

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

LANCER INSURANCE COMPANY,)	
)	
Plaintiff,)	
vs.)	NO. 3:07-cv-00117-RLY-WGH
)	
LANDERS EXPLOSIVES, INC.,)	
CEMEX, INC.,)	
LMS CONTRACTING, INC.,)	
)	
Defendants.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

LANCER INSURANCE COMPANY,)
Plaintiff,)
)
vs.) 3:07-cv-117-RLY-WGH
)
LANDERS EXPLOSIVES, INC., CEMEX,)
INC. d/b/a Kosmos Cement Company, and)
LMS CONTRACTING, INC.,)
Defendants.)

**ENTRY ON DEFENDANT CEMEX, INC.'S MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION AND IMPROPER VENUE, OR IN THE ALTERNATIVE,
TO TRANSFER TO THE WESTERN
DISTRICT OF KENTUCKY**

This matter is before the court on Defendant Cemex Inc. d/b/a Kosmos Cement Company's ("Cemex") motion to dismiss for lack of personal jurisdiction and improper venue, or in the alternative, to transfer to the Western District of Kentucky. For the reasons set forth below, Cemex's motion to dismiss for lack of personal jurisdiction is **DENIED**; Cemex's motion to dismiss or transfer for improper venue is **DENIED**; and Cemex's motion to transfer for convenience is **GRANTED**.

I. Background

Plaintiff, Lancer Insurance Company ("Plaintiff"), issued a commercial general liability insurance policy to Defendant Landers Explosives, Inc. ("Landers"). (Complaint ¶ 7). Plaintiff filed the declaratory judgment action in this court seeking a declaration that the policy does not cover damage allegedly caused by Landers in an underlying action.

In the underlying action, Kosmos Cement Company ("Kosmos"), a partnership

comprised of Cemex, a 75% interest holder and managing partner, and Lone Star Industries, Inc., hired Defendant LMS Contracting, Inc. (“LMS”) to perform blasting and excavation work at a construction site in Meade County, Kentucky. LMS, in turn, subcontracted the blasting work to Landers. During the course of its work, Landers allegedly caused damage to the land owned by Cemex. On March 6, 2006, Cemex filed suit against LMS and Landers in the United States District Court for the Western District of Kentucky, Louisville Division, seeking compensation for the damage Landers allegedly caused to Cemex’s property.

Cemex now argues that the court should dismiss the present declaratory judgment action because this court does not have personal jurisdiction over Cemex and this court is the improper venue. In the alternative, Cemex seeks a transfer to the Western District of Kentucky because it is a more convenient forum.

II. Facts

Plaintiff is an Illinois corporation with its principal place of business in New York. (Complaint ¶ 1). Cemex is a Louisiana corporation with its principal place of business in Kentucky. (Complaint ¶ 3). Kosmos, the partnership of which Cemex is the majority owner and through which Cemex contracted with LMS, is a Kentucky general partnership. (Affidavit of Kirk Light (“Light Aff.”) ¶ 5, Cemex’s Ex. B₂).¹ Kosmos is not a party to the present action. LMS is an Indiana corporation with its principal place of business in Madison, Indiana, which is located in the Southern District of Indiana. (LMS Bankruptcy Filing, Docket # 8). Landers is an Indiana corporation with its principal place of business in Magnet, Indiana, also located in the

¹ Cemex’s and Plaintiff’s exhibits included with their supplemental briefs are denoted by a subscript “2” to indicate that they are part of their second sets of exhibits. Cemex’s exhibit to its supplemental reply brief is denoted by a subscript “3”.

Southern District of Indiana. (Complaint ¶ 2).

Originally, Cemex stated that it operates two bulk cement distribution terminals in Indiana, one in Mt. Vernon and the other in Indianapolis. (Affidavit of Peter Lyons (“Lyons Aff.”) ¶ 4, Cemex’s Ex. 2). In its supplemental briefing, however, Cemex indicated that Kosmos actually operates the Mt. Vernon and Indianapolis facilities. (Supplemental Affidavit of Peter Lyons (“Supp. Lyons Aff.”) ¶ 6, Cemex’s Ex. A₂). Kosmos owns the real property on which the Indianapolis terminal is located. (Light Aff. ¶ 5). Kosmos leases the property on which the Mt. Vernon terminal is located from the Indiana Port Authority. (Lease Agreement, CED000033, Cemex’s Ex. A₃). Cemex, as general partner in Kosmos, pays the real estate taxes for that property. (Kosmos Tax Return 2006 at 2, CED000462, Plaintiff’s Ex. A₂). These two terminals employ a total of four employees in Indiana. (Lyons Aff. ¶¶ 5–6).

The material distributed from the Mt. Vernon and Indianapolis terminals accounts for 0.35% of Cemex’s total revenues. (Lyons Aff. ¶¶ 5–6). Cemex’s “Total Receipts” from Indiana, as listed on its Indiana tax return, were over \$16 million in 2006. (Cemex Indiana Tax Return 2006 at 3, Plaintiff’s Ex. A₂). This includes sales of packaged cement products to eleven customers located in Indiana. (Affidavit of Francisco Uzcategui (“Uzcategui Aff.”) ¶ 4, Cemex’s Ex. C₂). In 2007, Cemex made eighteen product deliveries to three of those customers in Indiana. (Uzcategui Aff. ¶ 4).

Cemex is authorized to do business in Indiana and has appointed a registered agent in Indiana. (Indiana Secretary of State Records, Plaintiff’s Ex. B).

III. Discussion

Cemex argues that this action should be dismissed because the court lacks personal jurisdiction over it and because the Southern District of Indiana is an improper venue.

Alternatively, Cemex moves to transfer this case to the Western District of Kentucky. The court addresses each of these arguments below.

A. Motion to Dismiss for Lack of Personal Jurisdiction

1. Imputation of Kosmos' Contacts to Cemex

Before the court can address the merits of Cemex's motion to dismiss for lack of personal jurisdiction, the court finds it necessary to address the relationship between Kosmos Cement Company and Cemex, Inc. and how that affects the court's jurisdiction over Cemex. As referenced in the Background and Fact Section, *supra*, Kosmos is a Kentucky general partnership with Cemex as a 75% interest holder and majority partner. Cemex asserts in its briefing that Kosmos is the entity that operates the Indiana terminals, owns/leases the real property on which those businesses are located, and employs Indiana residents. Cemex argues that Kosmos' contacts, as a general partnership, are not imputable to Cemex, as one of the general partners. *See Guy v. Layman*, 932 F. Supp. 180, 183 (E.D. Ky. 1996) (refusing to exercise personal jurisdiction over individual partner based on contacts of partnership).

However, Plaintiff cites a number of cases from district courts in the Seventh Circuit that support the opposite proposition—personal jurisdiction over a partnership is sufficient to establish jurisdiction over the general partners. *See Que Sera Promotions v. Poughkeepsie Ford, Inc.*, No. 2:05CV38 PPS, 2005 WL 2896703, at *4 (N.D. Ind. Nov. 2, 2005); *Wolfson v. S&S Secs.*, 756 F. Supp. 374, 377 (N.D. Ill. 1991); *Felicia, Ltd. v. Gulf Am. Barge, Ltd.*, 555 F. Supp. 801, 805–06 (N.D. Ill. 1983).

This court finds particularly persuasive the reasoning in *Que Sera Promotions, Inc. v. Poughkeepsie Ford, Inc.*, wherein the District Court for the Northern District of Indiana found that the partnership's activities bound the general partners to personal jurisdiction in a state

because, among other things, “[i]t is a basic principal of partnership that the general partner is an agent of the partnership.” 2005 WL 2896703, at *5; *see also IDS Life Ins. Co. v. SunAmerica Life Ins. Co.*, 136 F.3d 537, 541 (7th Cir. 1998) (noting that if a corporate subsidiary were acting as the parent’s agent in conducting business for the parent in the forum state, then the court would have personal jurisdiction over the parent).

Considering the above reasoning in conjunction with the facts in this case, which demonstrate that Kosmos’ activities in Indiana are in furtherance of Cemex’s business, the court finds that Kosmos’ actions in Indiana are imputable to Cemex for the purpose of establishing personal jurisdiction. With this in mind, the court now turns to the analysis of whether it has personal jurisdiction over Cemex.

2. Burden of Proof

Although plaintiff’s complaint need not include facts alleging personal jurisdiction, plaintiff bears the burden of establishing the existence of such jurisdiction once defendant moves to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(2). *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 782 (7th Cir. 2003). When defendant challenges jurisdiction under Rule 12(b)(2), the court must first decide if any material facts are in dispute. *Hyatt Int’l Corp. v. Coco*, 302 F.3d 707, 713 (7th Cir. 2002). If so, the court must hold an evidentiary hearing to resolve them. *Id.* Plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence when the court holds an evidentiary hearing on the matter. *Purdue*, 338 F.3d at 782. However, where a court resolves defendant’s motion on the written materials alone, without the benefit of a hearing, plaintiff need only make out a prima facie showing of jurisdiction. *Id.*

In this case, there are no material disputes of fact and neither party has requested a

hearing. The court finds that an evidentiary hearing is unnecessary. Plaintiff, therefore, must only make a prima facie showing of personal jurisdiction.

3. Standard for Personal Jurisdiction

“A district court sitting in diversity has personal jurisdiction over a nonresident defendant only if a court of the state in which it sits would have jurisdiction.” *Purdue*, 338 F.3d at 779. Whether an Indiana state court would have jurisdiction over a nonresident defendant normally entails two steps: determining (1) if Indiana Trial Rule 4.4(A) (Indiana’s Long-Arm Statute) subjects the nonresident defendant to in personam jurisdiction and (2) if that exercise of jurisdiction comports with federal due process requirements. *Id.* However, Trial Rule 4.4(A) was amended in 2003, collapsing the two-step inquiry into the single question of whether the exercise of personal jurisdiction is consistent with the Federal Due Process Clause. *LinkAmerica Corp. v. Albert*, 857 N.E.2d 961, 967 (Ind. 2006).

The Due Process Clause of the Fourteenth Amendment requires that a nonresident defendant “have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). “When a corporation ‘purposefully avails itself of the privilege of conducting activities within the forum state,’ it has clear notice that it is subject to suit there” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (internal citation omitted) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). “[The] purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (internal quotations and citations omitted).

What contacts satisfy the “minimum contacts” standard of the Due Process Clause depends on whether the state asserts “general” or “specific” jurisdiction. *RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1277 (7th Cir. 1997). General jurisdiction over a party exists where that party has continuous and systematic business contacts with the state, even where those contacts do not relate to the cause of action at issue. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415–16 (1984). Specific jurisdiction, on the other hand, “exists for controversies that arise out of or are related to the defendant’s forum contacts.” *Hyatt*, 302 F.3d at 713. Plaintiff in this case asserts that the court has both general and specific jurisdiction over Cemex.

a. General Jurisdiction

The constitutional requirement for a court to exercise general jurisdiction over a defendant, as compared to specific jurisdiction, is “considerably more stringent.” *Purdue*, 338 F.3d at 787. The minimum contacts “must be so extensive to be tantamount to [defendant] being constructively present in the state to such a degree that it would be fundamentally fair to require it to answer in an Indiana court in *any* litigation arising out of *any* transaction or occurrence taking place *anywhere* in the world.” *Id.* Contacts that may establish such constructive presence include: having offices or sales in the forum state, *IDS Life Ins. Co.*, 136 F.3d at 541; being licensed to do business in the state, *Helicopteros*, 466 U.S. at 416; owning real estate in the forum state, *see Cent. States, Se. & Sw. Areas Pension Fund v. Phencorp Reinsurance Co.*, 440 F.3d 870, 877 (7th Cir. 2006); and having employees in that state, *see id.*

However, these contacts, on their own, may not be sufficient to establish general jurisdiction over a nonresident defendant. *See, e.g., Charlesworth v. Marco Mfg. Co.*, 878 F. Supp. 1196, 1201–02 (N.D. Ind. 1995) (finding court did not have general jurisdiction over

defendant where plaintiff was only employee in Indiana and defendant's sales in Indiana were not significant); *Reynolds & Reynolds Holdings, Inc. v. Data Supplies, Inc.*, 301 F. Supp. 2d 545, 551 (E.D. Va. 2004) (adopting view that registering with forum state and appointing an agent for service of process do not amount to a consent of general personal jurisdiction).

While Cemex asserts that its operations in Indiana only constitute a small portion of its business and thus general jurisdiction is improper, the court disagrees. The facts demonstrate that Cemex's contacts are continuous and systematic. Cemex is registered to do business in the State of Indiana and has appointed an agent to accept service of process in Indiana. Further, Cemex, through Kosmos, owns and operates two distribution terminals in Indiana, one in Mt. Vernon and one in Indianapolis. It owns the property on which the Indianapolis terminal is located and leases the property on which the Mt. Vernon facility is located, paying real estate taxes on that property. Purposefully establishing these business locations in Indiana to further the distribution of Cemex's products is certainly not "unilateral" or "random." *Burger King*, 471 U.S. at 475. Rather, Cemex establishing these continuous contacts with the state demonstrates its purposeful availment of the privilege of doing business in Indiana. *Hanson*, 357 U.S. at 253.

In addition to the above contacts, Cemex employs four individuals in Indiana, who work in the distribution terminals. In 2007, Cemex sold products to eleven customers in Indiana and made eighteen deliveries to three of those customers in Indiana. In 2006, Cemex did over \$16 million in sales in Indiana. While Cemex argues that its sales in Indiana only constitute 0.35% of its national sales and are therefore insufficient to establish general jurisdiction, "it is the overall nature of the activity, rather than its quantitative character that must be analyzed to determine whether the court has personal jurisdiction." *Eli Lilly & Co. v. Mayne Pharma (USA), Inc.*, 504 F. Supp. 2d 387, 395 (S.D. Ind. 2007) (internal quotations omitted).

While any one of the above facts alone may not be sufficient to establish jurisdiction, the court finds that, as a whole, these facts demonstrate that Cemex has continuous and systematic contacts with Indiana such that the “minimum contacts” requirement of general jurisdiction are satisfied.

Once plaintiff has established that defendant purposefully established minimum contacts with the forum state, the court must determine whether exercising jurisdiction over defendant would comport with “fair play and substantial justice.” *Burger King*, 471 U.S. at 477 (quoting *Int’l Shoe*, 326 U.S. at 320).

These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required. On the other hand, where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.

Id. (internal citations omitted). In this case, the parties do not argue that the considerations of “fair play and substantial justice” otherwise alter the court’s jurisdiction analysis. Thus, for the reasons stated in the court’s minimum contacts analysis above, the court finds that exercising general jurisdiction over Cemex comports with fair play and substantial justice. This court therefore has general personal jurisdiction over Cemex.

b. Specific Jurisdiction

Alternatively, Plaintiff argues that even if Cemex’s contacts are insufficient to establish general jurisdiction, this court has specific jurisdiction over Cemex.

Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, this ‘fair warning’ requirement [of the Due Process Clause] is satisfied if the defendant has ‘purposefully directed’ his activities at residents of the forum, [] and the litigation results from alleged injuries that ‘arise out of or relate to’ those activities.

Burger King, 471 U.S. at 472–73 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984) and *Helicopteros*, 466 U.S. at 414).

To assess Cemex’s contacts for specific jurisdiction, the court must first determine whether it will treat the present action as a simple contract dispute or a tort action. In *American Family Mutual Insurance Co. v. Williams*, this court treated an insurance policy dispute as a simple contract action where the issue was the scope of an insurance policy’s coverage. 839 F. Supp. 579, 583 (S.D. Ind. 1993). However, in *State Farm Mutual Automobile Insurance Co. v. Estate of Bussell*, also involving an insurance policy dispute, this court treated the action as one in tort because the primary issues were of tort law, not insurance policy interpretation. 939 F. Supp. 646, 649–50 (S.D. Ind. 1996). In the present case, the primary issue is whether the policy issued by Plaintiff to Landers covers the losses alleged in the underlying complaint filed by Cemex in Kentucky. Clearly, the primary issue here is one of insurance policy interpretation. Thus, for purposes of analyzing Cemex’s contacts to determine whether the court has specific jurisdiction over it, the court treats the present case as a simple contract dispute.

Plaintiff argues that the court has specific jurisdiction over Cemex because it hired LMS and Landers, both Indiana corporations, in the underlying action. However, as discussed above, this case is a contract dispute primarily between Plaintiff, the insurance company, and Landers, the insured. Cemex was not a party to the insurance contract. Simply because, in a separate action, Cemex now seeks to recover damages from Landers, which may or may not be covered by Landers’ insurance policy issued by Plaintiff, does not give this court specific jurisdiction over Cemex. The present case does not arise out of any alleged injury Cemex has caused Plaintiff as a result of Cemex’s activities in Indiana. As such, this court does not have specific jurisdiction over Cemex.

Because Plaintiff has met its prima facie burden to show that this court has general personal jurisdiction over Cemex, although it lacks specific personal jurisdiction, Cemex's motion to dismiss under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction is **DENIED**.

B. Motion to Dismiss or Transfer for Improper Venue

Cemex next moves to dismiss or transfer this case for improper venue. Title 28, Section 1391(a) of the United States Code, which governs venue, provides: "A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State" 28 U.S.C. § 1391(a)(1). For purposes of venue under § 1391, "a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." 28 U.S.C. § 1391(c).

As the court held above, Cemex is subject to general personal jurisdiction in the State of Indiana, based, among other things, on its distribution terminals located in Mt. Vernon and Indianapolis, both in the Southern District of Indiana. Thus, Cemex not only resides in Indiana, it resides in the Southern District of Indiana. Landers and LMS, the other two defendants, are both Indiana corporations with offices in the Southern District of Indiana. Section 1391(a)(1) states that where all defendants reside in the same state, such as here, venue is proper in a judicial district where any defendant resides. Because all Defendants reside in the Southern District of Indiana, venue in this court is clearly proper. Cemex's motion to dismiss or transfer for improper venue is therefore **DENIED**.

C. Cemex's Motion to Transfer for Convenience

Cemex last argues that even if jurisdiction and venue in this court are proper, the present

action should otherwise be transferred to the Western District of Kentucky under 28 U.S.C. § 1404(a) because it is a more convenient forum. Section 1404(a) provides: “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 movant bears the burden “of establishing, by reference to particular circumstances, that the transferee forum is *clearly* more convenient.” *Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 219–20 (7th Cir. 1986) (emphasis added). It is within the discretion of the district court to adjudicate motions to transfer under § 1404(a) according to an “individualized, case-by-case consideration of convenience and fairness.” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)). “Transfer is appropriate under § 1404(a) where the moving party establishes that (1) venue is proper in the transferor district, (2) venue is proper in the transferee district, and (3) the transfer will serve the convenience of the parties, the convenience of the witnesses, and the interest of justice.” *State Farm*, 939 F. Supp. at 651.

As the court discussed above, venue is proper in this district. Plaintiff does not dispute that venue is proper in the Western District of Kentucky, only that it is not more convenient. Therefore, the court’s analysis will focus on whether Cemex has established that transferring this case will (1) be more convenient for the parties, (2) be more convenient for the witnesses, and (3) serve the interest of justice.

1. Convenience of the Parties

Cemex argues that the Western District of Kentucky is more convenient for the parties because Plaintiff’s choice of forum in Indiana, which is not its home forum, is entitled to less deference, and because all the parties are involved in the underlying litigation in Kentucky.

Plaintiff argues, on the other hand, that Landers, the insured under the insurance policy at issue, resides in this district.

Generally, plaintiff's choice of forum is given deference. *State Farm*, 939 F. Supp. at 651. However, when plaintiff sues outside of his home forum, that choice is given less weight, and the location of defendant's residence becomes more important in determining the convenience of the parties. *Kendall U.S.A., Inc. v. Cent. Printing Co.*, 666 F. Supp. 1264, 1268 (N.D. Ind. 1987). Here, Plaintiff sued outside its home forum of Illinois or New York. Thus, the fact that Cemex resides in Kentucky, where it seeks to transfer the case, carries some weight in the court's consideration of the convenience to the parties. However, the parties in this case are not just Plaintiff and Cemex. The other two Defendants, LMS and Landers, both reside in Indiana. More notably, the dispute in the present case involves the interpretation of an insurance policy Plaintiff issued to Landers, an Indiana resident. Considering Plaintiff's choice of forum in this District, albeit that choice is entitled to less deference, combined with Landers' and LMS's residence in this District, Cemex fails to demonstrate that transferring this case to the Western District of Kentucky is more convenient for the parties.

2. Convenience of the Witnesses

Cemex next argues that transferring this case to Kentucky would be more convenient for the witnesses because most of the witnesses to the underlying action, which is relevant to determine whether the insurance policy at issue covers the damage alleged in that case, are in Kentucky. Plaintiff responds that Cemex has identified no particular witnesses for whom litigating in Kentucky would be more convenient.

In its reply brief to the present motion, however, Cemex identified a number of potential witnesses who live in Kentucky and for whom transferring this case to the Western District of

Kentucky would be more convenient. Specifically, Cemex identifies witnesses who would testify about the underlying events that resulted in the alleged damage to Cemex's property in Kentucky. While this testimony may not relate directly to the facts surrounding the conclusion of the insurance policy at dispute in the present action, such testimony will certainly be relevant in ascertaining the type of damages Cemex allegedly incurred and whether Landers' insurance policy covers those damages. Thus, the court finds that the convenience of the witnesses weighs in favor of transfer.

3. Interest of Justice

"The 'interest of justice' is a separate component of a § 1404(a) transfer analysis, and may be determinative in a particular case, even if the convenience of the parties and witnesses might call for a different result." *Coffey*, 796 F.2d at 220 (internal citations omitted). Factors considered in the interest of justice analysis "relate to the efficient administration of the court system." *Id.* at 221. The interest of justice may be served by transferring the case to a forum where the parties would receive a speedier trial and the case could feasibly be consolidated with related litigation. *Id.*

As previously discussed, the underlying case bringing rise to the present insurance dispute is pending in the Western District of Kentucky. Substantial discovery regarding Cemex's alleged property damage, which will be relevant to the present case, has already occurred. The judge in that case is more familiar with the underlying facts that will be relevant to the interpretation of the insurance policy in this case. Clearly, transferring this case to the Western District of Kentucky, where it may feasibly be consolidated with the underlying action, will promote the efficient administration of the court system. As such, Cemex has met its burden to demonstrate that transferring this case will be in the interest of justice.

Considering all the facts in this case, Cemex has met its burden to show that transferring this case to the Western District of Kentucky is clearly more convenient because it is more convenient for the witnesses and will serve the interest of justice.

IV. Conclusion

For the reasons set forth above, Cemex's motion to dismiss or transfer (Docket # 17) is **GRANTED** in part and **DENIED** in part. Cemex's motion to dismiss for lack of personal jurisdiction and improper venue is **DENIED**. However, Cemex's motion to transfer under 28 U.S.C. § 1404(a) is **GRANTED**. This court therefore **TRANSFERS** this case to the **WESTERN DISTRICT OF KENTUCKY, LOUISVILLE DIVISION**.

SO ORDERED this 24th day of July 2008.

s/ *Richard L. Young*
RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

Electronic copies to:

Douglas B. Bates
STITES & HARBISON, LLP
dbates@stites.com

Joseph A. Hammer
HAMMER & ASSOCIATES
jahammer@bellsouth.net

Joseph L. Hardesty
STITES & HARBISON PLLC
jhardesty@stites.com

Ira S. Lipsius
SCHINDEL FARMAN LIPSIUS GARDNER & RABINOVICH, LLP
ilipsius@sfl-legal.com

Donald R. Wright
Rudolph, Fine, Porter & Johnson, LLP
drw@rfpj.com