

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**  
**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**  
**CIVIL TRIAL DIVISON**

BRUCE SCHAFFROTH, and  
DIANA SCHAFFROTH

: APRIL TERM, 2003

: No. 3553

v.

:

NATIONWIDE MUTUAL FIRE  
INSURANCE COMPANY

: Superior Court Docket No.  
2472 EDA 2003

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**O P I N I O N**

**ALBERT W. SHEPPARD, JR., J. .... October 23, 2003**

This Opinion is submitted relative to the appeal of this court's Order, dated August 5, 2003, which sustained defendant's Preliminary Objections pursuant to Pa.R.Civ.P. 1006(d), and transferred the case to the Bucks County Court of Common Pleas.

For the reasons discussed, this court respectfully submits that its Order should be affirmed.

## **Factual Background**

The operative facts may be briefly summarized. Plaintiffs purchased an insurance policy from Nationwide Mutual Fire Insurance Company (“Nationwide”), which covered plaintiffs’ home located at 48 Essex Court, Quakertown, Pennsylvania, in Bucks County. Compl., ¶ 5. In September 2002, the plaintiffs incurred physical losses to the insured property. Compl., ¶ 6. Subsequently, the plaintiffs notified the defendant of the losses pursuant to the insurance policy’s provisions. Compl., ¶ 7. Defendant paid plaintiffs for the loss, but failed to include funds to cover the general contractor’s overhead costs and profit. Compl., ¶8. Plaintiffs contend that this conduct constituted only partial indemnification, and was thus a breach of the insurance contract. Compl., ¶¶ 7-8, 10-11, 30-31.

On May 1, 2003, plaintiffs filed a class action Complaint, which was served on defendant at its principal place of business, located at One Nationwide Plaza, Columbus, Ohio 43216. Compl., ¶ 2; Pltfs’ Affidavit of Service by Mail. The Complaint alleges improper withholding of payment from plaintiffs and other similarly situated property owners in Pennsylvania who held properties insured by the defendant, who sustained loss to those properties, and who were not paid by the defendant for the general contractor’s overhead costs and profits to restore the loss. Plaintiffs set forth the following causes of action: Breach of Contract (Count I), Bad Faith (Count II), and Violation of Unfair Trade Practices and Consumer Practice Law (Count III).

On May 23, 2003, defendants filed preliminary objections to the Complaint, arguing that the matter should be transferred to Bucks County due to improper venue. Prelim. Obj., ¶ 7. In addition, defendants requested that the case be dismissed based

on standing. Further, defendants objected on that ground that Counts I and III of the Complaint failed to state a claim, and that the punitive damages claim was inappropriate.<sup>1</sup>

By Order dated August 5, 2003, this court sustained the preliminary objection to venue and transferred the action to the Bucks County Court of Common Pleas.<sup>2</sup>

Plaintiffs now appeal this Order.

### **Discussion**

The issue presented is whether this court properly transferred venue from Philadelphia County to Bucks County. Rule 2179 provides:

- (a) Except as otherwise provided by an Act of Assembly or by subdivision (b) of this rule, a personal action against a corporation or similar entity may be brought in and only in
  - (1) the county where its registered office or principal place of business is located;
  - (2) a county where it regularly conducts business;
  - (3) the county where the cause of action arose; or
  - (4) a county where a transaction or occurrence took place out of which the cause of action arose.
- (b) An action upon a policy of insurance against an insurance company, association or exchange, either incorporated or organized in Pennsylvania or doing business in this Commonwealth, may be brought
  - (1) in a county designated in Subdivision (a) of this rule; or
  - (2) in the county where the insured property is located; or
  - (3) in the county where the plaintiff resides, in actions upon policies of life, accident, health, disability, and live stock insurance or fraternal benefit certificates.

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<sup>1</sup> Plaintiffs filed a Praecipe to Overrule Preliminary Objections for untimely filing which the court denied. According to plaintiffs' Affidavit of Service by Mail, the plaintiffs' certified mail receipt reflects that the post office in Jenkintown, Pennsylvania received the Complaint for mailing on May 2, 2003. The return receipt reflects that Nationwide received the Complaint in Columbus, Ohio on May 6, 2003. Nationwide filed its preliminary objections on May 23, 2003, only seventeen days later.

<sup>2</sup> The court did **not** address the remaining preliminary objections.

Pa.R.Civ.P. 2179.

In addition, Rule 1006(d)(1) provides:

For the convenience of parties and witnesses the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought.

Pa. R. Civ. P. 1006(d)(1).

Pennsylvania case law requires that a trial court accord the plaintiff's choice of venue "great weight," yet the court maintains discretion to transfer a case based on venue considerations. Gilfor v. Altman, 770 A.2d 341, 343 (Pa. Super. 2001) (affirming transfer of venue from Philadelphia County to Montgomery County), quoting Masel v. Glassman, 456 Pa. Super. 41, 45, 689 A.2d 314, 316 (1997) (citations omitted) (affirming transfer of venue from Philadelphia County to Bucks County). "[A] plaintiff's choice of forum is accorded less deference when the plaintiff does not live in the forum district and none of the operative events occurred there." International Mills Services, Inc. v. Allegheny Ludlum Corp., 2002 WL 748896, \*2 (C.P. Phila. April 11, 2002), citing Watt v. Consolidated Rail Corp., 1997 WL 288607, \*2 (E.D.Pa. May 21, 1997). In addition, "it is well-settled that 'corporations have a constitutional right to seek a change of venue.'" PECO v. Philadelphia Suburban Water Company, 802 A.2d 666, 668 (Pa. Super. 2002).

Nationwide argues that venue in Philadelphia County is improper because all of the activity described in the Complaint occurred either within Bucks County, or otherwise outside Philadelphia County. Def's Memorandum, p. 3; Prelim. Obj., ¶ 6. In fact, Nationwide contends that the Complaint fails to describe any "conduct,

communication, activity or incident” which took place in Philadelphia. Def’s Memorandum, p. 3; Prelim. Obj., ¶ 7. However, Nationwide does not address the degree to which it may conduct business in Philadelphia, and that is the factor upon which plaintiffs rely for their choice of venue. Pltfs’ Response, ¶ 7.

Alternatively, Nationwide asserts that even if venue is proper in Philadelphia County, it is oppressive and would be more appropriate in Bucks County. Def’s Memorandum, pp. 3-4. Nationwide asserts that the case should be transferred to Bucks County pursuant to Rule 1006(d) for reasons of proximity and convenience. Pa. R. Civ. P. 1006(d); Def’s Memorandum, p. 3. The action originally could have been filed in Bucks County because plaintiffs’ insured property is located in Bucks County and the plaintiffs reside there. Pa. R. Civ. P. 2179; Prelim. Obj., ¶¶ 2, 6; Def’s Memorandum, p. 3. Bucks County, according to Nationwide, would be most convenient for non-party witnesses, such as contractors and tradesmen, who will be called upon to testify regarding repairs and repair charges relating to the insured property. Def’s Memorandum, p. 4. In addition, Nationwide states that “any denial of claims by the defendant took place either in Ohio or Bucks County,” but not in Philadelphia County. Prelim. Obj., ¶¶ 6-7; Def’s Memorandum, p. 3.

In response, plaintiffs argue that venue in Philadelphia is proper because Rule 2179 provides that a defendant insurance company may be sued in the county where it regularly conducts business, and Nationwide regularly conducts business in Philadelphia County. Pltfs’ Response, ¶ 7. While plaintiffs admit that the insured property is located in Bucks County, that the insurance policy was sold in Bucks County,

and that they live in Bucks County, they maintain that Nationwide must submit to venue in Philadelphia. Pltfs' Response, ¶¶ 1-7.

Admittedly, this is a close case, but a recent decision is instructive. In Mateu v. Stout, 2003 Pa. Super. 93, 819 A.2d 563 (2003), our Superior Court considered similar facts and affirmed the transfer of venue based on Rule 1006(d). In that personal injury case, the plaintiff filed the action in Philadelphia County based on a car accident which occurred in Delaware County. The plaintiff lived in Delaware County, and one of the three defendants also resided in Delaware County, but in any event, all parties (including the defendant insurance company) were located outside Philadelphia County. Id. at 567. The identified witnesses were also located outside of Philadelphia County. Id. at 567. The plaintiff received medical care after the car accident in Delaware County, and her treating physician was located there as well. Id. at 567. In addition, the Court pointed out that the defendants were served notice of the action outside Philadelphia County. Id. at 567. The Court held that based on these facts, it was reasonable for the trial court to find that venue in Philadelphia County was oppressive pursuant to Rule 1006(d). The Court explained its rationale by stating: "Litigation of the action in Delaware County would provide easier access to the sources of proof, namely, to the witnesses, . . . as well as to the site of the automobile accident." Id. at 567. Thus, the transfer of venue was affirmed.<sup>3</sup>

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<sup>3</sup> The Mateu court confirmed the principles that the transfer of venue will not be reversed unless the trial court abused its discretion, and that an order on venue will not be disturbed if the order is reasonable after a consideration of the relevant facts presented. Mateu v. Stout, 2003 Pa. Super. 93, 819 A.2d 563, 565 (2003).

Just as in Mateu, the facts of this case reveal that litigation in Philadelphia County would be sufficiently oppressive to warrant the transfer of venue. Bucks County is the jurisdiction where the insured property at issue is located and where the plaintiffs reside. Bucks County is also the jurisdiction where the loss to the insured property occurred and where witnesses to the loss and subsequent repair, such as contractors and tradesmen, worked. Nationwide asserts that the denial of plaintiffs' claim either occurred in Bucks County or in Ohio, but in any event, not in Philadelphia. Def's Memorandum, p. 3. (In addition, plaintiffs served defendants with the Complaint outside Philadelphia, in Columbus, Ohio.) Plaintiffs do not dispute these assertions. Instead, plaintiffs stress that Nationwide regularly conducts business in Philadelphia County. Pltfs' Response, ¶ 7.

Nationwide's argument to transfer venue is persuasive under these circumstances in that it values the convenience of non-party witnesses throughout the discovery process and litigation, as well as the ease of accessibility to evidence. For these reasons, the court transferred venue to Bucks County.

### **Conclusion**

It is respectfully submitted that this court's Order transferring venue to Bucks County should be affirmed.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**