

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SCRIPPS HEALTH, et al.,

vs.

BLUE CROSS & BLUE SHIELD OF
KANSAS, INC., et al.,

Defendants.

CASE NO. 10cv2028 DMS (RBB)

**ORDER DENYING
DEFENDANT’S MOTION TO
TRANSFER VENUE**

[Docket No. 5]

This case comes before the Court on Defendant’s motion to transfer venue. Plaintiffs filed an opposition to the motion, and Defendant filed a reply. For the reasons set out below, the Court denies the motion.

**I.
BACKGROUND**

On July 25, 2008, a Patient presented at the emergency room at Scripps Memorial Hospital Chula Vista (“Scripps”). The Patient represented that she was insured through Defendant Blue Cross & Blue Shield of Kansas, Inc. (“BCBS”). Scripps verified with a BCBS representative that the Patient was eligible for coverage, and the BCBS representative provided pre-certification for medical services to be provided to the Patient. Scripps admitted the Patient on July 25, 2008, with the understanding that it would be paid for services rendered. Scripps alleges that it provided “extensive, life-saving

///

1 health care services to the Patient from July 25, 2008 through August 25, 2008, resulting in total billed
2 charges of over \$500,000.” (Compl. ¶ 28.)

3 Pursuant to the BlueCard program,¹ Scripps filed its claim for reimbursement with the local
4 Blue Cross entity, Blue Cross of California (“BCC”). BCBS denied the claim initially. Scripps
5 appealed that denial, and a Blue Cross representative informed Scripps that the claim would be paid
6 at the discounted rate of \$250,083.95. BCBS did not pay the claim, however, asserting that the
7 services provided were excluded according to the BCBS policy. Scripps again appealed the denial
8 of the claim, but BCBS refused to pay. BCBS thereafter agreed to pay for emergency services at the
9 discounted rate, but refused to acknowledge most of the services as emergent.

10 On August 25, 2010, Scripps and South Bay Surgical Associates Medical Group, Inc. filed a
11 Complaint in San Diego Superior Court against BCBS. Plaintiffs’ Complaint alleges claims for breach
12 of contract, breach of implied contract and declaratory relief. Defendant removed Plaintiffs’
13 Complaint to this Court on September 29, 2010, and promptly filed the present motion to transfer
14 venue to the United States District Court for the District of Kansas.

15 **II.**
16 **DISCUSSION**

17 Defendant moves to transfer the present case pursuant to 28 U.S.C. § 1404(a). This statute
18 provides: “For the convenience of parties and witnesses, in the interest of justice, a district court may
19 transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C.
20 § 1404(a). The moving party bears the burden of establishing these factors weigh in favor of transfer.
21 *Shropshire v. Fred Rappoport Co.*, 294 F.Supp.2d 1085, 1095 (N.D. Cal. 2003) (citing *Decker Coal*
22 *v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986)); *Florens Container v. Cho Yang*
23 *Shipping*, 245 F.Supp.2d 1086, 1088 (N.D. Cal. 2002) (citing *Commodity Futures Trading Comm’n*
24 *v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979)).

25 ///

26 ///

27
28 ¹ Plaintiffs allege the BlueCard program “enables members of one BCBSA member company to obtain healthcare services while traveling or living in another BCBSA member company’s service area.” (Compl. ¶ 9.)

1 **A. Might This Action Have Been Filed in the Northern District?**

2 As stated in the statute, the first inquiry for the Court is whether this action could have been
3 filed in the District of Kansas. Defendant invoked this Court’s diversity jurisdiction in its notice of
4 removal, therefore 28 U.S.C. § 1391(a) controls the determination of venue in this case.

5 Section 1391(a) provides:

6 A civil action wherein jurisdiction is founded only on diversity of citizenship may,
7 except as otherwise provided by law, be brought only in (1) a judicial district where
8 any defendant resides, if all defendants reside in the same State, (2) a judicial district
9 in which a substantial part of the events or omissions giving rise to the claim occurred,
10 or a substantial part of property that is the subject of the action is situated, or (3) a
11 judicial district in which any defendant is subject to personal jurisdiction at the time
12 the action is commenced, if there is no district in which the action may otherwise be
13 brought.

14 28 U.S.C. § 1391(b). As a corporation, Defendant is “deemed to reside in any judicial district in
15 which it is subject to personal jurisdiction at the time the action is commenced.” 28 U.S.C. § 1391(c).
16 It is undisputed that Defendant is subject to personal jurisdiction in, and therefore a resident of,
17 Kansas. Accordingly, the Court finds this action could have been brought in the District of Kansas
18 pursuant to 28 U.S.C. § 1391(b)(1).

19 **B. Convenience of Parties and Witnesses**

20 The first factor mentioned in the statute is the convenience of the parties and witnesses.
21 Defendant argues it would be more convenient for itself and its witnesses if this case was transferred
22 to the District of Kansas. Specifically, Defendant asserts its employees reside in Kansas, as does the
23 Patient. However, both Plaintiffs reside in California, and they assert it would be more convenient
24 for their employees to have the matter heard in this Court. Because each side resides in and has
25 witnesses in its own state, this factor is neutral.

26 **C. Interest of Justice**

27 The next factor mentioned in the statute is the interest of justice. Defendant argues the interest
28 of justice in this case clearly weighs in favor of transfer. Specifically, Defendant argues the policy
at issue in this case, the BCBS policy, was made and entered into in Kansas, the District of Kansas
would have subpoena power over witnesses that reside in Kansas, and the District of Kansas is less
congested than this Court.

1 Plaintiffs do not dispute Defendant's argument about subpoena power, but they do dispute
2 Defendant's other arguments. First, Plaintiffs dispute that the policy at issue in this case is the BCBS
3 policy. They assert the agreement at issue is the one Plaintiffs had with BCC, which is governed by
4 California law. Although both the BCBS policy and the BCC agreement appear to be relevant to this
5 case, the Complaint reflects that Plaintiffs' breach of contract claim is based solely on the BCC
6 agreement. (See Compl. ¶¶ 41-45.) Thus, Defendant's arguments about the BCBS policy do not
7 justify transfer to the District of Kansas.

8 Second, Plaintiffs dispute that the District of Kansas is less congested than this Court. On this
9 point, the Court agrees with Defendant. The evidence reflects the District of Kansas had a total of
10 2,172 filings for fiscal year 2009 while this Court had a total of 9,191 filings during the same time
11 period. (Compare Decl. of Theresa Lopez in Supp. of Reply, Ex. A at 3 with Ex. B at 6.) Each judge
12 in the District of Kansas has a total of 362 filings compared with 706 filings per judge in this Court.
13 (Id.) Finally, the time from filing to trial for civil cases in the District of Kansas is twenty-four (24)
14 months compared with thirty-two (32) months in this Court. (Id.) Thus, the evidence supports
15 Defendant's argument that the District of Kansas is less congested than this Court.

16 III.

17 CONCLUSION


18 After considering the factors set out above, the Court declines to transfer this case to the
19 District of Kansas. The only factor weighing in favor of transfer is the relative congestion of this
20 Court compared to the District of Kansas. However, despite the overall statistics, this Court attempts
21 to get cases like this one to trial within eighteen (18) months of the filing of the complaint. (See
22 Chambers

23 Rules 4.A.) This Court is confident the present case can be tried here just as expeditiously as it would
24 be in Kansas. Accordingly, Defendant's Motion to Transfer pursuant to 28 U.S.C. § 1404(a) is denied.

25 Defendant shall file its response to the Complaint within fourteen (14) days of the filing of this
26 Order.

27 **IT IS SO ORDERED.**

28 DATED: November 30, 2010



HON. DANA M. SABRAW
United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28