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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT CAPELLI and
CARLA CAPELLI,

Plaintiffs,

v.

BRINKS INCORPORATED,

Defendant.

No. 2:09-cv-03469-MCE-GGH

MEMORANDUM AND ORDER

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Plaintiffs Robert Capelli and Carla Capelli ("Plaintiffs") seek redress for injuries sustained in a car collision with Defendant Brink's Incorporated ("Defendant"). Presently before the Court is a Motion by Defendant for an Order transferring this action to the United States District Court for the Southern District of Florida, Fort Pierce Division, pursuant to 28 U.S.C § 1404(a). For the reasons set forth below, Defendant's Motion is DENIED.

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1 **BACKGROUND¹**

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3 On January 12, 2008, Plaintiffs were driving east on State
4 Road 60 in Vero Beach, Florida when they were struck from behind
5 by an armored truck owned by Defendant and operated by
6 Defendant's employee Neige Pierre-Louis. Plaintiffs were driving
7 a 2007 Jeep rented from National/Alamo-Rent-A-Car in West Palm
8 Beach, Florida. (Ex. A Decl. Of Mary Reilley) The Florida
9 Highway patrol officer who investigated the collision cited
10 Defendant's employee's failure to use due care as cause of the
11 accident. (Pl.s' Ex. 4 pg. 2)

12 Plaintiffs sustained several injuries resulting in multiple
13 surgeries and medical treatment. Plaintiffs subsequently filed
14 suit against Defendant in the Eastern District of California
15 alleging claims of negligence, negligence per se, negligent
16 hiring and retention, and loss of consortium. Plaintiffs have
17 alleged that venue is proper in this Court as Plaintiffs are
18 citizens of California, have received treatment for their
19 injuries in California and Defendant does business throughout the
20 State of California.

21 Defendant now moves for a transfer of venue.

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27 ¹ The factual assertions in this section are based on the
28 allegations in Plaintiffs' First Amended Complaint unless
otherwise specified.

1 **STANDARD**

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3 Section 1404(a) of Title 28 of the U.S. Code states: "For
4 the convenience of parties and witnesses, in the interest of
5 justice, a district court may transfer any civil action to any
6 other district or division where it might have been brought. The
7 purpose of 28 U.S.C. 1404(a) "is to prevent the waste 'of time,
8 energy, and money' and 'to protect litigants, witnesses and the
9 public against unnecessary inconvenience and expense.'" Van
10 Dusen v. Barrack, 376 U.S. 612, 616 (1964). Courts have broad
11 discretion in deciding whether to transfer venue. U.S. v.
12 Sherwood, 98 F.3d 402, 410 (9th Cir. 1996). In determining
13 whether transfer is appropriate in a particular case, the court
14 may weigh multiple factors including:

15 "(1) the location [of the activity that gave rise
16 to the cause of action], (2) the state that is most
17 familiar with the governing law, (3) the plaintiff's
18 choice of forum, (4) the respective parties' contacts
19 with the forum, (5) the contacts relating to the
20 plaintiff's cause of action in the chosen forum,
21 (6) the differences in the costs of litigation in the
22 two forums, (7) the availability of compulsory process
23 to compel attendance of unwilling non-party witnesses,
24 and (8) the ease of access to sources of proof."

21 Jones v. GNC Franchising, Inc., 211 F.3d 495, 498-499 (9th Cir.
22 2000)

23 The party seeking transfer bears the burden of justifying by
24 particular circumstances that a transfer of forum is appropriate.
25 Commodity Futures Trading Comm'n v. Savage, 611 F.2d 270, 279
26 (9th Cir 1979). Transfer is inappropriate where it merely shifts
27 the inconvenience from one party to another. Decker Coal Co. v.
28 Commonwealth Edison Company, 805 F.2d 834, 843 (9th Cir. 1986).

ANALYSIS

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3 In alleging venue, Plaintiffs' Complaint states, *inter alia*,
4 that venue is proper in the Eastern District of California,
5 Sacramento Division as "liability is not at issue in this case
6 and all of the treatment for [Plaintiffs] has been in Sacramento,
7 California." Defendant contests Plaintiffs' characterization
8 that liability is not at issue, and instead asserts that it is
9 because liability is at issue transferring venue to Florida is
10 necessary. Defendant argues that because the accident occurred
11 in Florida, that Defendant and Defendant's employee are citizens
12 of Florida, and that all witnesses on the issue of liability
13 reside in Florida, a transfer to the United States District Court
14 for the Southern District of Florida would provide for the
15 convenience of parties and witnesses and serve the interests of
16 justice.

17 Whether this case will ultimately be resolved on the issue
18 of liability or on the issue of damages is not controlling at
19 this juncture. Rather, the Court need only decide whether
20 Defendant has met his burden of justifying, under these
21 particular circumstances, that transfer would be appropriate.
22 The Court finds that Defendant has not.

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1 Although Defendant insists that "all of the percipient
2 witnesses to the accident and the subsequent investigation" are
3 located in Florida, Plaintiffs equally contend that all parties
4 who might attest to their injuries reside in Northern California
5 and Plaintiffs provide a list of approximately thirty-three such
6 witnesses that they intend to bring forth. Even if Defendant
7 wishes to contest the issue of liability, Plaintiffs have
8 nonetheless expressed their desire to present evidence on the
9 issue of damages, and to that end a transfer of venue would
10 burden their ability to do so.

11 Great weight is generally accorded to Plaintiffs' choice of
12 forum. Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987)
13 Ultimately, Defendant's motion merely effectuates a shift of
14 inconvenience from one party to another. Such are impermissible
15 grounds on which this Court may grant a transfer of venue.
16 Defendant has failed to show that a transfer of venue to the
17 United States District Court for the Southern District of Florida
18 would serve the "convenience of the parties" and the "interests
19 of justice".

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1 **CONCLUSION**

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3 Based on the foregoing, Defendant's Motion for Transfer of
4 Venue (Docket No. 9) is DENIED.²

5 IT IS SO ORDERED.

6 Dated: March 26, 2010

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9 MORRISON C. ENGLAND, JR.
10 UNITED STATES DISTRICT JUDGE
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27 ² Because oral argument will not be of material assistance,
28 the Court ordered this matter submitted on the briefing. E.D.
Cal. Local Rule 230(g).