



THE BASSETT FIRM
WWW.THEBASSETTFIRM.COM

Passion. Preparation. Persistence.

Volume 6, Issue 7

THE BASSETT BULLETIN™

IN RE: VOLKSWAGEN OF AMERICA INC.

Generally, under 28 U.S.C. §1391(c), when a suit is filed in federal court in a multidistrict state, like Texas, a Plaintiff can choose to file suit in **any** district in the state. However, in a recent decision, the majority of the 5th U.S. Circuit Court of Appeals, sitting *en banc*, held that the Plaintiff's choice of venue is limited by the considerations of inconvenience under 28 U.S.C. §1404(a). This decision should make it easier for Defendants to challenge Plaintiffs' choice of venue.

FACTS OF THE CASE

This case involves a motor vehicle accident that occurred in 2005 on a freeway in Dallas, Texas. At the time of the accident, Ruth Singleton was driving a Volkswagen Golf. The driver's husband, Richard Singleton, was riding in the passenger seat, and her granddaughter, Mariana Singleton, was in the back seat.

The accident occurred when the Volkswagen vehicle was struck from behind, propelling it into a flat-bed trailer parked on the shoulder of the freeway. Mariana, 7, died from injuries she sustained when the front passenger seat collapsed on her during the accident. Richard, who was sitting in the seat that collapsed, also suffered serious injuries and was left a paraplegic.

In May 2006, the grandparents and Mariana's mother, Amy Singleton, sued Volkswagen and its parent company Volkswagen AG in the U.S. District Court for the Eastern District of Texas in Marshall, Texas, alleging that the design defects in the Volkswagen Golf caused Richard Singleton's injuries and the 7-year-old's death. Volkswagen filed a Third-Party Complaint against the driver of the automobile that struck the Singleton's, alleging that his negligence was the only proximate cause of the damages.

Pursuant to §1404(a), Volkswagen moved to transfer *Singleton v. Volkswagen of America Inc., et al.* to Dallas. Volkswagen asserted that a transfer was warranted as (1) the Volkswagen Golf was purchased in Dallas County, Texas; (2) the accident occurred on a freeway in Dallas, Texas; (3) Dallas residents witnessed the accident; (4) Dallas police and paramedics responded and took action; (5) a Dallas doctor performed the autopsy; (6) the Third-Party Defendant lives in Dallas County, Texas; (7) none of the Plaintiffs live in the Marshall Division; (8) no known party or significant non-party witness lives in the Marshall Division; and (9) none of the facts giving rise to this suit occurred in the Marshall Division.

THE LOWER COURT'S RULING

The District Court denied Volkswagen's motion in September 2006 and denied Volkswagen's motion for reconsideration in December 2006. The Court held that Volkswagen failed to show that convenience and justice outweighed the Plaintiff's right to choose venue under §1391. The Court also determined that citizens of Marshall, Texas, would have an interest in the product liability case, because the product at issue in *Singleton* is available in Marshall, Texas.

Volkswagen filed a mandamus writ challenging the District Court's decision.

THE COURT OF APPEALS' DECISION

In a 2-1 per curiam opinion, the 5th Circuit panel agreed with the District Court's decision to keep the case in Marshall. Volkswagen appealed by filing a motion for *en banc* reconsideration of the petition for writ of mandamus, which the panel interpreted as a petition for panel rehearing. Vacating its order, the original panel ordered the mandamus proceeding set for oral arguments.

In a 10-7 decision written by Judge Jolly, the 5th Circuit confirmed that mandamus was an appropriate avenue to challenge the District Court's ruling on a party's motion to transfer venue. The Fifth Circuit articulated the three requirements that the United States Supreme Court has determined must be satisfied before a writ may issue:

- (1) "the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires;"
- (2) "the petitioner must satisfy the burden of showing that [his] right to issuance of the writ is clear and indisputable;" and
- (3) "even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances."

The Court next considered whether Volkswagen established a "clear and indisputable" right to a writ. In so doing, the Appellate Court first distinguished the more stringent showing required in a *forum non conveniens* analysis from the lesser burden imposed under 28 U.S.C. § 1404(a) and found that the District Court erred by placing too much emphasis on the Plaintiffs' choice of venue.

The Fifth Circuit also reviewed the District Court's application of the private and public interest factors. The District Court concluded that: 1) there was no greater ease of access to proof in Dallas because of advances in copying technology and information storage; 2) the availability of compulsory process was neutral because the District Court could deny motions to quash and compel the attendance of third-party witnesses found in Texas; 3) the cost of attendance was neutral, because the cost of having witnesses attend a trial in Marshall, Texas, would be minimal because of its proximity to Dallas, Texas, and Volkswagen did not designate key witnesses; and 4) the local interest in having disputes resolved locally was neutral, because citizens of Marshall, Texas, would like to know whether defective products are being offered for sale in close proximity to them. The Fifth Circuit's disagreed with the District Court's analysis of these factors.

The Fifth Circuit determined all the pertinent documents and physical evidence were located in Dallas. The Court also pointed out that the Dallas Division, unlike Marshall, could exercise subpoena power for both depositions and trial. The Fifth Circuit also determined that when the distance between a proposed and existing venue is more than 100 miles, the resulting inconvenience to witnesses increases in direct relationship to the additional distance.

Finally, the court discussed having localized interests decided at home. The Fifth Circuit held that while ‘the residents of the Marshall Division “would be interested to know” whether a defective product is available [that] does not imply that they have an interest—that is, a stake-in the resolution of this controversy. Indeed, they do not, as they are not in any relevant way connected to the events that gave rise to the suit.’

Based on the foregoing, the Fifth Circuit concluded its transfer analysis by noting that “not a single factor” favored the Plaintiffs’ choice of venue and that the sole “connection between this case and the Eastern District of Texas is plaintiffs’ choice to file there.” The Fifth Circuit thus found that Volkswagen’s right to issuance of a writ was “clear and indisputable.”

WHAT EFFECT WILL THIS DECISION HAVE?

This decision clearly limits the power of the Plaintiff to choose venue, and makes it easier for Defendants to challenge that decision. Plaintiffs will need to consider more carefully their choice of venue. In situations where the facts underlying a lawsuit are not closely connected to the Plaintiff’s choice of venue, a Plaintiff may need to consider whether the anticipated benefits of litigating a lawsuit in that venue outweigh the potential time and expense associated with trying to withstand a motion to transfer. In the event that a Plaintiff chooses a venue with little or no connection to the case, this decision provides several factors a Defendant can rely upon in moving for venue to be transferred.

The Bassett Firm

**Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769
www.thebassettfirm.com**

ATTORNEYS

- **MIKE H. BASSETT**
- **JENNIFER R. ELDRIDGE**
- **CHRISTINE S. JOHNSON**
- **ROBERT L. MCGEE, JR.**
- **JAMIE J. MCKEY**
- **MICHAEL J. NOORDSY**
- **MATHEW SAMUEL**



Information regarding *The Bassett Bulletin*TM is available from **Angie Stevenson** (astevenson@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

*The Bassett Bulletin*TM is published twenty-six times a year, and is a complimentary publication of The Bassett Firm.
