

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

CONSOLIDATED RISK SERVICES, INC.	:	CIVIL ACTION
	:	
Plaintiff/Counterclaim Defendant,	:	
	:	
v.	:	NO. 05-6827
	:	
AUTOMOBILE DEALERS WC SELF INSURANCE TRUST	:	
	:	
Defendant, Counterclaim Plaintiff,	:	
and,	:	
MICHAEL A. SMITH, in his capacity as Chairman of the ADSIP Board of Trustees,	:	
WAYNE JOHNSON, in his capacity as Chairman of the ADSIP Board of Trustees,	:	
WILLIAM LIA, JR., in his capacity as Secretary of the ADSIP Board of Trustees,	:	
PAUL HEALEY, in his capacity as Treasurer of the ADSIP Board of Trustees,	:	
DWIGHT HEALEY, in his capacity as Member of the ADSIP Board of Trustees,	:	
DENNIS PETRISAK, in his capacity as Member of the ADSIP Board of Trustees,	:	
CHARLES BASIL, in his capacity as Member of the ADSIP Board of Trustees,	:	
JOHN WORTS, in his capacity as Member of the ADSIP Board of Trustees,	:	
RICHARD D'ANDREA, in his capacity as Member of the ADSIP Board of Trustees,	:	
Defendants.	:	
	:	

ORDER AND MEMORANDUM

ORDER

AND NOW, this 21st day of June, 2006, upon consideration of defendants' Motion to Transfer Venue to the Northern District of New York Pursuant to 28 U.S.C. § 1404(a) (Document No. 11, filed April 27, 2006) and Plaintiff's Response to Defendants' Motion to

Transfer Venue (Document No. 18, filed May 17, 2006), **IT IS ORDERED**, for the reasons set forth in the attached memorandum, that defendants' Motion to Transfer Venue to the Northern District of New York Pursuant to 28 U.S.C. § 1404(a) is **GRANTED**. The case is **TRANSFERRED** to the United States District Court for the Northern District of New York.

IT IS FURTHER ORDERED that the Clerk of the United States District Court for the Eastern District of Pennsylvania **SHALL** send the complete file to the United States District Court for the Northern District of New York.

MEMORANDUM

I. BACKGROUND

The following facts are taken from plaintiff's Complaint.¹

Defendant Automobile Dealers WC Self Insurance Trust ("the Trust") is a New York trust. The Trust funds workers' compensation benefits for the employees of its members, who are New York automobile dealerships. Compl. ¶¶ 2, 17. Plaintiff Consolidated Risk Services ("CRS") is a Pennsylvania company with expertise in designing, managing, and implementing self-insured workers' compensation programs. Id. ¶ 16.

In November 1995, plaintiff and defendant entered into a contract for plaintiff to administer the Trust's workers' compensation program. Id. ¶ 18. The contract provided that it

¹ In considering a motion to transfer venue, a court must accept as true the allegations in the complaint. Andrade v. Chase Home Fin., LLC, 2005 WL 3436400, at *2 (N.D. Ill. Dec. 12, 2005) ("When deciding a motion to transfer venue, the court must accept as true all of plaintiff's well-pleaded facts in the complaint, unless they are contradicted by affidavits or other appropriate evidence from the defendant."); Fellner v. Philadelphia Toboggan Coasters, Inc., 2005 WL 2660351, at *1 (E.D. Pa. Oct. 18, 2005) ("In considering a motion to dismiss for improper venue under Fed. R. Civ. P. 12(b)(3), the court must generally accept as true the allegations in the complaint.").

would automatically renew for successive five year terms unless specific conditions constituting “cause” occurred and a timely notice of termination was given. Id. ¶ 19. In November 2005, the Trust informed plaintiff that it did not intend to renew the contract. Plaintiff did not receive any notice of cause or notice of termination. Id. ¶ 20.

Plaintiff filed suit against the Trust for breach of contract. Id. ¶ 22. Plaintiff has also named the Trust’s board of trustees as defendants. Id. ¶¶ 3-11.

In their Answer, defendants assert counterclaims against plaintiff CRS and counterclaim defendant Consolidated Claims Services, Inc. (“CCS”), which was the third-party claims administrator for the Trust.² Answer ¶ 15. The counterclaims against CRS and CCS are based on breach of contract, breach of fiduciary duty, negligence, unjust enrichment, fraud in the inducement, conversion, and deceptive business practices. Specifically, defendants allege that plaintiff failed to administer and maintain the Trust in accordance with New York law and caused the Trust to become underfunded through neglect, mismanagement, and self-dealing. Id. ¶ 30. Currently the trust is administered by FCS Administrators, Inc. (“FCS”). Id. ¶ 36.

Defendants have filed a Motion to Transfer Venue to the Northern District of New York.³ For the reasons below, defendants’ Motion is granted.⁴

² According to defendants, CCS and CRS shared an office in Dewitt, New York, and had the same chief executive officer. Def. Memo at 4.

³ Defendants expect the case to be transferred to the Syracuse division of the Northern District of New York, since Dewitt, New York, where the day-to-day administration of the Trust occurred, is just outside of Syracuse. Case Assignment Plan for the Northern District of New York, Def. Ex. A.

⁴ Plaintiff and counterclaim defendant have filed a Motion to Dismiss Counts 2 through 7 of Defendant Automobile Dealers WC Self Insurance Trust’s Counterclaims: Motion for More Specific Pleading as to Conversion Claim; and Motion of CCS to Dismiss Entire Counterclaim

II. LEGAL STANDARD

Under 28 U.S.C. § 1404(a), a court may transfer a civil action “to any other district or division where it might have been brought.” In federal diversity cases, venue is proper in

(1) a judicial district where any defendant resides, if all defendants 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 a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which the defendants are subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(a).

Once a court determines that venue would be proper in another district, the court must consider “all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum.” Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995), citing 15 Wright, Miller, & Cooper, Federal Practice and Procedure § 3847 (2d ed. 1986). The party moving to transfer venue bears the burden of establishing the need for the transfer. Jumara, 55 F.3d at 879; Miller v. Consol. Rail Corp., 196 F.R.D. 22, 24 (E.D. Pa. 2000).

The relevant factors considered in deciding a motion to transfer venue are:

- The plaintiff’s choice of forum;
- The defendant’s choice of forum;
- Where the claim arose;
- The convenience of the parties;
- The convenience of the witnesses;⁵

for Failure to State Claim. Because the Court grants defendants’ motion to transfer venue, it will not address plaintiff and counterclaim defendant’s motion.

⁵ Jumara instructs that the convenience of the witnesses is considered “only to the extent that the witnesses may actually be unavailable for trial in one of the fora.” Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995).

- The location of books and records;
- The enforceability of the judgment;
- Practical considerations making the trial easy, expeditious, or inexpensive;
- 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 familiarity of the trial judge with the applicable state law in diversity cases.

Jumara, 55 F.3d at 879-80; Leading Edge Logistics, Inc. v. Central Trucking, Inc., 2005 WL 1417131, at *1 (E.D. Pa. June 16, 2005).

Ordinarily, there is a strong presumption in favor of the forum chosen by plaintiff. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255 (1981); Bhatnagar v. Surrendra Overseas Ltd., 52 F.3d 1220, 1226 n.4 (3d Cir. 1995). However, a court is vested with “broad discretion to determine, on an individualized, case-by-case basis, whether convenience and fairness considerations weigh in favor of transfer.” Jumara, 55 F.3d at 883. “While the burden is on the defendant, the defendant is not required to show truly compelling circumstances for change of venue, but rather that all relevant things considered, the case would be better off transferred to another district.” In re United States, 273 F.3d 380, 388 (3d Cir. 2001) (internal quotation omitted).

III. ANALYSIS

A. The Case Could Have Been Brought in the Northern District of New York

In this case, the Northern District of New York is an appropriate venue because it is “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.” 28 U.S.C. § 1391(a)(2). While plaintiff’s place of business is in Wayne, Pennsylvania, it also has an office in Dewitt, New York, which is just outside of Syracuse in the

Northern District of New York. CRS Internet Page, Def. Ex. F.⁶ Most of the day-to-day administration of the Trust occurred at CCS's office, which was also in Dewitt, New York. Answer ¶¶ 14-15. Most of the meetings of the board of trustees also occurred in the Northern District of New York, several of which were attended by representatives of plaintiff. Smith Aff. ¶ 7, Def. Ex. D. Therefore, a substantial part of the events giving rise to the claims in this case occurred in the Northern District of New York, making venue proper there.

B. The Jumara Factors Weigh in Favor of Transfer

While the Court finds several of the Jumara factors to be neutral, the Court concludes that the convenience of the parties, particularly the trustee defendants, the convenience of the likely witnesses, and state of New York's interest in the case all weigh heavily in defendants' favor and warrant transferring the case to the Northern District of New York.

1. Convenience of the parties

This is a case between a Pennsylvania company, a New York trust, and nine individual trustees. Of those nine individual trustees, eight live in New York. Two live in the Northern District of New York (defendants Johnson and Lia); three live in the Western District of New York (defendants Smith, Petrisak, and Basil); and three live in the Southern District of New York (defendants P. Healey, D. Healey, and D'Andrea). Compl. ¶¶ 3-9, 11. The final defendant, Worts, lives in the District of New Jersey, near the New York border. Id. ¶ 10. It will be significantly easier for the five individual defendants in both the Northern and Western Districts

⁶ In considering a motion to transfer, a court may examine affidavits submitted by the parties and facts outside of the complaint, although the court must draw all reasonable inferences in favor of the party opposing the transfer. See Fellner, 2005 WL 2660351, at *1; Heft v. AAI Corp., 355 F. Supp.2d 757, 762 (M.D. Pa. 2005).

of New York to travel to Syracuse, New York, where the case is expected to be litigated. Requiring these defendants to travel to Philadelphia would likely pose a significant hardship to them.⁷ Lambton Mfg. Ltd. v. Young, 1992 WL 5275, at *1 (E.D. Pa. Jan. 10, 1992) (finding that the greater disruption to defendants weighed in favor of transfer). Furthermore, it is likely that many of the defendant trustees would testify at trial, including defendant Smith, a resident of Buffalo, New York, who is chairman of the board of trustees.⁸

2. Convenience of the witnesses

When considering the convenience of the witnesses, the primary consideration for the Court is witnesses who might be unavailable for trial in one of the fora. Jumara, 55 F.3d at 879. “The factors which a court considers when ruling on whether the balance of convenience weighs in favor of transfer are . . . availability of compulsory process for attendance of unwilling witnesses” Saint-Gobain Calmar, Inc. v. Nat’l Products Corp., 230 F. Supp.2d 655, 659 (E.D. Pa. 2002).

Defendants have identified six potential witnesses who could be unavailable for a trial in the Eastern District of Pennsylvania because they are not parties to the litigation and are beyond the subpoena power of the court. Three of these witnesses are members of the Workers’ Compensation Board of the State of New York, which is located in Albany. Pfalzgraf Aff. ¶ 6, Def. Ex. E. Defendants anticipate that these witnesses would be necessary to provide evidence

⁷ In an affidavit, defendant Smith avers that attending legal proceedings far away from his business, a group of auto dealerships, would cause significant disruption to his business operations. Smith Aff. ¶ 3, Def. Ex. D.

⁸ The Court takes judicial notice of the fact that Buffalo is over 400 miles from Philadelphia, whereas it is only 150 miles from Syracuse.

regarding the Board's investigation of plaintiff's management of the Trust as well as other trusts in New York. Id. The other three witnesses are employees of FCS, which is the current administrator of the Trust. Id. ¶¶ 3, 5. FCS is located in Williamsville, New York, which is just outside of Buffalo. Id. ¶ 4.

Defendants anticipate calling these six witnesses to testify about plaintiff's improper practices. Id. ¶ 5. All six of these witnesses are beyond the subpoena power of this court. Fed. R. Civ. P. 45(b)(2) ("Subject to the provisions of clause (ii) of subparagraph (c)(3)(A), a subpoena may be served . . . at any place without the district that is within 100 miles of the place of the deposition, hearing, trial . . ."); Fed. R. Civ. P. 45(c)(3)(A) ("On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from where that person resides, is employed or regularly transacts business in person."); see also Pippett v. Waterford Dev., LLC, 166 F. Supp.2d 233, 239 (E.D. Pa. 2001) (noting that non-party witnesses who resided in Connecticut were beyond 100-mile radius of Rule 45).

If defendants are unable to call at least some of these six witnesses to testify at trial, their ability to present their case would be significantly hampered.⁹ Therefore this factor weighs heavily in favor of transfer. See Leading Edge Logistics, 2005 WL 1417131, at *2 (finding that defendant's strongest argument in favor of transfer was unavailability of non-party witnesses

⁹ Plaintiff argues that defendants do not truly need to call either the Workers' Compensation Board witnesses or the FCS witnesses. Pl. Response at 8-9. However, plaintiffs have not provided any evidence to support this argument. In light of the allegations in the Complaint and defendants' Answer and Counterclaims, the Court concludes that at least some of these witnesses would be useful, if not crucial, in defending plaintiff's breach of contract claim and proving defendants' counterclaims.

who were located in Indiana); Pippett, 166 F. Supp.2d at 239 (finding that transfer of venue was favored in order to prevent Connecticut public officials from having to travel to Pennsylvania to testify about a Connecticut matter).

3. Local interest in the case

The state of New York has a far greater interest in the outcome of this case than the commonwealth of Pennsylvania. The contract at issue required plaintiff to administer a trust which provided workers' compensation benefits for hundreds of New York car dealership and thousands of workers, almost all of whom are New York residents. Def. Memo at 18; Camp Aff. ¶ 7, Def. Ex. C. The state of New York has a strong interest in ensuring that its workers are adequately covered by workers' compensation. See New York Cent. R.R. Co. v. White, 243 U.S. 188, 206 (1917) (“[T]he public has a direct interest in [the matter of compensation for human life or limb lost or disability incurred in the course of hazardous employment] as affecting the common welfare.”); State Ins. Fund v. Boyland, 282 A.D. 516, 521 (N.Y. App. Div. 1953) (“So there can be no doubt that the Workmen’s Compensation Law was enacted in the public interest for the health, safety, and welfare of the inhabitants of the State.”). If workers are not adequately covered by their compensation fund, the ultimate burden for their care may fall upon the state. New York has demonstrated its interest in this case through the Workers’ Compensation Board investigation into plaintiff’s management of the Trust. Smith Aff. ¶¶ 11-12. Therefore this factor also weighs heavily in favor of transfer.

4. Other factors

Regarding the other Jumara factors, the court finds that only one, the plaintiff’s choice of forum, weighs in favor of keeping the case in this District. “In the Third Circuit, a plaintiff’s

choice of forum is a paramount concern in deciding a motion to transfer venue and should not be lightly disturbed. In particular, when a plaintiff chooses his home forum the choice is entitled to great deference.” Endless Pools, Inc. v. Wave Tec Pools, Inc., 362 F. Supp.2d 578, 586 (E.D. Pa. 2005) (internal citations omitted). This presumption may be overcome, however, “when the public and private interest factors clearly point toward trial in the alternative forum.” D’Onofrio v. Il Corriere Della Sera, 373 F. Supp.2d 555, 557 (E.D. Pa. 2005) quoting Piper Aircraft, 454 U.S. at 236. The Court concludes that the factors analyzed above – the convenience of the parties, witnesses, and the local interest – are sufficiently strong to overcome plaintiff’s choice of forum. This is not a case where transferring venue will merely shift the inconvenience of litigation from defendant to plaintiff. See Bolles v. K Mart Corp., 2001 WL 767605, at *3 (E.D. Pa. July 9, 2001) (“The Court would not grant the motion to transfer venue if the net result would be merely a shift of inconvenience from the defendant to the plaintiff.”).

The other factors to be considered in deciding a motion to transfer venue are largely neutral. For example, based on the submissions of the parties, it appears that the claim arose both in New York and in Pennsylvania. While the day-to-day administration of the Trust occurred in CCS’s office in Dewitt, New York, much of the decisions regarding administration occurred in plaintiff’s Wayne, Pennsylvania office. Answer ¶¶ 14-15; Hannigan Aff. ¶¶ 3, 8-10, Pl. Ex. B. As a result, much of the physical evidence in the case is located in both New York and Pennsylvania. Similarly, the other Jumara factors, such as the enforceability of the judgment, the relative administrative difficulty in the two fora resulting from court congestion, and the familiarity of the trial judge with the applicable state law are also neutral.

IV. CONCLUSION

Because venue is proper in the Northern District of New York, and because three of the Jumara factors – the convenience of the trustee defendants, the need to call non-party witnesses beyond the Court’s subpoena power, and New York’s significant interest in the case – weigh heavily in favor of transferring venue, and, with the sole exception of plaintiff’s choice of forum, the remaining Jumara factors are largely neutral, the case will be transferred to the Northern District of New York.

BY THE COURT:

/s/ Honorable Jan E. DuBois _____

JAN E. DUBOIS, J.