

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

LEADING EDGE LOGISTICS, LLC, : CIVIL ACTION  
Plaintiff :  
v. :  
CENTRAL TRUCKING, INC. : No. 05-1299  
Defendant :

MEMORANDUM AND ORDER

McLaughlin, J.

June 16, 2005

The plaintiff has brought this action against Central Trucking, Inc. ("Central Trucking") for breach of contract, breach of implied covenant of good faith and fair dealing, and unfair competition. Central Trucking entered into an agreement with Leading Edge Logistics, LLC ("Leading Edge") to transport freight for its customers. As part of their agreement, Central Trucking agreed not to solicit any of Leading Edge's customers. Central Trucking allegedly breached this agreement by soliciting and transporting freight for one of Leading Edge's customers, Indiana Packers.

The case was initially brought in the Court of Common Pleas of Delaware County, and removed to this Court on March 21, 2005. Central Trucking has now moved to transfer this case to the Southern District of Indiana pursuant to 28 U.S.C. § 1404(a). Having weighed the private and public factors set out in Jumara v. State Farm Insurance Company, 55 F.3d 873 (3d Cir. 1995), the

Court will grant the motion.

Section 1404(a) of Title 28 states:

For the convenience of the 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). The party requesting the transfer has the burden of establishing that transfer is warranted. The Court must consider private and public factors to determine in which forum the interests of justice and convenience would be best served. Jumara, 55 F.3d at 879.

Private factors include: (1) the plaintiff's forum preference; (2) the defendant's preference; (3) where the claim arose; (4) the convenience of the parties as indicated by their relative physical and financial condition; (5) the extent to which witnesses may be unavailable for trial in one of the forums; and (6) the extent to which books and records could not be produced in one of the forums. Id.

Public factors include: (1) enforceability of a judgment; (2) practical considerations that could make the trial easy, expeditious, or inexpensive; (3) the relative administrative difficulty resulting from court congestion; (4) the local interest in deciding the controversy; (5) the public policies of the forums; and (6) the familiarity of the trial judge with the applicable state law in diversity cases. Id. at 879-880.

The plaintiff's choice of forum weighs slightly against transfer. Although the plaintiff is located in Pennsylvania, the operative facts occurred in Indiana.

The defendant's preference favors transfer. Central Trucking is based in Indiana and prefers to litigate this matter in the Southern District of Indiana.

Where the claim arose weighs strongly in favor of transfer. Central Trucking's alleged solicitation of Indiana Packers, the central issue in this litigation, would have had to take place in Indiana. Leading Edge does not dispute Central Trucking's contention that the negotiation, contracting, and performance of the contract at issue took place primarily in Indiana. Although Leading Edge may have done some negotiation in Pennsylvania and felt harm from the alleged breach in Pennsylvania, Leading Edge's claim against Central Trucking arose in Indiana.

The convenience of the parties as indicated by their relative physical and financial condition is neutral. Leading Edge contends that it has already suffered a financial loss of over \$300,000 due to Central Trucking's breach of their agreement, and it should not have to incur additional expenses. However, Central Trucking alleges that Leading Edge owes \$295,000 in unpaid freight charges in a case pending in Indiana. Thus, the convenience factor does not weigh heavily in favor of either

party. Either Leading Edge would incur additional expenses by litigating in Indiana, or Central Trucking would incur additional expenses by litigating in Pennsylvania.

Witness availability weighs heavily in favor of the defendant. It would be more convenient for Central Trucking's witnesses to litigate this case in Indiana. Central Trucking listed nine key witnesses that it intends to call at trial, eight from Indiana and one from Michigan. Central Trucking provided affidavits from two potential witnesses, the President and Controller of Central Trucking, who stated that they would be "greatly inconvenienced" and their work and home life would be disrupted if they had to travel to Philadelphia. See Affidavit of Keith Roberts, Jr.; Affidavit of Geneva Davis.

The defendant's strongest argument for witness availability deals with its ability to compel the attendance of witnesses at trial. Central Trucking listed six non-party witnesses from Indiana that it intends to call to testify. In the likely event that some of these witnesses would be unwilling to travel to Philadelphia, they would not be subject to this Court's subpoena power because they are located out of state and more than 100 miles from this courthouse. See Fed.R.Civ.P. 45(b)(2).

Witness availability has no impact on the plaintiff. The plaintiff identified only one witness, the President of

Leading Edge, who is located in Pennsylvania. The plaintiff did not argue that it would be inconvenient for this witness to appear in Indiana for trial. Further, since this is the President of Leading Edge, there is no reason to suspect that this witness would be unwilling to appear at trial to testify on its behalf.

The books and records issue weighs slightly in favor of the defendant. Central Trucking and Indiana Packers are both located in Indiana. Any records with respect to their alleged business dealings with each other, the main issue in the case, would be maintained in Indiana. Any relevant records from Leading Edge could be easily shipped for trial in Indiana.

The public factors are generally neutral. Leading Edge argues that public factor three, relative administrative difficulty resulting from court congestion disfavors transfer. Leading Edge states that the median time in months for a jury trial is far shorter in the Eastern District of Pennsylvania than it is in the Southern District of Indiana, citing a 15-month difference. Although the relative congestion of court dockets may be evaluated in a motion to transfer, it generally is not a factor worthy of great weight. See Gen. Refractories Co. v. Washington Mills Electro Minerals Corp., No. 94-6332, 1995 U.S. Dist. LEXIS 8351, \*15 (E.D. Pa. June 16, 1995); Branter v. Black & Decker Mfg. Co., 1992 WL 365489, \*4 (E.D. Pa. Nov. 30, 1992)

(finding a 12-month difference in mean time to trial insufficient to defeat transfer).

The other public factors are generally neutral with respect to advancing the interests of justice and convenience in this case. Having weighed the Jumara factors, the Court concludes that the defendant has established that transfer is warranted.

An appropriate Order follows.

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ORDER

AND NOW, this 16<sup>th</sup> day of June, 2005, upon consideration of Defendant's Motion to Transfer Venue (Docket No. 4), the plaintiff's opposition, the defendant's reply, and the plaintiff's sur-reply, IT IS HEREBY ORDERED that said motion is GRANTED. IT IS FURTHER ORDERED that this case shall be transferred to the United States District Court for the Southern District of Indiana.

BY THE COURT:

/s/ Mary A. McLaughlin  
MARY A. McLAUGHLIN, J.