

**Case Name:** Laverty v. CSX Transportation, Inc.

**Date Decided:** September 15th, 2010

**Originally Filed in:** Illinois (state)

**Decided by:** Illinois 5th District Appellate Court (State)

**Court:** Appellate Court of Illinois for the Fifth District

**Judge:** Judge Wexstten

**Citation:** Laverty v. CSX Transportation, Inc., 2010 WL 3623583 (Ill. App. 5th 2010)

**Background:**

Thomas Laverty worked as a railway fireman and engineer from 1940 to 1942 and from 1945 to 1979. Thomas Laverty's wife, Claudious Laverty, filed suit against CSX Transportation, Inc. (CSX) asserting that during the course of his employment he was exposed to and inhaled, ingested, and absorbed asbestos fibers, causing his death from mesothelionma in November 2007. Mr. Laverty died in Texas, worked mostly in Michigan and received medical care during his employment from a physician in Michigan. As a result, CSX filed a motion to dismiss on the basis of *forum non conveniens*. In it's motion, CSX argued it would be inconvenient to defend the lawsuit in Illinois when the primary location of the exposure is in Michigan and as a result all of the investigation and discovery would take place in Michigan and Texas. The circuit court, however, denied CSX's moton to dismiss. CSX appealed the lower court's ruling.

**Issue:**

Did the lower court err in failing to grant CSX's motion to dismiss on the basis of *forum non conveniens*?

**Overall Issues Discussed or Touched Upon in this Case:**

- *Venue Issues*
- *Summary Judgment - Defendant Legal Granted*
- *Procedural Issues - State*

**Held:**

The Illinois appellate court began its analysis by providing its jurisdiction statute: an action must be commenced (1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county or (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose. The present case provides more than one potentially proper forum and when the court is faced with this situation it must determine the most appropriate forum. In situations where multiple forums are proper the court's decision in determining the most appropriate forum should be based on considerations of fairness and sensible and effective judicial administration of the case. Specifically, the trial court must balance private-interest factors affecting the convenience of

the parties and the public-interest factors affecting the court's administration of justice. As such, a trial court has considerable discretion in determining whether to grant a *forum non conveniens* motion and will only be reversed if the court abused its discretion. Private interest factors include a wide variety of considerations such as: the convenience of the parties, the relative ease of access to sources of testimonial, documentary, and real evidence, and all other practical considerations that make the trial of a case easy, expeditious, and inexpensive—for example, the availability of compulsory process to secure the attendance of unwilling witnesses, the cost to obtain the attendance of willing witnesses, and the ability to view the premises, if appropriate. Meanwhile, the public-interest factors consider: having localized controversies decided in the local forum, administrative concerns, including the congestion of court dockets, and the imposition of jury duty upon residents of a county or state with little connection to the litigation. The trial court has the duty to look at all of these factors and base its decisions off of the totality of the circumstances rather than on any single factor; but, while also giving deference to the plaintiff's choice of forum. In applying the facts of this case with the factors for determining whether a forum is proper, the appellate court held that the lower court erred in its denial of CSX's motion and reversed and remanded the issue to the lower court. It found that Illinois has no connection to this case—the parties are not located here, the alleged exposure did not occur here, and the witnesses are not located here. The record strongly indicates that a trial in Michigan would better serve the convenience of the parties and the ends of justice.

**Comments:**

**In resolving forum non conveniens questions, the trial court must balance private-interest factors affecting the convenience of the parties and public-interest factors affecting the administration of the court.**