

Stephanie SMITH
v.
COLONIAL PENN INSURANCE COMPANY.
Civil Action No. G-96-503.
United States District Court, S.D. Texas, Galveston Division.
Nov. 6, 1996.
ORDER DENYING MOTION TO TRANSFER

KENT, District Judge.

This is a breach of contract case based on an insurance contract entered into by Plaintiff and Defendant. Now before the Court is Defendant's October 11, 1996 Motion to Transfer Venue from the Galveston Division to the Houston Division of the United States District Court for the Southern District of Texas pursuant to 28 U.S.C. § 1404(a). For the reasons set forth below, the Motion is DENIED.

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." 28 U.S.C. s 1404(a). The defendant bears the burden of demonstrating to the District Court that it should, in its sound discretion, decide to transfer the action. *Peteet v. Dow Chemical Co.*, 868 F.2d 1428, 1436 (5th Cir.) (holding that the decision whether to transfer rests with the sound discretion of the District Court), cert. denied, 493 U.S. 935, 110 S.Ct. 328, 107 L.Ed.2d 318 (1989); *Time, Inc. v. Manning*, 366 F.2d 690, 698 (5th Cir.1966) (holding that the defendant bears the burden of demonstrating that the action should be transferred). The Court weighs the following factors to decide whether a transfer is warranted: the availability and convenience of witnesses and parties, the location of counsel, the location of books and records, the cost of obtaining attendance of witnesses and other trial expenses, the place of the alleged wrong, the possibility of delay and prejudice if transfer is granted, and the plaintiff's choice of forum, which is generally entitled to great deference. [citations omitted]

Defendant's request for a transfer of venue is centered around the fact that Galveston does not have a commercial airport into which Defendant's employees and corporate representatives may fly and out of which they may be expediently whisked to the federal courthouse in Galveston. Rather, Defendant contends that it will be faced with the huge "inconvenience" of flying into Houston and driving less than forty miles to the Galveston courthouse, an act that will "encumber" it with "unnecessary driving time and expenses." The Court certainly does not wish to encumber any litigant with such an onerous burden. The Court, being somewhat familiar with the Northeast, notes that perceptions about travel are different in that part of the country than they are in Texas. A litigant in that part of the country could cross several states in a few hours and might be shocked at having to travel fifty miles to try a case, but in this vast state of Texas, such a travel distance would not be viewed with any surprise or consternation.¹ Defendant should be assured that it is not embarking on a three-week-long trip via covered wagons when it travels to Galveston. Rather, Defendant will be pleased to discover that the highway is paved and lighted all the way to Galveston, and thanks to the efforts of this Court's predecessor, Judge Roy Bean, the trip should be free of rustlers, hooligans, or vicious varmints of unsavory kind. Moreover, the speed limit was recently increased to seventy miles per hour on most of the road leading to Galveston, so Defendant should be able to hurtle to justice at lightning speed. To assuage Defendant's worries about

¹ "The sun is 'rize, the sun is set, and we is still in Texas yet!"

the inconvenience of the drive, the Court notes that Houston's Hobby Airport is located about equal drivetime from downtown Houston and the Galveston courthouse. Defendant will likely find it an easy, traffic-free ride to Galveston as compared to a congested, construction-riddled drive to downtown Houston. The Court notes that any inconvenience suffered in having to drive to Galveston may likely be offset by the peacefulness of the ride and the scenic beauty of the sunny isle.

The convenience of the witnesses and the parties is generally a primary concern of this Court when considering transfer motions. However, vague statements about the convenience of unknown and unnamed witnesses is insufficient to convince this Court that the convenience of the witnesses and the parties would be best served by transferring venue. [citation omitted] In the Court's view, even if all the witnesses, documents, and evidence relevant to this case were located within walking distance of the Houston Division courthouse, the inconvenience caused by retaining the case in this Court would be minimal at best in this age of convenient travel, communication, discovery, and trial testimony preservation. The Galveston Division courthouse is only about fifty miles from the Houston Division courthouse. "[I]t is not as if the key witnesses will be asked to travel to the wilds of Alaska or the furthest reaches on the Continental United States." *Continental Airlines*, 805 F.Supp. at 1397.

As to Defendant's argument that Houston might also be a more convenient forum for Plaintiff, the Court notes that Plaintiff picked Galveston as her forum of choice even though she resides in San Antonio. Defendant argues that flight travel is available between Houston and San Antonio but is not available between Galveston and San Antonio, again because of the absence of a commercial airport. Alas, this Court's kingdom for a commercial airport!² The Court is unpersuaded by this argument because it is not this Court's concern how Plaintiff gets here, whether it be by plane, train, automobile, horseback, foot, or on the back of a huge Texas jackrabbit, as long as Plaintiff is here at the proper date and time. Thus, the Court declines to disturb the forum chosen by the Plaintiff and introduce the likelihood of delay inherent in any transfer simply to avoid the insignificant inconvenience that Defendant may suffer by litigating this matter in Galveston rather than Houston. See *United Sonics, Inc. v. Shock*, 661 F.Supp. 681, 683 (W.D.Tex.1986) (plaintiff's choice of forum is "most influential and should rarely be disturbed unless the balance is strongly in defendant's favor"); *Dupre*, 810 F.Supp. at 828 (a prompt trial "is not without relevance to the convenience of parties and witnesses and the interest of justice").

For the reasons stated above, Defendant's Motion to Transfer is hereby DENIED [and if you have any gripes about this Order, take them to the Fifth Circuit]

² Defendant will again be pleased to know that regular limousine service is available from Hobby Airport, even to the steps of this humble courthouse, which has got lights, indoor plummin', 'lectric doors, and all sorts of new stuff, almost like them big courthouses back East.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas
ENTERED

GALVESTON DIVISION

MAR 1 1999

REPUBLIC OF BOLIVIA

Plaintiff,

vs.

PHILIP MORRIS COMPANIES,
INC., ET AL.

Defendant.

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Michael N. Milby, Clerk of Court

CIVIL ACTION NO. G-99-110

ORDER OF TRANSFER PURSUANT TO 28 U.S.C. § 1404(a)

Plaintiff, the Republic of Bolivia, brings this action to recover from numerous tobacco companies various health care costs it allegedly incurred in treating illnesses its residents suffered as a result of tobacco use. This action was originally filed in the District Court of Brazoria County, Texas, 239th Judicial District, and removed to this Court on February 19, 1999, by certain Defendants alleging jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1332. For the following reasons, the Court exercises its authority and discretion pursuant to 28 U.S.C. § 1404(a) to sua sponte TRANSFER this case to the United States District Court for the District of Columbia.

This is one of at least six similar actions brought by foreign governments in various courts throughout the United States. The governments of Guatemala, Panama, Nicaragua, Thailand, Venezuela, and Bolivia have filed suit in the geographically diverse locales of Washington, D.C., Puerto Rico, Texas, Louisiana,

and Florida, in both state and federal courts. Why none of these countries seems to have a court system their own governments have confidence in is a mystery to this Court. Moreover, given the tremendous number of United States jurisdictions encompassing fascinating and exotic places, the Court can hardly imagine why the Republic of Bolivia elected to file suit in the veritable hinterlands of Brazoria County, Texas. The Court seriously doubts whether Brazoria County has ever seen a live Bolivian . . . even on the Discovery Channel. Though only here by removal, this humble Court by the sea is certainly flattered by what must be the worldwide renown of rural Texas courts for dispensing justice with unparalleled fairness and alacrity, apparently in common discussion even on the mountain peaks of Bolivia! Still, the Court would be remiss in accepting an obligation for which it truly does not have the necessary resources. Only one judge presides in the Galveston Division--which currently has before it over seven hundred cases and annual civil filings exceeding such number--and that judge is presently burdened with a significant personal situation which diminishes its ability to always give the attention it would like to all of its daunting docket obligations, despite genuinely heroic efforts to do so. And, while Galveston is indeed an international seaport, the capacity of this Court to address the complex and sophisticated issues of international law and foreign relations presented by this case is dwarfed by that of its esteemed colleagues in the District of Columbia who deftly address such awesome tasks as a matter of course. Indeed, this Court, while

doing its very best to address the more prosaic matters routinely before it, cannot think of a Bench better versed and more capable of handling precisely this type of case, which requires a high level of expertise in international matters. In fact, proceedings brought by the Republic of Guatemala are currently well underway in that Court in a related action, and there is a request now before the Judicial Panel on Multidistrict Litigation to transfer to the United States District Court for the District of Columbia all six tobacco actions brought by foreign governments, ostensibly for consolidated treatment. Such a Bench, well-populated with genuinely renowned intellects, can certainly better bear and share the burden of multidistrict litigation than this single judge division, where the judge moves his lips when he reads

Regardless of, and having nothing to do with, the outcome of Defendants' request for transfer and consolidation, it is the Court's opinion that the District of Columbia, located in this Nation's capital, is a much more logical venue for the parties and witnesses in this action because, among other things, Plaintiff has an embassy in Washington, D.C., and thus a physical presence and governmental representatives there, whereas there isn't even a Bolivian restaurant anywhere near here! Although the jurisdiction of this Court boasts no similar foreign offices, a somewhat dated globe is within its possession. While the Court does not therefrom profess to understand all of the political subtleties of the geographical transmogrifications ongoing in Eastern Europe, the Court is virtually certain that Bolivia is not within the four

counties over which this Court presides, even though the words Bolivia and Brazoria are a lot alike and caused some real, initial confusion until the Court conferred with its law clerks. Thus, it is readily apparent, even from an outdated globe such as that possessed by this Court, that Bolivia, a hemisphere away, ain't in south-central Texas, and that, at the very least, the District of Columbia is a more appropriate venue (though Bolivia isn't located there either). Furthermore, as this Judicial District bears no significant relationship to any of the matters at issue, and the judge of this Court simply loves cigars, the Plaintiff can be expected to suffer neither harm nor prejudice by a transfer to Washington, D.C., a Bench better able to rise to the smoky challenges presented by this case, despite the alleged and historic presence there of countless "smoke-filled" rooms. Consequently, pursuant to 28 U.S.C. § 1404(a), for the convenience of parties and witnesses, and in the interest of justice, this case is hereby **TRANSFERRED** to the United States District Court for the District of Columbia.

IT IS SO ORDERED.

DONE this first day of March, 1999, at Galveston, Texas.



SAMUEL B. KENT
UNITED STATES DISTRICT JUDGE