

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

MARIANTHI BURNS and	:	
JAMES BURNS	:	
Plaintiffs,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 97-6455
NATIONAL RAILROAD PASSENGER	:	
CORPORATION (AMTRAK)	:	
Defendant.	:	

MEMORANDUM-ORDER

GREEN, S.J.

July , 1998

Presently before the court is Defendant's Motion for Transfer of Venue from the Eastern District of Pennsylvania to the District of New Jersey pursuant to 28 U.S.C. § 1404(a) and Plaintiff's Response thereto. Plaintiffs, Marianthi and James Burns, both residents of New Jersey, commenced this action in the Court of Common Pleas of Philadelphia County on September 25, 1997 for injuries allegedly suffered by them as a result of the negligence of Defendant, National Railroad Passenger Corporation ("Amtrak"). Plaintiff Marianthi Burns alleges that she was injured in Pennsylvania as a passenger on an Amtrak train traveling from Wilmington, DE to Metro Park, NJ. The action was removed to this court by motion of Defendant on October 17, 1997. This court has original jurisdiction pursuant to 28 U.S.C. § 1331 because Amtrak was created by an Act of Congress, 49 U.S.C. § 24107 et seq., and more than half of its corporate stock is owned by the federal government. See 28 U.S.C. § 1349.

A motion for transfer of venue is governed by 28 U.S.C. § 1404(a) which states: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district where it might have been brought." In analyzing a motion for transfer of venue, the plaintiff's choice of forum is a paramount consideration and that choice

should not be lightly disturbed. Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970) (citation omitted). In addition, courts have adopted a balancing test weighing a number of other factors including: (1) relative ease of access to sources of proof; (2) availability of compulsory process for attendance of unwilling witnesses; (3) the cost of obtaining attendance of willing witnesses; (4) the possibility of a view of premises, if appropriate; (5) all other practical problems that make trial of a case easy, expeditious and inexpensive; and (6) public interest factors. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947). The burden is on the moving party to establish that a balancing of proper interests weigh in favor of the transfer and unless the balance of convenience of the parties is strongly in favor of the defendant, the plaintiff's choice of forum should prevail. Shutte, 431 F.2d at 25; see also, Jumara v. State Farm Ins. Co., 55 F.3d 873, 879-80 (3d Cir. 1995).

In the present case, neither party argues that the action could not have been brought in both the Eastern District of Pennsylvania and the District of New Jersey. Defendant argues, however, that the action should be transferred to the District of New Jersey because the accident did not occur in Pennsylvania. (Def.'s Mot. Transfer of Venue at 2). Defendant also argues that the action should be transferred because Plaintiffs' reside within the District of New Jersey and because it would be inconvenient for the witnesses, including Plaintiffs' medical providers, to travel to the Eastern District of Pennsylvania. Id. at 3, 9-11. Finally, Defendant argues that transfer would best serve the public interest and the interest of justice because it would burden the Commonwealth of Pennsylvania to have this case heard in the Eastern District of Pennsylvania and it would further system integrity and fairness to the parties. Id. at 11-12.

This court concludes that Defendant has failed to establish that a balancing of the proper

interests weigh in favor of the transfer. See Shutte, 431 F.2d at 25. Furthermore, the balance of convenience of the parties is not in favor of Defendant because it would not be overly burdensome for the witnesses to travel to the Eastern District of Pennsylvania as opposed to the District of New Jersey. Id. Moreover, although Defendant alleges that it “may” bring forth witnesses who are beyond the subpoena power of the Eastern District of Pennsylvania, it has not identified any. Therefore, because Defendant has failed to satisfy its burden, Plaintiffs’ choice of forum should prevail and Defendants’ Motion to Transfer Venue is denied.

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Defendant.	:	

ORDER

AND NOW, this day of July, 1998 upon consideration of Defendant's Motion for Transfer of Venue and Plaintiff's Response thereto, IT IS HEREBY ORDERED that Defendant's Motion is DENIED.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.