UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT PAYNE and PAYNE INVESTMENTS LLC,	:	
Plaintiffs,	:	
v.	:	Civ. No. 3:02CV2234(AWT)
TAYLOR VISION RESOURCES, TAYLOR STRATEGIC ACQUISITIONS, TAYLOR STRATEGIC DIVESTITURES, and TAYLOR FINANCIAL SERVICES, LCC,	:	
Defendants.	:	

RULING ON MOTION TO TRANSFER

Defendants Taylor Vision Resources, Taylor Strategic Acquisitions, Taylor Strategic Divestitures, and Taylor Financial Services, LLC (collectively, the "Taylor Companies") have moved to transfer this case to the United States District Court for the District of Columbia pursuant to 28 U.S.C. § 1404. For the reasons set forth below, the defendants' motion to transfer is being denied.

I. FACTUAL BACKGROUND

Plaintiff Robert Payne ("Payne") is a former employee of the defendants, and plaintiff Payne Investments, LLC is a corporation Payne formed during the course of his work with

the defendants. The Taylor Companies are a group of affiliated corporations formed under the laws of the District of Columbia. They provide investment banking services and specialize in mergers and acquisitions.

In late 1999, the Taylor Companies extended an offer of employment to Payne to work as a managing director. On January 3, 2000, Payne began employment for the Taylor Companies as a managing director. Payne worked from his home in Connecticut, rather than from the Taylor Companies' office in Washington, D.C. The employment contract provided that the Taylor Companies would cover the costs of Payne's telecommunications needs, including hookups and cellular telephone expenses. The Taylor Companies also leased equipment that was located in Payne's home office in Connecticut.

In late 2000 or early 2001, Payne established Payne Investments, LLC, through which he continued to work for the Taylor Companies as an independent contractor. Although Payne traveled to Washington, D.C. periodically, he was there no more than 12 days out of the year. The plaintiffs operated out of the State of Connecticut. In mid-2002, Payne ceased performing services for the Taylor Companies.

As part of the terms of the plaintiffs' compensation,

the plaintiffs were entitled to receive a certain percentage of commissions on net revenues from certain acquisitions and divestitures, determined by the extent to which Payne was responsible for generating the revenue. This action arises out of a dispute about the amount of commissions to be paid to the plaintiffs in connection with the sale of three companies.

According to the defendants, the documents relevant to this action, namely (1) all documents relating to the plaintiffs' employment contract with the defendants, (2) all documents relating to the plaintiffs' compensation by the defendants, (3) all documents relating to Payne's benefits through the defendants, and (4) all documents relating to the sale of the three companies, are located in hard copy and/or electronic form in Washington, D.C.

II. LEGAL STANDARD

"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). To determine whether transfer is appropriate, the court must consider the following nine factors: (1) the convenience of the witnesses; (2) the convenience of the parties; (3) the location of

relevant documents and ease of access to sources of proof; (4) the locus of operative facts; (5) the availability of process to compel attendance of unwilling witnesses; (6) the relative means of the parties; (7) a forum's familiarity with the governing law; (8) the weight accorded the plaintiff's choice of forum;[1] and (9) trial efficiency and the interest of justice, based on the totality of the circumstances. Cummings & Lockwood, P.C. v. Simses, 301cv422, 2001 WL 789313 at *6 (D.Conn. July 5, 2001); GMT Corp. v. Quiksilver, 02 Civ. 2229, 2002 WL 1788016 at *3 (S.D.N.Y. Aug. 1, 2002); Ayala-Branch v. TAD Telecom, Inc., 197 F. Supp. 2d 13, 15 (S.D.N.Y. 2002).

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[1] The plaintiff's choice of forum is given substantial weight except when the forum is not the plaintiff's residence and the connection between the forum and the facts and issues in the case is minimal. Coker v. Bank of America, 984 F. Supp. 757, 766 (S.D.N.Y. 1997) (citing Geiger v. E.I. Du Pont Nemours & Co., 96 Civ. 2757, 1997 WL 83291 at *5 (S.D.N.Y. Feb. 27, 1997)); see also, D'Anton Jos, S.L. v. Doll Factory, Inc., 937 F. Supp. 320, 323 (S.D.N.Y. 1996); Eskofot A/S v. E.I. Du Pont De Nemours & Co., 872 F. Supp. 81, 96 (S.D.N.Y. 1995) (the "deference accorded to plaintiff's choice of forum [] is diminished substantially where the forum is neither plaintiff's home district nor the place where the events or transactions underlying the action occurred."); De Jesus v. National R.R. Passenger Corp., 725 F. Supp. 207, 208 (S.D.N.Y. 1989) ("A plaintiff's choice of forum is entitled to substantial weight . . . [b]ut where a plaintiff chooses a forum that is not his residence, that weight is diminished.").

The defendants, as the movants, must satisfy the "heavy" burden of demonstrating that a weighing of the appropriate factors dictates that the case be transferred. Howard v. Four Seasons Hotels Ltd., 96 Civ. 4587, 1997 WL 107633 at *2 (S.D.N.Y. March 10, 1997) ("Section 1404(a) requires the moving party to satisfy a heavy burden."); Geiger v. Du Pont, 1997 WL 83291 at *4 (same); Raines v. Switch Mfg. Corp., 96 Civ. 2361, 1996 WL 413720 at *1 (S.D.N.Y. July 24, 1996) (movant "has the burden of establishing the propriety of the transfer by a clear and convincing showing.").

III. DISCUSSION

The court's analysis of the nine pertinent factors follows.

First, as to the convenience of the witnesses, this factor does not favor either party. Payne, key witness for the plaintiff, is located in Connecticut, and the key witnesses for the defendants, some of whom are employees and some of whom are non-party witnesses, are either located in the District of Columbia or in other parts of the United States or abroad. None of the defendants' non-party witnesses are located in the District of Columbia. Although the defendants assert that the District of Columbia is more accessible for out-of-town witnesses in terms of airline travel, the

defendants ignore the fact that Bradley International Airport, which services Hartford, Connecticut, is an international airport, nor do they submit any proof that access to Hartford, Connecticut would prove more difficult for out-of-town witnesses than would access to the District of Columbia.

Second, as to the convenience of the parties, this factor also does not favor either party as the plaintiffs are located in Connecticut, and the defendants are located in the District of Columbia. The defendants argument that this factor weighs in their favor because their counsel of choice is located in the District of Columbia is unpersuasive. See Hernandez v. Grabel Van Lines, 761 F. Supp. 983, 988 (E.D.N.Y. 1991).

Third, as to the location of relevant documents and ease of access to sources of proof, this factor favors the defendants slightly. Notwithstanding the plaintiffs' contention that electronic access to certain documents is available in Connecticut, hard copies of many of the relevant documents are located in Washington, D.C. However, it has not been shown that the documents as to which only hard copies exist are so voluminous as to make shipping them to Connecticut an undue hardship. Thus this factor weighs

slightly in favor of the defendants.

Fourth, as to the locus of operative facts, this factor weighs in favor of the plaintiffs because the plaintiffs operated primarily out of Connecticut, and the issue is whether they were properly compensated. The defendants contend that it was their desire that the plaintiffs operate out of the Washington, D.C. offices of the Taylor Companies. However, they entered into and maintained a contractual relationship with the plaintiffs that contemplated that Payne would operate out of his home in Connecticut, and the defendants even paid costs associated with Payne maintaining a separate base of operations, such as the costs for Payne's telecommunications.

Fifth, as to the availability of process to compel attendance of unwilling witnesses, the defendants have failed to make a specific showing that any significant non-party witness would be unwilling to travel to Connecticut, as opposed to Washington, D.C., to testify. The plaintiffs' potential non-party witness, an accountant who is an independent contractor, is located in Connecticut. As to witnesses who are employees of the defendants, the defendants are in a position to facilitate travel to Connecticut by any unwilling employees. Thus, this factor

weighs slightly in favor of the plaintiffs.

Sixth, as to the parties' relative means, the plaintiffs and the defendants have each failed to submit evidence showing that the other side is more easily able to absorb the costs associated with this litigation. However, the plaintiffs contend, and the defendants do not dispute, that during 2000 and 2001 the Taylor Companies had gross revenues in the range of $10 to $12 million. The court concludes that this factor weighs slightly in favor of the plaintiffs.

Seventh, as to a forum's familiarity with the governing law, a court in Connecticut would be more familiar with the governing law. However, this is a contract action that does not appear to involve any complicated issue of state law. Therefore, this factor weighs in favor of the plaintiffs, but only slightly.

Eighth, because the plaintiffs reside or are located in the chosen forum, their choice of forum should be given substantial weight. Thus, this factor weighs heavily in favor of the plaintiffs.

Finally, as to trial efficiency and the interests of justice, based on the totality of the circumstances, the court concludes that this factor does not weigh in favor of either party. The defendants' contentions show only that the

District of Columbia would be more convenient for the defendants. However, there are no special factors in this case that will serve to make the trial more or less efficient, or cause the interests of justice to be better served if the trial is held in one district versus the other.

As noted above, the defendants bear a heavy burden on this motion. They have failed to meet that burden. The only factor they have shown weighs in favor of transfer is the location of relevant documents and ease of access to sources of proof, and that factor only slightly weighs in favor of transfer under the circumstances of this case. That showing is inadequate to overcome the deference that should be accorded the plaintiffs' choice of forum and the fact that other relevant factors also weigh in the plaintiffs' favor to at least some degree.

IV. CONCLUSION

For the reasons set forth above, Defendants' Motion to Transfer Venue to the District of Columbia (Doc. #5) is hereby DENIED.

It is so ordered.

Dated this _____ day of September 2003, at Hartford, Connecticut.

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Alvin W. Thompson
United States District Judge