

I'm Getting Sued Where? Venue Dispute Decision Considers the Convenience of Technology in Affirming Plaintiff's Venue Selection

PUBLISHED ON
June 26, 2023

When a lawsuit is filed in Pennsylvania state court, the plaintiff decides what county, or venue, is appropriate for the case. Often there are several counties that may be appropriate for any given case based on the minimum standards of the Rules of Civil Procedure. The plaintiff's decision between those counties is given deference, and a defendant must show that the selected venue is oppressive under the doctrine of *forum non conveniens* in order to have the case transferred to a more appropriate county. It is presumed that plaintiffs will bring the case in a venue that is convenient to them and relevant to the lawsuit. Venue shopping, however, remains a concern. The Pennsylvania Superior Court recently explained that trial courts should consider whether the use of modern technology may reduce a defendant's potential burden of an inconvenient forum and make transfers from the selected county less likely.

In *Ehmer v. Maxim Crane Works*, a man in a personal injury case appealed the decision of the trial court granting Maxim Crane Works' request to transfer the venue from Philadelphia County to Columbia County under *forum non conveniens*. Even though the accident occurred in Columbia County and all of the fact witnesses reside in Columbia County, the Superior Court found that the plaintiff was entitled to his selected forum of Philadelphia. As its primary rationale, the Superior Court determined that Maxim failed to create the "detailed record information" necessary to overcome the heavy presumption in favor of a plaintiff's venue selection of Philadelphia. In short, Maxim did not build a sufficient record to support its request. While the burden on the residents of Columbia County to travel to Philadelphia and testify seems obvious, it cannot be assumed and must be supported by appropriate evidence.

The appellate court then also explained that some of the remaining reasons Maxim claimed to need a venue change were made obsolete when the court factored in technology. For example, Maxim claimed that the jury's ability to have a site visit to Columbia County during the trial would support a venue transfer. The Superior Court rejected this argument because it failed to account for the potential that using photos, videos, or live-transmitted video could make a site visit unnecessary. Maxim also stated that the plaintiff's medical records being in Columbia County was a factor to consider for a venue change. The Superior Court, again, found that those records could quickly and efficiently be transferred to wherever they needed to go, and therefore, this concern did not support a venue transfer.

The decision from this case could easily have ramifications for defendants looking to obtain a venue change. Courts already give a plaintiff's choice of forum great weight, and defendants have had a heavy burden

justifying the need for a venue change. They now must consider potential arguments that some historically considered hardships have been reduced by technological advancements.

Clients should be aware of the court's acceptance of developing technology and understand how it could impact where lawsuits may be filed. Venue transfer relies heavily on the ability to prove that the chosen forum is oppressive, a heavier standard than proving mere inconvenience. It can be expected that plaintiffs will use this rationale to support keeping cases in venues they have deemed more favorable. Considering the proliferation of technology, including remote capabilities, these arguments are likely to be adapted to fit a range of scenarios.

If you have any questions about the latest venue dispute decision, please contact [Luke Weber](#) or any member of the [Barley Snyder Litigation Practice Group](#).

Summer Associate Anthony Austin assisted in the drafting of this client alert. To learn more about our summer associate program, [click here](#).

WRITTEN BY:



Luke T. Weber

Partner

Tel: (717) 399-1513

Email: lweber@barley.com