

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

LINDA AKINS, Individually and as	:	CIVIL ACTION
Administratrix of the	:	
Estate of Dale Akins, Deceased	:	
	:	
v.	:	NO. 05-0758
	:	
RADIATOR SPECIALTY COMPANY	:	
and	:	
USX CORPORATION, formerly known	:	
as U. S. STEEL CORPORATION	:	

MEMORANDUM AND ORDER

Savage, J.

November 3, 2005

In this diversity wrongful death action, the plaintiff alleges that her late husband's death was caused by exposure to benzene which was an ingredient of a product he had used in his work as a plumber. She has named as defendants Radiator Specialty Company ("Radiator"), the manufacturer of the product, and USX Corporation ("USX")¹, the supplier of the component containing the benzene.

Defendant USX seeks transfer pursuant to 28 U.S.C. § 1404(a), claiming that the Western District of Pennsylvania is the more appropriate forum. Opposing the transfer, the plaintiff argues that this case should remain in the district of her choice.

After considering all relevant factors and giving significant consideration to the plaintiff's preference, we conclude that this case should be transferred to the Western District of Pennsylvania pursuant to 28 U.S.C. § 1404(a).

Legal Standard

A defendant moving for transfer of venue bears the burden of demonstrating that

¹ The correct name of the USX Corporation is United States Steel Corporation. No motion or stipulation to substitute or change the name has been filed.

(1) the case could have been brought initially in the proposed transferee forum; (2) the proposed transfer will be more convenient for the parties and the witnesses; and, (3) the proposed transfer will be in the interest of justice. 28 U.S.C. § 1404(a); *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995); *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 25 (3d Cir. 1970). Once the defendant establishes that the action could have been brought in the proposed district², the court must weigh several private and public interest factors to determine whether the balance of conveniences tips in favor of transfer. *Jumara*, 55 F.3d at 879-80.

Among the factors considered when determining whether transfer is more convenient for the parties and in the interest of justice are: (1) the plaintiff's choice of forum; (2) the defendant's preferred forum; (3) the place where the claim arose; (4) the relative ease of access to the sources of proof; (5) the convenience of the parties as demonstrated by relative financial status and physical location; (6) the availability of compulsory process for the attendance of witnesses; (7) the convenience of the witnesses; (8) the practical problems that make trial of a case expensive and inefficient; and, (9) "public interest" factors, such as congestion of court dockets and the relationship of the jury and the community to the occurrence. *Jumara*, 55 F.3d at 879-80; *McMillan v. Weeks Marine*, No. Civ. 02-6741, 2002 WL 32107617, at *1 (E.D. Pa. Dec. 2, 2002).

The district court has broad discretion in deciding a motion for transfer of venue because the analysis involved is "flexible and individualized." *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988). Despite this wide latitude, a transfer motion is not to be granted without a careful weighing of factors favoring and disfavoring transfer. See *Shutte*,

² Plaintiff does not dispute that this action could properly have been filed in the Western District of Pennsylvania.

431 F.2d at 24-25. Because the defendant bears the burden of demonstrating that the balance of convenience and the interest of justice clearly favor transfer, we begin our analysis favoring the plaintiff's selection of venue. *Jumara*, 55 F.3d at 879-80; see also *McMillan*, 2002 WL 32107617, at *1.

The plaintiff's choice of venue is usually given paramount consideration. *Shutte*, 431 F.2d at 25. However, it is given less deference where the plaintiff does not reside in the chosen forum and none of the operative facts occurred there. See *McMillan*, 2002 WL 32107617, at *1-*2; 15 CHARLES ALAN WRIGHT ET AL., FED. PRAC. & PROC. JURIS. 2D § 3848 (2d ed. 1986); cf. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 & n.23 (1981) (noting that "[c]itizens or residents deserve somewhat more deference than foreign plaintiffs").

Analysis

The plaintiff, who resides in the Western District of Pennsylvania, does not offer any reason for her choosing this forum. Her attorneys are located in Texas. Neither of the defendants have its principal place of business in this district.

USX offers a number of considerations weighing in favor of transfer. Before his death, the decedent lived and worked in the Altoona area in the Western District of Pennsylvania, and the plaintiff still resides there. The decedent purchased the product, Liquid Wrench, at stores located in the Altoona area. For a significant portion of the alleged period of benzene exposure, he did his plumbing jobs within a fifty mile radius of Altoona. At least two important witnesses, the plaintiff and her husband's former employee reside in Altoona.

The plaintiff conflates convenience with availability. She argues that potential witnesses are within the subpoena power of this district because they are all residing

within Pennsylvania, making them subject to service of a subpoena pursuant to FED. R. CIV. P. 45(b)(2) which extends the range of service to anywhere within Pennsylvania. She misdirects the focus of the inquiry. The rule she cites does not address convenience, but rather, it goes to availability. Indeed, the rule itself acknowledges the possibility of inconvenience by providing that a subpoena requiring a person beyond 100 miles to appear may be quashed or modified. FED. R. CIV. P. 45(c)(3)(A)(ii). In short, merely because a witness may be required to appear pursuant to a subpoena does not eliminate inconvenience to the witness.

The plaintiff also argues that USX's wealth belies its claim of inconvenience. This argument overlooks the impact upon persons who are not parties nor related to the parties. Witnesses having knowledge of the decedent's use and purchase of the product, and his health would be required to travel from the Altoona area and possibly stay in Philadelphia for a trial.

In sum, the plaintiff does not reside in the Eastern District of Pennsylvania, has not identified any witnesses located here and does not allege that any of the operative facts occurred here. Thus, we conclude that the convenience of the parties and the witnesses, and the lack of any real connection to this district override the plaintiff's choice of forum.

Conclusion

Weighing the factors of public interest and convenience against the plaintiff's choice of forum requires transferring this case to the Western District of Pennsylvania where the alleged injury arose and where the majority of witnesses and sources of proof are located. Accordingly, the motion to transfer venue will be granted and this

case will be transferred to the Western District of Pennsylvania.

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ORDER

AND NOW, this 3rd day of November, 2005, upon consideration of the Motion of Defendant United States Steel Corporation to Transfer Venue (Document No. 29), and the plaintiff's response, it is **ORDERED** that the motion to transfer is **GRANTED** and this matter is **TRANSFERRED** to the Western District of Pennsylvania.

TIMOTHY J. SAVAGE, J.