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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHARBEL ELKHOUEIRY,)
)
Plaintiff,)
)
v.)
)
LARRY N. SCHROEDER;)
SUSAN L. SCHROEDER;)
GAINY CORPORATION;)
GAINY TRANSPORTATION)
SERVICE, INC.; NATIONAL)
AMERICAN INSURANCE)
COMPANY; ~~F.A. RICHARD &~~)
~~ASSOCIATES; MANDEVILLE~~)
CLAIMS; DOES 1 TO 10,)
inclusive,)
)
Defendants.)
_____)

Case No. EDCV 08-1067-VAP
(OPx)
**[Motion filed on October 13,
2008]**
**ORDER GRANTING MOTION FOR
CHANGE OF VENUE**

Gainey Corporation and Gainey Transportation Service
Inc.'s (collectively "Defendant") Motion for Change of
Venue came before the Court for hearing on November 3,
2008. Plaintiff did not appear through his counsel nor
did he file any opposition. After reviewing and
considering all papers filed in support of the Motion, as

1 well as the arguments advanced by counsel at the hearing,
2 the Court GRANTS the Motion for Change of Venue.

3

4 The Court grants Defendant's motion for transfer of
5 venue because Plaintiff has not opposed the Motion and
6 private and public factors weight in favor of
7 adjudicating this dispute in Ohio, where the dispute
8 occurred.

9

10 **A. Venue is Improper in the Central District of**
11 **California**

12 Plaintiff satisfied none of the requirements of 28
13 U.S.C. § 1391 when he filed suit here. As to 28 U.S.C. §
14 1391 (a) and (b), Plaintiff did not allege that a
15 defendant resided in California nor that the collision
16 took place in California. As to 28 U.S.C. § 1391(c), the
17 Central District of California was not a proper venue
18 because there was another district where the action could
19 have been brought: the district where the collision
20 occurred. See 28 U.S.C. § 1391(b)-(c).

21

22 **B. Venue is Proper in the Southern District of Ohio**

23 The factors outlined in Jones v. GNC Franchising,
24 Inc., 211 F.3d 495, 498-99 (9th Cir. 2000) indicate
25 transfer is appropriate: several factors weigh in favor
26 of transfer, several affect the balance neither one way

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1 or another, and none weigh in favor of maintaining the
2 action here.

3

4 **1. Venue is Proper in Ohio Because This**
5 **Action Could have Been Brought There**

6 Venue is proper under section 1391 of Title 28 in "a
7 judicial district in which a substantial part of the
8 events or omissions giving rise to the claim occurred .
9 . ." Venue is proper in the Southern District of Ohio
10 because the collision occurred there.

11

12 **2. Private and Public Factors Weigh in Favor**
13 **of Change of Venue to Ohio**

14 The factors in the Jones test weigh strongly in favor
15 of transfer.

16

17 **(1) The location where the relevant**
18 **agreements were negotiated and**
19 **executed**

20 This factor does not apply to this controversy.

21

22 **(2) The state that is most familiar with**
23 **the governing law**

24 This factor is neutral. Upon transfer, the Ohio
25 court would apply the same choice-of-law rules that a
26 California court would apply, which could be the law of
27 the state where the accident occurred.

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(3) The Plaintiff's choice of forum

Ordinarily this factor would weigh in favor of California, where the Plaintiff resides and chose to file suit. Here, however, Plaintiff did not oppose the Motion.

(4) The respective parties' contacts with the forum

This factor weighs heavily in favor of transfer. The only contact that all the parties share is a collision in Ohio. In contrast, the only contact between California and this case, according to the Complaint, is that Plaintiff lives here.

(5) The contacts relating to the Plaintiff's cause of action in the chosen forum

This factor weighs heavily in favor of transfer. Plaintiff's contact with Ohio is the collision there, the event on which Plaintiff brings suit. It is fair to transfer Plaintiff's case when his contact with that forum is the event on which he brings suit.

(6) The differences in the costs of litigation in the two forums

This factor is neutral. Litigation costs for all parties will be lower in Ohio than California because any

1 non-party witnesses are likely to be located in Ohio, as
2 discussed below.

3

4 Otherwise, litigation costs for the Plaintiff will be
5 higher in Ohio as his attorney's address on the Complaint
6 is in Los Angeles, California. Litigation costs will not
7 necessarily be lower for the other parties in Ohio, as
8 none of them are residents of Ohio: the Schroeders are
9 citizens of Missouri; the Gainey entities are citizens of
10 Michigan; FARA is a citizen of Louisiana. (Compl. ¶ 1.)

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**(7) The availability of compulsory process
to compel attendance of unwilling
non-party witnesses**

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(8) The ease of access to sources of proof

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This factor weighs strongly in favor of transfer. As
Defendant points out, "[p]olice officers, emergency
personnel, local bystanders and other eyewitnesses will
make up a good deal of the witness list. The expense of
obtaining both deposition and trial testimony from these

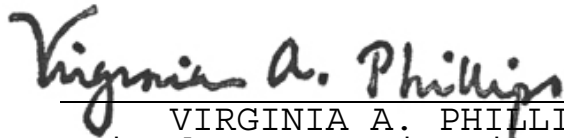
1 individuals will be alleviated by the case being venued
2 in Ohio. . . " (Mot. 7.)

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As described above, no factor weighs strongly in favor of maintaining the action before this Court. Some of Plaintiff's litigation costs will increase if the case is transferred, but others will remain the same (cost of taking depositions) or be decreased (cost of obtaining witnesses for trial). As Plaintiff has not opposed the Motion, the Court may assume that Plaintiff's judgment is that transfer will not cause a hardship to Plaintiff.

Accordingly, the Court GRANTS Defendant's motion to transfer venue.

Dated: November 7, 2008



VIRGINIA A. PHILLIPS
United States District Judge