

****NOT FOR PRINTED PUBLICATION****

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CHRISTOPHER WINN, <i>et al.</i> ,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	Civil Action No. 1:08-CV-186
v.	§	
	§	
ALAMO TITLE INSURANCE COMPANY,	§	JUDGE RON CLARK
<i>et al.</i>	§	
	§	
<i>Defendants</i>	§	

ORDER TRANSFERRING VENUE

Plaintiffs Christopher Winn *et al.* allege violations of federal and state anti-trust statutes in connection with the rates for title insurance approved by the Texas Department of Insurance (TDI) and charged by thirteen title companies and their affiliates. Suit was filed in the Eastern District of Texas. Numerous factors indicate that the case should be transferred, including the following:

No named Plaintiff claims to reside in, or have any connection to, this district;

One Defendant, Alamo, part of a group that allegedly accounts for one-third of the title insurance premiums collected in Texas has a significant presence in the Western District of Texas, but no corporate office in the Eastern District;

One Defendant, Stewart, is headquartered in Houston (Southern District) and has no corporate offices in the Eastern District;

Home sales in the Western District are double that in the Eastern District, which has the lowest number, and the smallest value, of home sales in the State;

The claims in the suit make it almost certain that some of the most important non-party witnesses will be State employees of the TDI, headquartered in Austin, (which will also be the location of some of the most important documents in the case) who would have to travel some 238 miles to Beaumont, burdening an already tight State budget; and

It is very likely that the significant interest of the State of Texas in its system of regulation of, and setting of rates for, title insurance companies will make the State an interested, if not indispensable party. While the location of counsel is usually not a factor, imposing costs on the limited budget of the State, by requiring its attorneys, headquartered in Austin, to travel to Beaumont is not in the public interest.

These factors, especially the unusual circumstance that significant costs are likely to be imposed on State taxpayers if this case remains in Beaumont, leads the court to transfer this case to the Western District of Texas, Austin Division, *See In re Volkswagen of America, Inc.* 545 F.3d 304 (5th Cir. 2008).

BACKGROUND

Plaintiffs Christopher Winn *et al.* are residents of Texas who allegedly purchased title insurance from one or more of the title insurance company Defendants. Two defendants Stewart Title Insurance Company and Stewart Information Services Corporation are wholly-owned and controlled by Stewart Information Services Corporation headquartered in Houston, Texas. Another defendant Alamo Title Insurance Company has significant ties to, and a main office in, San Antonio where it was started Alamo Title Insurance Company, Fidelity National Title Insurance Company, Chicago Title Insurance Company, and Ticor Title Insurance Company are wholly owned and controlled by Defendant Fidelity National Finance, Inc. which is headquartered in Jacksonville, Florida. First American Title Insurance Company of New York, United General Title Insurance Company, and First American Corporation are wholly-owned and controlled by First American Corporation. Common Wealth Land Title Insurance Company and Lawyers Title Insurance Corp. are wholly-owned and controlled by Land America America Financial Group, Inc. headquartered in Glen Allen, Virginia.

Plaintiffs allege that the price for title insurance is artificially high because Defendants' engage in anti-competitive conduct in violation of the Sherman Act, Clayton Act, Texas Free Enterprise and Antitrust Act of 1983, and the Texas Deceptive Trade Practices Act. Amended Complaint, Doc. #18, at ¶¶ 1, 59-60. Plaintiffs contend that Defendants concerted efforts cause the Texas Department of Insurance to set title insurance rates at levels higher than they would be set absent Defendants' allegedly illegal actions. *Id.*

The court provided notice to the parties of its intent to transfer this case to the Western District of Texas, Austin Division pursuant to 28 U.S.C. § 1404(a). [Doc. #65]. Plaintiffs state that they agree that the case should be transferred. [Doc. #66]. Defendants did not respond and are assumed not to oppose the transfer. *See* L.R. CV-7(d).

APPLICABLE LAW

A district court may transfer a civil action "to any other district or division where it might have been brought." 28 U.S.C. § 1404(a).¹ The goal of § 1404(a) "is to prevent waste of time, energy, and money and to protect litigants, witnesses, and the public against unnecessary inconvenience and expense." *Van Dusen v. Barrack*, 376 U.S. 612, 616, 84 S. Ct. 805 (1964).

To determine the appropriateness of a transfer pursuant to § 1404(a), the court considers private and public interest *Gilbert* factors initially set forth in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S.Ct. 839 (1947). *In re Volkswagen of America, Inc.*, 545 F.3d 304, 315 (5th Cir. 2008).

The private interest factors include: (1) the cost of attendance for willing witnesses; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the relative ease of

¹The court informed the parties that it was considering transfer and set a deadline for any objection or other response. *Put down what happened*

access to sources of proof; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive. *Id.*

The public interest factors include: “(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws” *Id.*

ANALYSIS

When transferring a case under § 1404(a), a district court must first determine whether the new judicial district is one where the civil action may have been brought originally. *In re Horseshoe Entm’t*, 337 F.3d 429, 433 (5th Cir. 2003). Plaintiffs allege a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Jurisdiction is therefore proper in the Southern District of Texas, Houston Division pursuant to 28 U.S.C. §§ 1331 and 1337. Venue is also proper as Defendants sell title insurance in the Southern District of Texas, Houston Division. Amended Complaint, Doc. #18, at ¶¶ 5, 7, 9, and 11.

A. Public Interest Factors

1. Reducing Costs to the Public

The four public interest factors listed above “are not necessarily exhaustive or exclusive.: *Volkswagen*, 545 F.3d at 315. In this case many of the most significant non-party witnesses work for the Texas Department of Insurance, which is located in Austin, Texas. This matter involves alleged price fixing in violation of the Sherman Act. Defendants argue in part that because the title insurance rates are promulgated by the Texas Commission of Insurance, they are reasonable. Doc. #24 at 9-14. Substantial evidence is likely to come from employees of the

Texas Department of Insurance, which must provide reasonable notice and hold a hearing open to title insurance companies, title insurance agents, and the public as part of the process of setting title insurance rates. Doc. #62 at 8.

Requiring these State employees to attend court in Beaumont will be more costly to the State, and more disruptive to the operation of this important State agency, than requiring them to attend hearings or trial in Austin. No airline service is available between Austin and Beaumont.

Plaintiffs allege that the Texas title insurance system, which is comprehensively regulated by the State, to include the setting of rates, has resulted a gross violation of State and Federal law. The State itself has an obvious public policy interest in the matter, and it would be difficult to say that it is not a proper interested party. The offices of the Attorney General of the State of Texas are located in Austin. While the location of counsel is not ordinarily an important factor, the logic behind the Fifth Circuit's 100-mile rule would seem to have some application in this case. Requiring attorneys for the State to engage in protracted litigation 238 miles from their offices simply imposes needless costs on this agency, and therefore on the public treasury.

Like the federal government, the State of Texas is facing growing demands with limited resources. As discussed below, there is no good reason for this case to be filed in the Eastern District, and thus no good reason to impose easily avoided additional costs on the taxpayers. This factor weighs strongly in favor of transfer to the United States District Court for the Austin Division of the Western District.

2. The local interest in having localized interests decided at home

It can be argued that there are property sales in the Eastern District of Texas, so its residents have an interest in adjudicating this matter. This factor does not weigh in favor of the

Eastern District because fewer homes are historically sold in the Eastern District than in any other district in Texas. The Southern District has three times the sales of Beaumont, more than any other district in terms of both number and value.² Twice as many homes are sold in the Western District as are sold in the Eastern District. In 2008, the number of home sales in Austin ranked third among all cities in the State. The Eastern District does not contain a localized interested group comparable to that found in Austin. Plano, the largest city in the Eastern District is half the size of Austin, and Beaumont, where this suit was filed, is about one-fifth the size of Austin.

Defendant Stewart Information Services Corporation is headquartered in Houston which is part of the Southern District of Texas. Alamo has significant ties to, and operations in San Antonio. No Defendant is headquartered in the Eastern District of Texas, nor does any Defendant even operate a significant office in this district.

This factor favors transfer.

3. The other public interest factors

The factor of potential court congestion is neutral, as is avoidance of unnecessary problems of conflict of laws. The federal courts in Austin and Beaumont are equally capable of interpreting and applying federal antitrust law. Due to their location, the courts of the Austin Division may have greater experience with the law and administrative regulations governing State agencies. On balance these factors are neutral.

² It could be argued that the Houston Division of the Southern District, is an appropriate venue. It is the largest city in the state, accounts for a population of almost two million people and had more than 65,000 home sales in 2008, more than any other metropolitan area in the state. Data obtained from the Real Estate Center at Texas A&M University, located at <http://recenter.tamu.edu/data/hs/trends1.html>.

B. Private Factors

1. The cost of attendance for willing witnesses

The cost imposed upon, or convenience of, the witnesses is an important private interest factor, and arguably the most important. *Reed v. Fina Oil & Chemical Co.*, 995 F. Supp. 705, 714 (E.D. Tex. 1998). Evaluation of the convenience factors “should not rest on a ‘battle of numbers’ but should be directed by the content and quality, rather than quantity of their testimony.” *TV-3, Inc. v. Royal Ins. Co. Of America*, 28 F. Supp. 2d 407, 411 (E.D. Tex. 1998). “When the distance between an existing venue for trial of a matter and a proposed venue under §1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled.” *In re Volkswagen of America, Inc.*, 545 F.3d 304 (5th Cir. 2008) (quoting *In re Volkswagen AG*, 371 F.3d 201, 204-05 (5th Cir. 2004)).

Most of the Defendants are headquartered in other states. Austin has an airport with national service connections. Beaumont does not. The headquarters for Defendant Stewart Information Services Corporation is located in Houston. Its key witnesses are likely located in Houston. While Beaumont is within driving distance of Houston, there are no fewer than six flights a day between Houston and Austin. Defendant Alamo Title Insurance Company has significant presence in San Antonio which is much closer to Austin than to Beaumont. The named Plaintiffs do not seem to have any connection to the Eastern District, and it is not apparent that any important witness is located within the Eastern District of Texas. This factor is, at best neutral, and certainly does not favor retention of the case.

2. The availability of compulsory process to secure the attendance of witnesses

As discussed above, the most significant non-party witnesses likely work, or have worked, for the Texas Department of Insurance, which is located in Austin, Texas. These witnesses are outside of the Eastern District's subpoena power for deposition under Fed. R. Civ. P. 45(c)(3)(A)(ii). Any trial subpoena for these witnesses would be subject to motions to quash under Fed. R. Civ. P. 45(c)(3)(B)(iii). Since the Austin Division has absolute subpoena power for both depositions and trial, this factor weighs in favor of transfer. *See Volkswagen*, 545 F.3d at 316.

3. The relative ease of access to sources of proof

_____The accessibility and location of sources of proof factor into the court's transfer analysis, although some sources of proof, such as electronic documents, present a lesser inconvenience than they previously did. *In re Volkswagen of America, Inc.*, 545 F.3d at 316. Transport of any physical evidence from the offices of the Texas Department of Insurance to the federal court in Austin would be easier and cheaper than transport to Beaumont. This factor slightly favors transfer.

4. All other practical problems that make trial of a case easy, expeditious and inexpensive

A scheduling order has not yet been issued by this court in this matter. The court in the Western District of Texas may schedule the case as the judge sees fit. This court does not foresee that transfer of this case will cause significant delay or prejudice. This factor is neutral.

Jurisdiction and venue are proper in the Western District of Texas. On balance the eight standard private and public *Gilbert* factors listed in Fifth Circuit cases dealing with this issue favor transfer. When the potential inconvenience to State government officials and the imposition of costs on overburdened taxpayers are added to the mix, this court concludes that scales are heavily weighted in favor of transfer.

IT IS THEREFORE ORDERED that this case shall be TRANSFERRED to the United States District Court for the Western District of Texas, Austin Division.

So **ORDERED** and **SIGNED** this **3** day of **March, 2009**.

A handwritten signature in cursive script, appearing to read "Ron Clark".

Ron Clark, United States District Judge