

14-0766

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IN THE CIRCUIT COURT OF ROANE COUNTY, WEST VIRGINIA

CHRISTIE SIEGEL, Individually and as
Successor-In-Interest to the Estate of Jordan
Siegel and Ashley Siegel, deceased; MARC
SIEGEL, Individually and as Successor-In-
Interest to the Estate of Jordan Siegel and
Ashley Siegel, deceased; DAWN SIEGEL, an
Individual; ERICA FOX, an individual;
CHRISTOPHER FOX, an individual;
BROOKLYN SIEGEL by and through her
Guardian MARC SIEGEL; and MADISON
OWENS by and through her Guardian DAWN
SIEGEL,

Plaintiffs,

v.

FORD MOTOR COMPANY; JACK GARRETT
FORD, INC., a West Virginia Corporation;
KRISTIN KAE BOSS, an Individual; PRESTIGE
DELIVERY SYSTEMS, INC., an Ohio Corporation;
And DOES 1-50 INCLUSIVE,

\\ CASE #: 14-C-7

JUDGE: David W. Nibert

FILED
CIRCUIT COURT
ROANE COUNTY, W. VA.
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ANDREW STORNER
CIRCUIT CLERK

ORDER

On May 8, 2014 the remaining parties appeared through their Counsel of Record on Ford Motor Company's and Jack Garrett Ford, Inc.'s Joint Motion to Dismiss Based Upon *Forum Non Conveniens*. T. Keith Gould and Travis Siegel appeared on behalf of Plaintiffs. William Hanna and Bradley Schmalzer appeared on behalf of Ford Motor Company and Jack Garrett Ford, Inc. After reviewing the parties' briefs, relevant case law, and hearing argument of Counsel, the Court finds as follows:

I. INTRODUCTION

This is a tragic case involving the deaths of two children and serious injuries to their family members during a car accident in which they were all passengers of a 1999 Ford Expedition. The accident occurred on June 22, 2012. The two deceased children's step mother,

Dawn Siegel, was driving at the time. Mrs. Siegel was taking her six children and step-children, who were all properly seat belted, to a friend's house for the weekend. While Mrs. Siegel was driving on a state highway, a silver Honda Odyssey believed to be driven by Kristen Boss suddenly darted into Mrs. Siegel's lane and made contact with the Expedition.

Mrs. Siegel swerved to the left to avoid the Odyssey. She briefly left the road and turned back to the right to return to the highway. Due to the inherent instability of the Expedition, two of its wheels came off the ground when the vehicle was back on the highway and turning to the right. This caused the Expedition to overturn and roll over multiple times along the shoulder of the highway. The silver Odyssey fled the scene almost immediately after the accident and was not located until days later.

Jordan Siegel, age 14, was seated behind the front passenger seat. Ashley Siegel, age 11, was seated on the driver's side, in the third row of seats. When the car rolled, the roof of the Expedition crushed inward as it came in contact with the pavement. In addition, Jordan's and Ashley's bodies were allowed to travel towards the roof and side window of the Expedition. They were partially ejected from the vehicle as the roof crushed inward into the cab of the Expedition. Jordan and Ashley suffered catastrophic head injuries as a result. Once the Expedition came to rest, passers-by stopped to help. Unfortunately, Jordan and Ashley were dead at the scene due to massive head injuries. The other family members in the Expedition suffered serious injuries as well including head injuries, injured arms and legs, and significant bruising.

Plaintiffs allege, among other things, that the 1999 Ford Expedition they were riding in suffered from defective design which placed them at a significant risk of injury during a car accident. Plaintiffs also allege that a West Virginia company, Jack Garrett Ford (one of many

Ford dealerships in West Virginia), is liable for selling the vehicle new to a West Virginia citizen and thereby placing a defective vehicle in the stream of commerce in West Virginia.

II. FORUM NON CONVENIENS

Defendants Ford Motor Company and Jack Garrett Ford ("Defendants") filed a Joint Motion to Dismiss based upon *forum non conveniens*. Defendants argued that West Virginia was an inconvenient forum because plaintiffs were residents of Michigan, the car collision at issue occurred in Michigan, a majority of the witnesses and evidence are located in Michigan, and it would be burdensome to require Michigan witnesses to appear at trial in West Virginia. In addition, Defendants argued that the great deference usually afforded to a plaintiff's choice of forum does not apply in the case of a non-resident plaintiff. Defendants allege that Michigan is the more appropriate forum for this case.

Plaintiffs opposed the Motion and argued that Defendants failed to offer any evidence that West Virginia was substantially more inconvenient and expensive than West Virginia. Defendants failed to provide testimony or affidavits from any witnesses that they would not appear at trial in West Virginia. Defendants failed to provide any evidence of the additional cost of litigating this case in West Virginia versus Michigan. In doing so Plaintiffs argued that Defendants improperly relied upon conclusory allegations in their pleadings. Further, Plaintiffs argued that pursuant to *Abbott v. Owens-Corning Fiberglass Corp.*, 191 W.Va. 198 (1994), the deference afforded Plaintiffs' choice of forum may be reduced because they are non-residents, but it is not eliminated altogether. Setting this aside, Plaintiffs argue that applying West Virginia's *forum non conveniens* factors found in West Virginia Code § 56-1-1a, Defendants have not met their heavy burden in asking this Court to disregard Plaintiffs' choice of forum.

The Court finds Plaintiffs' arguments are consistent with the current status of West Virginia's law on *forum non conveniens*. It has been held that even in the case of a non-resident plaintiff, "the doctrine of *forum non conveniens* is a drastic remedy which should be used with caution and restraint." *Abbott* 191 at 205. The burden remains with the defendants to establish that the private and public interest factors heavily weigh in favor of dismissal. A defendant seeking dismissal based upon *forum non conveniens* must prove that the case can be tried substantially more inexpensively and expeditiously in the alternate forum. *Norfolk and Western Ry. Co. v. Tsapis*, 184 W.Va. 231, 400 S.E.2d 239 (1990). This proof must be supported by a record and something more than allegations in a pleading. *Abbott* 191 W.Va. at 203.

The Court finds the reasoning in *Abbott* persuasive. That case involved non-resident plaintiffs whose cause of action accrued in another state. The only connection to West Virginia was that a handful of the seventy defendant manufacturers had offices in West Virginia. The *Abbott* defendants made similar arguments to the Defendants here; i.e. West Virginia was an inconvenient forum for witnesses and evidence, more expensive to litigate in West Virginia, cause of action bore little nexus to West Virginia, etc. However, the *Abbott* defendants, like the Defendants here, failed to provide any substantive evidence that West Virginia was substantially more inconvenient and expensive than the alternate forum. The *Abbott* defendants, like the Defendants here, merely relied on conclusory allegations in their pleading. The West Virginia Supreme Court found that mere allegations are not enough. *Id.* at 205. Evidence must be presented and a record must be made proving that West Virginia is *substantially* more inconvenient and expensive. *Id.*

As an example, Defendants here failed to identify a single witness who believed West Virginia is unfairly burdensome or a witness who refuses to appear in West Virginia. This could

have been accomplished with an affidavit or other form of testimony explaining why it is burdensome, yet no evidence was provided. Defendants simply relied upon the general allegations in their pleading.

In addition, Defendants failed to set forth what evidence the unavailable witnesses might offer. Defendants failed to explain why this unavailable evidence could not be presented through other means like videotaped trial testimony. Finally, Defendants failed to explain how this unavailable evidence would prejudice them if not presented at trial. There is simply no evidence to suggest Defendants are substantially limited in their ability to present evidence or witnesses in this case.

With respect to legal expenses, Defendants failed to identify any additional legal expenses incurred by litigating this case in West Virginia. The only argument is the conclusory statement that “discovery will be far more costly and time consuming”, but there was no explanation how or to what extent. *Abbott* makes clear that a defendant seeking dismissal must provide a detailed showing of the additional expenses incurred by litigating in West Virginia and the expenses must be substantial. *Id.*

Further, Defendants failed to argue or provide any evidence supporting the argument that this case would burden West Virginia courts. The reality is that it would not burden this Court. In short, Defendants did not provide any evidence that this Court reasonably rely upon to find that Michigan was a substantially more convenient forum.

Defendants argued that *Abbott* is no longer good law because West Virginia Code § 56-1-1a was codified after the West Virginia Supreme Court’s *Abbott* decision. The Court finds this argument without merit. First, there is no indication that *Abbott* has been overruled or otherwise rendered inapplicable by § 56-1-1a. Second, the *Abbott* Court went through the same analysis of

forum non conveniens factors as those eventually codified in § 56-1-1a. This Court finds that *Abbott* is still controlling law.

Further, in evaluating the factors described in § 56-1-1a, this Court finds that Plaintiffs choice of forum in West Virginia is appropriate as well. Defendants have not met their burden in arguing that Michigan is substantially more convenient. Michigan is an alternate forum only because Jack Garrett Ford agreed not to contest personal jurisdiction there. Otherwise, Michigan would have no jurisdiction over the dealership because it is a West Virginia company doing business only in West Virginia.

It is also important to note that not only do Defendants conduct business and have offices in West Virginia, but a portion of Plaintiffs' claims arise in West Virginia as well. Plaintiffs allege that Jack Garrett Ford injected the subject Expedition into the stream of commerce in Roane County to a West Virginia citizen thereby subjecting the dealership to potential liability. This is more of a connection to West Virginia than the defendants in *Abbott*. In that case, the only connection to West Virginia was that a handful of the defendants had offices in this state.

Ford makes no argument that its expert witnesses would be prejudiced by testifying in West Virginia. As plaintiff points out, auto defect cases such as this typically revolve around expert witness testimony. It is clear from the record that neither party's experts will suffer any prejudice by testifying in West Virginia versus Michigan.

Finally, with respect to remedies available in Michigan, this Court is mindful that Michigan enforces a statute of repose. Michigan's statute of repose requires a plaintiff to prove their case without the benefit of presumptions, like strict liability, if the product has been in use longer than 10 years. The subject vehicle is a 1999 Ford Expedition so Michigan's statute of repose would apply. While not necessarily determinative, Michigan's statute of repose is

inconsistent with the principles underlying West Virginia's doctrine of strict products liability, which is critical in protecting West Virginia consumers.

III. CONCLUSION

After reviewing the briefs and relevant case law and hearing the argument of counsel, this Court finds that Defendants' Joint-Motion to Dismiss Based on *Forum Non Conveniens* should be denied.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Ford Motor Company's and Jack Garrett Ford, Inc.'s Joint Motion to Dismiss Based Upon *Forum Non Conveniens* is hereby DENIED. *The clerk shall forward an attached copy to counsel of record.*

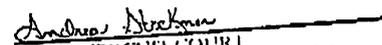
Dated: July 3, 2014


The Honorable David Nibert
Judge of the Circuit Court

Entered in C.O.B. No. 50 Page _____
this 3 day of July, 2014

A TRUE COPY, CERTIFIED THIS THE

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CLERK CIRCUIT COURT
ROANE COUNTY, WEST VIRGINIA

Approved as to form and content:

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