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PENNSYLVANIA

Can I Get My Case Transferred from Philadelphia County?



Gary N. Stewart

Philadelphia, Pennsylvania—the City of Brotherly Love—is known for a lot of things. Cheesesteaks, the Phillies baseball team, our “Iggles” football team, Rocky Balboa. And in the litigation world, Philadelphia is known as one of the worst defense venues in the state, if not the entire country.

In 2010, the American Tort Reform Association (ATRA) ranked Philadelphia first on its list of Judicial Hellholes. However, the 2014/2015 list “only” had Philadelphia on the “watch list.” Maybe

things are improving.

ATRA general counsel described Judicial Hellholes as “[t]raditionally . . . considered places where civil judges systematically apply laws and court procedures in an unfair and unbalanced manner, generally against defendants in civil lawsuits.” He also notes that “[t]he jurisdictions we name as Judicial Hellholes each year are not the only unfair courts in the nation, but they are among the most unfair, based on our survey of litigants and considerable independent research.”

In Pennsylvania, it is common for a plaintiff’s attorney to file the client’s case in the Court of Common Pleas for Philadelphia County, even if the accident did not occur there or their client is not a resident there. Sometimes, the only tie is that the plaintiff’s attorney has an office there, but that is not always the case.

Historically, it has been quite difficult to have a case transferred to another of the state’s sixty-seven counties because generally, the plaintiff has the “right” to choose the venue

as long as he or she can obtain jurisdiction over the defendants. Plaintiffs would allege that the motor carrier defendant “routinely” did business in Philadelphia County and in most cases, at a least a truck or two would. Most times, a motion to transfer or change the venue would fail.

However, this situation may be changing. On October 22, 2014, the Pennsylvania Superior Court, which is the intermediate appellate court, upheld the transfer of a case from Philadelphia to another county and presented a possible “roadmap” to assist attorneys to accomplish this in the future.

In *Lee v. Bower Lewis Thrower*, No. 2421 EDA 2013, plaintiff was injured on the main campus of Penn State University when she was struck by a pick-up truck driven by a PSU employee who was on his way home from work. The location where this occurred was adjacent to an area under improvement/construction and thus, numerous other corporate entities were named as defendants.

Plaintiff filed the Complaint in Philadelphia County. The defendants filed a motion to transfer the case to Centre County, which is approximately 200 miles from Philadelphia, and the trial court agreed. On appeal, the Superior Court upheld the transfer, noting that it reviewed the trial court’s ruling for an “abuse of discretion.” This means that the “trial court’s ruling must be reasonable in light of the peculiar facts. If there exists any proper basis for the trial court’s decision to transfer, the decision must stand.” In essence, it is very important to present thorough and complete supporting documentation and evidence to the trial court in an attempt to “win” there

because, on appeal, it is more likely than not, that the underlying court’s decision will stand.

The *Lee* Court relied on the Pennsylvania Supreme Court case of *Cheeseman v. Lethal Exterminator, Inc.*, 549 Pa. 200, 701 A.2d 156 (1997), which clarified the factors for transfer and stated that a petition should be granted if the defendant “demonstrates, with detailed information on the record, that the plaintiff’s chosen forum is oppressive or vexatious to the defendant.”

The so called ‘public interest’ factors that many think will assist in obtaining a transfer, such as the court’s own convenience or other concerns, are not controlling because the rules only speak to the convenience of the parties and not the courts. Thus, it is very important that the moving parties show that the chosen forum is more than merely inconvenient for it.

What should the moving parties submit? The Court notes that detailed, fact-specific affidavits from the various witnesses (not “cookie-cutter” forms), noting problems with travel, child care, work responsibilities, location of evidence and/or records should be put on the record. The *Lee* Court relied on seven such personalized affidavits. It specifically referenced one where the supervisor of the Office of the Physical Plant at Penn State noted that he supervises 1,300 employees and would be required to miss multiple days of work to attend a trial in a court house hours away, whereas if the trial was in Centre County, it would only be 10 minutes away.

The Court also explained that counsel’s arguments complaining about the accuracy or credibility of the facts

in the affidavits would not be considered, but only the evidence.

The Court continued and explained that the decision to transfer is fact-specific and travel issues would be less of a concern when the requested transfer of the case was to one of the counties adjacent to Philadelphia.

In a recent trucking case, we witnessed the same labor-intensive process of obtaining individualized affidavits from parties and witnesses. This resulted in a court in the Scranton/Wilkes Barre area (Luzerne and Lackawanna Counties) agreeing to transfer the case to Washington County (south of Pittsburgh and arguably more conservative), which is where the accident occurred. As a practical matter, the result changed the strategy

and handling of the case, especially when the plaintiff's attorney might be "a local" in one county and no longer has that possible advantage. Thus, the playing field is made more reasonable for the defendants.

As a result, simply do not "give up" when your case is filed in a "bad" venue, especially if that venue is not where the accident/incident occurred. Seriously consider taking the time and making the effort to file a motion to transfer, but be certain to prepare detailed, itemized, fact-specific affidavits executed by the people who might be adversely affected.

This may be a lot of work and some expense initially, but wouldn't you rather be trying your case in a county other than Philadelphia, Luzerne or Lackawanna counties?

Gary N. Stewart is a partner in the Commercial Motor Vehicle Section in our Harrisburg office. Gary is admitted to practice in Pennsylvania, New Jersey, Massachusetts, Connecticut, Vermont and Rhode Island as well as before the U.S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania, the District of New Jersey, the District of Massachusetts, the District of Rhode Island, the District of Connecticut and the U.S. Court of Appeals for the First and Third Circuits.

He graduated *magna cum laude* from Widener University School of Law (Harrisburg campus) in 1992. Gary was the recipient of the James C. Crumlish Jr. Award for Excellence in Scholarship and Administrative Law. He received his undergraduate degree from the U. S. Merchant Marine Academy at Kings Point, NY, and holds U. S. Coast Guard professional licenses as Master of Oceans, Steam or Motor Vessels up to 1600 gross tons as well as Chief Officer, unlimited tonnage, all oceans. Gary served as the law clerk for the Honorable Rochelle Friedman, Commonwealth Court of Pennsylvania in Harrisburg.

He has been selected by his peers, as a Transportation/Maritime Pennsylvania Super Lawyer in 2012, 2011, 2010, 2009 and 2007. It is an honor reserved for the top 5% of all Pennsylvania lawyers.

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NEW HARRISBURG ASSOCIATE



Jolee Bovender

Jolee Bovender has joined the firm as an associate in our Harrisburg office. She concentrates her practice on the defense of commercial motor vehicles and their insurers and is experienced in all aspects of general litigation.

Jolee earned her J.D., *cum laude*, from Widener University School of Law. While in law school, she clerked for the Honorable J. Michael Eakin of the Supreme Court of Pennsylvania as well as the Honorable John F. Cherry of the Dauphin County Court of Common Pleas. She served as a certified intern at the Dauphin County District Attorney's office and also with a private law firm in Dillsburg, Pennsylvania. In addition, Jolee was on the Dean's List at Widener and was a student member of the James S. Bowman Inn of Court. She served as a senior staff member of the *Widener Law Journal*. Her academic survey on the Pennsylvania Right-to-Know law was published in the *Widener Law Journal* in 2013. In 2011 she studied abroad in Lausanne, Switzerland.

She earned her B.A., *magna cum laude*, from East Stroudsburg University. She has volunteered with the Disability Rights Network of Pennsylvania, and with Wills for Heroes.

Jolee is admitted to practice in Pennsylvania and New Jersey, as well as the U.S. District Court for the Middle District of Pennsylvania.

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The **Commercial Motor Vehicle Section** publishes the *Transportation Law Update* as a service to its clients and the transportation industry. This newsletter provides timely articles on new trends in the law and the potential impact of these developments on litigation involving the transportation industry. Previous issues of the *Transportation Law Update* are available on our website: www.rawle.com. If you would like **hard copies** of previous issues of the *Transportation Law Update*, please email info@rawle.com with the specific issues that you would like to receive, and we will mail them out to you promptly.

State Law Summaries for **Pennsylvania, New York, New Jersey** and **Delaware**—which highlight laws that affect commercial motor vehicles operating in those jurisdictions—are also available on our website.