Venue

**EX 6:** P (San Francisco - N.D.Cal.) sues D1 Corp and D2 Corp.

 Suit is under California state law breach of contract action re: a contract signed in San Francisco (N.D. Cal) for construction of a hospital in Albany (N.D.N.Y.)

D1 corp. Built foundation; D2 Corp. built structure

D1 corp. Incorporated in D. Del, main office S.D.N.Y. and large branch office in E.D. Pa

D2 corp incorporated in D. Del, main office in W.D. Pa., and large branch office in D. Mass

 Where is there venue?

 Transaction venue : N.D. Cal & N.D.N.Y.

 Residential venue: D. Del. **AND S.D.N.Y and N.D.N.Y.**

 \*D1 and D2 are subject to specific personal jurisdiction in the N.D.N.Y. and therefore reside there – so venue in SDNY exists since D1 resides there and D2 resides in same state (namely in NDNY)

**\*\*\* What if venue does not exist under (b)(1) or (2)?**

 **That would mean the following:**

* no substantial part of the events or omissions giving rise to the claim occurred in US
* AND the defendants, although domiciled in US (if they were all domiciled abroad there would be venue in any district) are not domiciled in the same state
* If so then…
1. 1391(b)(3) – then venue in any judicial district in which any Def. is subject to PJ may be used.
2. In the end they will all have to be subject to PJ though

**EX 7:** P (S.F. - N.D. Cal) sues D1 (S.D.N.Y.) and D2 (E.D. Pa)

 Suit is breach of contract action concerning a contract signed in S.F. for Construction of a hospital in Paris

 D1 built foundation; D2 build structure

 Where is venue?

**1391(b)(3) does not apply** because there is a district with venue under 1391(b)(1)-(2), namely the NDCal (where the contract was signed)

**EX 8:** P (S.F. - N.D. Cal) sues D1 (S.D.N.Y.) and D2 (E.D. Pa)

 Suit is breach of contract action concerning a contract signed in London. for Construction of a hospital in Paris

Here 1391(b)(3) would apply – venue in any district in which a D1 or D2 is subject to PJ

Venue and Removal

1. State Court -> Remove to Federal Court = There IS venue in that Federal Court – even if 1391 is not satisfied

**EX. 9:** Assume WWVW action had been brought in the Fed Court E.D. Okla. (where accident occurred). Set aside PJ and SMJ.

Is there venue? Yes because transactional venue

Green: notice that there can be transactional venue even though the D does not reach out to the district in the way that is necessary for specific PJ

No specific PJ over Seaway in OK in WWVW but there would be venue in district in OK if it had been brought in federal court

**Note, however that 8th Cir. has a more restrictive understanding of what is necessary for transactional venue**

* **8th cir demands that the D reach out to the district in a manner similar to specific PJ (Green: this is wrong)**
* **and also demands that event in district be part of cause of action**

**Uffner v. La Reunion Francaise (2001)**

-Claim originally brought in Dist. of PR

P’s boat sank but insurer denied coverage because did not have out of water survey done

-PJ was an issue but the Ds did not bring it up. Dist court dismisses sua sponte on PJ grounds. Ct App says it can’t do this, Ds basically consented to PJ by not bringing it up on their own.

But Ds did object to venue

-Does D.P.R. fall under the language of 1391(b)(2) “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred”?

-Test used by District Court: similar to evidence Test for “arising out of or related to” for specific PJ (what happens in the district must be part of the cause of action)

- the sinking was not an element of the cause of action – the disute was about the contract, the out of water survey, and the denial of the claim

-Court of Appeals uses a “But for” test (“But for” the sinking in Puerto Rico there wouldn’t be this dispute) – rejects 8th Cir approach

IV. Venue

1. Dismissal of for lack of Venue
2. If there is no venue in the district the D can move to dismiss
	1. Waiver of Venue
		1. Def can consent to venue by failing to bring lack of venue up
		2. some think court may dismiss a case for lack of venue sua sponte (rare and must be done carefully) for the purpose of convenience
3. but in addition to dismissing can also transfer to a district with venue under 28 U.S.C. 1404
	1. From a district without venue to one with venue
		1. transfer only occurs within a court system
4. In addition, a court can (at the request of a party – usually a defendant – or sometimes sua sponte) transfer from a district with venue to one with venue because the transfree district is more convenient
5. 28 U.S.C. 1404 Change of Venue

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|  | **Cases Filed in the Wrong Venue** | **Cases Filed in the Correct Venue** |
| **Motions to Transfer** | 28 U.S.C. § 1406 | 28 U.S.C. § 1404 |
| **Motions to Dismiss** | 28 U.S.C. § 1406 + Fed. Rule 12(b)(3) | Forum Non Conveniens (Common Law Doctrine) – this is only for a case dimsised to be brought abroad |

**28 U.S.C.§1406. CURE OR WAIVER OF DEFECTS**

(A defendant can make a motion that asserts that the case was filed in an improper venue.)

* (a) the district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

**UNDERSTANDING §1406:**

* + Dismiss or Transfer? Federal Courts usually conclude that a transfer is in the *interests of justice* when a proper federal venue exists. Transfers will save P time and expenses of having to refile.
	+ Limitations on Intersystem Transfers: a judge only has the authority to transfer cases within the same court system.
		- TX state court has no power to transfer case to OK state ct
		- also no power to transfer to fed court
			* State cases can be removed to fed ct, but the state court cannot do it itself
		- a Fed District judge can transfer to another federal district court
			* Fed judge has no authority to transfer case to foreign ct
	+ Waiving objections to venue: a party is considered to waive a motion to dismiss for lack of proper venue unless the motion is made at an appropriate time, usually quite early (Fed. R. 12g-h).
	+ May a court bring up lack of venue sua sponte? Rare to do this, but some think they can.

**28 U.S.C. §1404. CHANGE OF VENUE**

(Although a venue is proper in the court where the lawsuit was filed, there is more appropriate federal district where the case should be litigated.)

* (a) 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 or to any district or division to which all parties have consented.
* \*\* No statute authorized a FED CT to dismiss a case that was filed in proper venue, but they implement common law authority. A party can dismiss using ***forum non conveniens dismissal****.*
	+ - Dismissal from a district with venue so that it can be brought outside of the United States
		- Using *forum non conveniens* in Federal Courts means that though there is venue – in that court making the ruling – there is a better court outside of the United States that should hear the suit. They would dismiss on forum non conveniens.
	+ §1404: Though a convenient district giving rise to proper venue, there is a possibility that there is a BETTER venue for this case.

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**MacMUNN v. ELI LILLY CO.**

**559 F. Supp. 2d 58 (D.D.C. 2008).**

**OVERVIEW:** *Looks at §1404 transfer motion.*

**PARTIES**

* Plaintiffs: Judith MacMunn and husband - Massachusetts
* Defendant: Eli Lilly Co – Indiana (PPB and Incorporation)

**CAUSE OF ACTION:** products liability

**RELEVANT FACTS**

* Suit originally filed in “state” court in DC: then removed to D.D.C.
* Why did P’s pick as forum?
	+ DC is very favorable in regard to statute of limitations and tolling statutes
	+ When suing in DC, you will be using the DC statute of limitations/tolling though you might be be using the Massachusetts product liability rules.
* **WHY IS THERE IS SMJ in DDC:** diverse citizens over the $75k threshold
* **WHY IS THERE PJ in DDC:** This is pre-Daimler and pre-Goodyear – probably arguing general PJ
* **WHY IS THERE VENUE in DDC:** always venue in district of removal
* P alleges her mother ingested DES while pregnant with her in 1962. The exposure of DES has led the P to suffer cervical malformations, infertility, physical and mental pain, medical treatments and expenses. Seeking 3 million dollars in compensatory damages and 3 million dollars in punitive damages.
* D motions to transfer this products liability case to D. Massachusetts.
	+ P opposes transfer citing numerous cases involving the same defendant and subject matter that have resolved in this District.

**RELEVANT RULE**

1. The D must make two showings to justify transfer
	1. (1) D must establish P originally could have brought the action in the proposed transferee district
	2. (2) D must demonstrate that considerations of convenience and the interest of justice weigh in favor to transfer to that district
		1. Private interest
			1. (1) P’s choice of forum
			2. (2) D’s choice of forum
			3. (3) Whether the claim arose elsewhere
			4. (4) the convenience of the parties
			5. (5) the convenience of the witnesses
			6. (6) the ease of access to sources of proof
		2. Public interest
			1. (1) transferee’s familiarity with the governing laws
			2. (2) relative congestion of the calendars of the potential transferee and transferor courts
			3. (3) local interest in deciding local controversies at home

**HOLDING/REASONING:** Court grants D’s motion to transfer to Massachusetts.

You can get a transfer motion accepted under § 1404 if it promotes convenience of parties and witnesses.

The discretion in the district court to adjudicate motions to transfer are according to individualized case and must analyze fairness and convenience. In this case, the court grants it because the private interest: (1) witnesses are in Massachusetts, (2) that’s where the action of taking medicine occurred, (3) that’s where proof of doctor records are there.

The court further grants because of public interest: (1) less court congestion in Massachusetts, (2) the judge is fine and has experience with these cases (3) plus others.

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* SCt has ruled that dist ct can dismiss a case or lack of PJ without first determining whether the court has SMJ, but cannot engage in dismissal that involves a decision on merits (like failure to state a claim) without deciding SMJ
* A P can move to transfer its own case
* Consenting to venue
	+ **Waive objection to venue:** by failing to raise the issue at appropriate time
	+ **Consent to venue:**
		- Most commonly “consented” to during *forum selection clauses.* Forum selection clauses carry great weight and will typically mean dist ct will enforce such clause.
			* Done under §1404 when the P sues in a different, however proper, venue, but since the forum selection clause was within original contract, the D will usually get it transferred.

**SHOULDN’T THE TRANSFER in MacMunn LEAD TO DISMISSAL ON STATUTE OF LIMITATIONS GROUND?**

* No. You get the same statute of limitations, same substantive law, same choice of law of the *transferor* ct when transferred to another district under 1404. (*Van Dusen v. Barrack*, 376 U.S. 612 (1964).
* The fact is, it could have proceeded in the original venue; with that, you should still be able to use the law of the transferor ct.

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