

2024 WL 5389548

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United States District Court, D. Massachusetts.

Jessica DIGGS, Plaintiff,

v.

The SAVINGS BANK MUTUAL LIFE INSURANCE  
COMPANY OF MASSACHUSETTS, Defendant.

No. 24-cv-11808-PGL

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Signed December 4, 2024

#### Attorneys and Law Firms

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for Plaintiff.

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Defendant.

#### **REPORT AND RECOMMENDATION** **ON MOTION FOR TRANSFER**

[LEVENSON](#), UNITED STATES MAGISTRATE JUDGE

#### **INTRODUCTION**

\*1 Before the Court is Defendant's motion to transfer this case to the Northern District of Oklahoma pursuant to [28 U.S.C. § 1404\(a\)](#). Docket No. 14.

Judge Saris has referred the motion to me for report and recommendation.

I have considered Defendant's memorandum in support of that motion (Docket No. 15) and attached documents, as well as Plaintiff's opposition (Docket No. 19) and its attachments. On December 4, 2024, I heard argument from counsel for the parties.

#### ***A. Overview of the Case***

For present purposes, a brief description of the parties' dispute will suffice.

This case involves a challenge to the decision of Defendant, a Massachusetts-based life insurer ("SBLI"), to deny a claim for death benefits. The decedent, Kelcey A. Ford ("Mr. Ford" or "decedent"), was an Oklahoma resident who applied for life insurance in December 2021, naming the Plaintiff, Jessica Diggs, as primary beneficiary. On December 23, 2021, SBLI approved Ford's application.

Following Mr. Ford's death in 2023, Plaintiff submitted a claim for benefits. SBLI denied that claim. SBLI maintains that the policy was "contestable" because the date of death was less than two years after the date of issuance of the policy. SBLI further maintains that, after receiving Plaintiff's claim, it investigated the bona fides of the representations in Mr. Ford's original application and concluded that some of the information submitted was inaccurate and that the information reflected an intent to deceive. In particular, SBLI identified as inaccurate Mr. Ford's answers to questions regarding his criminal record and regarding his history of using illegal drugs. On this basis, SBLI notified Plaintiff that it had rescinded the policy and denied Plaintiff's claim. These purported inaccuracies in decedent's application (and, presumably, his intent) are at the heart of the parties' dispute.

#### ***B. The Motion for Transfer***

SBLI's transfer motion is centered on the location of a key witness, Ms. Ayanna Taylor. Ms. Taylor is the insurance producer who received the information reflected in Mr. Ford's insurance application. Plaintiff alleges that Ms. Taylor assisted Mr. Ford in preparing his application and that Ms. Taylor communicated with Mr. Ford about what information he was required to disclose. The parties agree generally that Ms. Taylor is uniquely positioned to testify about the facts and circumstances surrounding the completion of the contested portions of Mr. Ford's insurance application.

In its motion, SBLI contended that Ms. Taylor would be subject to subpoena in the Northern District of Oklahoma, whereas she plainly is not subject to being subpoenaed into this district. *See generally* [Fed. R. Civ. P. 45\(c\)](#). SBLI wrote:

Because the key witness, the third-party licensed insurance producer who completed, signed and submitted the proposed insured's application to the Defendant, The Savings Bank Mutual Life Insurance Company

of Massachusetts (“SBLI”), is an Oklahoma resident who cannot be compelled to appear in Massachusetts, and because this matter is based upon the rescission of an Oklahoma life insurance policy and resulting denial of an Oklahoma plaintiff’s claim for benefits pursuant to Oklahoma law, SBLI moves to transfer venue of this matter to the U.S. District Court for the Northern District of Oklahoma under [28 U.S.C. § 1404\(a\)](#).

\*2 Docket No. 15, at 1.

In its recitation of facts, SBLI also emphasizes various ways in which the facts of this case touch upon the Northern District of Oklahoma. *See* Docket No. 15 at 2–5. Among other things, SBLI recites that: the decedent lived there; Plaintiff lives there still; SBLI is licensed to sell approved life insurance products to Oklahoma insurance consumers; the policy identified the state of sale/issue as Oklahoma; the policy was issued on a form approved by the Oklahoma Insurance Department; all signatures of Mr. Ford reflect that they were executed in Broken Arrow, Oklahoma (which is within the Northern District); the signature of the insurance producer, Ms. Taylor, reflects that it was executed in Owasso, Oklahoma (also within the Northern District); and Oklahoma licensure records show Ms. Taylor as a licensed Oklahoma resident life insurance producer with a business address in Owasso, Oklahoma, whose license “was active for two years, June 2021–May 2023.” Docket No. 15 at 2.

SBLI also points out that, in its view, this matter is likely to be governed—in part or in whole—by Oklahoma law.



### C. The Opposition to the Motion

Attached to Plaintiff’s opposition is an affidavit from Ms. Taylor which recites that she currently lives and works in Princeton, Texas. Docket No. 19-2, at 1. Princeton is more than 100 miles from Tulsa, Oklahoma, the seat of the Northern District of Oklahoma. Accordingly, Plaintiff contends, Ms. Taylor is not subject to being subpoenaed for personal appearance in either Tulsa or Boston. Plaintiff argues that these circumstances cut the heart out of Defendant’s motion for transfer.

At oral argument, counsel for SBLI stated that, having reviewed Ms. Taylor’s affidavit, counsel has no reason to contest that Ms. Taylor has moved away from the Tulsa area, such that she would not be subject to subpoena there.<sup>1</sup> (Princeton, Texas, is significantly closer to Tulsa than Boston, but that does not weigh in the decision.)

### D. Legal Standards

Under [28 U.S.C. § 1404\(a\)](#), the Court “may transfer any civil action to any other district or division where it might have been brought.” Such transfers may be ordered “[f]or the convenience of parties and witnesses” and “in the interest of justice.” [28 U.S.C. § 1404\(a\)](#). As the statute reflects, such motions are addressed to the discretion of the district court. *Id.* [§ 1404\(b\)](#). In his unpublished decision in *Rosenthal v. Unum Group*, Judge Hillman usefully summarized the relevant standard:

It is the moving party’s burden to establish that “an adequate alternative forum exists and that considerations of convenience and judicial efficiency strongly favor litigating the claim in the second forum.”  [Iragorri v. International Elevator Inc.](#), 203 F.3d 8, 12 (1st Cir. 2000). There is a strong presumption in favor of the plaintiff’s choice of forum.  [Royal Bed & Spring Co. v. Famossul Industria e Comercio de Moveis Ltda.](#), 906 F.2d 45, 52 (1st Cir. 1990).

\*3 No. 17-CV-40064-TSH, 2018 WL 1250483, at \*1 (D. Mass. Mar. 12, 2018).

Judge Hillman noted, as well, that factors such as controlling law or place of key events have some relevance. *Id.* at \*2 (“Additional factors the court should consider are the convenience of the parties, the convenience and location of the material witnesses and documents, connection between the particular issues involved in the case and the forum state, the applicable law, and any relevant state or public interests that may be involved in the case.”). Considering that SBLI is headquartered in this district, however, it cannot be said that there is any appreciable inconvenience in hailing it into court here. And none of the other factors weigh heavily enough to overcome the strong presumption in favor of honoring Plaintiff’s choice of forum.

In this case, the most important consideration, unsurprisingly, is the convenience and availability of a key witness. *See*

 [Brant Point Corp. v. Poetzsch](#), 671 F. Supp. 2, 3 (D. Mass.

1987) (Wolf, C.J.) (“The convenience of the witnesses is ‘[p]robably the most important factor, and the factor most frequently mentioned, in passing on a motion to transfer under 28 U.S.C.A. § 1404(a).’ ” (alteration in original) (quoting 15 Wright, Miller & Cooper, [Federal Practice and Procedure 2d § 3851 at 415 \(1986\)](#))). The parties appear to agree that Ms. Taylor is an important witness, probably the critical witness in this case. The affidavit of Ms. Taylor that is attached to the Complaint (Docket No. 1-1), indicates that Ms. Taylor is a percipient witness who could testify about her interactions with Mr. Ford in connection with the entry of answers to the two questions that are central to the parties’ dispute. It does not appear that there is any other percipient witness to those potentially critical events.

If Ms. Taylor were available to testify in one district or the other, that would likely be a determinative consideration. There does not, however, appear to be any genuine factual

dispute that Ms. Taylor cannot be subpoenaed for in-person testimony in either of the districts at issue.<sup>2</sup> In these circumstances, there is no good reason to transfer this case out of the district where Plaintiff has brought suit and where SBLI is headquartered.

### CONCLUSION




For the forgoing reasons, I recommend that the Court DENY Defendant's motion for transfer to the Northern District of Oklahoma.<sup>3</sup>

### All Citations

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### Footnotes

- 1 When SBLI filed its present motion, Defendant's counsel was unaware of Ms. Taylor's move.
- 2 That Ms. Taylor may previously have worked in the Northern District of Oklahoma is irrelevant. See  [Comm-Tract Corp. v. N. Telecom, Inc.](#), 168 F.R.D. 4, 7 (D. Mass. 1996) (“[T]he time frame for judging whether a witness must travel more than 100 miles from his residence, place of employment, and the place where he transacts business in person is the time when the witness is to appear ....”).
- 3 The parties are advised that under [Rule 72\(a\) of the Federal Rules of Civil Procedure](#) and Rule 2(b) of the Rules for United States Magistrate Judges in the United States District Court for the District of Massachusetts, any party seeking review by a district judge of these determination(s) and order(s) must serve and file any objections within fourteen days of being served a copy of this order, unless a different time is prescribed by the magistrate judge or the district judge. See [Fed. R. Civ. P. 72\(a\)](#). Such objections must specifically designate the order, or part, to be modified or set aside and the basis for objection. The district judge will set aside any portion of the magistrate judge's order that is found to be clearly erroneous or contrary to law. The parties are further advised that failing to follow the objection procedures of Rule 2(b) may preclude further appellate review. See  [Phinney v. Wentworth Douglas Hosp.](#), 199 F.3d 1, 4 (1st Cir. 1999);  [Sunview Condo. Ass'n v. Flexel Int'l, Ltd.](#), 116 F.3d 962, 964–65 (1st Cir. 1997).