. 2003) (citation omitted). Penn Machine contends that because of North Coast's extensive contacts with Pennsylvania, the court may assert both general and specific jurisdiction. (Pl.'s Mem. Law Opp. Def.'s Mot. Dismiss at 5–12.)

1. *General Jurisdiction*

In *Perkins*, the Supreme Court held that Ohio could assert personal jurisdiction over a foreign corporation even though the specific cause of action did not arise in the state because the corporation carried on "continuous and systematic" activities in the state, "consisting of directors' meetings, business correspondence, banking, stock transfers, payment of salaries, [and] purchasing of machinery". 342 U.S. at 445. Proof of general jurisdiction must meet a "higher threshold" that requires "extensive and persuasive" factual allegations. *Reliance Steel Prods. Co. v. Watson, Ess, Marshall, & Engass*, 675 F.2d 587, 589 (3d Cir. 1982).

Penn Machine has failed to allege sufficient facts to show that Pennsylvania courts may assert general jurisdiction over North Coast. North Coast is not incorporated in Pennsylvania. Moreover, it has never maintained offices or employees in the state. Penn Machine argues that the court has general jurisdiction over North Coast because it has received over $1 million in revenue from Pennsylvania clients. (Pl.'s Mem. Law Opp. Def.'s Mot. Dismiss at 11.) However, Penn Machine does not allege that this amount constitutes a substantial percentage of North Coast's overall revenues. Thus, this lone allegation fails to show that North Coast has engaged in the type of "continuous and systematic" activities required for general jurisdiction. *Perkins*, 342 U.S. at 445.

2. *Specific Jurisdiction*

If the cause of action "arises out of the defendant's contact with the forum", specific personal jurisdiction may be appropriate. *Shaffer*, 433 U.S. at 204. Courts generally use a two-part test to determine whether they may assert personal jurisdiction over a non-resident. *See IMO Indus*., 155 F.3d at 259; *Vetrotex*, 75 F.3d at 150. First, the defendant must "have certain minimum contacts" with the forum state. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Such contacts require that the defendant "purposefully availed itself of the privilege of conducting activities within the forum state." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). To make this determination, courts question whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). If the defendant has the requisite minimum contacts, courts ask whether the exercise of jurisdiction "would comport with 'traditional notions of fair play and substantial justice.'" *Burger King Corp. v. Rudzewicz*, 471

U.S. 462, 486 (1985) (quoting *Kulko v. Cal. Superior Court*, 436 U.S. 84, 92 (1978)); *IMO Indus*., 155 F.3d at 259. The personal jurisdiction inquiry is fact-specific and it will vary from case to case. *See Burger King*, 471 U.S. at 485; *Farino*, 960 F.2d at 1224.

In *Burger King*, the Supreme Court addressed personal jurisdiction in interstate contract disputes. The Court recognized that a contract between a non-resident and a resident is not in itself sufficient to justify personal jurisdiction over the non-resident. *Burger King*, 471 U.S. at 478; *Farino*, 960 F.2d at 1223. Instead, courts must evaluate a host of factors, including, "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing." *Burger King*, 471 U.S. at 479.

North Coast's solicitation and prior negotiations with Penn Machine suggest that it has "purposefully availed itself of the privilege of conducting" business in Pennsylvania. *Hanson*, 357 U.S. at 253. Courts applying *Burger King* often conclude that out-of-state defendants have sufficient contacts when they initiate a business relationship with an in-state party or negotiate a contract in the forum state. *See Farino*, 960 F.2d at 1223–26; *Sea Lift, Inc. v. Refinadora Costarricense de Petroleo, S.A.*, 792 F.2d 989, 994 (11th Cir. 1986) ("A direct solicitation by a foreign defendant of the business of a forum resident has been held to be 'purposeful availment' in cases where either a continuing relationship or some in-forum performance on the part of the plaintiff was contemplated."); *Shanks v. Wexner*, No 02-7671, 2003 U.S. Dist. LEXIS 4014 *11 (E.D. Pa. Mar 18, 2003) ("In cases where a out-of-state resident contracts with a forum resident, whether the out-of-state resident initiated the relationship is crucial."); *Dimark Marketing, Inc. v. La. Health Serv. & Indem. Co.*, 913 F. Supp. 402, 406–07 (E.D. Pa. 1996) (concluding that personal jurisdiction was appropriate and emphasizing that "most important to our analysis" was

a meeting in Pennsylvania to negotiate the agreement). In *Burger King*, the Court held that the defendant availed himself of Florida's laws by choosing to reach out beyond his home-state and negotiate a franchise agreement with a Florida business. 471 U.S. at 479. The Court concluded that this showed that the defendant "most certainly knew that he was affiliating himself with an enterprise based primarily in Florida." *Id*. at 480. In *Farino*, the Third Circuit held that Pennsylvania had jurisdiction over non-residents because they chose to seek financing from a Pennsylvania bank and "negotiated and corresponded with [the bank] in Pennsylvania." 960 F.2d at 1223. The court decided that the defendants had "availed themselves of the opportunity to do business" in Pennsylvania even though they had no residence, office, bank accounts, telephone listings, or property in the state. *Id*. at 1223, 1225.

Here, North Coast's executives traveled to Pennsylvania to solicit business from Penn Machine several times before the contract. (Lafferty Aff. at ¶ 4.) Additionally, the parties engaged in extensive pre-contract negotiations, during which time North Coast communicated with Penn Machine in Pennsylvania and sent representatives to the state to negotiate the terms and inspect the machine. (*Id*. at ¶ 10, 12.) Thus, like the defendants in *Farino*, North Coast chose to contract with a Pennsylvania business, directed communication to the state, and negotiated the agreement in the state. *See Farino*, 960 F.2d at 1220. These contacts suggest that North Coast "most certainly knew that [it] was affiliating [itself] with an enterprise based primarily in [Pennsylvania]." *Burger King*, 471 U.S. at 480.

The contemplated consequences of the contract also indicate that North Coast availed itself of Pennsylvania's laws and should have "reasonably anticipate[d] being haled into court there." *World Wide Volkswagen*, 444 U.S. at 297. In *Mesalic v. Firefloat Corp.*, 897 F.2d 696,

700 (3d Cir. 1990), the Third Circuit held that a New Jersey court could assert personal jurisdiction over a non-resident boat manufacturer because the defendant delivered a boat to the plaintiff in New Jersey and sent employees to the state to repair the vessel. The court concluded that these contacts "'create[d] a substantial connection with the forum state'" even though the parties' contract did not obligate the defendant to deliver and repair the boat in New Jersey. *Id.* at 701 (quoting *Burger King*, 471 U.S. at 475–76). Here, the contract explicitly provided that North Coast was responsible for shipping the machine back to Pennsylvania and supervising its reassembly. (Lafferty Aff. at ¶ 15, 16.) Because there was a breach, North Coast never carried out its promise to reassemble the machine in Pennsylvania. Nonetheless, by agreeing to these provisions, North Coast clearly contemplated additional contacts with Pennsylvania and should have foreseen "being haled into court there." *World Wide Volkswagen*, 444 U.S. at 297.

Finally, the parties "course of dealing" suggests that the court may properly exercise jurisdiction over North Coast. *Burger King*, 471 U.S. 479. From 2000 to 2002, North Coast periodically contacted Penn Machine in Pennsylvania to provide status reports on the progress of the repair job.[2] (Lafferty Aff. at ¶ 17.) These contacts, along with North Coast's solicitation in Pennsylvania, the prior negotiations in Pennsylvania, and North Coast's agreement to deliver and reassemble the machine in Pennsylvania, are sufficient to establish personal jurisdiction. Hence, Penn Machine has alleged sufficient facts to establish a prima facie case for the exercise of personal jurisdiction. *See Farino*, 960 F.2d at 1223.

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[2]Penn Machine alleges that North Coast continued its correspondence through 2003. (Lafferty Aff. at ¶ 17.) However, according to North Coast, it assigned the Penn Machine contract to MV Acquisition in August 2002. (Br. Supp. Def.'s Mot. Dismiss at 13–14.)

North Coast contends that forcing it to litigate the case in Pennsylvania would not "comport with traditional notions of fair play and substantial justice." *Burger King*, 471 U.S. at 486. In *World Wide Volkswagen*, the Supreme Court provided a list of factors to use when evaluating this consideration, which courts often label "reasonableness." 444 U.S. at 292. "These factors include: 'the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.'" *Farino*, 960 F.2d at 1222 (quoting *Burger King*, 471 U.S. at 477). The defendant bears the burden of persuasion on this matter, and must "show that the assertion of jurisdiction is unconstitutional." *Farino*, 960 F.2d at 1226.

North Coast has failed to present sufficiently compelling evidence to show that jurisdiction would be "unconstitutional". North Coast argues that forcing it to travel to Philadelphia to defend itself will inflict an "undue financial burden". (Br. Supp. Def.'s Mot. Dismiss at 8.) However, it fails to present any evidence documenting the effect that defending the suit in Pennsylvania would have on the company. The Supreme Court has recognized that "modern transportation and communications have made it less burdensome for a party sued to defend himself in a State where he engages in economic activity." *Burger King*, 471 U.S. at 474 (quoting *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957)). In light of these modern methods of transportation and communication, I cannot conclude that forcing North Coast to defend itself in a neighboring state, in a city 430 miles from its home office, would offend "traditional notions of fair play and substantial justice." *Id*. at 486. Additionally, (1)

Pennsylvania has a valid interest in providing a convenient forum for its residents, (2) Penn Machine has a strong interest in obtaining relief in its home state, and (3) there is no evidence that the interests of either Pennsylvania or Ohio would be better served if the case was litigated in Ohio. *See id.* at 477, 482–83; *Mesalic,* 897 F.2d at 701–02. For these reasons, the court may assert personal jurisdiction over North Coast within the limitations of the Due Process clause.

B. Venue

North Coast contends that even if personal jurisdiction is proper, the court should dismiss or transfer the case for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406(a). Alternatively, North Coast asks the court to transfer the case "for the convenience of the parties and witnesses" or "in the interests of justice" to the United States District Court for the Northern District of Ohio pursuant to 28 U.S.C. § 1404(a) .

1. *Proper Venue*

In a diversity action, venue is proper in a district where the defendant resides. 28 U.S.C. § 1391(a)(1). For the purposes of venue, a corporate defendant resides "in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." § 1391(c). Because North Coast is subject to personal jurisdiction in this district, venue is proper. *See Jumara v. State Farm Ins.* Co., 55 F.3d 873, 879 (3d Cir. 1995) ("Venue is also proper . . . in the Eastern District of Pennsylvania, where the defendant transacts business and is therefore subject to personal jurisdiction.").[3] Thus, I will deny North Coast's request for dismissal or transfer

[3]Penn Machine does not argue that venue is proper under § 1391(a)(1). Instead, it claims that venue is appropriate under § 1391(a)(2) because "a substantial part of the events or omissions giving rise to the claim occurred" in this district. Because venue is proper under §

pursuant to Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406(a).

2. *Transfer of Venue*

Under 28 U.S.C. § 1404(a), even if venue is proper, a court may "may transfer any civil action to any other district or division where it might have been brought" "for the convenience of the parties and witnesses" or "in the interest of justice". This decision lies within the discretion of the trial court. *See Shuttle v. ARMCO Steel Corp*., 431 F.2d 22, 25 (3d Cir. 1970). Courts must exercise that discretion in light of the strong presumption in favor of the plaintiff's choice of forum. *See id.* at 25 ("[A] plaintiff's choice of a proper forum is a paramount consideration in any determination of a transfer request, and that choice 'should not be lightly disturbed.'") (citation omitted). The defendant has the burden of "establish[ing] that a balancing of proper interests weigh in favor of the transfer." *Id*. Courts consider a list of private and public interests when deciding a motion to transfer.

The private interests include: (1) "the 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 witnesses 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 files could not be produced in the alternative forum". *Jumara*, 55 F.3d at 879. Courts also consider the following public interests: (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

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1391(a)(1), I need not address this argument.

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." *Id.* at 879–80.

a. *Private interests*

North Coast acknowledges that courts generally give deference to a plaintiff's forum choice, but it contends that "choice of forum merits less deference when none of the conduct complained of occurred in [the] plaintiff's selected forum." *Lomanno v. Black*, 285 F. Supp. 2d 637, 644 (E.D. Pa. 2003). However, unlike *Lomanno*, where the plaintiff "asserted little to no operative facts" that occurred in the forum state, Penn Machine has alleged that North Coast made solicitations in Pennsylvania, negotiated the agreement in Pennsylvania, and was required to perform part of the contract in the state. *Id*. at 645; (Laff. Aff. at ¶¶ 4, 12, 15, 16.) Because these operative facts occurred in Pennsylvania, the court should give substantial deference to Penn Machine's forum choice.

North Coast also contends that the relative "financial condition" of the parties suggests that transfer to Ohio is appropriate. *Jumara*, 55 F.3d at 879. North Coast alleges that this case "is truly a battle between David and Goliath" because Penn Machine is a national business with "unlimited resources" and North Coast "has very limited resources" and cannot bear the financial burden of defending itself in a distant forum. (Br. Supp. Def.'s Mot. Dismiss at 15.) North Coast fails to support these allegations with any concrete evidence. Absent evidence that the parties have significantly disparate resources, I cannot conclude that this factor justifies transfer.

Additionally, North Coast argues that the "convenience of witnesses" requires the court to transfer the case to Ohio. It lists several former employees who reside in Ohio and are thus

beyond compulsory process.[4] (Br. Supp. Def.'s Mot. Dismiss at 14.) It further speculates that these witnesses will not agree to travel to Pennsylvania to testify, and that even if they agreed, the cost would be "extremely burdensome." (*Id*.) These bare allegations do not prove that litigating the case in Pennsylvania will cause these witnesses substantial inconvenience. North Coast fails to explain why these non-parties are necessary to the litigation. *See Factors, Etc., Inc. v. Pro Arts, Inc*., 579 F.2d 215, 218 (2d Cir. 1978) ("When a party seeks the transfer on account of the convenience of witnesses under § 1404(a), he must clearly specify the key witnesses to be called and must make a general statement of what their testimony will cover.") (citing Wright, Miller & Cooper, 15 Federal Procedure and Practice 244 (1976)). Additionally, North Coast fails to cite evidence showing that the witnesses would refuse to testify in their neighboring state. In contrast, Penn Machine provides evidence that two of the proposed witnesses frequently travel to Pennsylvania and would agree to appear in this court. (Lafferty Aff. at ¶ 23.) Finally, North Coast's fails to explain why it cannot effectively present these witnesses via videotaped testimony. *See ICT of N. Am., Inc. v. Team Air Express*, No. 00-3959, 2000 U.S. Dist LEXIS 16420, at *4 (E.D. Pa. Nov. 2, 2000) ("The cost of obtaining attendance of willing witnesses is . . . not persuasive given the ability to take videotaped trial depositions."); *Tuff Torq Corp. v. Hydro-Gear Ltd. P'ship*, 822 F. Supp. 359, 363 (D. Del. 1994) ("[I]n regard to the convenience of both parties and witnesses . . . . [t]echnological changes have made an already high burden on the moving party . . . even higher."); *see also Burger King*, 471 U.S. at 474.

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[4]The court must consider the convenience of North Coast's *former* employees because they are no longer considered agents of a party. *See Mentor Graphic Corp. v. Quickturn Design Sys., Inc*., 77 F. Supp. 2d 505, 510 (D. Del. 1999) ("[T]he convenience of witness that are employees of a party carries no weight because the parties are obligated to procure their attendance at trial.")

North Coast also contends that the court should transfer the case to Ohio because records and documents relating to the contract are located there. (Br. Supp. Def.'s Mot. Dismiss at 16.) However, it fails to explain why it cannot produce these records in Pennsylvania, especially given recent technological advances. *See Jumara*, 55 F.3d at 879 (limiting consideration of "the location of books and records" to the extent that they "could not be produced in the alternative forum"); *Lomanno*, 285 F. Supp. 2d at 647 (noting that "'technological advances of recent years have significantly reduced the weight of this factor in the balance of convenience analysis."') (citation omitted). Additionally, Penn Machine asserts that there is significant evidence located in Pennsylvania, including the machine at the heart of the contract, which weighs over 200,000 pounds and must be disassembled before it can be moved. (Lafferty Aff. at ¶¶ 20–21.)

At best, North Coast has shown that it will incur some inconvenience and additional cost if it litigates the case in Pennsylvania. However, transfer is not appropriate if it will "merely shift the inconvenience from the defendant to the plaintiff". *Dinterman v. Nationwide Mut. Ins. Co.*, 26 F. Supp. 2d 747, 749–50 (E.D. Pa. 1998). "Unless the balance of convenience of the parties is strongly in favor of defendant, the plaintiff's choice of forum should prevail." *Shuttle*, 431 F.2d at 25. Thus, the private interests do not justify transferring the case to Ohio.

b. *Public interests*

North Coast contends that the courts should transfer the case because the docket in this district is congested in comparison to the docket in the Northern District of Ohio. (Br. Supp. Def.'s Mot. Dismiss at 17.) To support this claim, North Coast submits official Judicial Caseload Profiles for the two districts. (Decl. R. Christopher Yingling at Ex. 1.) North Coast observes that in 2003 there were nearly 200 more filings per judgeship in this district compared to the Northern

District of Ohio. (Br. Supp. Def.'s Mot. Dismiss at 17.) However, Penn Machine points out that in the same year there were approximately 150 additional pending cases per judgeship in the Northern District of Ohio. (Pl.'s Mem. of Law in Opp. Def.'s Mot. Dismiss at 20.) These statistics are inconclusive and fail to show that the docket in this district is significantly more congested than the docket in the Northern District of Ohio..

North Coast also argues that Ohio has a strong interest in the litigation because North Coast is located there. (Br. Supp. Def.'s Mot. Dismiss at 17.) However, Pennsylvania has a similarly compelling "interest in protecting its residents and providing a forum for resolution of their disputes." *Elbeco Inc. v. Estrella de Plato Corp*., 989 F. Supp. 669, 679 (E.D. Pa. 1997); *see also McGee*, 355 U.S. at 223 (noting that a state "has a manifest interest in providing effective means of redress for its residents").

None of the other "public interests" suggest that the court should grant North Coast's motion to transfer.[5] Thus, after balancing the public and private interests, I conclude that North Coast has not established that these interests "weigh in favor of transfer." *Shuttle*, 431 F.2d at 25.

III. CONCLUSION

For the above reasons, I will deny North Coast's motion to dismiss the complaint, or alternatively to transfer the case to the United States District Court for the Northern District of Ohio. An appropriate order follows.

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[5]North Coast has failed to provide any reason why a judgment in this court would be unenforceable and neither party indicates whether Pennsylvania or Ohio law applies here. *See Jumara*, 55 F.3d at 879–80 (noting that courts should consider "the enforceability of the judgment" and "the familiarity of the trial judge with the applicable state law" in ruling on § 1404(a) motions).

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

PENNSYLVANIA MACHINE WORKS, INC., Plaintiff,	:	
v.	:	CIVIL ACTION
NORTH COAST REMANUFACTURING CORPORATION, Defendant.	:	NO. 04-1731

ORDER

AND NOW, this _____ day of November, 2004, upon consideration of defendant North Coast Remanufacturing Corporation's motion to dismiss the complaint for lack of *in personam* jurisdiction and improper venue or, alternatively to transfer venue (Doc. No. 7), and plaintiff Pennsylvania Machine Works, Inc.'s opposition thereto (Doc. No. 8), it is hereby ORDERED that the motion is DENIED.

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William H. Yohn. Jr., J.