IN THE CIRCUIT COURT
FOR THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

FILED
OCT 04 2004
CLERK OF CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

PAUL PALMER, SR., and)
LORRAINE ;PALMER,)
Plaintiffs,)
)
vs.) No. 04-L-167
)
RILEY STOKER CORPORATION; et al,)
defendants.)

ORDER REGARDING MOTIONS TO DISMISS OR TRANSFER ON THE BASIS OF "*FORUM NON CONVENIENS*"

This case come on for hearing on September 15, 2004, on the motions of several defendants to dismiss or transfer venue on the basis of *forum non conveniens*. And while several of the defendants' briefs refer to this as a question of ***"Intrastate Forum Non Conveniens"***; it is the understanding of this court that the defendants are actually wanting this case to be dismissed or transferred to Baton Rouge, Louisiana and that would make it a question of ***"Interstate Forum Non Conveniens"***. Although, the case law studied for this ruling indicate that the private and public factors to be considered are the same in either case.

It is also noted that while most defendants in this case joined in the motion, one defendant, John Crane, Inc., specifically objected, since said defendant is located in Illinois and argued that this is a more convenient forum for that company than to transfer the cause to Baton Rouge, Louisiana. This court took the matters under advisement, with similar

motions in two other cases in order to review all of the case law cited by all parties and to review the facts and circumstances specific to each case.

While this judge tends to agree with the observations of Justice Lewis in a specially concurring opinion with the Appellate Court in the case of ***Peile v. Skelgas*** , 242 Ill.App.3d 500; 182 Ill.Dec. 944; 610 N.E.2d 813 (5th Dist., 1994), that **"the battle over the forum results in a battle over minutiae"** as quoted in the Supreme Court opinion of the same case, 163 Ill.2d 323 at 335; 645 N.E.2d 184 at 190; 206 Ill.Dec. 179 at 185; it is obvious from the Illinois Supreme Court's holding in that case that this court is required to preside over, consider and decide such battles.

It might serve to recite and to reiterate the factors to be considered by the court in this issue and to acknowledge one of the more unique arguments made during the oral presentations. It is clear from all of the case law cited, from ***Torres v. Walsh*** **(1983), 98 Ill.2d 338; 74 Ill.Dec. 880; 456 N.E.2d 601;** to ***Satkowiak v. Chesapeake & Ohio Ry. Co.,*** **(1985), 106 Ill.2d 224; 478 N.E.2d 370; 1985 Ill.LEXIS 215; 88 Ill.Dec. 55;** to ***Peile v. Skelgas, supra;*** and, ***Dawdy v. Union Pacific RR Co.,*** **(2003) 207 Ill.2d 167; 797 N.E.2d 687; 278 Ill.Dec. 92**; among several other cites not required to be listed here, that there is no real difference in the considerations of "intrastate" or "interstate" forum issues; and, that the factors to be considered are as follow:

> **<u>Private Interest factors include:</u> 1)** Ease of access to sources of proof; **2)** accessibility of witnesses; **3)** possibility of jury view of premises; and **4)** all other practical problems that make trial of a case easy, expeditious and inexpensive.

<u>Public Interest factors include:</u> **1)** having localized controversies being decided in the local forum; **2)** administrative concerns, including congestion of court dockets; and, **3)** the imposition of jury duty upon residents of a county with little connection to the litigation.

The other possible consideration which was referred to earlier as a "unique argument" made during the hearing, is that the court should consider the **"appropriateness"** of the forum. That argument stems from language incorporated in the Illinois Supreme Court's opinion in ***Peile,*** **supra at 333,** and cited in a Rule 23 Order (which carries no precedential value), in ***Wakehouse v. Titan Wheel Corp.; et al, Docket No. 5-99-0749*** **(5th Dist., 2001),** that:

> "Since the decision in ***Torres***, this court has continued to characterize the intrastate application of the doctrine as rooted in the court's discretionary power to dismiss a case within its jurisdiction when ***'a more appropriate forum'*** is available." [emphasis added]

Nothing else could be found to give any guidance as to whether or not that language was intended to create a new standard, another consideration, another type of consideration or, if it means anything other than another way of saying a "more convenient forum". Several defendants' attorneys tended to employ and emphasize this term when referring to the holdings that "the plaintiff's choice of forum is to be given less deference when the chosen forum is not the home forum of the plaintiff and the accident or exposure did not occur there".

Those arguments are supported by the opinion in ***Dawdy v. Union Pacific RR Co.,*** **supra at 173 and 174**, where the Supreme Court stated, quoting and citing other cases, that:

> "However, the plaintiff's choice of forum is not entitled to the same weight or consideration in all cases. 'When the home forum has been chosen, it is reasonable to assume that this choice is convenient.' *Piper Aircraft Co. v. Reyno,* 454 U.S. 235, 255-256, 102 S.Ct. 252, 266, 70 L.Ed.2d 419, 436 (1981). **'Similarly, when the site of the accident or injury is chosen, the choice is convenient because the litigation has the aspect of being 'decided at home'.' *Guerine,* 198 Ill.2d at 518, 261 Ill.Dec. 763, 764 N.E.2d 54;** . . . 'When the plaintiff is foreign, however, this assumption is much less reasonable. Because the central purpose of any *forum non conveniens* inquire is to ensure that the ***174** trial is convenient, a foreign plaintiff's choice deserves less deference.' . . . Indeed, as a panel of our appellate court has observed:
>
>> "When the plaintiff is foreign to the forum chosen and the action that gives rise to the litigation did not occur in the chosen forum, this assumption [of convenience] is no longer reasonable. Instead, it is reasonable to conclude that the plaintiff engaged in forum shopping to suit his individual interests, a strategy contrary to the purposes behind the venue rules." *Certain Underwriters at Lloyds, London v. Illinois Central R.R. Co.,* 329 Ill.App.3d 189, 196, 263 Ill.Dec. 698, 768 N.E.2d 779 (2002).
>
> We Agree."

The further reading of the ***Dawdy*** case makes it clear that our Supreme Court does not condone such "forum shopping" when it quotes at pages **174-175** from *Espinosa v. Norfolk & Western Ry. Co.,* 86 Ill.2d 111, at 122-23, 56 Ill.Dec. 31, 427 N.E.2d 111, quoting *Miles v. Illinois Central R.R. Co.,* 315

U.S. 698 at 706, 62 S.Ct. 827 at 831-32, 86 L.Ed. 1129 at 1135, in part as follows:

> " 'The judiciary has never favored this sort of shopping for a forum. It has sought to protect its own good name as well as to protect defendants * * * against the practice of ***175** seeking out soft spots in the judicial system in which to bring particular kinds of litigation. * * *' "

This case involves some similar facts as those considered in the above quoted cases. The plaintiffs in this case have had no contact with Madison County, Illinois except for the bringing of this lawsuit.

Mr. Palmer worked in Louisiana, lived in Louisiana his entire life and his and Mrs. Palmer's residence is located approximately 15 miles from the courthouse in Baton Rouge, Louisiana and is approximately 700 miles from this court (Madison County Circuit Court). There is undisputed evidence in this case that the 19th Judicial Circuit in Baton Rouge, Louisiana, has an asbestos docket with an assigned judge. Furthermore, pursuant to Louisiana law, LSA-C.C.P. Art. 1573, a mechanism is in place for expediting trial if the plaintiff, as in this case, suffers from *mesothelioma* (actually the law refers to plaintiffs whose illness or condition because of which he is not likely to survive beyond six months). Perhaps it can be argued that "appropriate" means that there must have been some reasonable contact with the forum in order for it to be considered; but, that sounds more like a jurisdiction or venue question; and, it is a given in this case that jurisdiction and venue exist and that the only issue is the convenience of this forum. In any event, that would appear to be an issue for the higher courts.

It is pointed-out by Mr. Palmer's attorney, that the defendant carries the burden of showing that there is a "more convenient forum"; and, that this

is a convenient forum because jurisdiction and venue is present as to all of the defendants; this court has had for years and continues to maintain the Central Records Depository for these cases; the Madison County Courthouse is easily accessible through the interstate highway system, the St. Louis International Airport, the new airport in Swansea, rail and even bus service; most of the witnesses in these cases are from all over the country (another consideration when looking at the plaintiff's choice of forum; i.e., *Bird v. Luhr Brothers, Inc.,* 334 Ill.App.3d 1088, 779 N.E.2d 907, 269 Ill.Dec. 53 (5th Dist., 2002); and *First National Bank v. Guerine,* (2002) 198 Ill.2d 511; 764 N.E. 2d 54; 2002 LEXIS 7; 261 Ill.Dec. 763; holding that:

> . . . In an effort to clarify the doctrine, we hold that [HN8] a trial court abuses its discretion in granting an intrastate *forum non conveniens* motion to transfer where, as here, the potential trial witnesses are scattered among several counties, including the plaintiff's chosen forum, and no single county enjoys a predominant connection to the litigation. . . ."

Certainly this case involves such circumstances. Plaintiff further argues that, from a *public interest* view, this case, although set for trial this month, will probably be settled and not go to trial because the history of this docket indicates that there have been very few such trials.

This court can and should take notice of it's own records, however, and those records indicate that the taxpayers of Madison County are actually being enriched by this docket. The filing fees are such that with the volume of cases filed and the fact that there are so few trials, the Madison County general fund receives a large deposit of money from these fees while the cost of administration is negligible, when compared to the amount of the fees. It is a proverbial "cash cow".

The problem with this is, however, that it is not the function of the courts to make money. This is not a "business". It is the function of the courts to administer justice. It is clear from some of the arguments and from the records, that one of the reasons there are so few trials is because there are so many of these cases pending, somewhat of a "Catch 22". This is especially true of the cases involving *mesothelioma*, an absolutely devastating, terminal form of cancer, which has only been linked, to date, with exposure to asbestos fibers, and which cause death in a very brief time from the time of diagnosis. In order to try to accommodate those poor plaintiffs who have been diagnosed with this evil disease, the court here as in some other jurisdictions, gives expedited trial dates to those cases. Certainly, there are other venues that do not have asbestos dockets nor, perhaps, expedited settings for such cases. But, in this case, the evidence is that such a forum exists in the court that is approximately 20 minutes from the plaintiffs' home.

As much as this judge, or any judge with any compassion whatsoever, would like to do anything to assist such a litigant, with expedited schedules and to accommodate him in any way possible; such accommodation must be reasonable in following the law. This court must consider, not only how many jury trials actually occur out of this docket; but, also what would happen if every case or even a similar percentage of these cases to all other types of civil jury lawsuits, were to go to trial. Similar logic was employed in consideration of the question of the viewing of the premises by the jury. In the ***Dawdy*** case, supra, our supreme court discussed the consideration of the view of the premises and held at pages 178-79 that:

> "Another private interest factor is the possibility of viewing the premises, if appropriate. The appellate court

> apparently gave this factor no weight. The court concluded: 'although the accident occurred in Macoupin County, there is nothing in the record to indicate that a view of the accident site will be necessary.'
>
> This reasoning misses the mark. This convenience factor is not concerned with the necessity of viewing the site of the injury, but rather is concerned with the *possibility* of viewing the site, if appropriate."

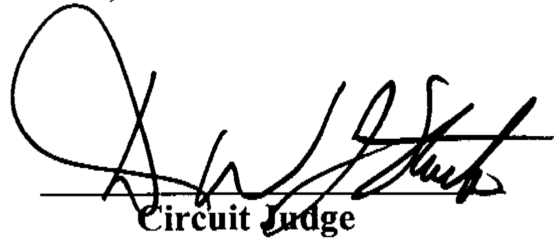
It would appear, therefore, that a consideration of the possibility of so many jury trials is appropriate. (It should be noted, specifically, however, that there is no premises viewing consideration in this case. It is this court's understanding that any premises involved could not be viewed in a similar condition that they would have been in during the time of the exposure.)

If large numbers of these cases did actually go to trial, then this docket would no longer be the "cash cow". Such circumstances would place an astronomical burden upon the citizens of Madison County to serve as jurors; would require more trial judges, courtrooms, clerks, bailiffs and other necessary accommodations than could be handled. It is one thing to make such efforts to accommodate the citizens of Madison County and others whose cases bear some connection or other reasons to be here.

But when, as in the case being considered, there is no connection with the county or with this state; the trial judge would probably be required to apply Louisiana law (another factor not only of difficulty to the trial judge but a consideration of local problems being decided locally); the treating physicians are all from Louisiana; there is a similar asbestos docket with expedited trial settings for persons similarly situated to the plaintiff herein; the distance from the home forum and the area of exposure is in excess of

700 miles and this county has such an immense docket; the case should be transferred. Accordingly, it is the order of this court, that this cause be transferred to the 19th Judicial Circuit in Baton Rouge, Louisiana; or, to any other circuit in Louisiana or those parts of Texas where the plaintiff claims exposure, at the further choice of the plaintiff who shall so indicate within 14 days.

SO ORDERED. Entered this 4th day of October, 2004.



Circuit Judge