LEXSEE 1999 U.S. DIST. LEXIS 12659

LISA JARVIS, Plaintiff, v. MARIETTA CORPORATION, and DOES 1 to 50, Defendants.

No. C 98-4951 MJJ

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

1999 U.S. Dist. LEXIS 12659

August 12, 1999, Decided
August 12, 1999, Filed; August 16, 1999, Entered in Civil Docket

DISPOSITION: **[*1]** Defendants' motion to transfer venue to the Northern District of New York GRANTED.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant former employer filed a motion to transfer venue, pursuant to *28 U.S.C.S. § 1404*, of plaintiff former employee's action to recover for breach of contract, wrongful termination, and sexual harassment.

OVERVIEW: Plaintiff former employee sued defendant former employer alleging breach of contract, wrongful termination, and sexual harassment. The court granted defendant former employer's motion to transfer venue, pursuant to *28 U.S.C.S. § 1404*. Defendant was able to overcome the strong presumption in favor of plaintiff's choice of forum by showing that the convenience of the parties and witnesses and the interest of justice weighed heavily in favor of a transfer to a district where the action might have been brought. Despite California's interest in protecting plaintiff as a citizen, all of the specific actionable events at issue occurred outside the state, predominantly in New York. Defendant's principle place of business was located in New York and the expense of sending a significant number of its employee witnesses to another state for purposes of trial and the relative access to important documentary evidence would have been burdensome. Plaintiff was already defending a suit in New York so convenience of her counsel was not a relevant factor. Further, a New York court would have been more familiar with the controlling state law.

OUTCOME: The court granted defendant former employer's motion to transfer venue of plaintiff former employee's action for breach of contract, wrongful termination, and sexual harassment because defendant was able to overcome the presumption in favor of plaintiff's choice of forum with evidence that the convenience of the parties and witnesses and the interest of justice supported a transfer.

LexisNexis(R) Headnotes

Civil Procedure > Venue > Federal Venue Transfers > Convenience Transfers

[HN1] Venue is governed by *28 U.S.C.S. § 1404(a)*. *28 U.S.C.S. § 1404(a)* provides that for the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where the action might have been brought. The purpose of the section is to prevent the waste of time, energy, and money and to protect litigants, witnesses, and the public against unnecessary inconvenience and expense. Under *28 U.S.C.S. § 1404(a)*, the moving party has the burden of showing that the balance of conveniences weighs heavily in favor of the transfer in order to overcome the strong presumption in favor of the plaintiff's choice of forum.

Civil Procedure > Venue > Motions to Transfer > Choice of Forum
Civil Procedure > Venue > Motions to Transfer >

Convenience of Parties
Civil Procedure > Venue > Motions to Transfer > Interests of Justice
[HN2] In order to support a motion to transfer venue, the moving party must show that the forum to which they seek transfer is a forum in which the action originally might have been brought. In addition, the transfer must be for the convenience of the parties and witnesses and in the interests of justice. The factors to be considered in making this determination include: 1) plaintiff's choice of forum, 2) convenience of the parties, 3) convenience of the witnesses, 4) ease of access to the evidence, 5) familiarity of each forum with the applicable law, 6) feasibility of consolidation of other claims, 7) any local interest in the controversy, and 8) the relative court congestion and time of trial in each forum.

Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview
Civil Procedure > Venue > Federal Venue Transfers > Convenience Transfers
[HN3] Transfer under *28 U.S.C.S. § 1404(a)* is limited to courts where the action might have been brought. The transferee court must have had complete personal jurisdiction over defendants, subject matter jurisdiction over the claim, and proper venue had the claim originally been brought in that court.

Civil Procedure > Venue > Federal Venue Transfers > General Overview
Civil Procedure > Venue > Motions to Transfer > Choice of Forum
[HN4] In considering motions to transfer venue, there is a strong presumption in favor of plaintiff's choice of forum. Therefore, there is a heavy burden on the defendant to overcome this presumption and demonstrate that the balance of inconveniences substantially weighs in favor of transfer.

Civil Procedure > Venue > Federal Venue Transfers > General Overview
[HN5] While the plaintiff's choice of forum is to be given great weight, it is not the final word. In determining the weight to be given to this choice, consideration must be given to the extent both of the defendant's business contacts with the chosen forum and of the plaintiff's contacts, including those relating to his cause of action. If the operative facts have not occurred within the forum of original selection and that forum has no particular interest in the parties or subject matter, the plaintiff's choice is entitled to only minimal consideration.

Civil Procedure > Venue > Federal Venue Transfers > Convenience Transfers
[HN6] Convenience of counsel is not a relevant factor in determining whether transfer of venue under *28 U.S.C.S. § 1404(a)* is proper.

Civil Procedure > Venue > Federal Venue Transfers > General Overview
[HN7] One of the most important factors in determining whether to grant a motion to transfer is the convenience of the witnesses. To demonstrate inconvenience, the moving party should produce information regarding the identity and location of the witnesses, the content of their testimony, and why such testimony is relevant to the action. The court considers not only the number of witnesses located in the respective districts, but also the nature and quality of their testimony.

Civil Procedure > Venue > Federal Venue Transfers > General Overview
[HN8] Convenience of non-party witnesses, rather than of employee witnesses, is a more important factor and therefore afforded greater weight.

Civil Procedure > Venue > Federal Venue Transfers > Convenience Transfers
[HN9] Absent any other grounds for transfer, the fact that records are located in a particular district is not itself sufficient to support a motion for transfer. However, where the location of the evidence is supported by other factors in favor of transfer, the relative ease of access to proof is an important factor to be considered in deciding whether to grant a motion to transfer under *28 U.S.C.S. § 1404*.

Civil Procedure > Venue > Federal Venue Transfers > Convenience Transfers
Civil Procedure > Federal & State Interrelationships > Choice of Law > Forum & Place
[HN10] An important factor in determining whether transfer of venue is warranted is the interest of having the trial in a forum that is familiar with the law. A change of

venue under *28 U.S.C.S. § 1404(a)* generally should be, with respect to state law, but a change of courtrooms. Therefore, a transferee court is obligated to apply the applicable law that would govern the transferor court.

Civil Procedure > Venue > Federal Venue Transfers > Convenience Transfers
[HN11] The feasibility of consolidation of claims is also a factor for the court to consider in determining whether to allow a transfer of venue motion under *28 U.S.C.S. § 1404(a)*.

Civil Procedure > Venue > Federal Venue Transfers > General Overview
[HN12] Another important consideration in granting a motion to transfer venue is the local interest in having local controversies decided at home.

Civil Procedure > Venue > Federal Venue Transfers > General Overview
[HN13] An increasingly important factor in determining transfer of venue motions involves the consideration of average trial times and court congestion.

COUNSEL: For LISA JARVIS, Plaintiff: Maurice Moyal, Concord, CA.

For MARIETTA CORPORATION, defendant: Robert V. Kuenzel, San Rafael, CA.

JUDGES: MARTIN J. JENKINS, UNITED STATES DISTRICT JUDGE.

OPINION BY: MARTIN J. JENKINS

OPINION

ORDER GRANTING DEFENDANTS' MOTION TO TRANSFER VENUE

INTRODUCTION

Before the Court is Defendants' motion to transfer venue pursuant to *28 U.S.C. § 1404(a)*. After reviewing the pleadings, the Court finds that despite the presumption in favor of a plaintiff's choice of venue, the convenience of the parties and witnesses, and the interests of justice warrant transfer. Therefore, defendant's motion to transfer venue to the Northern District of New York is GRANTED.

FACTUAL BACKGROUND

This breach of contract, wrongful termination, and sexual harassment case was originally filed in the Contra Costa Superior Court on November 2, 1998 by Plaintiff Lisa Jarvis against her former employer, Marietta Corporation. On December 31, 1998, this action was removed to this Court based on diversity and because the amount in controversy exceeded $ 75,000. On July 28, 1998, three **[*2]** months before this action was filed, Marietta filed a complaint against Jarvis for alleged breach of a confidentially agreement in the New York State Supreme Court for Cortland County (New York Action). In that action, Marietta alleged that Jarvis misappropriated information upon her resignation for her own use as well as for the use of her new employer, one of Marietta's competitor's. Marietta claimed that as a result of Jarvis's conduct it has already lost one customer and has had to offer reductions to other customers in order to keep their business. Jarvis has answered the complaint and is currently defending that action.

Here, Jarvis alleges five causes of action, including termination in violation of public policy, breach of implied covenant of continued employment, breach of the implied covenant of good faith and fair dealing, sexual harassment, and intentional infliction of emotional distress. Jarvis claims that her supervisor, Marietta's Vice President Roger H. Austin, made sexual advances and directed sexual innuendoes towards her on various occasions. Plaintiff also alleges that because of her failure to submit to his advances, and because Austin heard that Plaintiff had **[*3]** allegedly complained about him to the Director of Marietta's Human Resources Department, Gail Sechrist, Austin retaliated against Jarvis.

Austin allegedly retaliated by criticizing Jarvis' performance and competence, by causing her to be humiliated in front of the company's president at a sales meeting in Las Vegas because of his failure to warn her to be prepared for that meeting, and by causing Jarvis to be absent from a mandatory meeting in New York by failing to inform her that attendance was mandatory. Plaintiff claims that because of these actions, she was faced with a hostile work environment which led to her eventual resignation form the company on April 14, 1998.

Marietta is incorporated in New York, with its principal place of business, corporate headquarters, and its main production warehouse in Cortland, New York. Marietta claims it has never had more than four employees in California, and those employees worked out of their homes as sales representatives territory managers, or regional managers. Marietta has never had any offices within California. Plaintiff was interviewed and hired by the New York office as an at-will employee under New York state law. Plaintiff received **[*4]** both her pay and benefits from New York, and all of the terms and conditions of her employment were governed by New York law. Plaintiff also received her customer service, design, pricing, marketing, and other support from the Company's New York offices. Plaintiff resides within the Northern District of California, and worked out of her home during her employment with Marietta.

As discussed below, the majority of documents concerning Jarvis' employment, performance and sales at Marietta, including human resources information and financial records, are located at Marietta's New York headquarters. Further, of the witnesses identified in the parties' initial disclosures, a majority are located either in New York, the eastern United States or Canada. Only five witnesses, including Jarvis, reside in the state of California. Finally, many of the witnesses provided by Defendant are current Marietta employees.

ANALYSIS

I. Legal Standard

[HN1] Venue is governed by *28 U.S.C. § 1404(a)*. *Section 1404(a)* provides that "for the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district **[*5]** or division where the action might have been brought." *28 U.S.C. § 1404(a) (1998)*. The purpose of section is to "prevent the waste of 'time energy and money' and to 'protect litigants, witnesses, and the public against unnecessary inconvenience and expense.'" *Van Dusen v. Barrack, 376 U.S. 612, 616, 11 L. Ed. 2d 945, 84 S. Ct. 805 (1964)* (quoting *Continental Grain Co. v. Barge FBL-585, 364 U.S. 19, 26-27, 80 S. Ct. 1470, 4 L. Ed. 2d 1540 (1960))*. Under *section 1404(a)*, the moving party has the burden of showing that the balance of conveniences weighs heavily in favor of the transfer in order to overcome the strong presumption in favor of the plaintiff's choice of forum. *See Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986)*; *Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255-56, 70 L. Ed. 2d 419, 102 S. Ct. 252 (1981)*.

[HN2] In order to support a motion to transfer venue, the moving party must show that the forum to which they seek transfer is a forum in which the action originally might have been brought. *See Hoffman v. Blaski, 363 U.S. 335, 344, 4 L. Ed. 2d 1254, 80 S. Ct. 1084 (1960)*. In **[*6]** addition, the transfer must be for the convenience of the parties and witnesses and in the interests of justice. The courts in this Circuit have set forth several factors to be considered in making this determination. These factors include 1) plaintiff's choice of forum, 2) convenience of the parties, 3) convenience of the witnesses, 4) ease of access to the evidence, 5) familiarity of each forum with the applicable law, 6) feasibility of consolidation of other claims, 7) any local interest in the controversy, and 8) the relative court congestion and time of trial in each forum. *See Decker Coal, 805 F.2d at 843*, *Linear Technology Corp. v. Analog Devices, Inc., 1995 U.S. Dist. LEXIS 4548, 1995 WL 225672*, *1 (N.D. Cal. 1995); *Teknekron Software Systems, Inc. v. Cornell University*, 1993 WL 215024, *7 (N.D. Cal. 1993); *University of California v. Eli Lilly & Co., 21 U.S.P.Q.2D (BNA) 1201, 1207 (N.D. Cal. 1991)*.

II. The "Might Have Been Brought" Standard

[HN3] Transfer under *section 1404(a)* is limited to courts where the action "might have been brought." *See Hoffman, 363 U.S. at 344*; *A.J. Indus., Inc. v. United States Dist. Ct. for the Cent. Dist. of Cal., 503 F.2d 384, 386 (9th Cir. 1974)*. **[*7]** The transferee court must have had complete personal jurisdiction over defendants, subject matter jurisdiction over the claim, and proper venue had the claim originally been brought in that court. *See Hoffman, 363 U.S. at 343-44*. Here, it is undisputed that the Northern District of New York satisfies all three of these requirements.

The Northern District of New York has proper personal jurisdiction over Marietta because it is a company incorporated in New York. Further, it has proper subject matter jurisdiction over the claim based on diversity, and because the amount in dispute exceeds $ 75,000. Finally, venue is proper pursuant to *28 U.S.C. § 1391(c)* for corporations in any district in which a court has proper personal jurisdiction over that corporation. Therefore, since the action "might have been brought" in the Northern District of New York, we now turn to a consideration of the convenience and justice factors at

issue in this case.

III. Convenience Factors

A. Plaintiff's Choice of Forum

[HN4] In considering motions to transfer venue, there is a "strong presumption in favor of plaintiff's choice of forum." *Piper Aircraft, 454 U.S. at 255*. **[*8]** Therefore, there is a heavy burden on Defendant to overcome this presumption and demonstrate that the balance of inconveniences substantially weighs in favor of transfer. *See Decker Coal, 805 F.2d at 843 (9th Cir. 1986)*.

[HN5] While Plaintiff's choice of forum is to be given great weight, it "is not the final word" *Pacific Car and Foundry Co. v. Pence, 403 F.2d 949, 954 (9th Cir. 1968)*. In determining the weight to be given to this choice, "consideration must be given to the extent both of the defendant's business contacts with the chosen forum and of the plaintiff's contacts, including those relating to his cause of action. If the operative facts have not occurred within the forum of original selection and that forum has no particular interest in the parties or subject matter, the plaintiff's choice is entitled to only minimal consideration." *Id.* [1]

1 Jarvis' assertion that harassment took place in many different areas in addition to New York is unsupported by any competent evidence and is therefore stricken.

[*9] Beyond any contacts Plaintiff may have with the Northern District of California as a resident, there is not competent evidence that establishes that this forum has a "particular interest" in the matter at issue. While California does have an interest in protecting its citizens, all of the specific actionable events at issue here happened outside of California, and predominantly occurred in New York. Furthermore, it seems that Defendant's only contact with California has been with the four individuals it has employed within the state. However, as previously mentioned, the terms and conditions of their employment are governed pursuant to New York law.

Finally, Jarvis claims that because California is her residence, her choice of forum should be given greater weight. However, Jarvis cites no authority within this circuit to support this contention. Further, Jarvis' reliance on *Dwyer* seems to further diminish the strength of her argument, since it states that a plaintiff's choice of forum should be given less weight when it is not "the place where the operative facts of the action occurred." *See Dwyer, 853 F. Supp. 690 at 694*; *Teknekron*, 1993 WL 215024, **[*10]** *7 (plaintiff's choice of forum, although plaintiff is a resident of that forum, is entitled to limited deference where center of gravity of action is New York, not California).

B. Convenience of the Parties

The convenience of the parties is also an important factor in determining whether to allow a transfer of venue. Jarvis is a resident of California, while Defendant is a New York corporation with its principal place of business in New York. The burdens associated with traveling across the country to litigate are relatively equal for all parties. Jarvis is already defending the New York action in New York state court and is therefore required to travel there to defend herself anyway. Further, Marietta is a large company and presumably has the financial means to support litigation in California. However, it would be burdensome on Marietta to send a significant number of its employees to California for purposes of trial. These employees, such as Marietta's vice president Austin, are involved in the daily operations of the company and it could be detrimental to business to remove them from their duties.

Finally, despite Plaintiff's contention to the contrary, [HN6] convenience of **[*11]** counsel is not a relevant factor in determining whether transfer of venue under *section 1404(a)* is proper. *See NCL America Computer Products v. BSM Computers, Inc., 1993 U.S. Dist. LEXIS 15332, 1993 WL 280565*, *2 (citing *Solomon v. Continental American, 472 F.2d 1043, 1047 (3d Cir. 1973))*. Moreover, given the pending New York action, it is unclear that the factor supports transfer of this matter.

C. Convenience of the Witnesses

[HN7] One of the most important factors in determining whether to grant a motion to transfer is the convenience of the witnesses. To demonstrate inconvenience, the moving party "should produce information regarding the identity and location of the witnesses, the content of their testimony, and why such testimony is relevant to the action . . . The court will consider not only the number of witnesses located in the respective districts, but also the nature and quality of their

testimony." *Steelcase, Inc. v. Haworth, 41 U.S.P.Q.2D (BNA) 1468, 1470 (C.D. Cal. 1996)*.

In its initial disclosures, Defendant identified a total of thirty-one witnesses that would have information regarding the sexual harassment action, the retaliation action, and Plaintiff's **[*12]** general performance as a Marietta employee. (Kuenzel Decl., paras. 6-8). Among those listed, only Plaintiff and one other witness reside in the Northern District of California, while three others reside within the State of California. Three additional witnesses reside in the western half of the United States. However, fifteen of these witnesses reside within the Northern District of New York and eight others reside in the eastern United States and Canada. At least seven of the witnesses identified by Marietta are non-party witnesses, and of those none reside in this District. (Kuenzel Decl., Exh. E).

In Plaintiff's initial disclosure, Plaintiff is the only witness identified that resides within the Northern District of California. (Kuenzel Decl., Exh. F). Of the remaining witnesses, one resides elsewhere in California, one resides in New Jersey, and two in Canada. Plaintiff also lists two expert witnesses, both of whom conduct business within the Northern District of California.

From these disclosures, it is clear that a majority of the witnesses are located in or near the Northern District of New York so as to make that district a more convenient forum for the witnesses in this **[*13]** case. However, since many of these witnesses are employees of Defendant, their inconvenience should be given less weight in the *section 1404* context since they could be compelled to testify. *See STX, Inc. v. Trik Stik, Inc., 708 F. Supp. 1551, 1556 (N.D. Cal. 1988)*. Given that several of the non-party witnesses identified by the parties reside in the eastern United States or Canada, transfer to the Northern District of New York seems more convenient for those witnesses as well. *See Gundle Lining Construction Corp. v. Fireman's Fund Insurance Co., 844 F. Supp. 1163, 1166 (S.D. Tex. 1994)* [HN8] (convenience of non-party witnesses, rather than of employee witnesses, is a more important factor and therefore afforded greater weight).

Finally, the relative financial burdens on the parties for compelling witness testimony must be considered. As previously mentioned, although Marietta has no offices in California, it is a large corporation doing business in California through its representatives. While the costs associated with obtaining the witnesses' presence in California would be substantial, it does not seem that it would be an extraordinary financial burden **[*14]** on Marietta. On the other hand, Plaintiff's cost of getting witnesses to New York would most likely not be much higher than getting those same witnesses to California.

Given the location of the witnesses and the purported purposes of presenting these witnesses, the convenience of the witnesses weighs in favor of transferring this case to the Northern District of New York.

D. Ease of Access to Evidence

[HN9] Absent any other grounds for transfer, the fact that records are located in a particular district is not itself sufficient to support a motion for transfer. *See STX, 708 F. Supp. at 1556*. However, where as here, the location of the evidence is supported by other factors in favor of transfer, the relative ease of access to proof is an important factor to be considered in deciding whether to grant a motion to transfer under *section 1404*. *See Decker Coal, 805 F.2d at 843*.

Here, the record shows that a majority of the documentary evidence, including corporate records, financial records, sales information, human resources files, and documents related to Plaintiff's alleged breach of the confidentiality agreement, are all located at the company's **[*15]** headquarters in Cortland, New York, within the Northern District of New York (Sechrist Decl., P 9) Furthermore, as Defendant points out, all of the relevant documents listed by Plaintiff in her initial disclosures are located in New York as well. (Kuenzel Decl, Ex. F, 2). While it is true that it would be easy to simply mail these documents to this Court for trial, it would be markedly easier to obtain these documents if the trial was held in New York. Finally, as Magistrate Judge Brazil noted in *Linear Technology*, "encouraging [the movement of documents] also would increase risks that the best evidence would be lost--thus implicating larger interests in the administration of justice." *See* 1995 WL 225672, *3.

Therefore, the Court finds that the convenience of the parties and witnesses in this case favors transfer of venue in this action. Especially given that fact that Plaintiff is defending another suit in New York, and that many of the parties and witnesses are located in the eastern United States and Canada, transfer to the Northern District of New York is warranted.

IV. Interests of Justice

A. Familiarity of Each Forum with the Applicable Law

[*16] [HN10] An important factor in determining whether transfer of venue is warranted is the interest of having the trial in a forum that is familiar with the law. *See Decker Coal, 805 F.2d at 843*. The United States Supreme Court has stated that "[a] change of venue under *[section] 1404(a)* generally should be, with respect to state law, but a change of courtrooms." *See Van Dusen, 376 U.S. at 639*; *see also Ferens v. John Deere Co., 494 U.S. 516, 519, 108 L. Ed. 2d 443, 110 S. Ct. 1274 (1990)*. Therefore, a transferee court is obligated to apply the applicable law that would govern the transferor court. *See id.* The applicable law in this case, whether it is tried in New York or California, is New York law. This case involves an alleged breach of contract, wrongful termination, and sexual harassment claim based on an employment contract governed by New York law. Clearly, a New York court would be more familiar with the contours and applicability of New York law.

B. Feasibility of Consolidation of Other Claims

[HN11] The feasibility of consolidation of claims is also a factor for the court to consider in determining whether to allow a transfer **[*17]** of venue motion under *section 1404(a)*. *See Decker Coal, 805 F.2d at 843*; *Eli Lilly & Co., 21 U.S.P.Q.2D (BNA) at 1207*. Defendants claim that the facts and parties involved with this claim are the same as those in the pending New York Action. Defendant contends that Jarvis' employment with Marietta, her termination, and post-termination events are an essential part of both actions. It further claims that "the allegations to be litigated in the New York action are also at issue in this action by reason of Marietta's affirmative defense of offset." (Def's Motion to Transfer, 1). On the other hand, Jarvis claims that the New York Action deals with a breach of a confidentiality agreement while the present action is a sexual harassment and unemployment claim that is unrelated to the action filed in New York state. (Plaintiff's Opp., 7).

Given these facts, consolidation appears to be feasible in this case. While the claims do not involve all of the same relevant facts and claims, they do involve the same parties, and many of the same documents and witnesses would be essential to litigating both actions. Therefore, a transfer to the Northern District of New York **[*18]** in this case will result in judicial economy in furtherance of the interests of justice. *See NCL America Computer Products v. BSM Computers, Inc.*, 1993 WL 280565, *1 (citing *A.J. Indus., 503 F.2d 384*); *but see Linear Technology*, 1995 WL 225672, *4 (court held where there was no "meaningful overlap between the vast majority of the matters" that were to be litigated, consolidation would not be feasible). [2]

2 Jarvis claims that Defendants participated in unprofessional delay tactics by first removing this case to federal court, and then attempting to transfer venue several months later. (Plaintiff's Opp., 7). However, as Defendants point out, it would have been improper for Defendants to attempt to directly remove this case from California state court to a federal court in New York. Pursuant to *28 U.S.C. § 1446*, a notice of removal may only be filed in the federal court for the district in which the state action is pending.

C. Local [*19] Interest in the Controversy

[HN12] An another important consideration is the "local interest in having local controversies decided at home." *Decker Coal, 805 F.2d at 843* (internal quotations omitted). Here, the actions which substantiate the claim occurred predominantly in New York and involve a New York corporation. While California does have an interest in protecting its citizens, New York clearly has an interest in its corporations and the activities they undertake. See *Hi-Pac, Ltd. v. Avoset Corp., 980 F. Supp. 1134, 1141 (D. Haw. 1997)*. Especially given that most of the documentary evidence, witnesses and actions at issue in this case are, or occurred in, New York, New York has a greater local interest in the controversy at issue than does California.

D. Relative Court Congestion

[HN13] An increasingly important factor in determining transfer of venue motions involves the consideration of average trial times and court congestion. *See Decker Coal, 805 F.2d at 843*. As Defendant notes, the time lapse from filing a case to its completion is somewhat longer in the Northern District of New York than in the Northern District of California. **[*20]** (Kuenzel Decl., Exh. G). While the Court has some familiarity with the operative facts, the Northern District of New York has had no involvement with this case. However, the time to trial and relative congestion of the

two courts at issue here are sufficiently similar on this record so as to render this factor relatively neutral in the considering the transfer of venue motion.

An evaluation of the applicable law in this case, the feasibility of consolidation, any local interest in the controversy at issue, and relative court congestion supports the Court's finding that the interests of justice would be furthered by transferring this action to the Northern District of New York.

CONCLUSION

For the convenience of the parties and witnesses, and in the interest of justice, the Court hereby GRANTS Defendants' motion to transfer venue to the Northern District of New York.

IT IS SO ORDERED.

Dated: 8/12/99

MARTIN J. JENKINS

UNITED STATES DISTRICT JUDGE