

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

RICHARD DEMATO,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 3:02CV34(CFD)
	:	
NORTHWESTERN MUTUAL LIFE :	:	
INSURANCE CO.,	:	
Defendant.	:	

RULING ON MOTION TO TRANSFER

The plaintiff, Richard Demato, brings this diversity action against the defendant, Northwestern Mutual Life Insurance Company ("Northwestern") alleging breach of contract, misrepresentation, breach of good faith and fair dealing, and violations of the Connecticut Unfair Insurance Policies Act ("CUIPA") and Connecticut Unfair Trade Practices Act ("CUTPA"), in connection with his claim for partial disability benefits from Northwestern.

Northwestern has filed a motion to transfer the case to the U.S. District Court for the Southern District of New York pursuant to 28 U.S.C. § 1404(a).

Under 28 U.S.C. § 1404(a), "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 it might have been brought." See also Clishman Mgmt., Inc. v. American Steel Bldg. Co., 792 F. Supp. 150, 157 (D. Conn. 1992); Wilshire Credit Corp. v. Barrett Capital Management Corp., 976 F. Supp. 174, 180 (W.D.N.Y. 1997); Wine Mkts. Int'l, Inc. v. Bass, 939 F. Supp. 178, 179-80 (E.D.N.Y. 1996). The goal of section 1404(a) is to prevent waste of time, energy and money and to protect litigants, witnesses and to protect the public against unnecessary inconvenience and expense. See Schomann Int'l Corp.,

35 F. Supp. 2d at 213; Wilshire Credit Corp, 976 F. Supp. at 180; Wine Mkts. Int'l, 939 F. Supp. at 178. “The burden is on the moving party to clearly establish that a transfer is appropriate, by providing an affidavit containing detailed factual statements explaining why the transferee forum is more convenient, including the potential principal witnesses expected to be called and a general statement of the substance of their testimony.” Schomann Int'l Corp., 35 F. Supp. 2d at 213 (quotations omitted).

“The inquiry on a motion to transfer is two-fold. The court must first determine whether the action sought to be transferred is one that might have been brought in the transferee court. Second, the court must determine whether, considering the convenience of parties and witnesses and the interest of justice, a transfer is appropriate.” Wilshire Credit Corp, 976 F. Supp. at 180 (quotations omitted); see also Schomann Int'l Corp., 35 F. Supp. 2d at 213 (characterizing the standard as a three-part test).

As to the first inquiry, the plaintiff agrees that Northwestern has “arguably shown that this action could have been brought in New York.” Pl. Mem. Opp. Mot. to Transfer at 5. As to the second inquiry, courts are guided by the following factors: (1) convenience of the parties; (2) convenience of the witnesses; (3) relative means of the parties; (4) locus of operative facts and relative ease to sources of proof; (5) availability of process to compel attendance of witnesses to testify at trial; (6) the weight afforded the plaintiff’s choice of forum; (7) calendar congestion; (8) the desirability of having the case tried by the forum familiar with the substantive law to be applied; (9) practical difficulties; and (10) the Court should also consider how best to serve the interests of justice, based on an assessment of the totality of the material circumstances. See Schomann Int'l Corp., 35 F. Supp. 2d at 213; Wilshire Credit Corp., 976 F. Supp. at 181; Wine Mkts. Int'l, 939 F. Supp. at 179-180.

The defendant contends that the following factors favor transfer of this case to the Southern

District of New York: (1) the disability insurance policies upon which the plaintiff's complaint is based were negotiated, executed, and delivered to the plaintiff in New York; (2) at the time of his applications for the disability insurance, the plaintiff resided and worked in New York; (3) New York is where the majority of the witnesses are located, including the health care providers expected to testify regarding the plaintiff's medical condition, the witnesses likely to testify regarding the plaintiff's alleged inability to perform his occupational duties, and the plaintiff, as he resides in New York during part of the work week. Thus, the defendant contends, permitting this action to proceed in Connecticut would be unnecessary and inconvenient for the Court, the parties, and the witnesses.

However, the plaintiff chose to bring this action in Connecticut, and that choice is given substantial weight. See, e.g. Schomann Int'l Corp., 35 F. Supp. 2d at 214; Rosenman & Colin LLP v. Sandler, 2002 WL 836657, *3 (S.D.N.Y. Jan. 18, 2002) ("Substantial deference must be given to the plaintiff's choice of forum, particularly when, as here, the plaintiff has filed the action in its home state."). As well, several other factors indicate that this case should proceed in the District of Connecticut, including the following: (1) the plaintiff's medical witnesses, though located in New York, have expressed to the plaintiff that they are willing to travel to Connecticut; (2) depositions of certain of the defendant's employees must take place in Wisconsin, notwithstanding in which district the case proceeds, see Def. Mem. in Supp. Mot. to Transfer at 8; (3) the plaintiff's primary residence is in Connecticut, as is Mr. Meszkat's, a Northwestern employee and likely witness; and (4) the plaintiff has a longstanding relationship with his present Connecticut counsel and will likely have to retain alternate counsel if the case is transferred. Calendar congestion in the Southern District of New York also militates towards this Court retaining jurisdiction.

Having considered the totality of these factors, the Court concludes that this case should proceed in Connecticut rather than in New York. The defendant has failed to satisfy its burden of establishing that the convenience of the parties and witnesses tip decidedly in its favor. For the preceding reasons, the defendant's motion to transfer [Document # 9] is DENIED.

SO ORDERED this ____ day of November 2002, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE