SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOHN A. PARKINS, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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October 8, 2012

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Re: *Charles Williams v. PACCAR, Inc.*
C.A. No. 11C-09-129 ASB

Upon Defendant's Motion to Dismiss Plaintiffs' Delaware Complaint
DENIED

This is a personal injury suit for damages allegedly arising out of Plaintiff's exposure to asbestos. He originally filed this suit in a California state court, which dismissed it on the ground of *forum non conveniens.* At the time it did so, the California court directed that Plaintiff re-file his suit in Texas, which the California court deemed to be a preferable venue. Instead Plaintiff chose to re-file in this case. Defendant PACCAR now seeks to dismiss this action on the basis of law of the case, arguing that that doctrine obligated Plaintiff to re-file in Texas.

The law of the case arises when "a specific legal principle is presented by facts which remain constant throughout the subsequent course of the same

litigation."[1] This doctrine applies with equal weight to "the decisions of a coordinate court" as it does to decisions of its own court.[2] However, courts will not apply the law of the case doctrine if a prior court did not actually reach the issue in question.[3]

In the instant matter the actual holding of the California court was narrow. It held for a variety of reasons, including the state of its docket and Plaintiff's limited contacts with California, that it was an inconvenient forum for resolution of Plaintiff's asbestos claims. It never decided, nor was it asked to decide, that Delaware was an inconvenient forum for resolution of Plaintiff's claims. It has long been the policy of this court to accord great deference to the Plaintiff's choice of forum.[4] Because the California court never decided that this case cannot be conveniently litigated in Delaware, the law of the case doctrine does not require this court to depart here from the usual deference. The motion to dismiss is therefore **DENIED.**

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[1] *Kenton v. Kenton*, 571 A.2d 778, 784 (Del. 1990); *see also Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 816 (1988) ("As commonly defined, the doctrine [of the law of the case] posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.") (internal citations omitted)).

[2] *Christianson*, 486 U.S. at 816 ("This rule of practice promotes the finality and efficiency of the judicial process by 'protecting against the agitation of settled issues.'" (internal citations omitted)).

[3] *See Farina v. Nokia Inc.*, 625 F.3d 97, 117 (3d Cir. 2010); *see also Flood Control Dist. Of Maricopa County v. Paloma Inv. Ltd. P'ship*, 279 P.3d 1191, 1202 (Ariz. Ct. App. 2012) ("[W]e will not apply law of the case if the prior decision did not actually decide the issue in question." (internal citations omitted)); *In re IBM Credit Corp.*, 731 S.E.2d 444, 447 (N.C. Ct. of App. 2012) ("The law of the case applies only to 'what is actually decided.'" (internal citations omitted)).

[4] *See In re Asbestos Litigation*, 929 A.2d 373, 380 (Del. Super. 2006) ("This preference [in favor of a plaintiff's choice of forum] has been expressed in the form of a 'presumption' that the plaintiff's choice of forum will be respected unless the defendant carries the 'heavy burden' of establishing that Delaware is not an appropriate forum for the controversy." (*quoting Mar-Land Indus. Contractors, Inc. v. Caribbean Petroleum Ref., L.P.,* 777 A.2d 774, 777-78 (Del.2001))).

IT IS SO ORDERED.

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John A. Parkins, Jr.

oc: Prothonotary
cc: All Counsel of Record via E-File