

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RELIANCE STANDARD LIFE INSURANCE CO.,

Plaintiff,

v.

ROBERTA A. MATULA, THE EUGENE J. MATULA
LIVING TRUST, RENEE M. SCHMELING, SCOTT
A. MATULA and JILL MARIE MATULA,

Defendants.

ORDER

04-C-674-C

Plaintiff Reliance Standard Life Insurance Co. brings this action of interpleader against defendants Roberta Matula, The Eugene J. Matula Living Trust, Renee Schmeling, Scott Matula and Jill Marie Matula to avoid multiple liability under a life insurance policy. In an order dated May 18, 2005, the clerk of court granted plaintiff's motion for an entry of default as to defendant Todd E. Matula. Jurisdiction is present. 28 U.S.C. § 1332.

Presently before the court is a motion to dismiss for improper venue under Fed. R. Civ. P. 12(b)(3) brought by defendants Renee Schmeling, Scott Matula and Jill Matula. Defendant Roberta Matula did not join in the motion because she objects to the the delay that dismissal and refiling will cause. Alternatively, all of the defendants, except defendant

The Eugene J. Matula Living Trust request that the court transfer this case to the Eastern District of Wisconsin pursuant to 28 U.S.C. § 1406(a).¹

Venue is controlled in federal courts by 28 U.S.C. § 1391. Section (a) determines venue in diversity cases:

(a) 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, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which the defendants are subject to personal jurisdiction at the time the action is commenced, if there is no district in which the act may otherwise be brought.

According to defendants, three of the defendants reside in the Eastern District of Wisconsin and one lives in New York. The “residency” of the Trust is not known. In any event, because all of the defendants do not reside in the same state, § 1391(a)(1) does not apply. Defendants and plaintiff agree that a substantial part of the events or omissions giving rise to the claim occurred in the Eastern District of Wisconsin. The complaint bears this out. The claim arose out of a dispute concerning benefits from a life insurance policy

¹Defendant the Eugene J. Matula Living Trust is not represented in this action. The trust is too small to make it feasible for its administrator, James L. Tewalt, to hire a lawyer to appear on its behalf and my attempts to find a lawyer willing to represent the trust pro bono has failed. The lack of joinder of the Trust in the motion to dismiss is of no moment, however, because it is clear from the submissions of the remaining parties that this case is properly venued in the Eastern District of Wisconsin.

issued and held by an insured in the Eastern District of Wisconsin.

Plaintiff admits that this case belongs in the Eastern District of Wisconsin. Indeed, it claims that it made a clerical error when it filed its case in this district as opposed to the Eastern District. Nevertheless, I will not dismiss the case and require plaintiff to refile in the Eastern District, because that procedure would simply cause delay in the resolution of the suit and greater expense for all of the parties.

28 U.S.C. § 1406(a) permits a district court, in the interest of justice, to transfer a case “to any district or division in which it could have been brought.” Because the parties agree that venue is improper in this district and that this case should be transferred to the Eastern District, I will grant defendants’ alternative motion to transfer under 28 U.S.C. § 1406(a).

ORDER

IT IS ORDERED that

1. The motion to dismiss for improper venue of defendants Renee Schmeling, Scott Matula and Jill Matula is DENIED;

2. The motion of defendants Roberta A. Matula, Renee M Schmeling, Scott A. Matula and Jill Marie Matula to transfer venue to the United States District Court for the Eastern District of Wisconsin pursuant to 28 U.S.C. § 1406(a) is GRANTED.

3. The clerk of court is directed to send the file in this case to the Eastern District of Wisconsin.

Entered this 18th day of July, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge