

Most Convenient Forum is State of Company Headquarter, Tennessee Federal Judge Finds in Collective Action

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For the convenience of the parties and witnesses and in the interest of justice, the plaintiff's collective action under the **Fair Labor Standards Act** should be transferred from the District Court for the District of Tennessee to the District Court for the District of New Jersey, the state where the employer is headquartered, a Tennessee Magistrate Judge has decided. ***Dantes v. Indecomm Holdings, Inc., d/b/a Indecomm Global Services***, No. 1:13-CV-1290-JDB-egb, 2014 U.S. Dist. LEXIS 115348 (W.D. Tenn. Aug. 11, 2014). U.S. District Judge J. Daniel Breen adopted the Magistrate Judge's recommendation and ordered the case transfer on August 19,

2014.

New Jersey-based Indecomm Holdings, Inc., d/b/a Indecomm Global Services, employed more than 300 underwriters from 2011 through 2013. Indecomm's underwriters, including the plaintiff, Lisa Dantes, largely worked remotely from their homes. Dantes worked primarily from her home in Jackson, Tennessee. Dantes filed a collective action on behalf of herself and similarly situated underwriters in the District Court for the District of Tennessee seeking relief under the FLSA for allegedly unpaid overtime compensation. Indecomm requested the action be transferred to the District Court for the District of New Jersey pursuant to the federal Judicial Code, 28 U.S.C. § 1404.

The Law

Section 1404 states: "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...." The purpose of § 1404 is "to prevent the waste of time, energy, and money, and to protect litigants, witnesses and the public against unnecessary inconvenience and expense."

When ruling on such a motion, "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.'" District courts have "broad discretion" to determine, on balancing the relevant considerations, when party "convenience" or "the interest of justice" makes a transfer appropriate.

Factors relevant to the convenience of the parties include:

- (1) the location of willing and unwilling witnesses;
- (2) the residence of the parties;
- (3) the location of sources of proof;
- (4) the location of the events that gave rise to the dispute; and
- (5) the plaintiff's choice of forum.

Factors Considered

Dantes did not dispute the action could have been properly brought in the District of New Jersey. After examining the convenience and justice factors, Magistrate Judge Edward G. Bryant agreed with Indecomm that the relevant factors weigh strongly in favor of transferring the case to the District Court for the District of New Jersey.

As for location of willing and unwilling witnesses, Judge Bryant said it was clear that New Jersey would be the superior location, as Indecomm is headquartered there, whereas the more than 300 potential class members are spread among at least 30 different states. He also found residence of the parties favored Indecomm's choice of New Jersey, for the same reason, and location of sources of proof also favored New

Jersey.

As for location of the events giving rise to the dispute, Indecomm's selection has the advantage, Judge Bryant said. While Tennessee has few, if any, relevant connections to this case, Judge Bryant said New Jersey is "the nucleus" of the plaintiff's claims. Key decisions relating to the remote underwriters were made by individuals in various states who ultimately reported to decision makers in New Jersey. In addition, Indecomm kept no documents in Tennessee, but maintain hard copy documents in New Jersey as well as electronic records accessible by authorized New Jersey employees. Potential Indecomm witnesses either are located in New Jersey or go there frequently in connection with their duties. Finally, the Judge concluded, it likely would be easier for potential class members to travel to the District of New Jersey based on airport locations, particularly given that Jackson, Tennessee, has no major airport.

Judge Bryant discounted the Declarations of some opt-in plaintiffs indicating they preferred the action to remain in Tennessee. He agreed with Indecomm that "it is logical in a nationwide class action that a plaintiff's choice of forum is entitled to less deference."

Therefore, Judge Bryant concluded that the convenience of the parties and witnesses favored transfer of the action to New Jersey.

The question of what is the most convenient forum, not just the right forum, is an often-overlooked factor in determining litigation strategy. But transfer must be sought with caution and done in light of the prevailing law of the jurisdiction to which the case is transferred. Even though a forum may be more convenient, it may not be the best forum for your case.

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