IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Tianna Hatleberg,	)	
	)	No. 18 L 1816
Plaintiff,	)	
	)	consolidated with
v.	)	
	)	No. 18 L 1817
The Boeing Company,	)	No. 18 L 1827
	)	No. 18 L 1829
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Illinois Supreme Court Rule 187 authorizes the dismissal of a case for interstate transfer based on the *forum non conveniens* doctrine. In this instance, nearly all of the relevant public- and private-interest factors considered in a *forum non conveniens* analysis favor transferring these cases; several factors strongly favor such a transfer. As a result, the defendant's motion is granted and these cases are dismissed without prejudice for the plaintiffs to re-file in the Superior Court of the State of Washington subject to the conditions of Rule 187(c)(2).

Facts

In early 2018, Boeing Company informed this court that it planned to file a motion to dismiss and transfer these cases[1] to the Superior Court of Washington based on Rule 187 and the *forum non conveniens* doctrine. The parties and this court recognized that discovery would be necessary for the motion to proceed; consequently, on May 29, 2018, this court ordered limited written

[1] The Law Division's presiding judge had previously consolidated the cases before this court. The three other plaintiffs are: Marie Eleanor Giroux Riley (18 L 1817); Ashley Wahl (18 L 1827); and Natalie Ford, a minor by her father and next friend, Dana Ford (18 L 1829).

and oral discovery related to *forum non conveniens*. After the parties completed discovery, the plaintiffs, on June 10, 2019, filed their second amended complaints. On July 1, 2019, Boeing filed its Rule 187 motion to dismiss and transfer. The parties then completed the briefing process, both sides supporting their positions with numerous depositions, affidavits, and other supporting documents.

Each of the second amended complaints contains two counts based on the same core of operative facts. Count one is pleaded in products liability. Each plaintiff alleges that one parent worked at one of various Boeing production facilities in the Puget Sound region in Washington assembling Boeing 747, 767, and 777 airplanes. Over time, and during the course of their employment, each parent allegedly became exposed, either through inhalation or dermal contact, to chemicals used in the manufacturing and assembly of those airplanes. The chemicals are ingredients in primers, paints, paint strippers, corrosion inhibitors, sealants, lubricants, degreasers, and solvents the parents applied during the production process. Each plaintiff alleges that the chemicals entered their parent's bloodstream and reproductive system and were ultimately transmitted to the plaintiffs. This chemical transmission allegedly resulted in each plaintiff's birth defects and other medical conditions. Each complaint further alleges that Boeing supplied the chemicals to its production facilities despite knowing of the chemicals' dangers. Boeing is alleged to have had a duty to design, manufacture, distribute, and sell chemicals so that they did not cause birth defects. Boeing allegedly breached its duty by, among other things, failing to substitute safer alternative substances, research the safety of its chemical products, warn employees, design processes to eliminate exposure, and halt the distribution of chemicals to employees of childbearing years.

Count two incorporates count one, but is presented in negligence. This count alleges that Boeing used toxic chemicals at its production facilities despite knowing of warnings as to the use of organic solvents, medical studies linking chemical exposures to

reproductive injuries, various studies allegedly linking exposure of chemicals to adverse reproductive outcomes, and information and warnings from government agencies. Boeing's general and training policies are alleged not to have included warnings to employees about exposure to the chemicals used at the production facilities or supplied any standards or guidelines for the use of such chemicals. The plaintiffs allege that Boeing concealed from and misrepresented to its employees the dangers of working with the chemicals and substances containing them at Boeing's facilities. Boeing is also alleged to have known that some of its employees would have children, and that the exposure of the parents to chemicals and toxic substances would lead to birth defects and other injuries. The plaintiffs claim that Boeing breached its duties of care by failing to protect its employees, warn them about the potential dangers of chemical exposure to their reproductive health, comply with standards and regulations, test and study the hazards of chemical use, design industrial hygiene policies, chemical handling and disposal policies, install exhaust and ventilation systems, and provide proper training.

The plaintiffs' discovery answers establish that Riley was born in 1980, Wahl in 1990, Hatleberg in 1994, and Ford in 2014. Each plaintiff was born, raised, and currently lives in Washington. None has ever lived in Illinois. Each of the plaintiffs' parents who worked at Boeing facilities during the time they were allegedly exposed to chemicals lived in Washington. None has ever lived in Illinois. Neither the plaintiffs nor their parents ever received medical treatment in Illinois. Three of the parents who worked for Boeing completed questionnaires pursuant to Boeing's occupational health examination program and received medical examinations in Everett, Washington. It is the plaintiffs' position that their and their parents' treating physicians are unlikely to testify because the birth defects are undisputed and the only factual issues are causation, notice, and liability.

The plaintiffs disclosed a variety of proposed witnesses pursuant to Rule 213(f)(1), including their parents, who will testify as to their chemical exposure while working at Boeing. The

parents have supplied affidavits stating that it is not inconvenient for them to come to Chicago to testify. Hatleberg also identified in her response brief her two brothers, both of whom live in Chicago. It appears that, of the plaintiffs' disclosed Rule 213(f)(1) witnesses, five do not live in Washington – three in Montana and Oregon, one in New York, and one in California.

As to the issue of notice, the plaintiffs have identified a variety of Rule 213(f)(2) witnesses, including: a Philadelphia-based Environmental Protection Agency employee; the State of California attorney general; the Portland, Oregon city attorney; 70 plaintiffs in California-based litigation who sued Boeing for personal injuries and property damage; a Chicago-based record keeper with the American Medical Association; a University of Illinois-Chicago occupational safety expert and physician; a University of Michigan physician in Ann Arbor; a Maryland-based occupational medicine physician; and Motorola Corporation's former head of environmental health and safety based in Schaumburg. Finally, the plaintiffs have identified various Rule 213(f)(3) retained expert witnesses in a variety of specialties, including industrial hygiene, genetics, obstetrics and gynecology, toxicology, neonatology, epidemiology, and pediatrics.

Boeing is a Delaware corporation. In 2001, Boeing moved its world headquarters from Seattle to Chicago. Before 2001, Boeing did not have any personnel working in Illinois. Most of Boeing's production facilities, and each of the facilities in which the plaintiffs' parents worked, are located in the Puget Sound region in Washington. According to Boeing, the leadership of its production sites, including the ones at which the plaintiffs' parents worked, and the persons responsible for the organization of its production systems are located in Washington. Boeing provided numerous affidavits supporting its positions.

Boeing indicates that corporate information relative to the types of claims made by the plaintiffs is retained by Enterprise EHS (Environment, Health and Safety), a corporate division headquartered in Washington with more than 400 employees.

EHS governance includes environment, industrial hygiene, occupational health and safety, and toxicology. EHS executive leadership at the time of the alleged exposures was and currently remains in Washington. Boeing further indicates that its Rule 213(f)(1), (f)(2), and (f)(3) employees and experts who can testify about past and current EHS policies and procedures are located in Washington as are site-specific EHS personnel. Again, Boeing has supplied affidavits and witness depositions to support its positions.

EHS has links to Illinois, however, because Dennis Muilenburg, Boeing's Chicago-based ex-chairman and current chief executive officer and president, leads Boeing's EHS Council. Other Chicago-based Boeing executives are members of the EHS Council. Together, they review a weekly safety status report, a monthly EHS performance report, a bi-annual EHS reports, and an annual comprehensive risk management report. Paul Wright, Boeing's director of workplace safety, who is based in Washington, testified at a deposition as to the EHS Council's role in the company's day-to-day operations. He indicated that the Council meets semiannually and sets EHS goals for all of Boeing. He further testified that goal implementation is site specific and carried out by EHS personnel in the Washington production facilities.

Analysis

There exists an extensive body of law governing a court's consideration of a motion to transfer litigation based on the doctrine of *forum non conveniens*. At its essence, the doctrine "is founded in considerations of fundamental fairness and sensible and effective judicial administration." *Gridley v. State Farm Mut. Auto. Ins. Co.*, 217 Ill. 2d 158, 169 (2005). The modern application of the doctrine came with the United States Supreme Court's decision in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), a decision Illinois courts have consistently followed. *See Fennell v. Illinois Cent. R.R.*, 2012 IL 113812, ¶ 12 (2012), *citing* cases.

A motion to transfer based on *forum non conveniens* differs fundamentally from one based on venue. In Illinois, venue is a product of statute. *See* 735 ILCS 5/2-101. In contrast, *forum non conveniens* arises from the common law and is based on equitable principles. *See Langenhorst v. Norfolk S. Ry.*, 219 Ill. 2d 430, 441 (2006), *citing Vinson v. Allstate Ins. Co.*, 144 Ill. 2d 306, 310 (1991). In short, a circuit court is instructed to "look beyond the criteria of venue when it considers the relative convenience of a forum." *Id., quoting Bland v. Norfolk & W. Ry.*, 116 Ill. 2d 217, 226 (1987). In these cases, Boeing does not and could not argue that venue is inappropriate given its Chicago world headquarters.

Forum non conveniens is ultimately a jurisdictional doctrine. A circuit court may decline to hear a case if, under exceptional circumstances, a trial in another forum would better serve the ends of justice. *See First Am. Bk. v. Guerine*, 198 Ill. 2d 511, 515 (2002). Indeed, it has been consistently held that, "a case should not be tried in a forum that has no significant factual connections to the cause of action." *Foster v. Chicago & N.W. Transp. Co.*, 102 Ill. 2d 378, 383 (1984), *citing* cases. To that end, a circuit court has considerable discretion in determining whether to grant a *forum non conveniens* motion. *See Langenhorst*, 219 Ill. 2d at 441-42, *citing Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 336 (1994).

Various presumptions underlie a *forum non conveniens* analysis, several of which are relevant here. As to a plaintiff's choice of forum, "[First,] [w]hen the home forum is chosen, it is reasonable to assume that the choice is convenient. [Second,] [w]hen the plaintiff is foreign to the forum chosen . . . this assumption is much less reasonable and the plaintiff's choice deserves less deference." *Guerine*, 198 Ill. 2d 511, 517-18, *citing* cases. Third, "[w]hen the plaintiff is foreign to the chosen forum and the action that gives rise to the litigation did not occur in the chosen forum, '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.'" *Bruce v. Atadero*, 405 Ill. App. 3d 318, 328 (1st Dist. 2010), *citing Dawdy v. Union Pac. R.R.*, 207 Ill. 2d 167, 174 (2003), *quoting, in turn,*

Certain Underwriters at Lloyd's London v. Illinois Cent. R.R., 329 Ill. App. 3d 189, 196 (1st Dist. 2002). Fourth, "[a] plaintiff's 'home forum' for purposes of an interstate *forum non conveniens* motion is the plaintiff's home State." *Fennell*, 2012 IL 113812, ¶ 18, *citing Kwasniewski v. Schaid*, 153 Ill. 2d 550, 553 (1992).

The Supreme Court has plainly stated its position against forum shopping. "Decent judicial administration cannot tolerate forum shopping as a persuasive or even legitimate reason for burdening communities with litigation that arose elsewhere and should, in all justice, be tried there." *Id.*, at ¶ 19. Yet, even with that admonition, a plaintiff is accorded only "somewhat less deference," not no deference. *Quaid v. Baxter Healthcare Corp.*, 392 Ill. App. 3d 757, 767 (1st Dist. 2009) (plaintiffs California residents), *quoting Guerine*, 198 Ill. 2d at 517. The reason is that, even if a plaintiff's claims arise in another jurisdiction, such a fact merely establishes that the other jurisdiction is a proper venue, not necessarily a more convenient one. *See Kaiser v. Doll-Pollard*, 398 Ill. App. 3d 652, (5th Dist. 2010) (jurisdiction proper in St. Clair County despite plaintiff's medical malpractice injury occurring in Clinton County because St. Clair County physicians attempted to reverse resulting surgical complications).

In *Guerine*, the Illinois Supreme Court identified the private- and public-interest factors a circuit court is to consider when addressing a motion to transfer based on *forum non conveniens*. The private-interest factors are:

> (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make a trial of a case easy, expeditious, and inexpensive – for example, the availability of compulsory process to secure attendance of unwilling witnesses, the cost to obtain attendance of willing witnesses, and the ability to view the premises (if appropriate).

198 Ill. 2d at 516, *citing Griffith v. Mitsubishi Aircraft Int'l, Inc.*, 136 Ill. 2d 101, 105-06 (1990); *Bland*, 116 Ill. 2d at 224; and *Adkins v. Chicago, Rock Island & Pac. R.R.*, 54 Ill. 2d 511, 514 (1973). Courts frequently break down the third element so as to address each component separately, as this court does below. The public-interest factors identified in *Guerine* are:

> (1) the interest in deciding localized controversies locally; (2) the unfairness of imposing the expense of a trial and the burden of jury duty on residents of a county with little connection to the litigation; and (3) the administrative difficulties presented by adding further litigation to court dockets in already congested fora.

Guerine, 198 Ill. 2d at 516-17.

What *Guerine*, *Langenhorst*, and all other related cases make plain is that a jurisdictional challenge based on *forum non conveniens* is a fact-intensive analysis. *See, e.g.*, *Langenhorst*, 219 Ill. 2d at 443. "[T]he test . . . is whether the relevant factors, viewed in their totality, strongly favor transfer to the forum suggested by defendant." *Dawdy*, 207 Ill. 2d at 176, *quoting Griffith*, 136 Ill. 2d at 108. A defendant seeking to change venue based on *forum non conveniens* faces a challenge because "[a] plaintiff's right to select the forum is substantial." *Id.* at 173. "The defendant bears the burden of showing that the plaintiff's chosen forum is inconvenient to the defendant and another forum is more convenient to all parties. The defendant cannot assert that the plaintiff's chosen forum is inconvenient to the plaintiff." *Fennell*, 2012 IL 113812, ¶ 20, *citing Langenhorst*, 219 Ill. 2d at 444, and *Guerine*, 198 Ill. 2d at 518. In short, "transfer is allowed where defendant's choice is the substantially more appropriate forum." *Czarnecki v. Uno-Ven Co.*, 339 Ill. App. 3d 504, 508 (1st Dist. 2003), *citing Evans v. MD Con, Inc.*, 275 Ill. App. 3d 292, 298 (1st Dist. 1995).

It is important to note that a *forum non conveniens* challenge may be made on an intrastate and, as in these cases, an interstate basis. *See Fennell*, 2012 IL 113812, ¶ 13. The same considerations of convenience and fairness apply regardless of the ultimate venue. *Id., citing Dawdy*, 207 Ill. 2d at 176 (collecting cases). If a court grants a motion to transfer interstate, the litigation must be dismissed since Illinois circuit courts cannot impose litigation on the courts of another state. *Id., citing* 3 Richard A. Michael, Illinois Practice § 14:1, at 220 (2d ed. 2011). The dismissal presumes the plaintiff will timely re-file the action in the other state, and requires the defendant to accept service of process from that court and waive any statute of limitations defense. *Id., citing* Ill. S. Ct. R. 187(c)(2).

I. Private-Interest Factors

A. Convenience Of The Parties

The first private-interest factor is of substantial importance to a *forum non conveniens* analysis. This factor requires the defendant to establish that the plaintiffs' chosen forum is inconvenient to the defendant and that another forum is more convenient to all parties. *See Pendergast v. Meade Elec. Co.*, 2013 IL App (1st) 121317, ¶ 30. It should be emphasized that this factor concerns parties only; convenience to other witnesses is considered separately in part I.B.

The First District recently expressed the obvious dilemma a court faces when addressing the parties' convenience:

> The trial court found the first public interest factor . . . to favor neither forum. The court reasoned that William chose Cook County, so it must be more convenient for him, and Odman wants Kane County, so Kane County must be more convenient for him. If we follow this reasoning, the convenience of the parties means little because a *forum non conveniens* motion, by its nature, pits preferred forums against each other.

Hale v. Odman, 2018 IL App (1st) 180280, ¶ 34, *citing Fennell*, 2012 IL 113812, ¶ 20. To resolve this conflict, the court concluded that: "we must look beyond the declarations of convenience and realistically evaluate convenience and the actual burden each party bears when traveling to the plaintiff's chosen forum." *Id.* at ¶ 35.

To this realistic approach to a *forum non conveniens* analysis, this court wishes to contribute an observation that should be obvious, but is overlooked by nearly every party in nearly every similar pleading submitted to this court: the doctrine at issue is not called *forum non inconveniens*, but *forum non conveniens*. In other words, it does nothing for parties and witnesses to attach affidavits as exhibits to their pleadings declaring that a particular forum is "not inconvenient." Indeed, it is quite possible for a forum to be both not inconvenient, but not convenient.

To combine this observation with the pronouncement in *Hale* leads to an initial premise: Washington is the most convenient forum for all parties in these cases. Understandably, it is not wholly inconvenient for persons to fly from Seattle to Chicago or from Chicago to Seattle; likely, hundreds of persons do that daily. It is, however, quite another thing to fly halfway across the country declaring it is "not inconvenient" when another forum is within driving distance. Here, the plaintiffs cannot aver to the obvious – that it is more convenient to proceed with these cases in Washington near their homes and workplaces – because to do so would concede to Boeing's desired forum.

It is also important initially to orient the focus of this analysis based on the specifics of these cases. These are products liability cases concerning the manufacturing and production of airplanes, not the crash of them. *Cf., e.g., Griffith*, 136 Ill. 2d 101; *Vivas v. Boeing Co.*, 392 Ill. App. 3d 644 (1st Dist. 2009). Stated another way, these are not cases of how a product's useful life ended, but how it began. These cases do not concern multiple

variables of weather, pilot error, and product failure that may have acted separately or in combination to result in a mass tort. Rather, these cases concern exposure to allegedly toxic chemicals at particular Boeing facilities in particular ways that resulted in the plaintiff's unique injuries.

In these cases, each plaintiff lives either in King or Snohomish Counties, Washington; none has ever lived in Illinois. All of the plaintiffs have lived in Washington their entire lives except for Riley, who lived in Florida for a few years. Three of the four were born before Boeing moved its headquarters to Chicago. Given these facts, to accept the plaintiffs' averments that it is not inconvenient for their cases to proceed in Chicago is to do precisely what *Hale* holds should not be done – overlook the obvious.

For Boeing's part, it cannot be overlooked that its global headquarters is in Chicago. Indeed, Boeing voluntarily acceded to jurisdiction in Cook County when it relocated its offices here in 2001. Yet a principal place of business or a corporate headquarters is, by itself, not indicative of convenience. *See Gridley*, 217 Ill. 2d at 173. It is uncontested that the relevant Boeing manufacturing and production facilities in these cases are located in the Puget Sound region. Boeing's submissions indicate that the vast majority of its employees who know about the use of the chemicals at issue in these cases, employee exposure, and workplace regulations are located in Washington. And although it is likely that some of Boeing's Chicago-based executives will be deposed and, perhaps, testify at trial on various issues, their knowledge is far more general and removed from the day-to-day activities of Washington-based employees and executives.

In support of their position, the plaintiffs rely to a significant extent on the First District's decision in *Erwin v. Motorola, Inc.*, 408 Ill. App. 3d 261 (1st Dist. 2011). In that case, the current plaintiffs' law firm, Cooney & Conway, represented other plaintiffs who sued Motorola in the Circuit Court of Cook County for their children's birth defects and other injuries allegedly caused by the parents' exposure to toxic substances at Motorola's clean-room

facilities in Austin, Texas and Phoenix, Arizona. While the case has initial appeal, it is, ultimately, readily distinguishable on three substantive grounds as to this private-interest factor and the second, as well as the first public-interest factor. *See* parts I.B & II.A.

First, the plaintiffs' complaints in *Erwin* alleged that Motorola "from its headquarters" "repeatedly approved the use of reproductively toxic compounds in 'clean rooms,'" *id.* at 264, "from its headquarters" "knew of the dangers posed by these hazardous chemicals," *id.*, and "from its headquarters" "maintained the use of its 'clean rooms,' knowing that they were built without ventilation systems that could protect the workers from inhalation or skin exposure to any liquids, vapors, gases or fumes arising from the hazardous chemicals," *id.* at 265. In contrast, the complaints in these cases do not allege that Boeing's Chicago headquarters directed similar conduct or had similar immediate control over its production facilities in Washington. *Cf. id.* at 266 ("the parties hotly disputed whether it was local personnel at Motorola's Texas and Arizona facilities, or corporate personnel at Motorola's headquarters in Illinois, who were responsible for generating, implementing and overseeing environmental health and safety protocols in Motorola's 'clean rooms'"). The plaintiffs cannot make similar allegations here because the record shows that certain Boeing Chicago-based executives merely sit on the EHS Council and establish company-wide policies, but that the Washington-based EHS division implements them.

Second, *Erwin* is distinguished because Schaumburg-based Motorola had much more hands-on control over its Austin and Phoenix facilities than did or does Chicago-based Boeing over its Washington facilities. In *Erwin*, one of the plaintiffs testified that,

> while he was employed at Motorola's Phoenix and Austin facilities, senior managers and operational managers frequently traveled to Motorola's corporate headquarters in Schaumburg, Illinois, to discuss

> management, operations, and planning. According to Erwin, "the basic procedures for manufacturing the semiconductor chips, were developed in Schaumburg, Illinois." In addition, all protocols and information regarding employee safety came from Motorola in Schaumburg.

Id. at 266-67. Another plaintiff testified that, "Motorola employees who reported directly to Motorola's corporate headquarters near Chicago would come to the Austin plant to perform air testing in the semiconductor facilities." *Id.* at 267. Still another witness testified that,

> Motorola's headquarters in Schaumburg was "solely and directly" responsible for policy, decisions and precautions regarding health, and safety, industrial hygiene and OSHA compliance. [T]he individual facilities in Austin and Phoenix did not have health and safety personnel with independence to act outside of Motorola headquarters' [*sic*] protocol.

Id. Finally, another witness acknowledged that Motorola's Schaumburg-based steering committee determined "all environmental, health and safety regulations and standards," which were then approved by the Schaumburg-based executive committee. *Id.* at 269.

The facts in these cases indicate that Boeing does not operate its EHS division in a top-down fashion as did Motorola. Rather, the evidence shows that Chicago-based executives set policy and goals and review various reports related to those policies and goals. In contrast to Motorola's wholly centralized control, Boeing's EHS division is also centralized, but not in Chicago. Rather, EHS operates out of Boeing's Washington facilities where its employees with the most knowledge about EHS are located.

Third, while the *Erwin* plaintiffs disclosed scores of potential witnesses in support of their cases, "Motorola did not name a single witness it intended to call at trial. . . ." *Id.* at 271. Based on this omission alone, the appellate court could properly affirm the denial of Motorola's motion because the company had failed to meet its burden. *See Fennell*, 2012 IL 113812, ¶ 20, *citing Langenhorst*, 219 Ill. 2d at 444, and *Guerine*, 198 Ill. 2d at 518. Boeing has made no such omission here and, in fact, has plainly established that the bulk of its employees with knowledge are located in Washington. Further, that number far exceeds the number of Chicago-based Boeing executives who may be deposed or testify at trial.

In sum, this highly significant factor in a *forum non conveniens* analysis strongly favors Washington.

B. The Relative Ease Of Access To Evidence

This factor is also enormously important to this *forum non conveniens* analysis. This factor also reveals, to a certain extent, the antique nature of the *forum non conveniens* private-interest factors. The use of real evidence is far less common today given the availability of photography and videography both in depositions and at trial. Moreover, in large, complex cases such these, parties typically produce documents either electronically or on computer disks or jump drives. *See, e.g., Fennell*, 2012 IL 113812, ¶ 36. The ease of access to evidence is, however, still relevant with regard to testimonial evidence. And as to this factor, the focus is not on the parties, as in part I.A, but on other witnesses.

The remaining non-party, non-expert Rule 213(f)(1) witnesses not covered in part I.A appear to be limited to the plaintiffs' family members. Again, the plaintiffs' parents, who will be key witnesses, live in Washington. Other family members live in various states, particularly in the West. The plaintiffs also emphasize that two of Hatleberg's brothers live in Chicago, yet Hatleberg did not disclose either in answers to discovery. Besides,

it is likely that their testimony would be cumulative to her and her parents' testimony.

The largest group of potential Rule 213(f)(2) witnesses in these cases are treating physicians. The plaintiffs argue that there is no need for medical treaters to be deposed or testify because the plaintiffs' birth defects and other medical conditions are what they are. Boeing begs to differ and is entirely correct to do so. The precise nature of each plaintiffs' birth defects and their other medical conditions are valid subjects of written and oral discovery. Undoubtedly, Boeing will also inquire as to each plaintiff's parents' medical histories focusing on whether any have genetic or environmental predispositions to birth defects. Family histories will establish whether there are other instances of birth defects not caused by alleged toxic exposure.

Regardless of the nature and extent of medical discovery, Rule 213(f)(2) treating physicians are deposed where they work. That is true regardless of where cases proceed. In these cases, the upshot of this professional courtesy is that all depositions of medical treaters will occur in Washington as none of the plaintiffs has received medical treatment in Illinois. The number of identified medical providers in these cases is enormous, but not surprising. This fact, alone, weighs heavily in favor of these cases proceeding in Washington, near where the plaintiffs received and continue to receive medical treatment.

As to the issue of notice, the plaintiffs have identified a variety of what appear to be other Rule 213(f)(2) witnesses. These witnesses include: a federal EPA employee from Philadelphia; the California attorney general; Portland, Oregon's city attorney; 70 plaintiffs from a California lawsuit who sued Boeing for personal injuries and property damage; a Chicago-based record keeper with the American Medical Association; a University of Illinois-Chicago occupational safety expert and physician; a University of Michigan physician in Ann Arbor; a Maryland-based occupational medicine physician; and Motorola's former head of environmental health and safety in Schaumburg. This court questions the relevance or

necessity of any of these witnesses. Apart from that threshold problem, the plaintiffs have failed to indicate that any of these proposed witnesses would actually agree to be deposed or appear at trial or that it would be convenient for them to do so. It seems wishful thinking, at best, that any would willingly appear as a Rule 213(f)(2) witness. And except for the three based in Chicago, it is questionable that appearing here or in Washington would be any more or less convenient.

It is important at this point to circle back and distinguish *Eakin*, once again. There, Motorola failed to identify a single witness, Rule 213(f)(2) or otherwise, to be deposed or presented at trial. *See* 408 Ill. App. 3d at 277-79. In contrast, the plaintiffs disclosed scores of witnesses. *See id.* In these cases, Boeing has not duplicated Motorola's error, and there is no need to speculate who Boeing plans to call as Rule 213(f)(1) and (f)(2) witnesses – nearly all are current or past employees living and working in Washington. *Cf. Eakin*, 408 Ill. App. 3d at 279-80 (finding that plaintiffs' witnesses were "scattered" across the county and not localized). In sum, the location of the Rule 213(f)(2) witnesses in these cases also strongly favors Washington.

As to Rule 213(f)(3) witnesses, the Supreme Court has cautioned not to give undue weight to where these witnesses are located. *See id.* at ¶ 33. "To do so would allow a plaintiff to easily frustrate the *forum non conveniens* principle by selecting an expert witness in what would actually be an inconvenient forum." *Id., citing Bland*, 116 Ill. 2d at 227 (collecting cases). Frankly, courts do not sympathize with witnesses who are being paid for their time, appearances, and opinions. *Id.*, at ¶ 33, *citing Eads v. CONRAIL*, 365 Ill. App. 3d 19, 31-32 (1st Dist. 2006); *Hulsey v. Scheidt*, 258 Ill. App. 3d 567, 577 (1st Dist. 1994).

This court will not speculate where the parties' Rule 213(f)(3) witness are located. It would not be at all surprising that in cases as complex as these, the parties will seek out highly qualified experts in their fields regardless of where they live or work. To that extent, this court has not considered the

convenience of the parties' expert witnesses in this private-interest factor.

This factor is of substantial importance in a *forum non conveniens* analysis, and this court finds that it, too, strongly favors Washington.

C. Compulsory Process Of Unwilling Witnesses

This court patently has no authority to compel the presence of unwilling witnesses from outside Illinois. A Washington Superior Court judge is in the same position as to witnesses from outside Washington. To that extent, this factor is a wash; consequently, the best this court can do is to go over plowed ground.

The parties have identified their Rule 213(f)(1) witnesses, nearly all of whom are in Washington. It may be assumed that the parties will encourage these witnesses to go to any forum for depositions or trial, yet if these cases proceed in Washington, a judge there would have authority to compel the presence of any potentially reluctant witnesses. That is a valid consideration.

Rule 213(f)(2) witnesses are generally the ones most likely to be unwilling because they have no axe to grind. In these cases, the Rule 213(f)(2) witnesses consist primarily of the plaintiffs' treating physicians and their parents' treating physicians, each of whom is in Washington and over whom this court has no control. The other group of Rule 213(f)(2) witnesses consists of those who will testify factually as to industry standards, uses, and practices. For Boeing, nearly all of those witnesses are employees based in Washington. For the plaintiffs, those witnesses are all over the country, placing Illinois and Washington judges in the same powerless position.

The location of Rule 213(f)(3) witnesses – those already identified or yet to be named – is irrelevant to a *forum non conveniens* analysis because they are willing to go anywhere for a

price. To factor in the location of experts would allow parties to manipulate the doctrine by naming lots of experts to favor one venue over another. Such a strategy must be discouraged.

In sum, this factor would be neutral if it were based solely on the parties' lack of attention to it in their briefs. If, however, this factor is taken in context with I.B, above, the factor favors Washington.

D. Cost Of Obtaining Attendance Of Willing Witnesses

This factor's utility is diminished because neither side provided this court with information comparing the costs of willing witnesses travelling to Chicago or Washington. As a result, this court can only draw inferences based on the same discussion presented in parts I.A and I.B, above. In short, all parties have far more willing witnesses living and working in Washington than in Cook County. Additionally, most of the plaintiffs' other identified witnesses are in western states.

The plaintiffs correctly point out that, pursuant to Rule 237(b), all of Boeing's Washington-based employees could be compelled to appear in Chicago for depositions and trial. Compulsion and convenience are, however, two different things. Plainly, the costs associated with bringing each Washington-based employee to Chicago is far greater than having plaintiffs' identified willing witnesses appear in Washington.

Overall, the costs to willing witnesses would be lower if these cases proceeded in Washington; consequently, this factor favors Washington.

E. Viewing The Premises

Our Supreme Court has cautioned that, even if "'there is nothing in the record to indicate that a view of the accident site will be necessary,'" *Dawdy*, 207 Ill. 2d at 178, (quoting

unpublished appellate court decision), the applicable standard is one of "possibility, if appropriate," not "necessity." *See id.* (citing *Gulf Oil*, 330 U.S. at 508). A court must also consider whether the injury site has substantially changed, making a site visit unhelpful. *See Langenhorst*, 219 Ill. 2d at 449. Of course, the decision as to whether a jury needs to view a particular location is left to the trial judge's discretion. *See Fennell*, 2012 IL 113812, ¶ 37.

The problem in these cases is that the parties do not agree on what constitutes the premises to be viewed, even if appropriate. Indeed, it is unclear from the record at what stage or stages of production the plaintiffs' parents worked on Boeing 747s, 767s, and 777s. The plaintiffs apparently believe that viewing a post-production plane is sufficient because one could be flown to Chicago for the jury to view. Such a proposal is extraordinary. The cost of flying a passenger plane to Chicago would be enormous, and it is difficult to believe that the plaintiffs would ultimately be willing to pay for such a piece of evidence. Additionally, O'Hare International Airport is not a parking lot for airplanes subject to litigation, and jury access to the field may not be assured given Federal Aviation Administration and Transportation Safety Administration regulations. The inexorable conclusion is that a jury would gain far more knowledge critical to reaching a judgment by viewing Boeing facilities rather than walking through a post-production plane sitting on O'Hare's tarmac.

Boeing argues that viewing the production facilities in Washington is the best option. This court agrees. Although the particular planes on which the plaintiffs' parents worked are presumably flying or retired, doubtless there are exemplar planes in various stages of production at Boeing facilities. A jury would be able to view the interiors and exteriors where the parents worked, how the chemicals, solvents, and sealants were used, the type of protection devices Boeing employees wore, how exposure could occur, and how and where the chemicals were stored and readied for use. If these cases were to proceed in Chicago and the

trial judge determined that viewing the premises would be appropriate, an on-site inspection would be cost prohibitive. And although some of the same information could be obtained through recording production activities at Boeing's facilities, a Washington judge would not be forced to accept that lesser alternative.

It also appears that the plaintiffs' position as to this factor is counter to their interests. Their cases revolve around inhalation and dermal contact with chemicals. The plaintiffs should want the jury to smell the alleged toxic agents and compounds used in the production process, even if only briefly, something that can be achieved best with an on-site visit. And while dermal contact could be recorded, its immediacy is certainly lessened through an intervening medium.

Finally, as noted above, the Boeing facilities at issue in these cases are located in King and Snohomish Counties. The latter is immediately adjacent to the north of King County. Thus, if a Washington Superior Court judge in either county determined that a jury's inspection of the production facilities were appropriate, distance would not be an insurmountable hurdle.

For these reasons, this factor favors Washington.

F. Other Practical Considerations That Make A Trial Easy, Expeditious, And Inexpensive

A court is instructed to consider all other "'practical problems that make trial of a case easy, expeditious, and inexpensive.'" *Langenhorst*, 219 Ill. 2d at 443 (quoting *Guerine*, 198 Ill. 2d at 516-17). The only justiciable issue raised by either party under this rubric is the location of their counsel. The Illinois Supreme Court has stated that, "little weight should be accorded this consideration," *Fennell*, 2012 IL 113812, ¶ 40 (citing *Dawdy*, 207 Ill. 2d at 179); nonetheless, a court may still consider the issue in a *forum non conveniens* analysis. *See Quaid*, 392 Ill. App. 3d at 772.

The plaintiffs' counsel, Cooney & Conway, is a Chicago law firm that does not have an office in Washington. It would certainly be more convenient for the plaintiffs' current lawyers to proceed with these cases in Chicago. Cooney & Conway does not indicate in its pleading whether it would continue representing the plaintiffs if these cases proceed in Washington. Without that answer, this minor factor is diminished even further.

In contrast, Boeing's counsel, Perkins Coie, has offices both in Chicago and Seattle. While the firm's Chicago office has managed these cases so far, it is assumed that there are attorneys in the Seattle office who will be capable of picking up where the Chicago lawyers leave off. In short, this factor should be of little relevance to Boeing.

Given that the location of the parties' attorneys has little weight and that it is unknown if the Cooney & Conway firm would represent the plaintiffs before the Washington Superior Courts, this relatively unimportant factor tips ever so slightly in favor of Cook County.

II. Public-Interest Factors

A. Deciding Localized Controversies Locally

The first public-interest factor requires this court to determine the true locus of this dispute. Cook County has, without a doubt, a legitimate interest in this litigation arising from the fact that Boeing maintains its world headquarters in Chicago. In fact, in 2001, Boeing voluntarily relocated its headquarters from Seattle to Chicago and for the last 18 years has integrated itself into Chicago's commercial life. It can come as no surprise to Boeing that it would be sued, as in these cases, in the county where it chose to have its headquarters.

Courts have concluded, however, that the location of corporate headquarters has limited utility in a *forum non*

conveniens analysis. The reason is that the location of a corporate headquarters or identifying a principal place of business in Illinois does not mean that Illinois is a convenient venue for litigation. *See Gridley*, 217 Ill. 2d at 172 ("the fact that a corporation does business within a county in Illinois does not affect the *forum non conveniens* analysis"), *citing Vinson*, 144 Ill. 2d 306. Since the location of corporate headquarters does not, by itself, provide a reliable indicator of convenience, this court must identify other facts linking the plaintiffs' injuries in Washington with Boeing's domicile in Chicago. The record in this regard is sparse.

The plaintiffs' focus on the location of some Chicago-based Boeing executives is unimpressive. As noted above, several of these persons are involved with EHS policy making, but are not involved in the day-to-day activities of EHS at Boeing's Washington production facilities. Quite simply, these witnesses can be counted on, at most, two hands and do not counterbalance the substantial number of identified witnesses located in Washington.

It also bears repeating that Boeing is a Delaware corporation, headquartered in Chicago, with its primary manufacturing facilities in the Puget Sound region. Those facts echo *Dawdy*. There, the local interest factor weighed strongly against the plaintiff's chosen forum of Madison County because the defendant-railroad – a Delaware corporation with its principal place of business in Omaha, Nebraska – merely conducted business and maintained a post office box in the county. *See* 207 Ill. 2d at 182. As the court reasoned: "[i]f the fact that the defendant conducts business, or maintains a post office box, in the plaintiff's chosen forum were dispositive . . . 'plaintiff's choice would be elevated to the stature of a dispositive consideration, which is patently not to be allowed.'" *Id.*, *quoting Franklin v. FMC Corp.*, 150 Ill. App. 3d 343, 347 (1st Dist.1986).

There is nothing in the record to suggest that Boeing's Chicago-based executives hired, trained, directed, or supervised the plaintiffs' parents who worked at Boeing's Washington

facilities. Further, Boeing does not operate in Cook County, or anywhere else in Illinois, any production facilities, let alone ones similar to those in Washington, where Boeing allegedly exposed the plaintiffs' parents to toxic substances. This is a significant distinction from the facts in *Erwin* on which that court placed considerable and proper weight. *See* 408 Ill. App. 3d at 282-83. In *Erwin*, there was a strong link between what occurred in Austin and Phoenix and Cook County. Although the exposures in *Erwin* occurred elsewhere, Motorola operated two similar clean rooms – one in Northbrook and one in Schaumburg, both in Cook County – and operated another production facility in Arlington Heights, also in Cook County. *Id.* at 271-72. Such a link raised the specter that what happened in Austin and Phoenix could happen here.

These cases also differ from *Erwin* in that the plaintiffs' injuries occurred in only one location – Washington – rather than two – Arizona and Texas. *See id.* at 282 (exposure occurred in both states). In other words, the injuries at issue here are local to Puget Sound, not national in scope. That difference is weighty for it means that a Cook County jury would be considering Boeing's allegedly negligent conduct to which Cook County or Illinois residents are not and would not be exposed, a scenario presenting a jury with far less legitimate interest.

Timing was also important to the *Erwin* court. The court recognized that while Motorola was allegedly exposing its employees to toxic chemicals in Arizona and Texas, the same exposures could have been occurring at its Illinois facilities. *See id.* at 283. That scenario is not possible here because Boeing does not operate production facilities in Illinois. Moreover, three of the plaintiffs were born in Washington before Boeing moved its headquarters to Chicago. Riley was born in 1980, Wahl in 1990, and Hatleberg in 1994. Only Ford was born after the corporate relocation, in 2014.

Other facts, mentioned above, bear repeating here. First, each plaintiff is a Washington resident, and none has indicated plans to move to Illinois or Cook County. Second, each plaintiff's

claims are based on the fact that at least one of their parents was a Washington resident who worked at a Boeing facility in Washington at the time of their alleged exposure. Third, each plaintiff received medical treatment, and assumedly will continue to receive treatment, by Washington medical providers in Washington.

This court is compelled to address the issue of choice of law since Boeing jumped the gun and raised the issue in its filings. Lest there be any suggestion to the contrary, this court did not take choice of law into consideration. In personal injury cases, a party's rights and liabilities are determined by the state where the injury occurred unless another state has a greater interest in determining that issue. *See* Restatement (Second) Conflicts of Laws § 146 (1971). Since a choice of law requires an entirely different analysis and is necessary only if the states' laws would lead to a different result, *see Benedict v. Abbott Labs., Inc.*, 2018 IL App (1st) 180377, ¶¶ 63-P64, the issue is premature.

In sum, the facts presented in the record lead this court to conclude that this factor strongly favors Washington.

B. Unfairness Of Imposing Expense And Burden On A County With Little Connection To The Litigation

This public-interest factor often follows from the first, and it does in this instance. As Illinois courts have consistently recognized, litigation imposes various costs. For example:

> [j]ury duty constitutes a burden to the citizens of a county who must serve on the jury. The county in which the trial is held is financially burdened by the payment of jurors' fees and by providing court personnel and court facilities. The court system of this State is also burdened by the necessity to provide judicial personnel and the machinery for appellate review.

Wieser v. Missouri P.R. Co., 98 Ill. 2d 359, 371 (1983). As another court similarly concluded: "Illinois taxpayers should not be obligated to pay for litigation which is unrelated to Illinois any more than Illinois citizens should be burdened by sitting on juries in these cases." *Satkowiak v. Chesapeake & Ohio R. Co.*, 106 Ill. 2d 224, 232 (1985). *See also Fennell*, 2012 IL 113812, ¶ 46.

As noted in part II.A, Cook County residents certainly have some interest in this litigation. Boeing is, after all, headquartered in Chicago and has derived and continues to derive benefits from voluntarily relocating here in 2001. To that extent, Cook County citizens would be interested in deciding a case involving a prominent corporate resident. Beyond that, however, it is difficult to identify any other interest that Cook County residents would have in these cases. In contrast, Washington residents have a far greater interest in cases concerning a company manufacturing a product in Washington and allegedly injuring Washington residents in Washington.

Given the strong links between Washington and the gist of these cases, this court concludes that this factor also strongly favors Washington.

C. Administrative Difficulties

This public-interest factor typically prompts litigants to latch on to sparse and generalized court statistics and then apply them to the specifics of the case, always, of course, in their own favor. Perhaps for that reason alone, court congestion, by itself, is considered a relatively insignificant factor in a *forum non conveniens* analysis. *See, e.g., Dawdy*, 207 Ill. 2d at 181; *Guerine*, 198 Ill. 2d at 517; *Langenhorst*, 219 Ill. 2d at 451 ("When deciding *forum non conveniens* issues, the trial court is in the better position to assess the burdens on its own docket."). At the same time, the Supreme Court has repeatedly recognized that it is appropriate to consider the congested docket conditions of the

plaintiff's chosen forum. *See Dawdy*, 207 Ill. 2d at 181; *Wieser*, 98 Ill. 2d at 372-73 (collecting cases).

It is of note that both parties present this court with wrong information. Boeing cites the old saw that the Cook County Circuit Court is the largest unified court system in the country. Motion at 12, *citing Whirlpool Corp. v. Certain Underwriters at Lloyd's London*, 295 Ill. App. 3d 828, 838 (1st Dist. 1998). In fact, Cook County lost that title to the Superior Court of Los Angeles County, California in 1998 after that county's courts consolidated. *See* https://en.wikipedia.org>wiki>Circuit_Court_of_Cook_County. For their part, the plaintiffs state that "Cook County is not congested. . . ." Amd. Resp. at 17. This court begs to differ.

There are 10 judges, including this one, assigned to the Law Division's Motion Section where these cases are docketed. As of November 1, 2019, each of the judges had an average of 1,421 cases, each of which must return for case management every 60 days. That schedule does not include any motions the parties might file in the interim. Additionally, each judge typically rules on one to two dispositive motions each day. Based on any standard, these are crowded dockets.

There is other information to be considered. For example, the most recent statistics for Cook County indicate that, for verdicts greater than $50,000, a case takes 32.2 months from the date of filing to the date of disposition. Admin. Office of Ill. Cts., "2017 Annual Report of the Illinois Courts," at 60. Boeing has provided information showing that, in contrast, more than 93% of cases in the Superior Courts of Snohomish and King Counties resolve within one year. That statistic is certainly impressive. Yet even if the courts of those two Washington counties are highly efficient, this court has substantial doubt that by the end of 2020 these four, complex cases would be resolved.

Boeing also reports that the two Washington counties receive between 23-25,000 new filings each year. A Google search indicates that there are 15 judges in the Snohomish County

Superior Court, but there is no indication that they have any particular assignment. *See* https://snohomishcountywa.gov. A similar Google search indicates that King County Superior Court has nine out of 33 judges assigned to a civil docket. *See* https://www.kingcounty.gov. In contrast, this court takes judicial notice that in 2018, the Law Division, Motions Section alone received 10,571 new cases. By any calculation, the Motions Section courts are substantially more congested than those in Washington. At the same time, this court recognizes that four cases out of 1,421 is not a heavy additional burden. If not these four cases, there would be four others. And despite the crowded docket, this court believes it is fully capable of shepherding these four cases through pre-trial discovery and preparing them for trial.

The information presented above leads this court to conclude, as have so many others, that court congestion is, by itself, not a particularly insightful factor. Even if these four cases were to proceed apace, which they have not so far, it is impossible to conclude, given the number of potential witnesses, how they could be trial ready in less than two years. That conclusion appears to be equally true if these cases were before the Washington Superior Courts.

In sum, this court concludes that this factor is neutral.

Conclusion

This is an exceptional case. This court concludes that the private- and public-interest factors strongly favor the transfer of these cases to the Washington Superior Court. Based on the foregoing, this court orders that:

1. Boeing's motion is granted;
2. These cases are dismissed in this jurisdiction with prejudice;
3. The November 14, 2019 case management conference at 11:00 a.m. is stricken; and

4. Pursuant to Rule 187, if the plaintiffs re-file their cases in the Washington Superior Court within six months, Boeing shall: (a) accept service of process from the relevant court in which each case is re-filed; and (b) waive any argument based on a statute of limitations defense.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich
NOV 13 2019
Circuit Court 2075