



and with medical certainty" [Doc. #22 ¶ 5] that Siamon's health would be adversely affected by the extended travel required for his presence in Connecticut for discovery and/or trial:

The diabetic condition from which Mr. Siamon is suffering has certain physical symptoms that are exacerbated by sitting for extended periods of time. Specifically, Mr. Siamon has observed and reported to me, and I have observed the phenomenon, or the reaction, whereby if Mr. Siamon is sitting for an extended period of time, it causes his lower extremities to swell severely, causing minor tearing and bleeding on his skin surface. \* \* \* The extremity swelling from extended periods of being seated is a very painful process.

[Doc. #22 ¶¶ 3, 8].

In opposition, NGC presents the affidavit of a physician who has apparently never examined Siamon or reviewed his medical records, see Rosen Aff. ¶ 13 [Ex. to Doc. #24], and who asserts that he "ha[s] never treated an individual with Type 2 Diabetes Mellitus who has been medically unable to travel across the country by airplane due to the Type 2 Diabetes Mellitus," id. ¶ 9. NGC further asserts that while contract negotiations were underway, Siamon was "in excellent spirits . . . and gave all indications of a healthy person, both in mind and body," Horn Aff. ¶ 16 [Ex. to Doc. #19], and hints that weight loss is the answer, see [Doc. #19] at 7 n.4 (noting that a loss of ten to twenty pounds "is [sometimes]

enough to bring diabetes under control").

## II. Analysis

"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." 28 U.S.C. § 1404(a). The purpose of § 1404(a) is to prevent waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense. Van Dusen v. Barrack, 376 U.S. 612, 615 (1964). "[M]otions for transfer lie within the broad discretion of the district court and are determined upon notions of convenience and fairness on a case-by-case basis." In re Cuyahoga Equipment Corp., 980 F.2d 110, 117 (2d Cir. 1992) (citing Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988)). "It is clear that the burden is on defendant, when it is the moving party, to establish why there should be a change of forum." 15 Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3848 at 383 (citations omitted).

The health concerns of a party or witness can be an important factor in the determination of whether a § 1404(a)

transfer is proper. See Brownell v. La Salle Steel Co., 128 F. Supp. 548 (D. Del. 1955) (fact that prospective witness "has been compelled to cease all business activities because of ill health, and that a compulsory trip from Chicago to Wilmington, in connection with his appearance in Court, would be highly dangerous to his physical well being" was one factor in court's decision to transfer venue to Illinois); Farmer Bros. Co. v. Coca-Cola Co., Inc., 366 F. Supp. 725, 726-727 (S.D. Tex. 1973); see also Tyrill v. Alcoa Steamship Co., 158 F. Supp. 853, 854-855 (S.D.N.Y. 1958) (plaintiff's medical problem weighed against transfer); Vassallo v. Niedermeyer, 495 F. Supp. 757, 760 (S.D.N.Y. 1980) (same). The detrimental effect of travel on Siamon's health, confirmed "firmly and with medical certainty" by his treating physician, thus weighs strongly in favor of a transfer of venue pursuant to § 1404(a).<sup>1</sup>

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<sup>1</sup>NGC's efforts to cast doubt on the seriousness of Siamon's condition and the effect travel may have on his health are unavailing. While NGC's physician may well be a highly-qualified specialist in the field of endocrinology and metabolism, the fact remains that he has not personally examined Siamon or apparently even reviewed his medical records, and thus is confined to speaking in general terms about his treatment of "many individuals with Type 2 Diabetes Mellitus who have traveled extensively by airplane . . . without detrimental effect on the glucose control or overall health." Rosen Aff. ¶ 11 [Ex. to Doc. #24]. The preference for the opinion of a treating physician runs throughout the law, see, e.g., Schisler v. Heckler, 787 F.2d 76, 81 (2d Cir.

Beyond the NGC's initial choice of forum, which is a factor "accorded substantial weight," Golconda Mining Corp. v. Herlands, 365 F.2d 856, 857 (2d Cir. 1966) (citation omitted), the remaining factors often considered by courts in the § 1404(a) inquiry (including locus of the operative facts, convenience of the parties and witnesses, location of physical evidence and familiarity of the courts with the applicable law)<sup>2</sup> do not cut strongly either way, as the contract negotiations at issue were generally done at a distance and the parties, witnesses and evidence are divided between California and Connecticut. See, e.g., NGC's Mem. Opp. [Doc. #19] at 4 ("a transfer to California would only shift the current inconvenience of traveling between California and Connecticut from the defendants to NGC."); id. at 5 ("The documents relevant to this case are located in Connecticut and California, and are in possession of both parties . . . . The burden on each party to transfer such documents to the other state is therefore the same."). After balancing the detrimental health effects of travel on Siamon with the

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1986) (Social Security Disability determinations), and in this case weighs in favor of accepting Dr. Sigmund's conclusions about the detrimental effect travel will have on Siamon's health.

<sup>2</sup>See Royal & Sunalliance A/S/O v. British Airways, 167 F. Supp. 2d. 573, 575 (S.D.N.Y. 2001) (citation omitted).

substantial weight accorded to NGC's choice of forum, the Court concludes in this case that the interests of justice militate in favor of a transfer of venue pursuant to § 1404(a).

III. Conclusion

For the reasons set forth above, defendants' motion [Doc. #10] is GRANTED, and this case is ordered transferred to the United States District Court for the Central District of California.

IT IS SO ORDERED.

/s/

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Janet Bond Arterton, U.S.D.J.

**Dated at New Haven, Connecticut, this 21st day of April, 2003.**