Rel: December 31, 2020

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1190423

Ex parte Johnson & Johnson et al.

PETITION FOR WRIT OF MANDAMUS

(In re: DCH Health Care Authority et al.

v.

Purdue Pharma LP et al.)

(Conecuh Circuit Court, 2019-000007)

BOLIN, Justice.

Johnson & Johnson and other pharmaceutical defendants[1] in the

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[1]When this petition for a writ of mandamus was filed, the petition was styled "Ex parte Purdue Pharma LP et al." After the underlying case was commenced in the trial court but before the petition was filed, Purdue Pharma and its affiliates declared bankruptcy, and the underlying action against them was automatically stayed. Therefore, Purdue Pharma and its affiliates are not parties to this petition, and this Court has restyled this petition to accurately reflect the parties before it.

The petitioners/defendants include Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc., n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc., n/k/a Janssen Pharmaceuticals, Inc.; Endo Health Solutions Inc.; Endo Pharmaceuticals Inc.; Par Pharmaceutical, Inc.; Par Pharmaceutical Companies, Inc.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Watson Laboratories, Inc.; Actavis LLC; Actavis Pharma, Inc.; Amneal Pharmaceuticals, LLC; Noramco, Inc.; Abbott Laboratories; Abbott Laboratories Inc.; Allergan Finance, LLC, f/k/a Actavis, Inc., f/k/a Watson Pharmaceuticals, Inc.; Allergan Sales, LLC; Allergan USA, Inc.; AmerisourceBergen Drug Corporation; H.D. Smith, LLC, f/k/a H.D. Smith Wholesale Drug Co.; Anda, Inc.; Cardinal Health, Inc.; Henry Schein, Inc.; CVS Health Corporation; CVS Pharmacy, Inc.; CVS Indiana, L.L.C.; Rite Aid of Alabama, Inc.; Rite Aid of Maryland, Inc.; Walmart Inc.; Wal-Mart Stores East, LP; The Kroger Co.; Kroger Limited Partnership II; Walgreen Co.; and Walgreen Eastern Co., Inc. According to the complaint, these entities manufacture, market, distribute, and/or dispense opioid medications. Mallinckrodt LLC and SpecGx LLC are not included in this list, although they were named in the complaint. On October 12, 2020, after this petition was filed, those two entities notified this Court that they had declared bankruptcy and that an automatic stay with regard to them applied. Upon receiving that notice, this Court notified the other petitioners/defendants and the respondents/plaintiffs that, unless a party showed cause why this Court should not entertain this petition with the

underlying action filed in the Conecuh Circuit Court petition this Court for a writ of mandamus compelling that court to transfer the underlying action filed against them by DCH Health Care Authority and other plaintiffs[2] from Conecuh County to Jefferson County, on the basis that

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remaining parties, this Court would consider the petition. No party objected.

[2]The respondents/plaintiffs, who identify themselves as "Alabama hospitals that have been financially damaged by the opioid epidemic in Alabama which was created and maintained by the petitioners," are 17 corporate entities that own or operate 21 hospitals throughout Alabama. The respondents include: DCH Health Care Authority, operating as DCH Regional Medical Center in Tuscaloosa County, as Northport Medical Center in Tuscaloosa County, and as Fayette Medical Center in Fayette County; Healthcare Authority for Baptist Health, doing business as Baptist Medical Center East in Montgomery County, as Baptist Medical Center South in Montgomery County, and as Prattville Baptist Hospital in Autauga County; Medical West Hospital Authority, doing business as Medical West in Jefferson County; Evergreen Medical Center, LLC, doing business as Evergreen Medical Center in Conecuh County; Gilliard Health Services, Inc., doing business as Jackson Medical Center in Clarke County; Crestwood Healthcare, L.P., doing business as Crestwood Medical Center in Madison County; Triad of Alabama, LLC, doing business as Flowers Hospital in Houston County; QHG of Enterprise, Inc., doing business as Medical Center Enterprise in Coffee County; Affinity Hospital, LLC, doing business as Grandview Medical Center in Jefferson County; Gadsden Regional Medical Center, LLC, doing business as Gadsden Regional Medical Center in Etowah County; Foley Hospital Corporation, doing business as South Baldwin Regional Hospital in Baldwin County; Health Care Authority of Clarke County, doing business as Grove Hill Memorial Hospital in Clarke County; BBH PBMC, LLC, operating as

venue in Conecuh County is not proper as to all plaintiffs or, alternatively, on the basis that the convenience of the parties and/or the interest of justice requires it. We deny the petition.

Facts and Procedural History

On September 19, 2019, the plaintiffs filed a complaint in the Conecuh Circuit Court against numerous defendants that, they aver, manufacture, market, distribute, and/or dispense opioid medications throughout Alabama in a manner that is misleading, unsafe, and has resulted in drug addiction, injury, and/or death to Alabama citizens. The complaint asserts claims of negligence, nuisance, unjust enrichment, fraud and deceit, wantonness, and civil conspiracy.[3] The plaintiffs seek both compensatory and punitive damages because, they say, they have

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Princeton Baptist Medical Center in Jefferson County; BBH WBMC, LLC, operating as Walker Baptist Medical Center in Walker County; BBH SBMC, LLC, operating as Shelby Baptist Medical Center in Shelby County; BBH CBMC, LLC, operating as Citizens Baptist Medical Center in Talladega County; and BBH BMC, LLC, operating as Brookwood Baptist Medical Center in Jefferson County.

[3]The civil-conspiracy claim is alleged only against the marketing, distributing, and dispensing defendants. The other claims are alleged against all defendants.

incurred and will incur "massive costs by providing uncompensated care as a result of opioid-related conditions."

On December 31, 2019, the manufacturer defendants[4] filed a motion to transfer the case to Jefferson County because, they said, the doctrine of forum non conveniens required it.[5] With regard to the convenience-of-the-parties prong of the doctrine of forum non conveniens, see § 6-3-21.1(a), Ala. Code 1975, the manufacturer defendants reasoned that, because, they said, 8 of the 17 plaintiffs either have a place of business in Jefferson County or operate hospitals in Jefferson County or adjacent counties, logic dictated that a large percentage of the witnesses for those plaintiffs, i.e., prescribing doctors, hospital administrators, etc., and their evidence are located in or around Jefferson County. Therefore, they

[4]Those defendants include Janssen Pharmaceuticals, Inc.; Johnson & Johnson; Mallinckrodt LLC; SpecGX LLC; Endo Health Solutions Inc.; Endo Pharmaceuticals Inc.; Par Pharmaceutical, Inc.; Par Pharmaceuticals Companies, Inc.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc; Watson Laboratories, Inc.; Actavis, LLC; and Actavis Pharma, Inc. The motion was filed before Mallinckrodt LLC and SpecGX LLC filed for bankruptcy and the underlying case against them was automatically stayed.

[5]The manufacturer defendants did not submit any evidence with their motion.

maintained, it would be more convenient for those witnesses for the case to be heard in Jefferson County. They further contended that, because, they said, 11 of the 17 plaintiffs have a principal place of business or operate in counties in north Alabama, those plaintiffs and their witnesses would be inconvenienced by travel of more than 2 ½ hours to Conecuh County. Likewise, they maintained that, because the defendants' principal places of business are outside Alabama and their counsel and witnesses reside outside Alabama, travel to Conecuh County for litigation was also inconvenient for defense witnesses. They urged that, because Jefferson County is more centrally located in the State and is the location of Alabama's largest airport, Jefferson County's geographic location made it a substantially more convenient forum for the plaintiffs, the defendants, and all potential witnesses.

With regard to the interest-of-justice prong, the manufacturer defendants contended that transfer of the case to Jefferson County was required because, they said, Jefferson County has a strong "nexus" to the litigation and Conecuh County's connection is tenuous at best. They argued that Conecuh County's connection is weak because only one of the

17 plaintiffs, Gilliard Health Services, Inc., had its principal place of business in Conecuh County;[6] that none of the defendants have a principal place of business or office in Conecuh County; that only a fraction of one percent of the alleged conduct giving rise to the action occurred in Conecuh County; and that the plaintiffs did not allege that a "substantial part of the events or omissions giving rise to the claim" even occurred in Conecuh County. The manufacturer defendants argued that, unlike Conecuh County's weak connection to the case, Jefferson County had both a substantially strong nexus to the case and a far greater interest in overseeing its adjudication. They observed that 8 of the 17 plaintiffs had a principal place of business in Jefferson County or adjacent Shelby, Tuscaloosa, and Walker Counties. Citing a Washington Post article, "The Opioid Files: Drilling Into the DEA's Pain Pill Database," dated July 21, 2019, which was also relied upon by the plaintiffs in their complaint, the manufacturer defendants maintained that of the

[6]Although Gilliard Health Services, Inc., does business as Jackson Medical Center in Clarke County, its principal place of business is in Evergreen, in Conecuh County.

1,703,752,769 prescription opioid pills supplied to Alabama from 2006 to 2012, 247,636,796 of those pills were supplied to Jefferson County -- more than 39 times the amount supplied to Conecuh County. Thus, they reasoned, the interest of justice required transfer of the action because, they said, Jefferson County had a strong connection to the action and Conecuh County had a "negligible connection to this multi-party, complex litigation."

On January 6, 2020, the plaintiffs filed a response to the manufacturer defendants' motion for a change of venue. In their response, the plaintiffs noted that the manufacturer defendants had conceded that venue is proper in Conecuh County because the doctrine of forum non conveniens is applicable only when an action is filed in a county in which venue is appropriate.[7]

The plaintiffs contended that the manufacturer defendants had not met their burden of proving that the convenience of the parties or the

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[7]See Ex parte New England Mut. Life Ins. Co., 663 So. 2d 952, 956 (Ala. 1995)(noting that the doctrine of forum non conveniens "has a field of operation only where an action is commenced in a county in which venue is appropriate").

interest of justice required transfer of the case from Conecuh County to Jefferson County. The plaintiffs explained that they have hospitals located in multiple counties not in or near Jefferson County and that each of the plaintiffs had "chosen to promote judicial economy and resources by filing one consolidated civil action [in Conecuh County] instead of separate actions [in multiple counties]." The plaintiffs reasoned that, because they decided to join the Conecuh County action, the plaintiffs had selected their forum and that the convenience of the forum for themselves and their witnesses is irrelevant. They further reasoned that the defendants, being foreign corporations with principal places of business, witnesses, and counsel located outside Alabama, will be inconvenienced by having to litigate in any county in Alabama. With respect to the interest-of-justice prong, the plaintiffs maintained that Conecuh County has a strong connection to the case because the data, as pleaded in the complaint, demonstrated that Conecuh County received approximately 475 opioid pills per person while, during the same period, Jefferson County received approximately 376 pills per person. They reasoned that Conecuh County has a strong interest in the case because the data reflected that Conecuh

County is oversaturated with opioid pills. The plaintiffs concluded that, because the manufacturer defendants had submitted no evidence to support their motion for a change of venue and, they said, had failed to establish that Jefferson County is "significantly more convenient" for the parties or that the interest of justice requires transfer of the underlying action, the motion for a change of venue was due to be denied.

On January 21, 2020, other defendants joined the manufacturer defendants[8] and again moved for a change of venue to the Jefferson

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[8]The defendants listed as filing this motion include Rite Aid of Alabama, Inc.; Rite Aid of Maryland, Inc.; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc., n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc., n/k/a Janssen Pharmaceuticals, Inc.; Johnson & Johnson; Mallinckrodt LLC; SpecGx LLC; Endo Health Solutions Inc.; Endo Pharmaceuticals Inc.; Par Pharmaceutical, Inc.; Par Pharmaceutical Companies, Inc.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Watson Laboratories, Inc.; Actavis LLC; Actavis Pharma, Inc.; Amneal Pharmaceuticals LLC; Noramco, Inc.; Abbott Laboratories; Abbott Laboratories, Inc.; Allergan Finance, LLC, f/k/a Actavis, Inc., f/k/a Watson Pharmaceuticals, Inc.; Allergan Sales, LLC; Allergan USA, Inc.; AmerisourceBergen Drug Corporation; H.D. Smith, LLC, f/k/a H.D. Smith Wholesale Drug Co.; Anda, Inc.; Cardinal Health, Inc.; Henry Schein, Inc.; CVS Health Corporation; CVS Pharmacy, Inc.; CVS Indiana, L.L.C.; Walmart Inc.; Wal-Mart Stores East, LP; The Kroger Co.; Kroger Limited Partnership II; Walgreen Co.; and Walgreen Eastern Co., Inc.

Circuit Court, arguing that venue in Conecuh County is not proper as to all plaintiffs but that venue in Jefferson County is proper as to all plaintiffs or, alternatively, that, even if the court concludes that venue is proper in Conecuh County, the doctrine of forum non conveniens, mandates a transfer of this case from Conecuh County to Jefferson County for the convenience of the parties and/or in the interest of justice. The defendants supported their motion with the previously filed manufacturer defendants' motion for a change of venue and an evidentiary submission, which included:

- a copy of the Washington Post article "The Opioid Files: Drilling Into the DEA's Pain Pill Data Base," dated July 21, 2019;

- fifteen affidavits from defendant corporate representatives and/or corporate counsel stating that the defendants do not have a place of business in Alabama and/or a connection to Conecuh County and that their witnesses primarily reside in states other than Alabama;

- a list of 15 top pain-medicine prescribers in Alabama, indicating that 6 prescribers were located in Jefferson County and 3 prescribers were located in Mobile County;

- an "Overdose Surveillance Summary" issued by the Alabama Department of Public Health in July 2019;

- a list of Alabama hospitals indicating the location of each hospital; the number of staffed beds, total discharges, and patient days; and the gross patient revenue;

- MapQuest Reports indicating that 11 of the 21 represented hospitals are located over 100 miles from the Conecuh County courthouse;

- a MapQuest Report indicating that the Birmingham-Shuttlesworth International Airport is located two miles from the Jefferson County courthouse;

- lists of the doctors working in the various represented hospitals;

- lists of the Jefferson County circuit court judges and their staffs;

- copies of the Jefferson Circuit Court's calendars for 2020 and 2021;

- a copy of the 2020 combined Monroe Circuit Court and Conecuh Circuit Court calendar;

- financial statements for The Healthcare Authority of Baptist Health, an affiliate of UAB Health System (2017-2019), and for Medical West Hospital Authority, an affiliate of UAB Health System (2016-2018); and

- reports indicating the number of hotels in Evergreen (the county seat of Conecuh County) and Birmingham, Alabama.

First, the defendants argued that Conecuh County is not the proper venue for this case because, they said, a substantial portion of the events from which the plaintiffs' claims arise did not occur in Conecuh County. See § 6-3-7(a)(1), Ala. Code 1975 (providing that a plaintiff may bring an action against a corporation "[i]n the county in which a substantial part of the events or omissions giving rise to the claim occurred"). They urged that the core theory of the plaintiffs' complaint is that the represented hospitals incurred monetary losses because the hospitals were "compelled to act and treat patients with opioid-related conditions" and that, consequently, the plaintiffs seek reimbursement for the costs of that patient care. The defendants noted that 4 of the 17 plaintiffs involved in the action are located in Jefferson County and that the plaintiffs' complaint indicates that during the same period the number of opioid medications prescribed in Jefferson County was 39 times higher than the amount of opioid medications prescribed in Conecuh County. Additionally, the defendants contended that Jefferson County sustained a greater proportion of the alleged injuries than did Conecuh County because more hospitalization-related events, alleged to have occurred in

association with opioid medications, had been reported in Jefferson County than in Conecuh County. They reasoned that, (1) because the principal office of only 1 of the 17 plaintiffs is located in Conecuh County, (2) because at least 4 hospitals seeking reimbursements for costs expended on alleged opioid-addicted patients are located in or near Jefferson County, and (3) because Jefferson County had received the largest percentage of opioid pills for any county in the state, transfer to Jefferson County, where, they said, a substantial part of the alleged harm occurred, would result in venue being proper for the claims of all the plaintiffs.

Next, the defendants maintained that, even if venue was proper in Conecuh County for at least one plaintiff, the plaintiffs had not established all the exception-triggering conditions set forth in § 6-3-7(c), Ala. Code 1975, for venue to be proper as to all the plaintiffs. Specifically, they maintained that the plaintiffs had not asserted or demonstrated:

- any right to relief jointly, severally, or arising out of the same transaction or occurrence;
- the existence of a substantial number of common questions of law or material fact;

- the predominance of such questions over individualized questions;
- that the action can be conducted more efficiently and economically for all parties if conducted jointly than if prosecuted separately; and
- that the interest of justice supported the joinder of the plaintiffs as parties.

The defendants urged that, if the trial court determined that the plaintiffs had not satisfied the exception-triggering conditions for venue in Conecuh County to be proper as to all plaintiffs but declined to transfer the entire case to Jefferson County, § 6-3-7(c) required the trial court to sever the claims of all the plaintiffs except Gilliard Health Services, whose claims might be maintained properly in Conecuh County, and transfer the rest of the action to Jefferson County where, they said, venue is proper.

The defendants further argued that, if the trial court concluded that venue is proper in Conecuh County as to all plaintiffs, application of the doctrine of forum non conveniens required transfer of the case to Jefferson County. With respect to the convenience-of-the-parties prong, the defendants argued that transfer of the case is required because, they said, Jefferson County is significantly more convenient for the parties and

witnesses than is Conecuh County. They maintained that Jefferson County provides easier access to multiple sources of proof, because a majority of the plaintiffs reside or do business in or near Jefferson County. They argued that the submitted affidavits indicated that the defendants and potential defense witnesses providing testimony in any deposition, hearing, or trial resided in states other than Alabama and that Jefferson County, therefore, would be a significantly more convenient venue. For example, several averred:

> "Given the size, location, frequency of flights, and number of airlines serving the Birmingham International Airport, traveling to Jefferson County, Alabama is significantly more convenient than flying to the Pensacola International Airport Florida and driving to the Circuit Court of Conecuh County, Alabama (approximately 86 miles), or flying to the Montgomery Airport and driving to the Circuit Court of Conecuh County, Alabama (approximately 76 miles). The Circuit Court of Jefferson is located approximately 5 miles from the Birmingham International Airport. Consequently, it would be significantly more convenient for [counsel and defense witnesses] to appear at and/or provide testimony in any deposition."

With respect to the interest-of-justice prong, the defendants maintained that transfer of the case was required because, they said, Jefferson County has a strong connection to the case and considerable

judicial resources to conduct a multiparty, complex case, while Conecuh County's connection is weak and its judicial resources limited. To support their contention, the defendants argued that the submitted evidence indicated that 6 of the top 15 pain-medicine prescribers are located in Jefferson County; that, among the hospitals seeking reimbursement, more hospitals and beds are located in Jefferson County; and that more emergency-room visits allegedly related to opioid abuse existed or occurred in Jefferson County than in any other Alabama county. They also argued that the evidence indicated that Jefferson County, with its 27 circuit court judges of which 11 preside exclusively over civil cases, their judicial staffs, and their scheduled 30 civil-jury-trial weeks per year, has more judicial resources for litigating a complex case. They maintained that conducting multiparty, complex litigation would overly burden the judicial resources of Conecuh County, which shares a single circuit court judge with Monroe County, who presides over all types of cases, conducting only two civil-jury-trial weeks per year. Thus, they urged that the convenience of the parties and the interest of justice required transfer of the case to Jefferson County.

On January 28, 2020, the plaintiffs filed a response in opposition to the defendants' January 21, 2020, motion for a change of venue, arguing that venue is proper and appropriate in Conecuh County, pursuant to § 6-3-7(a)(3), Ala. Code 1975, because plaintiff Gilliard Health Services, an Alabama corporation with its principal place of business in Evergreen, did business by agent in Conecuh County at the time of the accrual of each cause of action. The plaintiffs further maintained that they had satisfied all the exception-triggering conditions of § 6-3-7(c) to make venue in Conecuh County proper for all plaintiffs. They noted that they had specifically pleaded in the complaint:

> "Venue is proper in this Court pursuant to § 6-3-2 and § 6-3-7 of the Code of Alabama (1975) and Rule 82 of the Alabama Rules of Civil Procedure as some of the acts on which the action is founded occurred in Conecuh County, as the Defendants did business by agent in Conecuh County at the time of the accrual of each cause of action. Venue is proper as the Plaintiffs assert their right to relief jointly, severally, and arising out of the same transactions or occurrences, and the existence of a substantial number of questions of law or material fact common to all plaintiffs not only will arise in the action, but also: (1) that such questions will predominate over individualized questions pertaining to each plaintiff; (2) that this action can be maintained more efficiently and economically for all parties than if prosecuted separately; and

(3) that the interest of justice supports the joinder of the parties as plaintiffs in one action."

The plaintiffs argued that all the plaintiffs severally assert the same right to relief and that the right to relief arose out of the same transaction or occurrence -- the defendants' creation of a public nuisance, the opioid epidemic. They further argued that individualized questions, such as how many opioid patients each hospital treated or how much in unreimbursed costs each hospital incurred, are predominated by several overarching questions, including: "Did the defendants create a public nuisance?" and "Did the public nuisance -- the opioid epidemic -- cause the plaintiffs to incur unreimbursed costs for the treatment of opioid-related conditions?"

Addressing the defendants' argument that the application of the doctrine of forum non conveniens required that the case be transferred from Conecuh County to Jefferson County, the plaintiffs noted that great deference is given to the plaintiff's selected venue in a forum non conveniens analysis[9] and maintained that the defendants had not demonstrated that the convenience of the parties or the interest of justice

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[9]See Ex parte Bloodsaw, 648 So. 2d 553, 555 (Ala. 1994).

required the transfer of the case to Jefferson County. With regard to the convenience-of-the-parties prong of § 6-3-21.1, the plaintiffs maintained that the defendants had not demonstrated that Jefferson County is a "significantly more convenient" venue than Conecuh County. They rejected the defendants' argument that the number of hospitals and their witnesses located in Jefferson County and its adjacent counties shows Jefferson County is a more convenient venue for the parties and witnesses, urging that, "[b]y joining in this lawsuit, these plaintiffs have chosen their forum and have made convenience [with regard to themselves and their witnesses] irrelevant." They also rejected the defendants' argument that venue should be changed to Jefferson County because it is a more convenient forum as a result of its centralized location, reasoning that Montgomery County, also a proper venue and located in the middle of the State, provides a more centralized location. They noted that the defendants are corporations and other business entities, whose representatives and witnesses are located outside Alabama and will be inconvenienced no matter where in Alabama the trial is conducted. They observed that travel from airports located in Pensacola, Montgomery, or

Mobile to Conecuh County would not be more than 86 miles, 76 miles, and 102 miles, respectively. Lastly, the plaintiffs urged that "with 17 plaintiffs located all over the state, a significant number of people are going to be inconvenienced by travel distance no matter where the case is situated," and, consequently, they reasoned that deference should be given to the plaintiffs' chosen venue because "travel distance to court is of minimal significance in a statewide, multi-plaintiff, multi-defendant case such as this one."

With respect to the interest-of-justice prong, the plaintiffs maintained that the defendants did not demonstrate that Conecuh County's connection to the case is weak or that Jefferson County is in a better position to adjudicate the case. The plaintiffs contended that their complaint and the evidence submitted by the defendants indicated that "more opioid pills were distributed per capita in Conecuh County [475 opioid pills per person] during the time period 2006-2012 than were distributed in Jefferson County [376 opioid pills per person]." The plaintiffs reasoned that Conecuh County's oversaturation with opioid pills establishes a strong connection between Conecuh County and the

litigation. They further argued that the defendants' reliance on counties adjacent to Jefferson County to establish a strong connection is misplaced, because the "interest of justice only measures the forum county's connection to the lawsuit and the proposed transferee county's connection to the lawsuit." The plaintiffs also disagreed with the defendants' contention that Jefferson County is in a better position to adjudicate the case, arguing that Conecuh County's civil docket is small because fewer civil cases are filed in Conecuh County than in Jefferson County. They reasoned: "The Conecuh Circuit Court does not have a clogged docket, which the court can also judicially notice, and is therefore in a much better position than the busy Jefferson Circuit Court to expeditiously bring this case to trial and try it."

On January 30, 2020, the defendants filed a reply in support of their motion for a change of venue to Jefferson County. In their reply, they maintained that the plaintiffs had not met their burden of proving the exception-triggering conditions of § 6-3-7(c) for venue to be proper for all plaintiffs and that, even if venue is proper in Conecuh County as to all the plaintiffs, the plaintiffs did not present any evidence to rebut the

defendants' evidence indicating that Jefferson County is a significantly more convenient forum for the parties and witnesses or that conducting the litigation in Jefferson County better serves the interest of justice. Specifically, the defendants argued that the plaintiffs had failed to establish that all the plaintiffs assert the same right to relief arising out of the same transaction or occurrence to demonstrate that venue is proper in Conecuh County because, they said, each plaintiff asserts an individual right to recover the uncompensated medical costs arising from the alleged opioid-related care it provided to patients; that each plaintiff's right to relief arises out of different transactions, i.e., each hospital's treatment of an addicted patient for some medical problem; and that a multitude of individualized questions underlie the assertion that the right to relief arises out of the defendants' alleged creation of the opioid epidemic. They insisted that the plaintiffs failed to demonstrate that a substantial number of common questions exist or that the common questions will predominate over individualized questions.

With regard to the convenience-of-the-parties prong of the forum non conveniens doctrine, the defendants rejected as nonresponsive the

plaintiffs' argument that the locations of the hospitals are irrelevant because the plaintiffs voluntarily joined the case, maintaining that the defendants have a right to defend the case and that those witnesses and their documents lie outside the subpoena power of the Conecuh Circuit Court. They reasoned that because a substantial number of the anticipated witnesses live or work within a few miles of the Jefferson County courthouse and all live within 100 miles of it, Jefferson County is significantly more convenient for the parties and witnesses. In reply to the plaintiffs' interest-of-justice argument, the defendants noted that, because only 1 of the 17 plaintiffs allegedly operates a hospital in Conecuh County and only 1 other plaintiff allegedly has its principal office in Conecuh County, the majority of the hospitals represented in the litigation, including their administrators and prescribing doctors, are located over 100 miles from Conecuh County, and the evidence demonstrated that the number of hospitalizations in Conecuh County alleged to be related to opioids is not substantial. They further reasoned that, in light of the limited contacts of the case with Conecuh County and the fact that Conecuh County had not borne the majority of the alleged

injuries and damage in this case, Conecuh County's interest in hearing this case is not proportionate to the burden and costs associated with adjudicating such a complex, multiparty litigation. The defendants insisted that they had selected Jefferson County as the transferee forum because, unlike Conecuh County, they believed Jefferson County is the only forum where venue is proper for all parties because, they said, Jefferson County is "the center of both Alabama's alleged opioid epidemic and plaintiffs' alleged injuries."

On January 31, 2020, the trial court conducted a hearing. At the hearing the defendants argued, among other arguments, that the plaintiffs did not meet the exception-triggering requirements of § 6-3-7(c) for venue to be proper in Conecuh County as to all plaintiffs. Essentially, the defendants argued that the plaintiffs could not satisfy the exception-triggering conditions of § 6-3-7(c) because, they said, the case focuses on debt collection and the oversupply of opioids did not create a common question with regard to the reimbursement for medical expenses related to treating opioid-induced conditions. They further argued that transfer of the case to Jefferson County was required under convenience-of-the-

parties prong of the forum non conveniens statute because Jefferson County provided better access to evidence, including witnesses and documents, in light of the number of plaintiffs located in and near Jefferson County and because Jefferson County, with its airport located approximately two miles from the Jefferson County courthouse, was more convenient for out-of-state witnesses. With regard to the interest-of-justice prong, the defendants argued that Jefferson County has a strong connection to the action while Conecuh County's connection is weak. The defendants observed that 4 of the 21 hospitals seeking reimbursement in the action were located in Jefferson County and that the data provided by the Alabama Department of Public Health for 2017 and 2018 indicated that the number of opioid-overdose-related 911 responses, emergency-department visits, and treatment interventions with naloxone, an opioid-overdose antidote, were substantially higher in Jefferson County than in Conecuh County. The defendants also argued that Jefferson County, with its 11 judges who entertain only civil cases, is better equipped to manage this multiparty, complex case.

The plaintiffs disagreed, maintaining that the defendants did not meet their burden for the transfer of the action because, the plaintiffs said, they did satisfy the exception-triggering conditions of § 6-3-7(c), arguing that the defendants created the opioid epidemic in a myriad of ways and that all the plaintiffs are affected in common ways because they cannot select the patients they treat when those patients arrive in the emergency room. The plaintiffs argued that the damages in this case derive from the defendants' causing people to become addicted to opioids and that treating an opioid-addicted patient is costly. The plaintiffs further maintained that the cause of action is not debt collection -- rather, it is public nuisance, i.e., whether the defendants created a nuisance in the State in each of the plaintiffs' counties. The plaintiffs rejected the defendants' convenience-of-the-parties argument, reminding the court that the plaintiffs had submitted voluntarily to the jurisdiction of the Conecuh Circuit Court and that the majority of the plaintiffs, with the exception of those located in Huntsville, are located in the lower two-thirds of the State. Consequently, they reasoned that Conecuh County is more centrally located and more convenient for a majority of the

witnesses. Additionally, the plaintiffs argued that the interest-of-justice prong did not require a transfer of the case to Jefferson County because Conecuh County has a strong connection to the case in light of data indicating that prescribers had prescribed 93 opioid prescriptions per resident in Conecuh County. They further reminded the court that in 2019 the Jefferson Circuit Court had adjudicated 25,000 cases (7,600 civil claims and 17,000 criminal claims), while the Conecuh Circuit Court had adjudicated 335. The plaintiffs admitted that Jefferson County does have more judges but maintained that additional judges do not correlate to this case being tried sooner.

The parties appeared to agree that they did not want the case broken up at this stage in the litigation. The defendants urged the trial court to transfer the entire case to Jefferson County and insisted that piecemeal transfers of the case would be problematic. The defendants emphasized: "In this motion to transfer, we are asking simply that the entire case be kept together, transferred to Jefferson County."

The trial court summarily denied the motions for a change of venue. The defendants petition this Court for a writ of mandamus ordering the transfer of the case to Jefferson County.

Standard of Review

> " ' "The proper method for obtaining review of a denial of a motion for a change of venue in a civil action is to petition for the writ of mandamus. Lawler Mobile Homes, Inc. v. Tarver, 492 So. 2d 297, 302 (Ala. 1986). 'Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court.' Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995). 'When we consider a mandamus petition relating to a venue ruling, our scope of review is to determine if the trial court abused its discretion, i.e., whether it exercised its discretion in an arbitrary and capricious manner.' Id. Our review is further limited to those facts that were before the trial court. Ex parte American Resources Ins. Co., 663 So. 2d 932, 936 (Ala. 1995)." '

> "Ex parte Benton, 226 So. 3d 147, 149–50 (Ala. 2016)(quoting Ex parte National Sec. Ins. Co., 727 So. 2d 788, 789 (Ala. 1998)).
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> > " 'Although we review a ruling on a motion to transfer to determine whether the trial court exceeded its discretion in granting or denying the motion, [Ex parte Indiana Mills & Mfg., Inc., 10 So. 3d 536, 539 (Ala. 2008)], where "the convenience of the parties and witnesses or the interest of justice would be best served by a transfer, § 6–3–21.1, Ala. Code 1975, compels the trial court to transfer the action to the alternative forum." Ex parte First Tennessee Bank Nat'l Ass'n, 994 So. 2d 906, 912 (Ala. 2008) (emphasis added).'
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> "Ex parte Wachovia Bank, N.A., 77 So. 3d 570, 573 (Ala. 2011)."

Ex parte Maynard, Cooper & Gale, P.C., 280 So. 3d 391, 397 (Ala. 2018).

Discussion

The defendants contend that they have a clear, legal right to have the underlying case transferred from Conecuh County to Jefferson County because, they say, the trial court exceeded its discretion in concluding implicitly that the plaintiffs had satisfied the exception-triggering conditions of § 6-3-7(c), Ala. Code 1975, for venue to be proper as to all

plaintiffs[10] and that the defendants did not satisfy their burden of proving that the doctrine of forum non conveniens required transfer of the action. The plaintiffs maintain that they satisfied their burden of establishing that venue is proper in Conecuh County as to all plaintiffs and that the doctrine of forum non conveniens does not mandate transfer of the underlying action. Each argument will be discussed in turn.

I. Propriety of venue in Conecuh County as to all plaintiffs under § 6-7-3(c), Ala. Code 1975.

The defendants contend that the trial court erred in concluding that venue was proper as to all plaintiffs in Conecuh County because, it says, 16 of the 17 plaintiffs do not have a direct relationship with Conecuh County and the plaintiffs failed to establish the exception-triggering

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[10]In the trial court, the defendants argued that the plaintiffs had not demonstrated that venue in Conecuh County was proper because, they maintained, Gilliard Health Services, the only plaintiff averred in the complaint to have had its principal office at the time the cause of action accrued in Conecuh County, had its principal office in Montgomery County. Before this Court, the defendants state: "Conecuh County is an improper venue for the claims of all but one plaintiff [Gilliard Health Services]." Therefore, the defendants have waived any objection that venue is not proper for at least one plaintiff in Conecuh County, pursuant to § 6-3-7(a)(3).

conditions set forth in § 6-3-7(c) for venue to be proper as to all plaintiffs. Specifically, the defendants maintain that the 17 plaintiffs do not assert the same rights to relief, that the asserted rights do not arise out of the same transaction or occurrence, that common questions of law and fact do not exist because each plaintiff's experience and/or damages are both different and individualized, and that, if common questions exist, the questions are not predominate.

Section 6-3-7(c) provides:

> "(c) Anything to the contrary in Rule 82(c) of the Alabama Rules of Civil Procedure notwithstanding, in any action against a corporation, venue must be proper as to each and every named plaintiff joined in the action, unless the plaintiffs shall establish that they assert any right to relief jointly, severally, or arising out of the same transaction or occurrence and that the existence of a substantial number of questions of law or material fact common to all those persons not only will arise in the action, but also: (1) that such questions will predominate over individualized questions pertaining to each plaintiff; (2) [that] the action can be maintained more efficiently and economically for all parties than if prosecuted separately; and (3) that the interest of justice supports the joinder of the parties as plaintiffs in one action. If venue is improper for any plaintiff joined in the action, then the claim of any such plaintiff shall be severed and transferred to a court where venue is proper. In the event severance and transfer is mandated and venue is appropriate in more than one court, a defendant sued alone or multiple

> defendants, by unanimous agreement, shall have the right to select such other court to which the action shall be transferred and, where there are multiple defendants who are unable to agree upon a transferee court, the court in which the action was originally filed may transfer the action to any such other court."

(Emphasis added.)

Accordingly, to establish that venue is proper in Conecuh County, the plaintiffs have to demonstrate, pursuant to § 6-3-7(c), that

> 1. the 17 plaintiffs assert a right "to relief jointly, severally, or arising out of the same transaction or occurrence";
>
> 2. a substantial number of questions of law or material fact common to all those persons will arise in the action;
>
> 3. the common questions of law or material fact will predominate over individualized questions pertaining to each plaintiff;
>
> 4. it is more efficient and economical for all parties that all the plaintiffs' claims are tried together, rather than separately; <u>and</u>
>
> 5. joinder of the parties in one action is in the interest of justice.

As evidenced throughout the defendants' motions and arguments, the defendants do not dispute that the action can be maintained more efficiently and economically if prosecuted together (condition 4) and that

the interest of justice supports the joinder of the plaintiffs in one action (condition 5). Therefore, only the exception-triggering conditions 1, 2, and 3 are in contention.

As an initial matter, the defendants appear to argue that the plaintiffs must establish the exception-triggering conditions by evidence and that the trial court must make specific findings with regard to each of the exception-triggering conditions. The plaintiffs insist that, because venue determinations are made early in the litigation, applying the relevant law to the pleaded facts to determine whether the exception-triggering conditions are met is a better policy and that the trial court may hold implicitly, i.e., by summarily denying a motion for a change of venue, that the plaintiffs satisfy the exception-triggering conditions for venue to be proper.

Venue determinations are made at the commencement of trial. See Ex parte Pratt, 815 So. 2d 532, 534 (Ala. 2001). After a defendant challenges the propriety of venue as to all plaintiffs, depending upon the facts pleaded in the complaint, additional evidence may or may not need to be submitted by the plaintiff to establish the exception-triggering

conditions. In Unum Life Insurance Co. of America v. Wright, 897 So. 2d 1059, 1080 (Ala. 2004), this Court, when denying the petitioner's request for a writ of mandamus directing the trial court to transfer the underlying case to another venue, stated:

> "We cannot say that Judge Smithart exceeded his discretion in concluding in the Wright case, as he implicitly did in denying Unum's challenge to venue, that those questions of law and fact would predominate over any individualized questions."

Accordingly, the trial court did not err by failing to make specific findings with regard to each of the exception-triggering conditions in § 6-3-7(c).

In Ex parte Flexible Products Co., 915 So. 2d 34 (Ala. 2005), a case in which 1,675 coal miners sued 11 manufacturers and/or distributors of isocyanate, alleging that they had been injured by exposure to isocyanate, this Court examined the propriety of the trial court's refusal to transfer the case. We observed:

> "[E]ach plaintiff asserts that he or she was harmed as a result of the same occurrence or transaction, i.e., exposure to isocyanate while employed as a coal miner, and each plaintiff asserts a separate, 'several' claim for damages based on personal injury as a result of the occurrence."

915 So. 2d at 53 (footnote omitted). When examining this assertion, this Court noted that it had not found any authority defining the phrase "transaction or occurrence" and then opined:

> "[T]he broad definition used by the federal courts in analyzing challenges to permissive joinder under Rule 20, Fed. R. Civ. P., substantially identical to Rule 20, Ala. R. Civ. P., is helpful:
>
> > " 'The first requirement for joinder is that the claims must "aris[e] out of the same transaction, occurrence, or series of transactions or occurrences." Fed. R. Civ. P. 20(a). " 'Transaction' is a word of flexible meaning. It may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship." Mosley v. Gen. Motors Corp., 497 F.2d 1330, 1333 (8th Cir.1974)(citation and internal quotation marks omitted); see also LASA Per L'Industria Del Marmo Societa Per Azioni v. Alexander, 414 F.2d 143, 147 (6th Cir.1969). "[L]anguage in a number of decisions suggests that the courts are inclined to find that claims arise out of the same transaction or occurrence when the likelihood of overlapping proof and duplication in testimony indicates that separate trials would result in delay, inconvenience, and added expense to the parties and to the court." 7 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1653.'
>
> "DIRECTV, Inc. v. Barrett, 220 F.R.D. 630, 631–32 (D. An. 2004). See also Jamison v. Purdue Pharma Co., 251 F. Supp.

> 2d 1315 (S.D. Miss. 2003); and Advamtel, LLC v. AT & T Corp., 105 F. Supp. 2d 507 (E.D. Va. 2000)(noting generally that the 'transaction or occurrence' test rule is designed to permit all reasonably related claims for relief by or against different parties to be tried in single proceeding)."

915 So. 2d at 52 n. 5.

Here, each plaintiff asserts that it was harmed, i.e., required to expend unreimbursed funds to treat opioid-related patients because of the defendants' alleged misconduct, as a result of the same occurrence or transaction, i.e., the defendants' creation of the opioid epidemic. Each plaintiff asserts a separate, "several" claim for damages as a result of that occurrence. The likelihood of overlapping proof and duplication in testimony to establish that the defendants' conduct in manufacturing, marketing, distributing, and/or dispensing opioid medications throughout Alabama in a misleading, unsafe manner resulted in drug addiction, injury, and/or death because of the defendants' negligence, wantonness, fraud and deceit, engaging in a civil conspiracy, creation of a nuisance, and unjust enrichment is great. As the plaintiffs reason: "Because all plaintiffs assert the same claims and all plaintiffs rely on the same conduct by defendants, the proof of defendants' conduct for each plaintiff's

cause of action is the same." Thus, each plaintiff asserts a right to relief arising out of the same transaction or occurrence. Additionally, each plaintiff seeks reimbursement for funds expended treating patients with opioid-related illnesses. If the plaintiffs fail to establish that the defendants created a public nuisance -- the opioid epidemic -- then the plaintiffs' claims for damages fail and the litigation ends. Cf. Ex parte Monsanto Co., 794 So. 2d 350, 357 (Ala. 2001)(approving the trial court's " 'plan of action ... to hear, at one proceeding, the evidence relating to liability issues as to all claims and then, if the liability issue was decided adversely to [the defendants], to try each individual plaintiff's causation and damages issues"). Therefore, the trial court did not exceed its discretion in holding implicitly that the plaintiffs established the first exception-triggering condition.

Additionally, a review of the complaint indicates that a substantial number of common questions of law and material fact will arise in the action because the elements of the plaintiffs' claims present common questions that will rise and fall on common evidence. As previously observed in Ex parte Flexible Products, supra, this Court noted that each

coal miner asserted a harm as a result of exposure to isocyanate -- a same occurrence or transaction -- and that each coal miner asserted a separate -- several -- claim for damages based on personal injury as a result of that occurrence. In addressing the defendants' argument that " because each plaintiff's claim is factually unique, the trial court exceeded its discretion" in consolidating the cases, we held:

> "The defendants' emphasis on the factual circumstances of the particular case of each individual plaintiff does not compel the conclusion that there is no common issue, or issues, suitable for resolution through a consolidated trial. In addition to [Ex parte] Monsanto [Co., 794 So. 2d 350 (Ala. 2001)], we note that many courts in similar situations involving exposure to allegedly dangerous substances have recognized the utility and validity of consolidation as a tool for avoiding needlessly duplicative trials. For example, in Owens–Corning Fiberglass Corp. v. James, [646 So. 2d 669 (Ala. 1994),] this Court rejected the defendant's argument that the consolidation of the plaintiffs' claims for damages arising from their alleged exposure to asbestos resulted in confusion of the jury. The Court stated:
>
> > " 'As the Eleventh Circuit Court of Appeals stated in Hendrix v. Raybestos–Manhattan, Inc., 776 F.2d 1492, 1496 (11th Cir. 1985), "[t]he cases here [involving asbestos litigation] present precisely the kind of tort claims a court should consider consolidating for trial." We conclude, after reviewing the record and the briefs, that there is no basis for holding that the consolidation of these

> three cases resulted in a confused jury and a flawed verdict. Instead, it appears that common questions of law and fact existed in these cases, both with respect to initial legal liability and with respect to medical causation, and that the simultaneous trial of these cases furthered the desired goals of Rule 42(a)[, Ala. R. Civ. P.,] by avoiding wasteful relitigation and a duplication of judicial effort. See Hendrix, supra.'
>
> "646 So. 2d at 674. ...
>
> "We conclude that the defendants have not shown that there is no possibility that the plaintiffs' claims present common issues .... In fact, the trial court's statement of the possibly common issues -- 'the dangers to human health posed by isocyanate exposure, Defendants' knowledge regarding those dangers, the adequacy of Defendants' warnings and Defendants' misrepresentation regarding the safety and their concealments of the known dangers of their products' -- lists aspects of the case that potentially meet the commonality requirement. See, e.g., University Fed. Credit Union v. Grayson, 878 So. 2d 280 (Ala. 2003)(discussing whether alleged misrepresentations in claims brought by the plaintiffs had sufficient commonality to support inclusion in a class for class certification under Rule 23, Ala. R. Civ. P.). For example, if, after the trial of common issues, it is determined that exposure to isocyanate is not harmful to humans, then such a determination would effectively conclude this litigation."

915 So. 2d at 41-42.

Likewise, the underlying litigation presents common questions of fact, such as, but not limited to:

- Did the defendants' conduct create a public nuisance, i.e., the opioid epidemic, by engaging in conduct such as, but not limited to, deceptive marketing campaigns to increase the use of opioids?

- Did the public nuisance created by the defendants cause the plaintiffs to incur unreimbursed costs for the treatment of opioid-related conditions? And,

- Are the defendants liable for negligence, wantonness, or unjust enrichment?

If it is determined that the defendants did not create an opioid epidemic, that determination effectively concludes this litigation. Thus, the trial court did not exceed its discretion in concluding implicitly that the plaintiffs satisfied this exception-triggering condition.

Lastly, the materials before us indicate that the common questions " ' "arise from a common nucleus of operative facts relevant to the dispute, and those common questions represent a significant aspect of the case which can be resolved for all [plaintiffs] in a single adjudication." ' " Ex parte Flexible Prods. Co., 915 So. 2d at 53 n.6 (quoting Avis Rent A Car Sys., Inc. v. Heilman, 876 So. 2d 1111, 1120 (Ala. 2003), quoting in turn Heartland Commc'ns, Inc. v. Sprint Corp., 161 F.R.D. 111 (D. Kan. 1995))(noting that the definition of "predominance" is mainly discussed

with regard to class-action certifications). Here, common issues of fact and law predominate because they impact every plaintiff's burden regarding its establishment of liability and entitlement to damages. Additionally, although the fraud claims are reliance-based and reliance usually requires individual inquiries in the class-action context, see Compass Bank v. Snow, 823 So. 2d 667, 676-77 (Ala. 2001), in the joinder context, because each plaintiff proves its own case, the individual issues presented in the fraud claims do not spoil the cohesion. Therefore, the trial court did not exceed its discretion in concluding implicitly that at this stage in the litigation common questions of law and material fact will predominate.

The materials before us indicate that the plaintiffs established that they had satisfied the exception-triggering conditions for venue to be proper in Conecuh County as to all plaintiffs. Thus, the trial court did not exceed its discretion in this regard, and the defendants are not entitled to a transfer of the underlying action based on application of § 6-3-7(c).

II. Right to transfer under § 6-3-21.1(a).

Because the materials before us support the trial court's conclusion that venue is proper in Conecuh County as to all plaintiffs, we turn to the defendants' contention that § 6-3-21.1, Ala. Code 1975, the forum non conveniens statute, mandates a transfer of this action.

Section 6-3-21.1(a) provides:

> "With respect to civil actions filed in an appropriate venue, any court of general jurisdiction shall, for the convenience of parties and witnesses, or in the interest of justice, transfer any civil action or any claim in any civil action to any court of general jurisdiction in which the action might have been properly filed and the case shall proceed as though originally filed therein."

(Emphasis added.)

In Ex parte New England Mutual Life Insurance Co., 663 So. 2d at 956, this Court explained that the purpose of the doctrine of forum non conveniens "is to prevent the waste of time, energy, and money and also to protect witnesses, litigants, and the public against unnecessary expense and inconvenience."

> " ' "A defendant moving for a transfer under § 6–3–21.1 has the initial burden of showing that the transfer is justified, based on the convenience of the parties and witnesses or based on the interest of justice." ' Ex parte Southeast Alabama Timber

> Harvesting, LLC, 94 So. 3d 371, 373 (Ala. 2012)(quoting Ex parte National Sec. Ins. Co., 727 So. 2d 788, 789 (Ala. 1998))."

Ex parte Tyson Chicken, Inc., 291 So. 3d 477, 480 (Ala. 2019). " 'When venue is appropriate in more than one county, the plaintiff's choice of venue is generally given great deference.' Ex parte Perfection Siding, Inc., 882 So. 2d 307, 312 (Ala. 2003)." Ex parte Burgess, 298 So. 3d 1080, 1083 (Ala. 2020). The forum non conveniens statute is compulsory, see Ex parte Sawyer, 892 So. 2d 898, 905 n. 9 (Ala. 2004), and the inquiry regarding its application depends upon the facts. Ex parte J&W Enters., LLC, 150 So. 3d 190 (Ala. 2017).

In Ex parte First Family Financial Services, Inc., 718 So. 2d 658, 661 (Ala. 1998), this Court observed:

> " 'The United States Supreme Court, in [Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 507 (1947)], addressed this issue and discussed the competing private and public interests involved:
>
> > " ' "Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate

to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to the enforcement of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, 'vex,' 'harass,' or 'oppress' the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.

" ' "Factors of public interest also have place in applying the doctrine. Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home. ..."

" '330 U.S. [at] 508–09, 67 S.Ct. at 843.' "

(Quoting Ex parte Gauntt, 677 So. 2d 204, 221-22 (Ala. 1996)(Maddox, J., dissenting).)

Here, the defendants maintain that the doctrine of forum non conveniens requires that the underlying case be transferred from Conecuh County to Jefferson County, because, they say, Conecuh County is an inconvenient forum and the interest of justice requires the transfer. Because the defendants moved for the change of venue, the defendants have the burden of demonstrating "either that [Jefferson] County is a more convenient forum than [Conecuh] County or that having the case heard in [Jefferson] County would more serve the interest of justice." Ex parte Fuller, 955 So. 2d 414, 416 (Ala. 2006). Each argument will be discussed in turn.

A. Convenience of the parties.

The defendants contend that the underlying action must be transferred to Jefferson County because, they say, Jefferson County is a significantly more convenient forum for the parties and witnesses than is Conecuh County.

In Ex parte Tyson Chicken, this Court addressed the "convenience-of-the-parties" prong of the forum non conveniens statute, stating:

> "With regard to the 'convenience-of-the-parties' prong of § 6–3–21.1, this Court has recognized that
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> > "'"[a] defendant seeking a transfer based on § 6–3–21.1 has the burden of proving to the satisfaction of the trial court that the defendant's inconvenience and expense in defending the action in the venue selected by the plaintiff are so great that the plaintiff's right to choose the forum is overcome. Ex parte New England Mut. Life, 663 So. 2d [952,] 956 [(Ala. 1995)]; Ex parte Townsend, 589 So. 2d [711,] 715 [(Ala. 1991)]. For a transfer to be justified, the transferee forum must be 'significantly more convenient' than the forum chosen by the plaintiff. Ex parte Townsend, 589 So. 2d at 715. See also[ ] Ex parte Johnson, 638 So. 2d 772, 774 (Ala. 1994)."'
>
> "Ex parte Blair Logistics, LLC, 157 So. 3d 951, 955 (Ala. Civ. App. 2014)(quoting Ex parte Integon Corp., 672 So. 2d 497, 500 (Ala. 1995)(emphasis added)). Thus, a trial court should not grant a motion for a change of venue under the convenience-of-the-parties prong unless the new forum is shown to be 'significantly more convenient' than the forum in which the action was filed. See Ex parte First Tennessee Bank Nat'l Ass'n, 994 So. 2d 906, 909 (Ala. 2008).
>
> "In cases in which this Court has found that the 'convenience of the parties and witnesses' warrants a transfer of the action, evidence was provided demonstrating that the proposed transferee forum was 'significantly more convenient'

than the transferor forum. Such evidence included affidavits from parties and witnesses stating that the incident underlying the action occurred in the transferee forum, affidavits from the parties stating that they lived in the transferee forum, and evidence indicating that requiring the parties and/or the witnesses to travel to the transferor forum would be a significant burden. See, e.g., Ex parte Kane, 989 So. 2d 509, 511, 512-13 (Ala. 2008)(noting affidavits submitted by the movant in support of the motion for a change of venue in holding that the transferee forum would be a 'substantially more convenient' forum than the transferor forum). In contrast, in cases in which the party moving for the transfer has failed to present evidence demonstrating that the transferee forum is 'significantly more convenient' than the transferor forum, this Court has declined to order a transfer. See, e.g., Ex parte Gentile Co., 221 So. 3d 1066, 1069 (Ala. 2016)(noting that the petitioner failed to present any evidence in support of its motion for a change of venue under the doctrine of forum non conveniens in declining to order a transfer of the case).

"... [T]his Court has stated that a party who makes this argument [i.e., that the accessibility of the documentary evidence in its proposed forum is significantly more convenient that the forum selected by the plaintiff] '"'must make a showing [with regard to the documentary evidence] on the factors such as volume, necessity, and inconvenience that would support such a claim.'"' Ex parte Yocum, 963 So. 2d 600, 602 (Ala. 2007) (quoting Ex parte Nichols, 757 So. 2d 374, 378 (Ala. 1999), quoting in turn Ex parte Wiginton, 743 So. 2d 1071, 1076 (Ala. 1999)); see also Ex parte General Nutrition Corp., 855 So. 2d 475, 480 (Ala. 2003), and Ex parte Nichols, 757 So. 2d at 379. This means that the moving party must identify those documents and provide information demonstrating how burdensome it would be for it to move

> those documents to the transferor forum. Nichols, 757 So. 2d at 379."

291 So. 3d at 480-81.

In Ex parte Tyson Chicken, the parties moving for a change of venue based on the convenience-of-the-parties prong did not present evidence discussing with specificity the nature and the volume of the documentary evidence or the inconvenience of accessing and transporting the documentation to the plaintiff's proposed forum to support its claim. Consequently, this Court held that it could not "consider the location of the documents in determining whether the trial court exceeded its discretion in denying the transfer." 291 So. 3d at 481. Additionally, the Court was not persuaded by the moving parties' argument that the proposed venue would be significantly more convenient for potential witnesses. The Court observed that none of the submitted evidence indicated that potential witnesses who might testify would be significantly inconvenienced by traveling to the plaintiff's chosen venue or demonstrated how the "inconvenience and expense in defending the

action" in the plaintiff's venue was "so great" that the plaintiff's ability to choose the forum was overcome.

Applying the law set forth in Ex parte Tyson Chicken, we conclude that the trial court did not exceed its discretion in denying the defendants' motion for a change of venue. The defendants did not clearly identify with specificity the evidence that they maintain will be inaccessible if the underlying action proceeds in Conecuh County. The evidence submitted in support of their motion for a change of venue is speculative and conclusory and does not demonstrate that a majority of the evidence is located in Jefferson County or that it would be inconvenient to present the evidence in Conecuh County. Indeed, none of the affidavits identified specific witnesses who would be deposed or who would testify or explained the testimony the witnesses would provide and its relevance to the litigation. Additionally, the affidavits from corporate representatives and defense counsel submitted by the defendants to establish the inconvenience of conducting litigation in Conecuh County were conclusory and offered little to no insight other than a fact obvious to the trial court and this Court -- it is over 100 miles from the airport in Jefferson County

to the Conecuh County courthouse and only 2 miles from the airport in Jefferson County to the Jefferson County courthouse. Consequently, the submitted evidence does not demonstrate why Jefferson County is significantly more convenient. See Ex parte Preston Hood Chevrolet, 638 So. 2d 842, 845 (Ala. 1994)("[A] defendant cannot assert the inconvenience of its witnesses without making a detailed statement specifying the key witnesses and providing generally statements of the subject matter of their testimony." (emphasis added)). Indeed, the generalities and conclusions presented in the defendants' affidavits would be common to any litigation involving national defendants.

Here, the parties are numerous and are located throughout this State and the nation. Venue in the underlying case appears proper in several counties and, regardless of where in this State the underlying case is litigated, some parties will be inconvenienced. In a multiparty case where venue is proper in numerous counties, the burden of demonstrating that a transferee venue is significantly more convenient for the parties and the witnesses is great. The materials before us do not demonstrate that the defendants established that Jefferson County is a significantly

more convenient venue such that it overcomes the deference given to the plaintiffs' selected venue. Therefore, the trial court did not exceed its discretion in refusing to transfer the underlying case, and the defendants have not demonstrated a clear, legal right to transfer of the underlying case based on the convenience of the parties.

B. Interest of justice.

The defendants maintain that the interest of justice requires transfer of the underlying action to Jefferson County because, they say, Jefferson County has a strong connection to the underlying action and Conecuh County's connection is weak.

> " 'The "interest of justice" prong of § 6–3–21.1 requires "the transfer of the action from a county with little, if any, connection to the action, to the county with a strong connection to the action." Ex parte National Sec. Ins. Co., 727 So. 2d [788,] 790 [(Ala. 1998)]. Therefore, "in analyzing the interest-of-justice prong of § 6–3–21.1, this Court focuses on whether the 'nexus' or 'connection' between the plaintiff's action and the original forum is strong enough to warrant burdening the plaintiff's forum with the action." Ex parte First Tennessee Bank Nat'l Ass'n, 994 So. 2d 906, 911 (Ala. 2008).... Further, in examining whether it is in the interest of justice to transfer a case, we consider "the burden of piling court services and

resources upon the people of a county that is not affected by the case and ... the interest of the people of a county to have a case that arises in their county tried close to public view in their county." Ex parte Smiths Water & Sewer Auth., 982 So. 2d 484, 490 (Ala. 2007).'

"Ex parte Indiana Mills & Mfg., Inc., 10 So. 3d 536, 540 (Ala. 2008)....

"....

"Our forum non conveniens analysis under the interest-of-justice prong, however, 'has never involved a simple balancing test weighing each county's connection to an action.' Ex parte J & W Enters., LLC, 150 So. 3d 190, 196 (Ala. 2014). Rather, to compel a change of venue under this prong, the underlying action must have both a 'strong' connection to the county to which the transfer is sought and a 'weak' or 'little' connection to the county in which the case is pending, which necessarily depends on the specific facts of each case. Id.; see also Ex parte Elliott, 254 So. 3d 882, 886 (Ala. 2017)('Even accepting Allstate's contention that Montgomery County has a "strong" connection to this action, we note that Allstate must also demonstrate that Lowndes County has a "weak" or "little" connection to the action.')."

Ex parte Tyson Chicken, 291 So. 3d at 482-83.

Typically, a factor in the strength-of-connection analysis that receives considerable weight but that is not the only factor to be considered is the location of the injury because of

> " 'the burden of piling court services and resources upon the people of a county that is not affected by the case and ... the interest of the people of the county to have a case that arises in their county tried close to public view in their county.' Ex parte Smiths Water & Sewer Auth., 982 So. 2d 484, 490 (Ala. 2007)."

Ex parte Allen, [Ms. 1190276, June 5, 2020] ___ So. 3d ___, ___ (Ala. 2020). However, in litigation that involves plaintiffs from across this State, the location of the injuries may be numerous counties and each of those counties may have a strong connection to the litigation. Therefore, as when considering the convenience of the parties, for the deference given to the plaintiff's selected venue to be overcome in a multiparty, complex case where venue is proper in numerous counties, the burden of demonstrating that the interest of justice requires transfer to the proposed transferee forum is great and the determination must be made on a case-by-case basis.

The defendants contend that the submitted evidence demonstrates that many of the plaintiffs' alleged injuries and damages were incurred in Jefferson County because four of the hospitals involved in the litigation operate in Jefferson County; because those four hospitals have a large

patient capacity, had large numbers of hospitalization events related to opioids; and because a significant number of the top opioid prescribers are located in Jefferson County. Thus, the defendants reason that, because a significant amount of the alleged uncompensated costs alleged to have resulted from the opioid epidemic were incurred in Jefferson County, Jefferson County's connection to the litigation is strong. The defendants further argue that the evidence indicates that Conecuh County's connection to the underlying case is weak. They observe that the submitted evidence indicates that only Gilliard Health Services, a corporate entity, has its principal office in Conecuh County and that only Evergreen Medical Center operates in Conecuh County. Consequently, the defendants reason that with only two plaintiffs having any nexus to Conecuh County, its connection to the litigation is weak. Additionally, the defendants insist that the evidence supports a finding that Jefferson County, with its larger number of specialized division judges and greater financial resources, is much better equipped to manage the complexities of this litigation with its 17 plaintiffs, their 21 hospitals, and numerous national defendants, than is Conecuh County's sole circuit judge, who also

presides over Monroe County and handles all matters of circuit court jurisdiction in both counties constituting the circuit. The defendants contend that this litigation will place an extraordinary burden on Conecuh County and its inhabitants and litigants who rely solely on the Conecuh Circuit Court and that that burden substantially outweighs Conecuh County's limited interest in entertaining the litigation. Based on the foregoing, the defendants urge that Jefferson County has a great interest in adjudicating this action and contends that Jefferson County's interest in the underlying case is directly proportionate to the burden it would bear in litigating it. The plaintiffs maintain that Conecuh County's connection is not weak or tenuous in light of the evidence indicating the oversaturation of opioids in Conecuh County, including the significant number of doses of naloxone that have been administered in Conecuh County, and Conecuh County's hospitalization information. Consequently, the plaintiffs insist that the citizens of Conecuh County have an interest in having this action decided in their county. The plaintiffs admit that Jefferson County has more judges than does Conecuh County, but they note that Jefferson County adjudicates significantly more cases.

Additionally, the plaintiffs observe that the trial court was in the best position to determine whether this multiparty, complex litigation would be too burdensome for the Conecuh Circuit Court's judicial resources.

After reviewing the arguments and the submitted materials, we conclude the trial court did not exceed its discretion in denying the defendants' motion for a change of venue because the defendants did not satisfy the heavy burden of demonstrating that the interest of justice requires transfer of this multiparty, complex litigation from Conecuh County to Jefferson County. Here, the evidence indicates that both Conecuh County and Jefferson County have strong connections to this litigation. The citizens of Conecuh County have an interest in this litigation, and the trial court was in the best position to determine the burden on Conecuh County's judicial resources that a multiparty, complex litigation like this one will cause. Therefore, the defendants have not demonstrated that they are entitled to mandamus relief in this regard.

Conclusion

Based on the foregoing, the defendants have not demonstrated a clear, legal right to transfer of the underlying case from Conecuh County to Jefferson County. Therefore, we deny the petition.

PETITION DENIED.

Wise, Mendheim, and Stewart, JJ., concur.

Parker, C.J., and Bryan, J., concur specially.

Shaw and Sellers, JJ., dissent.

Mitchell, J., recuses himself.

BRYAN, Justice (concurring specially).

A defendant seeking a transfer under the doctrine of forum non conveniens must establish that the transfer is warranted based on either the convenience of the parties or the interest of justice. Ex parte Tyson Chicken, Inc., 291 So. 3d 477, 480 (Ala. 2019). A defendant seeking a transfer based on the interest of justice must establish that the action has both a "weak" or "little" connection to the county where the case is pending and a "strong" connection to the county where the transfer is sought. Id. at 482. In concluding that the interest-of-justice prong was not established in this case, the main opinion states that the Conecuh Circuit Court "was in the best position to determine the burden on Conecuh County's judicial resources that a multiparty, complex litigation like this one will cause." ___ So. 3d at ___ . Insofar as the main opinion may be read as suggesting that a county's ability to handle a complex case is a factor in determining whether the case has a weak (or strong) connection to that county, I note that such a factor does not appear to be relevant in our caselaw.

Parker, C.J., concurs.

SHAW, Justice (dissenting).

Based on the convenience-of-the-parties prong of the _forum non conveniens_ doctrine found in Ala. Code 1975, § 6-3-21.1(a), I would grant the petition for a writ of mandamus and order this complex, multiparty litigation to be transferred from the Conecuh Circuit Court to the Jefferson Circuit Court. Therefore, I respectfully dissent.