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

HORACE MANN INSURANCE CO. **Plaintiff,**	
	CIVIL ACTION NO. 04-5978
v.	
NATIONWIDE MUTUAL INSURANCE CO. **Defendant.**	

MEMORANDUM AND ORDER

Tucker, J. **March 17, 2005**

Presently before this Court is Defendant Nationwide Mutual Insurance Company's ("Nationwide") Motion to Transfer (Doc. 2). For the reasons set forth below, upon consideration of Defendant's Motion, Plaintiff Horace Mann Insurance Company's ("Horace Mann") Response (Doc. 9), and oral argument held before this Court on March 15, 2005, this Court will grant Defendant's Motion and transfer the above-captioned case to the United States District Court for the District of Connecticut.

BACKGROUND

Plaintiff is an Illinois corporation, with its principal place of business in Springfield, Illinois. Defendant is an Ohio corporation with its principal place of business in Columbus, Ohio. The Plaintiff brings this case before this Court pursuant to 28 U.S.C. § 1332, based on diversity of citizenship. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391.

On or about October 23, 1994, a one car automobile accident occurred in Waterbury, Connecticut. John Pruden was the driver, and Vicki Benton and her minor daughter were passengers. Vicki Benton was injured as a result of the car accident. Bruce Powers was the

owner of the vehicle. Powers had an automobile insurance policy with Nationwide at the time of the accident, and Pruden had a personal automobile insurance policy with Horace Mann. Horace Mann asserts that, as Pruden was operating the vehicle with the permission and consent of Powers, he was also insured under Powers' Nationwide policy.

Benton filed a civil lawsuit against Pruden and Powers in the Waterbury Superior Court in Connecticut on or about November 12, 1996, relating to injuries sustained by Benton in the 1994 accident. Horace Mann claims that Nationwide accepted primary responsibility in providing a defense and representing the interests of Powers and Pruden in that action. Nationwide entered into a settlement agreement with Benton on November 8, 1996, but only on behalf of its insured Powers. Nationwide did not obtain a release on behalf of Pruden.

Horace Mann alleges that due to Nationwide's negligence and carelessness, a default judgment was entered against Pruden on May 20, 1998, in the amount of $450,000.00. On or about March 28, 1999, Pruden assigned his rights under his Horace Mann policy to Benton. On September 10, 2001, a bad faith civil action was commenced by Benton against Horace Mann and Nationwide in the United States District Court for the District of Connecticut. On October 28, 2002, a release was executed by Benton and a settlement agreement was reached in the bad faith action for $700,000.00.

As a result, Plaintiff brings this action against Nationwide for indemnification, equitable subrogation, and for violation of the Connecticut Unfair Trade Practices Act ("CUTPA") and the Connecticut Unfair Insurance Practices Act ("CUIPA").

DISCUSSION

Defendant filed the instant motion to transfer the above-captioned case to the United

States District Court for the District of Connecticut pursuant to 28 U.S.C. § 1404(a) and the doctrine of forum non conveniens. 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." District courts have broad discretion in deciding whether to transfer a case under § 1404(a). Czubryt v. Consol. Rail Corp., 2002 U.S. Dist. LEXIS 4692, *2 (E.D. Pa. Feb. 20, 2002) (citing Plum Tree v. Stockment, 488 F. 2d 754, 756 (3d Cir. 1973)).

"The threshold question is whether the alternative forum is a proper venue." Czubryt, 2002 U.S. Dist. LEXIS at *2. Venue would be proper in the District of Connecticut for the same reasons that venue is proper before this Court. Neither party disputes that conclusion. After determining that an alternative forum exists, the court may consider several private and public interest factors. Jumara v. State Farm Ins. Co., 55 F. 3d 873,879-80 (3d Cir. 1995).

The private interest factors for the court to consider are: (1) the Plaintiff's forum preference; (2) the Defendant's forum preference; (3) the location where the events occurred and claims arose; (4) the convenience of the parties; (5) the convenience of the witnesses; and (6) the ease of access to sources of proof. Id. The public interest factors to be considered are: (1) the relative congestion and burden of the courts in the two fora; (2) the relative ability of the two fora to resolve the case more expeditiously and inexpensively; (3) the interest of the community at-large, including the interest of the communities in having controversies resolved where they arise; and (4) the familiarity of the court with the particular state law in diversity cases. Id.

In support of its motion, Defendant argues that the private and public interest factors to be considered by the court support transfer to the District of Connecticut. Both parties are

inconvenienced regardless of whether the case is brought in Pennsylvania or Connecticut because both parties would be required to travel. Specifically, Defendant states that (1) the underlying facts and civil actions giving rise to the instant case occurred in Connecticut; (2) the potential witnesses live in Connecticut; (3) the Defendant's forum preference is Connecticut; (4) the Plaintiff has requested a jury trial, and the Connecticut community has a greater interest in having this controversy resolved there than the Pennsylvania community; and (5) the District of Connecticut is more familiar with Connecticut law.

Plaintiff argues that venue is proper in the Eastern District of Pennsylvania because both Plaintiff and Defendant conduct significant business and have significant contact with this forum. Furthermore, Plaintiff's regional office, which is responsible for all litigation in the Northeastern United States, is located in Pennsylvania, and suit in this venue is convenient for Plaintiff in overseeing and managing this litigation. All things being equal, travel to Philadelphia, the home of a major international airport, is much more convenient for witnesses than travel to Connecticut.

Plaintiff states that this Court will find that transferring this case to the District of Connecticut will not advance the convenience of the witnesses or parties nor will the interest of justice be better served. Of the nine potential witnesses that Defendant names, six have already been deposed in the prior bad faith action. The remaining witnesses do not reside in Connecticut. Moreover, this case will most likely be decided on the papers and require no live testimony of witnesses.

Lastly, Plaintiff states that an evaluation of the trial court's familiarity with the applicable state law in diversity cases should not result in a transfer of this case to Connecticut. Plaintiff

contends that this Court analyzes and applies the law of other states to facts on a daily basis and that there is no evidence to suggest that since the law involved in this case is Connecticut law that the Court would be overwhelmed in carrying out its duties. Thus, Plaintiff avers that Defendant has failed to prove that transfer of venue is warranted in this case.

After review, this Court finds that Plaintiff's considerations do not outweigh the factors supporting a transfer. Generally, a plaintiff's choice of forum is generally of paramount importance, however, "the plaintiff's choice of forum is accorded less deference where, as here, the plaintiff does not reside in the forum chosen and no operative facts occurred in the forum." Czubryt, 2002 U.S. Dist. LEXIS at *4 (citing Piper Aircraft Co. v. Reyno, 454 U.S. 325, 255-56, 70 L. Ed. 2d 419, 102 S. Ct. 252 (1981)). In addition, "the location of the plaintiff's attorney is not a crucial factor and must cede importance where other factors strongly favor a transfer." Id. (citing Solomon v. Continental Am. Life Ins. Co., 472 F. 2d 1043, 1047 (3d Cir. 1973)).

Although many of the factors to be considered do not tip the scales in favor of one party over the other, there are at least two factors that favor transfer to the District of Connecticut. First, the Connecticut community has a greater interest in having this controversy resolved there. All underlying events occurred in Connecticut, and the accident and its victims were all residents of Connecticut. Secondly, the District of Connecticut is more familiar with the Connecticut state law which will be applied in this case. For those reasons, this Court will grant Defendant's Motion to Transfer.

CONCLUSION

Defendant's Motion to Transfer is granted, and this case will be transferred to the United States District Court for the District of Connecticut. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HORACE MANN INSURANCE CO.	|	
Plaintiff,	|	
	|	**CIVIL ACTION NO. 04-5978**
v.	|	
	|	
NATIONWIDE MUTUAL INSURANCE CO.	|	
Defendant.	|	

ORDER

AND NOW, this 17th day of March, 2005, upon consideration of Defendant's Motion to Transfer (Doc. 2), Plaintiff's Response (Doc. 9) and oral argument held before this Court on March 15, 2005, **IT IS HEREBY ORDERED AND DECREED** that Defendant's Motion to Transfer is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk of the Court shall **TRANSFER** the above-captioned case to the United States District Court for the District of Connecticut.

BY THE COURT:

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Hon. Petrese B. Tucker, U.S.D.J.