

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>JORDAN’S MEATS,</b>	)	
	)	
<i>Plaintiff</i>	)	
	)	
<b>v.</b>	)	<b><i>Docket No. 98-7-P-C</i></b>
	)	
<b>SOUTHWESTERN CARRIERS, INC.,</b>	)	
	)	
<i>Defendant</i>	)	

***MEMORANDUM DECISION ON DEFENDANT’S MOTION FOR CHANGE OF VENUE***

The defendant, Southwestern Carriers, Inc., moves pursuant to 28 U.S.C. § 1404 to transfer this action to the United States District Court for the Northern District of Texas where an action between the defendant and the insurance carrier to which it presented a claim based on the events that give rise to the instant action is currently pending. I deny the motion.

Section 1404(a) of Title 28 of the United States Code 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.” Factors to be considered by the court to which a motion for transfer is brought include “the convenience of the parties and witnesses, the order in which jurisdiction was obtained by the district court, the availability of documents, and the possibilities of consolidation.” *Cianbro Corp. v. Curran-Lavoie, Inc.*, 814 F.2d 7, 11 (1st Cir. 1987). The burden is on the party seeking transfer to show that transfer is warranted. *Blinzler v. Marriott Int’l, Inc.*, 857 F. Supp. 1, 3 (D. R. I. 1994).

In considering the convenience of the parties, transfer of this action to the Northern District of Texas would serve the convenience of the defendant, which has its offices there, but would leave the plaintiff, a Maine corporation with offices in Portland, Maine, inconvenienced by the change. The general rule in the First Circuit has long been that “the federal district court which first obtains jurisdiction of the issues and the parties should proceed to adjudication.” *Small v. Wageman*, 291 F.2d 734, 736 (1st Cir. 1961). This court will not disturb a plaintiff’s choice of venue in the absence of evidence that predominates in favor of transfer, particularly when the plaintiff is a resident of the chosen forum. *Scott v. Jones*, 984 F. Supp. 37, 46-47 (D. Me. 1997). In this case, the fact that the action pending in the Northern District of Texas does not involve the plaintiff in this action is significant. While some of the underlying facts in both cases may be the same, the claims at issue are not. In Texas, the court presumably will be asked to determine whether the defendant has coverage under a policy of insurance for the loss of the shipment carried by the defendant from the plaintiff’s Maine place of business part of the way to its destination. In this court, the issue is whether the defendant is liable to the plaintiff for the value of the lost shipment, under theories of breach of contract, negligence, and violation of the Uniform Commercial Code, completely independent of the existence of any insurance. Complaint (Docket No. 1) at 3-4.

The Northern District of Texas would be more convenient for the five witnesses listed by the defendant, but not for the two witnesses listed by the plaintiff, both of whom are residents of Maine. Transfer “is inappropriate if the effect is merely to shift inconvenience from one party to another.” *Buckley v. McGraw-Hill, Inc.*, 762 F. Supp. 430, 439 (D. N. H. 1991); *see also Van Dusen v. Barrack*, 376 U.S. 612, 645-46 (1964) (“Section 1404(a) provides for transfer to a more convenient forum, not a forum likely to prove equally convenient or inconvenient.”). The defendant argues that

the inconvenience would not merely be shifted to the plaintiff by the transfer it seeks because it lists more witnesses than does the plaintiff. However, it is significant that two of the witnesses listed by the defendant are its employees. “A defendant’s motion to transfer under section 1404(a) may be denied when the witnesses are employees of the defendant and their presence can be obtained by the party.” *Ashmore v. Northeast Petroleum Div. of Cargill, Inc.*, 925 F. Supp. 36, 38 (D. Me. 1996).

Another witness is listed as an expert, and the defendant states in its reply memorandum that a fourth may also be named as an expert witness. Defendant’s Reply to Plaintiff’s Objection to Defendant’s Motion for Change of Venue (Docket No. 6) at 3 n.2. The defendant can obtain the presence of its expert witnesses without resort to compulsory process. The fifth listed witness is the insurance adjuster who investigated the loss at issue. It is not at all clear what relevance this individual’s testimony would have to the claims raised in the complaint in this action.

The defendant asserts that it will seek consolidation with the action against its insurer if this action is transferred. It does not address the availability of documents. The case law on which it relies involves actions in which the parties in each of the two cases at issue involved the same parties and the same issues. That is not the case here. The plaintiff points out, citing the Statistical Tables for the Federal Judiciary dated June 30, 1997, that the average civil caseload per judge in the Northern District of Texas is 352 and that the median time to trial is 16 months. The docket of this court is significantly less congested. This matter is likely to be resolved well before the related insurance-coverage action is resolved in Texas. This is a valid point for consideration by the court under the “interest of justice” language of section 1404(a). *Ashmore*, 925 F. Supp. at 39-40. A prompt trial is relevant to both the convenience of parties and the interest of justice. *Id.*

The evidence does not predominate in favor of transfer. *Scott*, 984 F. Supp. at 46-47.

Accordingly, the motion for change of venue is **DENIED**.

*Dated this 5th day of March, 1998.*

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*David M. Cohen*  
*United States Magistrate Judge*