

HOW TO GET YOUR CASE TRANSFERRED OUT OF PHILADELPHIA COUNTY

Monty Python once coined a phrase well known to all of us who handle large exposure cases in Philadelphia County - "Run Away! Run Away!" Thankfully, the Pennsylvania Supreme Court and Supreme Court have heard our cries and issued guidance on how to accomplish this much sought after remedy.

The Rules

The Rules of Civil Procedure provide for transfer of a case where venue is not proper. Venue is not proper in those situations where no defendant can be served in the County. Those cases must be transferred. This rule does not apply to cases involving entities that do any business or part of their enterprise in Philadelphia County. For example, cases involving national or international chains or large companies, while not headquartered in Philadelphia County or even having outlets in Philadelphia County, can very often still be served here.

There is another vehicle for transfer; that is for the convenience of the parties and witnesses. Pennsylvania Rule of Civil Procedure 1006(d)(1) provides as follows:

Pennsylvania Rule of Civil Procedure 1006(d)(1) provides as follows:

For the convenience of the parties and witnesses the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought.

In past, this rule was used by courts, particularly Philadelphia County, as a means to clear their dockets. This resulted in a backlash where the Superior Court began to reverse trial court transfers citing that the rule was for the convenience of the parties and witnesses, not for the convenience of the courts.

The Cases

In 1997, the Pennsylvania Supreme Court issued *Cheeseman v. Lethal Exterminator*, 549 Pa. 2000, 701 A.2d 156 (1997), putting a stop, once and for all, to transfer as a means of cleaning up the back log on trial dockets. The Court reiterated that the plaintiff's choice of forum is to be given deference. However, cases are properly transferred under the following circumstances:

1. The moving party shows that the plaintiff's chosen forum was designed to harass the defendant, even at some inconvenience to the plaintiff.

-or-

2. The defendant establishes, on the record, that trial in the chosen forum is oppressive to defendant.

There are very few cases turn on the first set of circumstances. Most moving parties opt for "Plan B."

What constitutes "oppressive" drives the moving parties' ability to transfer the case from Philadelphia County. Cheeseman offers three suggestions. The plaintiff's chosen forum may be oppressive to the defendant if another county would provide easier access to: (1) witnesses; (2) other sources of proof or evidence; (3) the site itself.

Following Cheeseman, the Superior Court rendered two decisions affirming transfers out of Philadelphia County. In *Matteo v. Stout*, 819 A.2d 563 (Pa. Super. 2003), the Superior Court affirmed the Philadelphia trial court's transfer of a motor vehicle case to the county where the plaintiff lived, the accident occurred, and the medical witnesses were located.

In *Wood v. DuPont*, 829 A.2d 707 (Pa. Super. 2003), the Superior Court again affirmed the Philadelphia trial judge's transfer of a trip and fall case to the county where the accident occurred, the site was located, and the witnesses lived. The transfer of the DuPont case was affirmed in spite of the order having been entered shortly before trial.

What To Do

1. File early, but not too early. In deference to the plaintiff's chosen venue, the defendant has the burden of proving that venue is vexatious or oppressive. It is important that you present the court with a sufficient record to rule in your favor.

a) Prepare Affidavits of parties or witnesses who will be inconvenienced by travel and attendance at depositions or trial in Philadelphia; and

b) Identify medical witnesses or damages witnesses who would be inconvenienced by travel to Philadelphia.

2. Take deposition testimony of key witnesses on the venue issue where possible.

3. Consider the need for a site inspection. A party has the right under Pa. R.C.P. 216 to request that the trial judge permit the jury to view the site. This decision is within the discretion of the trial court. Cheeseman suggests that choosing a forum which

precludes the defendant from the possibility of a site view is oppressive.

4. Identify physical evidence and present testimony or affidavits by the keeper of the evidence regarding the feasibility of transferring it to Philadelphia.

What Not To Do

1. Do not suggest that the court transfer the case to relieve itself of the burden or reduce their docket.

2. Do not file before you have had an opportunity to develop sufficient evidence to meet your burden of proof. While you can always refile (see the DuPont case), it is better to get it right the first time. You must make a factual record and present evidence. Argument alone will not sustain your burden.

3. Do not forget that "oppressive" does not simply mean that your client is inconvenienced. Rather, Cheeseman holds that the defendant is oppressed if their ability to defend the case suffers through difficulty accessing witnesses, evidence or the scene.

Some Final Thoughts

Not every case can be transferred. It actually helps your cause if your case belongs in the venue you are seeking. Remember that the case can only be transferred to a forum where it could have been brought originally. Also, a Rule 1006(d)(1) transfer, the moving party pays transfer costs. This is a small price to pay.

**Anyone wanting copies of the above referenced cases should feel free to contact me at ehorneff@margolisedelstein.com or by calling 215-931-5876.*