

NOT FOR PUBLICATION - FOR UPLAOD

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

|                                    |   |                   |
|------------------------------------|---|-------------------|
| Rupert Burt and Cynthia Burt,      | ) |                   |
|                                    | ) |                   |
| Plaintiffs,                        | ) | Civ. No. 2003-141 |
|                                    | ) |                   |
| v.                                 | ) |                   |
|                                    | ) |                   |
| General Accident Insurance Co., et | ) |                   |
| al.,                               | ) |                   |
|                                    | ) |                   |
| Defendants.                        | ) |                   |

---

**ATTORNEYS:**

**Alan D. Smith, Esq.**  
St. Thomas, U.S.V.I.  
*For the plaintiffs*

**Wilfredo A. Geigel, Esq.**  
St. Croix, U.S.V.I.  
*For the defendants*

**MEMORANDUM**

Moore, J.

This matter is before the court on the defendants' motion to transfer venue to Puerto Rico on *forum non conveniens* grounds. The defendants have not presented a compelling argument that on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to Puerto Rico. Accordingly, I will deny the defendants' motion.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiffs Rupert Burt and Cynthia Burt, citizens of the United States Virgin Islands, have filed suit against two insurance companies incorporated in Puerto Rico, namely, General Accident Insurance Company ["General Accident"] and IMS Insurance Company ["IMS"]. The plaintiffs' suit stems from an auto accident in the Virgin Islands in which plaintiff Rupert Burt sustained injuries when a car he was traveling in collided with a car being driven by Shawn Malone. Malone had rented the car he was driving from Puertorican Cars, Inc, d/b/a Hertz Car Rental ["Hertz"]. General Accident was the automobile liability insurer of the car, but denied coverage and refused to provide legal defense for Malone when the plaintiffs filed suit against him in Territorial Court. The plaintiffs and Malone entered into a consent judgment in Territorial Court for \$250,000, and Malone subsequently assigned all his causes of actions against General Accident to the plaintiff in exchange for the plaintiffs' agreement to not seek recovery against Malone for any portion of the judgment in excess of \$15,000. The plaintiffs then filed suit against General Accident and the successor of General Accident, IMS, in this Court. The defendants have moved to transfer venue to the District of Puerto Rico based on the doctrine of *forum non conveniens*. The facts that the defendants

claim support transfer to Puerto Rico, as well as the facts that the plaintiffs allege prevent transfer of venue, are discussed below.

## **II. ANALYSIS**

Under the doctrine of *forum non conveniens*, codified at 28 U.S.C. § 1404(a), you may transfer any civil action to any other district or division where it might have been brought "for the convenience of parties and witnesses, in the interest of justice." The parties do not dispute that the action could have been brought in Puerto Rico, as Puerto Rico clearly qualified as a "district . . . where [the action] might have been brought" under 28 U.S.C. § 1391(a) because the defendants reside in Puerto Rico and a substantial part of the events giving rise to the claim occurred in Puerto Rico. The parties do dispute that the interests of justice and convenience warrant transfer of venue to our territorial neighbor.

In analyzing the defendants' request for transfer, I consider "whether on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum." *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879-880 (3d Cir. 1995) (quoting 15 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal

Practice And Procedure § 3847 (2ed. 1986)). I do not limit my consideration to the enumerated factors of section 1404(a) (convenience of parties, convenience of witnesses, or interest of justice), but "consider all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum." *Jumara*, 55 F.3d at 879 (quoting 15 Wright, Miller & Cooper § 3847). I should not disturb the plaintiffs' choice of forum unless I conclude that the balance of factors strongly weigh in favor of transfer. See *Kressen v. Federal Insurance Co.*, 122 F. Supp. 2d 582, 589 (D.V.I. 2000); *Jackson v. Executive Airlines, Inc.*, 2001 WL 664673 at \*2 (D.V.I. 2001).

The defendants' motion sets forth the following facts, which they claim support transfer of venue to Puerto Rico: the defendants are incorporated in Puerto Rico with their principle place of business also in Puerto Rico; most of their employees reside and work in Puerto Rico and none reside or work in the Virgin Islands; the defendants no longer conduct business in the U.S. Virgin Islands; the agent corporation that handled the account at issue is located in Puerto Rico and all its employees reside in Puerto Rico; the claims against the defendants relate to insurance contracts that were negotiated and issued solely in Puerto Rico; and all witnesses the defendants will call are

residents of Puerto Rico and it would be unduly burdensome to bring them to the Virgin Islands to testify. These facts, and the defendants' corresponding arguments, can be grouped into three general categories: (1) it would be more convenient for the defendants if venue were transferred to Puerto Rico, (2) it would be more convenient for the defendant's witnesses if venue were transferred to Puerto Rico, and (3) the "weight of contacts" justifies transfer. I will consider these three arguments individually.

**A. Convenience of the Parties**

As set described above, a trial judge should not disturb a plaintiffs' choice of forum unless the balance of factors strongly weighs in favor of transfer. *Kressen*, 122 F. Supp. 2d at 589; *Jackson*, 2001 WL 664673 at \*2. Although the defendants will certainly have to incur some hardship and expense in traveling the short distance to the Virgin Islands for trial proceedings, this hardship is no greater than the hardship the plaintiff would sustain if venue would transferred to Puerto Rico. Given the law's deference to the plaintiff's choice of forum and that it would not be significantly easier for the plaintiff to travel to Puerto Rico for trial, I find that this factor weighs in favor of the plaintiffs.

**B. Convenience to Witnesses**

The defendants' motion sets forth a laundry list of potential Puerto Rico-based witnesses that they will likely call at trial. In contrast, the plaintiffs' motion specifies only three Virgin Islands-based witnesses that they will likely call at trial.<sup>1</sup> The potential difference in the number Virgin Islands residents and Puerto Rican residents called at trial, however, is overcome by the fact that Puerto Rico is within the 100-mile radius of this court's subpoena power and that many of the defendants' witnesses will likely be their employees. As Wright, Miller, and Cooper instruct: "[T]ransfer may be denied when the witnesses, although in another district, are within the 100-mile reach of the subpoena power or when they are employees of a party and their presence can be obtained by that party." Given the short distance between Puerto Rico and the Virgin Islands and the frequency of airline service between the two islands, I find that any inconvenience incurred by the defendants' witnesses would not be so substantial to require change of venue.

**C. Weight of Contacts**

The defendants make several claims that relate to the weight of their contact with Puerto Rico relative to the Virgin Islands, including that they are incorporated in Puerto Rico, their

---

<sup>1</sup> The plaintiffs claims their witnesses would likely include the insured, his attorney, and Malone.

principle place of business is in Puerto Rico, they no longer conduct business in the Virgin Islands, and the insurance contract was issued and negotiated in Puerto Rico. The defendants' argument, however, neglects two key points. First, the plaintiffs have contacts with the Virgin Islands that are as strong, if not more so than the defendants contacts with Puerto Rico. Both plaintiffs reside in the Virgin Islands and both allegedly sustained injuries in the Virgin Islands, including, for Rupert Burt, bodily injuries. Second, parties are often subject to a certain venues where they have relatively fewer contacts, despite the fact that they have more contacts with another venue. I thus find that the defendants' weight of contacts argument does not compel transfer of venue.

### **III. CONCLUSION**

The above analysis shows that, although venue in the Virgin Islands may be of some inconvenience to the defendants and their witnesses, the hardship of participating in a trial a relatively short distance from Puerto Rico is not so substantial that venue should be transferred in the interest of justice. Accordingly, I will deny the defendants' motion.

**ENTERED this 21st day of December, 2003.**

*Burt v. General Accident Insurance Co. et al.*  
Civil No. 2003-141  
Memorandum  
Page 8

**For the Court**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**WILFREDO MORALES**  
**Clerk of the Court**

**By:**\_\_\_\_\_/s/\_\_\_\_\_  
**Deputy Clerk**

**Copies to:**

Hon. G. W. Barnard  
Hon. J. L. Resnick  
Alan D. Smith, Esq.  
Wilfredo A. Geigel, Esq.  
Mrs. Jackson  
Jeffrey Corey