IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

RETURNS DISTRIBUTION SPECIALISTS, LLC, MIDWAY MANUFACTURING CORPORATION, and R.D.S. DOVER, LLC.,	)	
Plaintiffs,	)	
VS.	)	No. 02-1195-T
PLAYTEX PRODUCTS, INC., and CAPITAL INVESTMENT, LTD, LP, LLP,	)	
Defendants.	)	

ORDER GRANTING DEFENDANTS' MOTIONS TO TRANSFER VENUE

Plaintiffs Returns Distribution Specialists, LLC ("RDS"), Midway Manufacturing Corporation ("Midway"), and R.D.S. Dover, LLC ("RDS Dover"), filed this action against Defendants Playtex Products, Inc. ("Playtex"), and Capital Investment, LTD, LP, LLP ("Capital"), alleging that Defendants intentionally and/or negligently failed to disclose asbestos contamination in a building that Plaintiffs leased from Defendants in Delaware. Jurisdiction is predicated on diversity of citizenship, 28 U.S.C. § 1332. Defendant Capital Investment, LTD, LP, LLP filed a motion to transfer venue on September 16, 2002. Defendant Playtex Products, Inc., filed a separate motion to transfer venue on October 10, 2002. Plaintiffs were granted additional time in which to file a supplemental response to

Defendants' motions to transfer venue, and Defendants were given additional time to file a reply to the supplemental response. The court has been fully briefed by the parties and finds that the motions to transfer should be GRANTED.[1] The case will be transferred to the United States District Court of Delaware.

Defendants contend that the action should be transferred to the District Court of Delaware because they have not transacted business in West Tennessee sufficient to make the Western District the proper forum for a suit and because the Western District is not a fair and convenient forum for Defendants. Specifically, Defendants state that the gravamen of the dispute relates to the discovery of asbestos at a warehouse that is located in Dover, Delaware, and the majority of the non-party witnesses reside in Delaware. Defendant Capital also asserts that this court does not have personal jurisdiction over it. Plaintiffs contend that venue is proper in the Western District because the gravamen of the dispute is the alleged misrepresentation and concealing of the asbestos - events which occurred during the lease negotiations via communications by telephone and mail that were directed at Plaintiffs who are located in the Western District.

The facts are as follows.[2] At the time of the events giving rise to this complaint, Plaintiff Midway, a Tennessee corporation located in Bells, Tennessee, acted as a holding

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[1] Plaintiffs have asked for additional time in which to conduct discovery. The discovery deadline was previously extended ninety days. See Order 10/28/02. Plaintiffs have failed to make a sufficient showing as to why all the depositions that they now deem necessary could not have been taken during this additional ninety days. Therefore, Plaintiff's request to extend the discovery deadline is denied.

[2] The facts are stated for the purpose of deciding this motion only.

company and provider of management services for Plaintiffs RDS and RDS Dover. Plaintiff RDS is a Tennessee limited liability company in the business of receiving unsold consumer products and repackaging and re-labeling them for distribution to retail sellers. Plaintiff RDS is also located in Bells, Tennessee. Plaintiff RDS Dover, a Tennessee limited liability company set up by Midway and RDS, provided similar services in Dover, Delaware.

Defendant Playtex, a manufacturer and distributor of consumer products to retailers, has all its operations relating to the Banana Boat line of sun care products in Dover, Delaware. Moore Affidavit at p. 2. Defendant also has distribution centers throughout the United States, including Memphis, Tennessee. Lawrence Depo. at pp. 7-8. Defendant Capital is a Delaware limited partnership, with its principal place of business in Wilmington, Delaware, and is the owner of a building located at 350 Pear Street in Dover, Delaware. The building was leased by Capital to Playtex at the time that Plaintiffs entered into a contract with Playtex. Complaint at para. 12; G. Weiner Declaration at para. 7.

In 1997, Playtex contracted with Plaintiff RDS for the processing, inspection, cleaning, and repackaging of certain products, including the Banana Boat line, that were returned to Playtex for credit. Moore Affidavit at p. 2. Plaintiffs sought out Defendant Playtex in Delaware to solicit its business.[3] Brisentine Depo. at pp. 37-38. Jim Brisentine and David Gilley, Plaintiffs' officers, went to Delaware to work out the terms of the contract

[3] Although Plaintiffs initially alleged that Defendant Playtex "contacted Plaintiffs in Tennessee and fraudulently solicited and induced Plaintiffs to set up an operation in the building in Dover," complaint at para. 21, there is no evidence in the record to support this allegation. To the contrary, Jim Brisentine, president of Plaintiff RDS, testified that Plaintiffs made "cold calls" on Defendant Playtex. Brisentine Depo. at pp. 37-38.

that was eventually entered into by the parties. Id. at pp. 11, 38. Defendant Playtex insisted that Plaintiffs' operations be located in Delaware because Defendant's offices and "key players" were already there. Id. at p. 43.

After looking at other buildings, Plaintiffs decided to sublease space in the Pear Street facility from Playtex because that space was the least expensive. Id. at pp. 122-23. During the contract negotiations with Playtex, Plaintiffs did not talk to anyone from Capital, and no one from Capital came to Tennessee. Id. at p. 127. Plaintiffs and Playtex entered into a contract in May 1997. Id. at p. 149. In 1999, Playtex's lease with Capital ran out, and Plaintiffs leased the building directly from Capital. Id. at p. 148. After asbestos was discovered in the part of the building used by Plaintiffs, they moved to another part of the building until April 2000, at which time the Delaware facility was shut down. Weiner Depo. at p. 33; Brisentine Depo. at p. 75. No one from Playtex came to Tennessee until Plaintiffs' operation was moved to Tennessee in 2000. Gilley Depo. at p. 69.

Mandatory Transfer

Defendant Capital has brought its motion pursuant to 28 U.S.C. § 1404 or § 1406. Before the court can decide whether to transfer the action to the District Court of Delaware under its § 1404 discretionary power, a decision as to whether a mandatory transfer under § 1406 is required. See Pittock v. Otis Elevator Co., 8 F.3d 325 (6th Cir. 1993) (A district court cannot consider a motion to transfer under § 1404(a) unless the court first has personal jurisdiction.); Martin v. Stokes, 623 F.2d 469 (6th Cir. 1980) (The Sixth Circuit's

"construction of § 1406(a) necessarily limits the application of § 1404(a) to the transfer of actions commenced in a district court where both personal jurisdiction and venue are proper.")

The plaintiff bears the burden of establishing that personal jurisdiction exists. Theunissen v. Matthews, 935 F.2d 1454, 1458 (6th Cir. 1991); Serras v. 1st Tenn. Bank Nat'l Ass'n, 875 F.2d 1212, 1214 (6th Cir. 1989). However, when a court rules on a defense of lack of personal jurisdiction on the basis of written submissions, "[t]he burden on the plaintiff is relatively slight and the district court 'must consider the pleadings and affidavits in the light most favorable to the plaintiff.'" Third Nat'l Bank v. WEDGE Group Inc., 882 F.2d 1087, 1089 (6th Cir. 1989) (quoting Welsh v. Gibbs, 631 F.2d 436, 439 (6th Cir. 1980), *cert. denied*, 450 U.S. 981 (1981)). The plaintiff's burden "is merely that of making a prima facie showing that personal jurisdiction exists." Serras, 875 F.2d at 1214. However, a court's pretrial determination of the prima facie existence of personal jurisdiction "does not relieve [the plaintiff] . . . at the trial of the case-in-chief from proving the facts upon which jurisdiction is based by a preponderance of the evidence." Id. at 1214 (alteration in original) (quoting United States v. Montreal Trust Co., 358 F.2d 239, 242 n.4 (2nd Cir.), *cert. denied*, 384 U.S. 919 (1966)).

In Neogen Corp. v. Neo Gen Screening, Inc., 282 F.3d 883 (6th Cir. 2002), the Sixth Circuit Court of Appeals explained the standard to be used in determining whether a court has personal jurisdiction over a defendant when an evidentiary hearing is not held.

> As the plaintiff, Neogen has the burden of establishing the district court's personal jurisdiction over NGS. Nationwide Mut'l Ins. Co. v. Tryg Int'l Ins. Co., Ltd., 91 F.3d 790, 793 (6th Cir.1996). Because the district court did not conduct an evidentiary hearing on the issue of personal jurisdiction in considering NGS's motion to dismiss pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, Neogen "need only make a prima facie showing of jurisdiction." CompuServe, Inc. v. Patterson, 89 F.3d 1257, 1262 (6th Cir.1996). Neogen can meet this burden by "establishing with reasonable particularity sufficient contacts between [NGS] and the forum state to support jurisdiction." Provident Nat'l Bank v. California Fed. Savings Loan Ass'n, 819 F.2d 434, 437 (3rd Cir.1987). Under these circumstances, this court will not consider facts proffered by the defendant that conflict with those offered by the plaintiff, Serras v. First Tenn. Bank Nat'l Ass'n, 875 F.2d 1212, 1214 (6th Cir.1989), and will construe the facts in the light most favorable to the nonmoving party in reviewing a dismissal pursuant to Rule 12(b)(2). Id.

Thus, a prima facie showing of jurisdiction may be established based on the plaintiff's pleadings and affidavits. Bridgeport Music, Inc. v. Agarita Music, Inc., 182 F. Supp.2d 653, 657 (M.D. Tenn. 2002).

The court must apply the law of the state in which it sits, subject to due process limitations, to determine whether personal jurisdiction exists over a nonresident defendant in a diversity action. See Welsh v. Gibbs, 631 F.2d 436, 439 (6th Cir. 1980). Tennessee's long-arm statute provides that nonresidents of Tennessee are subject to personal jurisdiction on "[a]ny basis not inconsistent with the constitution of this state or of the United States." T.C.A. § 20-2-214(6). Tennessee courts have construed this statute to allow the exercise of personal jurisdiction "to the full limit allowed by due process." WEDGE, 882 F.2d at 1089 (quoting Masada Inv. Corp. v. Allen, 697 S.W.2d 332, 334 (Tenn. 1985)). Due process requires that a defendant "have certain minimum contacts with [the forum state] such that the

maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). In determining whether a nonresident defendant has the requisite minimum contacts, the court must employ the three-part test followed in the Sixth Circuit:

> First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

Southern Machine Co. v. Mohasco Indus., Inc., 401 F.2d 374, 381 (6th Cir.1968).

Due process requires that out-of-state defendants have "fair warning" that they could be "haled into" court in a foreign jurisdiction. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472-74 (1985). This requirement "is satisfied if the defendant has 'purposefully directed' his activities at residents of the forum.... and the litigation results from alleged injuries that 'arise out of or relate to' those activities." Id. at 472 (citations omitted). The due process clause forecloses personal jurisdiction unless the actions of the "defendant himself ... create[d] a 'substantial connection' with the forum State." Id. at 475 (citations omitted). See also Asahi Metal Indus. Co. v. Superior Ct. of Cal., 480 U.S. 102, 112 (1987) (action of defendant must be purposefully directed toward forum state). Once the court has found that the defendant purposefully established the requisite minimum contacts with the forum state, the court still must determine whether the assertion of jurisdiction comports with "fair play

and substantial justice." Burger King, 471 U.S. at 476 (quoting International Shoe, 326 U.S. at 320).

Beginning with the first prong of the Mohasco analysis, the Sixth Circuit has held that the "purposeful availment" requirement is satisfied when the defendant's contacts with the forum state are such that "he should reasonably anticipate being haled into court there." CompuServe, Inc. v. Patterson, 89 F.3d 1257, 1263 (6th Cir.1996). The Sixth Circuit has explained that the "purposeful availment" hurdle is overcome when the defendant's contacts with the forum state "proximately result from actions by the defendant himself that create a substantial connection with the forum State." Id. at 1263 (quoting Burger King v. Rudzewicz, 471 U.S. 462, 475 (1985)). Thus, such deliberate contacts cannot be "random," "fortuitous," or "attenuated," Burger King, 471 U.S. at 475; however, in light of the "inescapable fact of modern life that a substantial amount of business is transacted solely by mail and wire communications across state lines," the absence of physical contact or presence in the state "will not defeat jurisdiction so long as the defendant is deliberately engaged in efforts within the state." Id. at 476.

The analysis is slightly different when the application of the purposeful availment prong turns on a tort or fraud-based claim. In Calder v. Jones, the Supreme Court established an "effects test" for intentional torts aimed at the forum state. 465 U.S. 783 (1984). The Court held that it was proper for a California court to exercise jurisdiction over Florida reporters for *The National Enquirer* who had allegedly published a libelous article. Finding

that the "article was drawn from California sources, and the brunt of the harm ... was suffered in California," the Court concluded that jurisdiction was proper because the effect of the Florida conduct was based in California. Id.

In Neal v. Janssen, 270 F.3d 328 (6th Cir. 2001), the Sixth Circuit concluded that communications with the forum state that themselves give rise to the cause of action are sufficient to support a finding of personal jurisdiction over a non-resident defendant making the tortious contact. The court in Neal analyzed whether personal jurisdiction was proper over an out-of-state defendant who had allegedly made fraudulent statements over the phone in the course of selling a horse boarded in the Netherlands. Id. at 330. In analyzing "if the Defendant purposefully availed himself" of the privilege of acting in Tennessee, the Sixth Circuit noted that the Defendant intentionally defrauded Plaintiff in the contacts he directed to Plaintiffs in Tennessee. Id. Because the false representations made in these communications were "the heart of the lawsuit," the court concluded that the purposeful availment prong was satisfied.

In Nicholstone Book Bindery, Inc. v. Chelsea House Publ'ers, 621 S.W.2d 560, the Tennessee Supreme Court found that even a defendant that had no physical contact with Tennessee could be subjected to personal jurisdiction in a Tennessee court. The parties met in Atlanta, where they discussed entering into a business relationship. Id. at 561. The defendant later sent a purchase order from its office in New York to plaintiff's office in Tennessee. Id. The particulars of the purchase order were negotiated by telephone and mail

communications, and a contract was formed. Id. The plaintiff took several actions in order to fill the defendant's purchase order and sent a salesman to New York to discuss details of the transaction. Id. at 563. The court found that because (1) the defendant made a purposeful choice to enter into a business relationship with a Tennessee resident; (2) the business relationship was beneficial to both parties; (3) the business relationship began as a result of a purchase order sent from defendant in New York to plaintiff in Tennessee; and (4) the contract "provided for a customized product including the manufacture of specialized goods," it was foreseeable that economic consequences would arise in Tennessee out of the business transaction. Id. at 563-564. Accordingly, the court held that exercising personal jurisdiction over the New York defendant was proper. Id. at 566.

Here, Plaintiff claims that its lease agreement with Defendant Capital contained certain misrepresentations that were the result of a conspiracy between Defendant Capital and Defendant Playtex. The lease negotiations were conducted by written correspondence sent to Plaintiffs in Tennessee and during telephone conversations between Defendant Capital in Delaware and Plaintiffs in Tennessee. The lease agreement itself was sent to Plaintiffs in Tennessee and was executed by Plaintiffs in Tennessee. In the present case, as in Neal, the alleged "false representations made in these communications" are "the heart of the lawsuit." Moreover, Defendant Capital's contact with Plaintiffs was "significant because it constitute[d] the doing of business there, rather than simply the exchange of information." Neogen Corp., 282 F.3d at 892. Accordingly, the court finds that the first prong has been

satisfied.

As to the second prong, the court must determine whether the cause of action arises from the defendant's activities in the state. The Sixth Circuit has stated that the "arising from" requirement is satisfied when the operative facts of the controversy arise from the defendant's contacts with the state. Mohasco, 401 F.2d at 384. "Only when the operative facts of the controversy are not related to the defendant's contact with the state can it be said that the cause of action does not arise from that contract." Id. The cause of action in this case arises from Plaintiffs' lease with Defendant Capital, and Defendant's contacts with Tennessee are solely related to the lease. Thus, the second prong has been satisfied.

As to the third prong, the Sixth Circuit has stated that "when the first two elements are met, an inference arises that the third, fairness, is also present; only the unusual case will not meet this third criterion." First National Bank of Louisville v. J.W. Brewer Tire Co., 680 F.2d 1123, 1126 (6th Cir.1982). This is not such an unusual case to defeat the inference.

Because Plaintiffs have made a prima facie showing, although slight, that Defendant Capital is subject to personal jurisdiction under Tennessee's long-arm statute and that Defendant Capital had sufficient minimum contacts with Tennessee to satisfy the due process clause, this portion of Defendant Capital's motion is denied.[4]

Discretionary Transfer

[4] Ordinarily, the court would allow Defendant to again raise the issue of personal jurisdiction after discovery. See Neogen Corp. v. Neo Gen Screening, Inc., 282 F.3d 883, 893 (6th Cir. 2002). However, this is not necessary given the court's decision to transfer the action pursuant to its discretionary power as discussed below.

Defendant Playtex has brought its motion pursuant to 28 U.S.C. § 1404, apparently conceding that this court has personal jurisdiction over it. Defendant Capital has moved for a transfer of venue under this section as well as under § 1406. The federal discretionary venue transfer statute, 28 U.S.C. § 1404(a), provides: "For the convenience of 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." According to the Supreme Court, in Van Dusen v. Barrack, 376 U.S. 612, 636-37 (1964), "[B]oth the history and purpose of § 1404(a) indicate that it should be regarded as a federal judicial housekeeping measure, dealing with the placement of litigation in the federal courts and generally intended, on the basis of convenience and fairness, simply to authorize a change of courtrooms." Transfer under section 1404(a) is intended "to prevent a 'waste of time, energy and money,' and 'to protect litigants, witnesses, and the public against unnecessary inconvenience and expense.'" Van Dusen, 376 U.S. 612, 616 (1964) (quoting Continental Grain v. Barge FBL-585, 364 U.S. 19, 26-27 (1960)). A district court has broad discretion under section 1404(a) when determining whether to transfer a case. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 253 (1981).

The threshold question under § 1404(a) is whether the present action could have been brought in the first instance in the District Court for Delaware. The transferee court must have been an alternative forum wherein the action could have been brought. The parties do

not dispute the fact that the action could have been filed in the District Court for Delaware.[5]

"In ruling on a motion to transfer under §§ 1404(a), a district court should consider the private interests of the parties, including their convenience and the convenience of potential witnesses, as well as other public interest concerns, such as systemic integrity and fairness, which come under the rubric of interests of justice." Moses v. Business Card Express, Inc., 929 F.2d 1131, 1137 (6th Cir.1991) (citation omitted). Therefore, the court must decide if the action should be transferred considering the convenience and the interest of the parties, the courts, and of justice generally. *In re* Crash Disaster at Detroit Metropolitan Airport, 737 F. Supp. 391, 393 (E.D. Mich.1989).

The most significant factor when considering a transfer under § 1404 is the convenience of the witnesses. See Bacik v. Peek, 888 F. Supp. 1405, 1414 (N.D. Ohio 1993)(citing 15 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3851). Accord Dupree v. Spanier Marine Corp., 810 F. Supp. 823, 824 (S.D. Tex.1993); Nieves v. American Airlines, 700 F. Supp. 769, 771-72 (S.D.N.Y.1988); Darchuk v. Kellwood Co., 715 F. Supp. 1438, 1439 (W.D. Ark.1988); M.P. Paul v. International Precious Metals Corp., 613 F. Supp. 174, 179 (S.D. Miss.1985). Here, both Defendants and

[5] Section 1391(a)(1) of Title 28 provides that a civil action based on diversity of citizenship may be brought in "a judicial district where any defendant resides, if all defendants reside in the same State. . . ." For purposes of venue, a corporate defendant is deemed to reside "in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." 28 U.S.C. § 1391(c). Additionally, the action may be brought in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred. . . ." 28 U.S.C. § 1391(a)(2).

their corporate witnesses are located in Delaware. It would be difficult for Defendants to operate their businesses if their employees were required to be in Tennessee during the trial of this matter. It is undisputed that all of Defendant Playtex's employees who are responsible for the production of its Banana Boat line of products are based in Dover, Delaware, and all the documents relating to the production of these products are located in the Dover office. Moore Affidavit at p. 2. Defendant Playtex has presented unrefuted evidence that certain witnesses that it expects to call to testify at trial are a "core group of employees" and that it would be severely disruptive to its business if these employees were all out of town at the same time. Moore Affidavit at p. 3.

George Weiner, managing partner of Defendant Capital, resides in Delaware and is eighty-seven years old. G. Weiner Declaration at para. 1. His wife is eighty-two years old and has been institutionalized as a result of Alzheimer's. Id. at para 2. Since Mr. Weiner was the person who negotiated the lease between Capital and Plaintiffs, his testimony for both Plaintiffs and Defendants appears to be crucial. In light of Mr. Weiner's advanced age and family circumstances, it would be extremely inconvenient for him to travel nine hundred miles to Tennessee for the trial.

Plaintiffs acknowledge that they "hired employees in Delaware to set up and run the reprocessing center." Plaintiffs' Supp. Memo. at p. 13. At the time that the asbestos was discovered, RDS Dover had approximately eighty employees. Brisentine Depo. at p. 23. Presumably, at least some of these employees would be called to testify. Additionally, the

managers of the Delaware manpower company who were involved with the asbestos abatement are headquartered in Delaware. Moore Affidavit at p. 2.

Plaintiffs state that they learned about the "long history of asbestos contamination" in the building "through an investigation by the Delaware Health and Social Services agency" and were ordered to evacuate the building by the Delaware Department of Health. Plaintiffs' Supp. Memo. at p. 14. It would be an inconvenience for the employees of these state agencies and for the state agencies themselves to force the employees to travel to Tennessee for the trial.[6]

Another factor militating in favor of transfer is the fact hat Defendant Capital does not regularly transact business in the Western District of Tennessee. Defendant does not have an office or agents in this district. Other than the transaction at issue here, Plaintiffs have not shown that Defendant Capital has transacted business in this district. Defendant's only contacts with this district were telephone and mail communications. Such activities, standing alone, do not constitute regularly conducting business of a substantial and continuous character. Population Planning Assocs., Inc. v. Life Essentials, Inc., 709 F. Supp. 342, 344 (S.D.N.Y. 1989) (visits and mailings to district insufficient to provide venue); Dody v. Brown, 659 F. Supp. 541, 546 (W.D. Mo. 1987) (mailings, telephone calls and shipment of machine into district are insufficient). The mere fact that some of the lease negotiations took

[6] Plaintiffs assert that they do not expect to require "a significant number" of these witnesses to be called. Plaintiffs' Supp. Memo. at p. 15. However, it would be an inconvenience for any of these witnesses to have to travel to Tennessee.

place via telephone calls and the mail while Plaintiffs were in Tennessee is outweighed by the overwhelming number of acts that took place in Delaware and in light of the fact that the building at issue is located in Delaware.

Moreover, there is no evidence in the record that any alleged acts of conspiracy between Defendants were committed in the Western District of Tennessee. Instead, it is undisputed that neither Defendant came to Tennessee during the lease negotiations. Any "attempt to contain the asbestos by putting up sheets of plastic," see Plaintiffs' Supp. Memo. at p. 7, obviously occurred in Delaware. Plaintiffs' personnel who were allegedly told that "it was a dust problem," see id., were in Delaware a the time the statement was made.

Plaintiffs argue that justice would be better served by allowing them "to pursue their action on their home court rather than that of the Defendants, given that the Defendant Playtex lured them to their home court of Delaware where they could be taken advantage of and placed in the Defendants' asbestos contaminated building." Plaintiffs' Supp. Memo. at p. 32. To the contrary, as discussed above, Plaintiffs sought out Defendant Playtex's business in Delaware. Moreover, Plaintiffs were not "placed" in the Pear Street building by Defendants but, instead, made the decision to sublease space based on the comparative cost of other buildings in Dover.

Plaintiffs went to Delaware seeking to do business with Defendant Playtex, a Delaware corporation. Even though Plaintiffs would have preferred to have their facility located in Tennessee, they willingly entered into a contract with Defendant whereby they

agreed to work in Delaware. They subleased and later directly leased a building that was located in Delaware.[7] The alleged asbestos contamination came to light in Delaware. Defendants and their employees are located in Delaware. The state investigators are located in Delaware. Plaintiffs' employees who worked at the Dover facility are located in Delaware. Delaware law applies. Plaintiffs cannot now be heard to complain that they are being forced to litigate in Delaware.

Although the plaintiff's choice of forum is a factor that must be considered, see Rutherford v. Goodyear Rubber & Tire Co., 943 F. Supp. 789, 791 (W.D. Ky. 1996), the court finds that it is entitled to minimal deference in this case in light of the fact that Plaintiffs went to Delaware and sought out Defendants' business. Also the overwhelming inconvenience to the witnesses outweighs the Plaintiffs' interest in choosing their own forum.

Transferring the action to the District Court of Delaware would prevent a waste of time, energy, and money and would also protect Defendants and their witnesses against unnecessary inconvenience and expense. Therefore, the court finds that it would be in the interest of justice to transfer the case to the United State District Court for Delaware where the Defendants are located.[8]

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[7] The possible need for a view of the premises militates in favor of a transfer. See Mead Data Central, Inc. v. West Publishing Co., 679 F. Supp. 1455 (S.D. Ohio 1987).

[8] Plaintiffs' argument that the "'interests of justice' are better served by allowing the Plaintiffs here to pursue their action on their home court rather than that of the Defendants, given that the very nature of the Defendants' initial wrongful act was to lure them to their home court of Delaware where they could be taken advantage of and placed in the Defendants' asbestos contaminated building," see Plaintiffs' Response at para. H., is

Accordingly, Defendants' motions to transfer are GRANTED pursuant to 28 U.S.C. § 1404(a). The clerk is directed to transfer the case to the United States District Court for Delaware.

IT IS SO ORDERED.

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JAMES D. TODD
UNITED STATES DISTRICT JUDGE

_____
DATE

disingenuous at best in light of the evidence showing that Plaintiffs sought out Defendants' business.