

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRISTIN MORNEAU, et al.,

Plaintiffs,

v.

PROTECTIVE LIFE INSURANCE
COMPANY,

Defendant.

Case No. [22-cv-05004-RS](#)

**ORDER GRANTING MOTION TO
TRANSFER**

I. INTRODUCTION

Plaintiffs Cristin Morneau and Kelly Strange are siblings. In 1996, their mother, Carolyn Morneau, (“Ms. Morneau”) purchased a \$250,000 life insurance policy from a predecessor-in-interest to defendant Protective Life Insurance Company (“PLIC”). Ms. Morneau paid the annual policy premium of \$382.50 for the next two decades. After those 20 years, however, the annual premium was scheduled to increase to \$4,355.00, with further substantial increases each following year. Ms. Morneau did not pay the increased premium, and PLIC deemed the policy terminated in 2017.

In January of 2022, Ms. Morneau died. When plaintiffs thereafter inquired about the life insurance policy, PLIC advised them it had been cancelled for non-payment of the premiums nearly 5 years earlier. Plaintiffs subsequently filed this suit in San Francisco Superior Court, alleging that the policy is still in force as a matter of law, due to PLIC’s alleged failure to comply with provisions of the California Insurance Code related to terminating policies for non-payment.

1 PLIC then removed the action to this court, thereby waiving any right to object that this is
2 an *improper* venue for the suit. PLIC, however, retains its right to move for a venue transfer under
3 28 U.S.C. § 1404(a), “[f]or the convenience of the parties and witnesses,” and “in the interest of
4 justice,” which it has done.

5 Pursuant to Civil Local Rule 7-1(b), the motion is suitable for disposition without oral
6 argument, and the hearing set for December 1, 2022, is vacated. Because the relevant factors
7 weigh in favor of the requested transfer, the motion will be granted.

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II. BACKGROUND

10 In 1996, PLIC’s predecessor issued a \$250,000 life insurance policy to Ms. Morneau, for
11 which she had applied in El Cajon, California, her residence at all relevant times. The policy was
12 delivered to her there. All communications from PLIC or its predecessors to Ms. Morneau were
13 addressed to her home address. El Cajon is in San Diego County, in the Southern District of
14 California.

15 As long as the policy’s premiums were paid, it could not be cancelled. The guaranteed
16 maximum annual premium on the policy was \$382.50 for the first 20 years, through January of
17 2017. According to the policy, “after the first 20 policy years, premiums shown may be changed in
18 accordance with the change of premium section.” In the 21st year, the annual premium would
19 increase to \$4,355, in the 22nd year it would increase to \$4,815, in the 23rd year it would increase
20 to \$5,282, and so on.

21 In January of 2017, PLIC sent a first notice of premium due to Ms. Morneau in El Cajon,
22 stating that her current annual premium of \$4,355.003 was due on February 1, 2017, to prevent
23 policy lapse as of March 4, 2017. When it did not receive the premium, PLIC sent a second notice
24 in February.

25 On March 13, 2017, PLIC wrote Ms. Morneau again, stating that her annual premium had
26 not been received, resulting in expiration of the policy, but that it could be reinstated—without
27 evidence of insurability—if the premium were received by April 4, 2017. PLIC did not receive
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1 payment thereafter, leading to its contention that the policy terminated in April of 2017. PLIC did
2 not hear from Ms. Morneau again.

3 Nearly five years later, on January 22, 2022, Ms. Morneau died under the care of a
4 physician in San Diego County, at a nursing and rehabilitation center in La Jolla. Three days later,
5 plaintiffs inquired about the status of the policy, which was the first time PLIC had received any
6 communication about it since deeming it terminated in 2017.

7 Plaintiff Kelly Strange resides in Orange County and Plaintiff Cristin Morneau resides in
8 Louisiana. PLIC is a Tennessee corporation, with its principal place of business in Alabama.

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10 III. LEGAL STANDARD

11 “For the convenience of parties and witnesses, in the interest of justice, a district court may
12 transfer any civil action to any other district or division where it might have been brought or to
13 any district or division to which all parties have consented.” 28 U.S.C. § 1404(a). Pursuant to that
14 section, a court should consider: (1) the convenience of the parties, (2) the convenience of the
15 witnesses, and (3) the interest of justice. *Id.* As the Ninth Circuit explained in *Jones v. GNC*
16 *Franchising, Inc.*, 211 F.3d 495 (9th Cir.2000), additional factors that a court may consider
17 include:

- 18 (1) where the relevant agreements were negotiated and executed,
- 19 (2) which state is most familiar with governing law, (3) the
- 20 plaintiff’s choice of forum, (4) the parties’ contacts with each
- 21 forum, (5) the parties’ contacts with each forum that are related to
- the cause of action, (6) the relative costs of litigating in each
- forum, (7) the availability of compulsory process in each forum,
- and (8) access to evidence in each forum.

22 *Id.* at 498–99.

23 Consistent with the above, courts in this district have articulated additional factors such as
24 feasibility of consolidation with other claims, local interest in the controversy, and relative court
25 congestion. *See Vu v. Ortho-McNeil Pharmaceutical, Inc.*, 602 F.Supp.2d 1151, 1156 (N.D. Cal.
26 2009). “No single factor is dispositive, and a district court has broad discretion to adjudicate
27 motions for transfer on a case-by-case basis.” *Park v. Dole Fresh Vegetables, Inc.*, 964 F.Supp.2d

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1 1088, 1093 (N.D. Cal.2013) (citations omitted); *see also*, *Commodity Futures Trading Comm'n v.*
2 *Savage*, 611 F.2d 270, 279 (9th Cir. 1979) (“Weighing of the factors for and against transfer
3 involves subtle considerations and is best left to the discretion of the trial judge.”).

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5 IV. DISCUSSION

6 Motions to transfer “for convenience” rarely present as compelling of circumstances as
7 they did in an earlier time. The ease and speed of travel, electronic communications, and the
8 increasing use of “virtual” depositions and court appearances mean that it will not usually present
9 a significant hardship to litigate in one forum as opposed to another—particularly where, as in this
10 case, the two forums are both located in the same state and same time zone. That, however, is a
11 double-edged sword, because even though it makes it more challenging for the party seeking
12 transfer to show it is warranted, it is also more difficult for the opposing party to show a transfer
13 would cause it undue burden or prejudice.

14 In many instances, therefore, the deference due to the plaintiff’s choice of forum—which
15 has always been an important consideration—will be dispositive. Where none of the parties reside
16 in the forum, and the subject matter of the litigation is not otherwise connected to the forum,
17 however, plaintiff’s choice of forum is entitled to little, if any, deference. *See, Fabus Corp. v.*
18 *Asiana Exp. Corp.*, No. C-00-3172 PJH, 2001 WL 253185, at * 1 (N.D. Cal. Mar. 5, 2001) (“The
19 degree to which courts defer to the plaintiff’s chosen venue is substantially reduced where the
20 plaintiff’s venue choice is not its residence”); *Lou v. Belzberg*, 834 F.2d 730, 739 (9th
21 Cir.1987) (“If the operative facts have not occurred within the forum and the forum has no interest
22 in the parties or subject matter, [plaintiff’s] choice is entitled to only minimal consideration.”).

23 Here, as noted, neither plaintiff resides in the district, nor does defendant. Plaintiffs argue,
24 however, that the action is connected to this district and/or that potential witnesses or parties that
25 might be added later may be found here—or in the Eastern District, which is marginally closer to
26 this district than is the Southern District. Plaintiffs’ lengthy complaint includes allegations that
27 PLIC participated in a broad-ranging “scheme” in attempt to avoid being required to comply with
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1 California Ins. Code Sections 10113.71 and 10113.72, which went into effect in 2013 and imposes
2 certain procedural protections for policy holders and their beneficiaries against policy cancellation
3 for non-payment of premiums. Plaintiffs assert PLIC acted in concert with unnamed “other
4 insurers, other licensed insurance entities, including licensed insurance administrators, and
5 industry trade unions, lobbyists, and attorneys” to that end, and attempted to influence the
6 California Department of Insurance to support that goal.

7 Now that the California Supreme Court has ruled that Sections 10113.71 and 10113.72
8 apply to policies in force as of its effective date,¹ it is unclear whether plaintiffs’ allegations
9 regarding the “scheme” remain relevant at all. In any event, however, the claims for relief
10 plaintiffs plead do not turn on the existence or non-existence of any such scheme. Moreover,
11 plaintiffs’ murky suggestions that there may be third party witnesses and/or parties to be named
12 later in connection with those allegations falls short of establishing that there are witnesses (or
13 parties) in the Northern District whose convenience warrants denying transfer. *See also Pitt v.*
14 *Metropolitan Tower Life Ins. Co.*, No. 18-cv-06609-YGR, 2020 WL 1557429, at *9 (N.D. Cal.
15 Apr. 1, 2020) (dismissing for improper venue complaint brought in this district by the same
16 plaintiffs’ counsel, which contained similar “scheme” allegations and similar claims against a
17 different insurer.) As all other relevant factors are neutral or favor transfer,² the clear locus of the
18 operative events in this action in the Southern District, and the dearth of any genuine connection to
19 this district, warrant transfer.

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¹ See *McHugh v. Protective Life Ins. Co.*, 12 Cal. 5th 213 (2021).

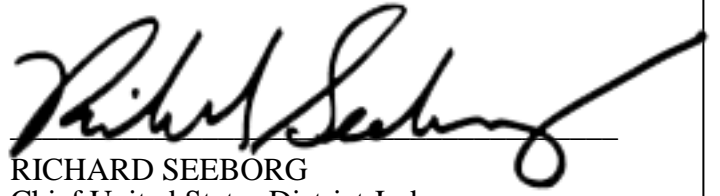
² Relative docket congestion statistics appear to favor transfer.

V. CONCLUSION

The motion to transfer venue is granted.

IT IS SO ORDERED.

Dated: November 23, 2022


RICHARD SEEBORG
Chief United States District Judge

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