

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

_____	)	
GENERAL ELECTRIC COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 08-591-TSE/JFA
	)	
ADRIANA KOECK,	)	
	)	
Defendant.	)	
_____	)	

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S  
MOTION TO DISMISS FOR LACK OF SUBJECT  
MATTER JURISDICTION AND MOTION TO TRANSFER VENUE**

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**I. INTRODUCTION AND RELEVANT FACTS<sup>1</sup>**

Defendant Adriana Koeck's Motions to Dismiss and Transfer Venue are nothing more than an effort to delay the Court's granting of the injunctive relief that the facts warrant here. With respect to Koeck's Motion to Dismiss, plaintiff General Electric Company ("GE") easily satisfies the \$75,000.00 amount in controversy standard for the federal jurisdictional minimum. In fact, it is presumed that GE meets the standard unless Koeck can show to a *legal certainty* that GE did not have a reasonable, good faith basis, at time suit was commenced, to believe that its recovery would meet the jurisdictional threshold. Notably, GE need not establish that the amount it will actually recover at the end of this case will exceed the jurisdictional amount, or even that it will succeed on each claim.

GE has expended time, money, and resources well in excess of the \$75,000 jurisdictional minimum by responding to a *New York Times* reporter; by engaging in correspondence and communications with Koeck's counsel in a useless effort to obtain a return of purloined documents; by attempting to prevent any further unauthorized disclosures of protected information; and by conducting a forensics analysis of Koeck's computer to determine what information she improperly retained and disclosed. In addition, GE has been required to engage outside counsel as well as a forensics expert, and its internal counsel similarly have expended significant hours responding to Koeck's breaches. All of these pre-litigation damages stem directly from Koeck's wrongful retention and disclosure of GE's documents in violation of her Confidentiality Agreement, as well as her fiduciary and ethical obligations as a lawyer. (*See* Declaration of Sarah Bouchard, which sets forth pre-litigation damages in protecting the value of GE's confidential information, attached as Exhibit A).

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<sup>1</sup> GE refers the Court to its previous filings, and, in particular, to its Memorandum in Support of Motion for Preliminary Injunction, for additional factual background.

More recently, Koeck's wrongful disclosures to a news reporter led to the publication of a news article containing false, malicious and highly misleading statements about GE. Specifically, on Monday, June 30, the same news reporter, now with a separate publication, used information she supplied to publish a news article containing false and malicious statements about GE. The news article appeared on several websites and in a Brazilian newspaper.<sup>2</sup> The disclosure of such false and misleading information has damaged GE's reputation and its ability to maintain public goodwill, for which it is also entitled to recovery. Importantly, Koeck argues that no damages existed because no article had been published. Given that the article has now been published and disseminated through several news outlets, thereby damaging GE's reputation and its ability to maintain public goodwill, Koeck lacks any good faith basis (based on her own arguments) to continue to argue the amount in controversy requirement has not been met.

Koeck's Motion to Transfer Venue to the Commonwealth of Kentucky or the District of Columbia was similarly brought without basis in law or fact. The factors warranting denial of Koeck's Motion to Transfer are clear and straightforward. Despite Koeck's arguments to the contrary, GE's choice of forum is entitled to substantial deference and Koeck cannot make the requisite showing that the convenience of the parties and the interest of justice favors transferring this action to the Commonwealth of Kentucky or the District of Columbia. A crucial fact that Koeck deliberately overlooks in her Motion is that she resides and works within the Eastern District of Virginia. It is, therefore, not credible for Koeck to suggest that this forum is inconvenient for her. In addition, the documents and protected information at the heart of this

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<sup>2</sup> After GE notified the website that the article was false, misleading, and based on privileged and confidential documents, the site agreed, as an interim measure, to remove the article pending further discussions between GE and the website.

case are presumed to be present in the district and any monitoring or oversight of the requested injunctive relief would occur within the district. Further, Koeck also offers nothing more than speculation that the location of potential witnesses and electronic documents are outside of the district, but such speculation is legally insufficient to justify a venue transfer. She also ignores that it would be inconvenient and inefficient for the parties, who already have retained counsel licensed to practice within the Eastern District of Virginia, to obtain new counsel in a different forum. Furthermore, the location of events does not favor transfer as GE has good reason to believe that at least some, if not all, of the unlawful disclosures of its protected information were made by Koeck from within the district and she continues to breach her Confidentiality Agreement within this district as well.

Finally, the fact that Kentucky law is likely to be applied to the substantive claims, and that the District of Columbia bar rules are likely to apply to Koeck's actions as an attorney, does not justify transfer. Regardless of where the case is adjudicated, whether it is in the Commonwealth of Kentucky, the District of Columbia or the Eastern District of Virginia, the adjudicating court will need to apply the law of a foreign jurisdiction. In short, GE's choice of forum is entitled to substantial weight. Because Koeck has failed to offer any legitimate justification for transferring the case to a different venue, the Court should also deny Koeck's Motion to Transfer.

## **II. ARGUMENT**

### **A. The Court Should Deny Koeck's Motion To Dismiss Because GE Has Shown Ample Factual Support For Its Claims.**

GE has met the requisite jurisdictional amount to support diversity jurisdiction. To dismiss a complaint for lack of subject matter jurisdiction for failure to meet the amount in controversy requirement, it must appear to a legal certainty that the claims set forth in the

Complaint are worth less than the required jurisdictional threshold. *Rasnic v. Merial Ltd.*, No. CIV.A.2:07cv00017, 2007 WL 1378525, at \*1 (W.D. Va. May 8, 2007) (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)). In the leading jurisdictional amount case, *St. Paul Mercury Indemnity Company v. Red Cab Company*, the Supreme Court described the legal certainty test this way:

The rule governing dismissal for want of jurisdiction in cases brought in the federal court is that, unless the law gives a different rule, the sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal. The inability of plaintiff to recover an amount adequate to give the court jurisdiction does not show his bad faith or oust the jurisdiction. Nor does the fact that the complaint discloses the existence of a valid defense to the claim. But if, from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never was entitled to recover that amount, and that his claim was therefore colorable for the purpose of conferring jurisdiction, the suit will be dismissed.

*St. Paul Mercury Indem. Co.*, 303 U.S. at 288-289. According to this standard, even when the complaint discloses a valid defense to a plaintiff's action, the sum claimed by the plaintiff still controls. *Work v. U.S. Trade, Inc.*, 747 F. Supp. 1184, 1187 (E.D. Va. 1990) (citing *Smithers v. Smith*, 204 U.S. 632 (1907)). Further, "the jurisdictional amount test is not dependent upon the amount actually recovered by the plaintiff at the end of the case. Otherwise, the district court's subject matter jurisdiction would be uncertain throughout the litigation and some adjudication of the merits would be subject to a condition subsequent." 14B Charles Alan Wright *et al.*, *Determination of the Amount in Controversy – General Rules and the Legal Certainty Test*, Federal Practice and Procedure § 3702 (3d ed. 2008).

"In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation." *Hunt v. Wash. State*

*Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977). Thus, the amount in controversy is measured by the value of what is at stake to either party. *Dixon v. Edwards*, 290 F.3d 699, 710 (4th Cir. 2002). Stated differently, the amount in controversy in cases seeking injunctive relief is “the value of the right to be protected or the extent of the injury to be prevented.” *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1252-53 (5th Cir. 1998) (quoting *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983)).

Under this standard, Koeck has failed to show to a legal certainty that the amount in controversy has not been met and, as a result, the Court should deny Koeck’s Motion to Dismiss. Here, GE alleges irreparable harm to its reputation through: (1) Koeck’s malicious publication of GE’s protected information to multiple entities, particularly to a reporter who then published the information in an article; (2) Koeck’s deliberate breach of her contractual obligations and professional responsibilities; and (3) Koeck’s unlawful conversion of valuable confidential information and trade secrets. Therefore, it is more than apparent that the amount in controversy requirement has been satisfied. In fact, GE considers its professional reputation to be its greatest asset and it has worked tirelessly to develop and preserve an unparalleled reputation of “unyielding integrity.” (See GE’s Code of Conduct, “The Spirit and The Letter,” attached at Exhibit B). In fact, as reflected in GE’s “Statement of Integrity,” GE has been named the world’s most respected and admired company in several surveys of CEOs. *Id.* (reminding employees that “...only one kind of performance will maintain our reputation, increase our customers’ confidence in us and our products and services, and enable us to grow, and that is performance with integrity.”) As GE’s Code of Conduct makes clear, its hard-earned, reputation for stellar integrity and governance, which is the object of this litigation and what will determine

the “value” of the amount in controversy, is based upon GE’s “high standards of governance and compliance.” (See Exhibit B).

**1. GE’s Business Confidences and Goodwill Have A Value In Excess of \$75,000.**

In this matter, the object of the litigation by which the amount in controversy is measured is the protection of GE’s business confidences and goodwill – a business value that far exceeds \$75,000.<sup>3</sup> Here, GE seeks to prevent further damage to GE’s name, business reputation, and goodwill – damage that Koeck inflicted by her unlawful retention and dissemination of protected information and documents. In a similar case, *Union Pacific R.R. Co. v. Mower*, 219 F.3d 1069, 1071 (9th Cir. 2000), a corporation sued a former employee to prevent the disclosure of its confidential information. That former employee, who, like Koeck, was privy to extensive confidential information, argued that the amount in controversy of \$75,000 had not been adequately established by the plaintiff corporation. The court rejected this argument, noting that:

[The former employee] argues that the district court lacked jurisdiction because [the company] failed to establish adequately that the amount in controversy exceeded \$75,000. We are not persuaded. *The value to [the company] of protecting its confidential information from disclosure far exceeded the requisite jurisdictional amount.*

*Union Pacific R.R. Co.*, 219 F.3d at 1071 (emphasis added) (citing *Budget Rent-A-Car, Inc. v. Higashiguchi*, 109 F.3d 1471, 1473 (9th Cir. 1997)). Indeed, and as stated above, the efforts GE made *prior to this litigation* in protecting its confidential information from disclosure already exceed the jurisdictional amount, not to mention the other damages it seeks through this action. (See Ex. A).

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<sup>3</sup> GE asks the Court to take judicial notice of its First Quarter 2008 Financial Statement, which values GE’s goodwill at a value of in excess of \$80 billion dollars. See Exhibit C (excerpt).

Koeck, however, argues that GE's "repetition of the round \$100,000 dollar amount suggests that the company has made no effort to ascertain its actual damages, if any." (Koeck's Brief, at p. 6). This statement mischaracterizes the standard pleading convention followed by GE in alleging damages in its complaint. GE did not merely repeat a "round" number, rather it offered a conservative estimate that, for each of the five counts in the Complaint, it has suffered damages it believes in good faith *to be in excess of \$100,000 dollars*. (Complaint, ¶¶45, 50, 57, 67, 75). The law recognizes that "the jurisdictional amount is determined by the amount of the plaintiff's original claim, provided that the claim is made in good faith." *Wiggins v. N. Am. Equitable Life Assurance Co.*, 644 F.2d 1014, 1016-127 (4th Cir. 1981). Koeck has not offered any evidence that GE's claims were made in bad faith, and, therefore, the jurisdictional amount should be determined by the amount pled in the Complaint.

**2. Koeck's Misappropriation And Disclosures Have Already Caused Significant Harm To GE, Far In Excess Of \$75,000 In Compensatory Damages.**

In her Motion to Dismiss, Koeck claims that GE did not meet the amount in controversy because no news story had been printed as a result of her inappropriate disclosures. (Koeck's Brief, at p. 6). However, it was clear at the time GE filed its Complaint that Koeck had created a lurking danger for GE through her disclosures to the press.<sup>4</sup> That danger was realized on June 30, 2008, when the publication *taxanalysts.com* ran an article based upon the protected information that Koeck maliciously leaked to the reporter (who has since left the *New York*

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<sup>4</sup> After learning in March 2008 that Koeck had provided information to a news reporter for the *New York Times*, GE expended significant economic resources to prevent further disclosures of false, misleading and confidential information. It was only after a month of information gathering, as well as various meetings with the reporter and his editors that the *New York Times* correctly decided not to run the article. Also during this time, GE, through its attorneys, wrote various letters to Koeck's attorneys in an effort to get the documents back, as well as prevent further disclosures. (*See Ex. A*).

*Times*). In addition, the article also appeared in a related publication, *Tax Notes International*, and was picked up by other news services within the US and by prominent publications in Brazil.<sup>5</sup>

In light of Koeck's public dissemination of the damaging information contained within this article, GE easily satisfies the burden for amount in controversy. Courts have recognized repeatedly that defamation claims involving much smaller reputations than the one enjoyed by GE and involving much more limited distributions of information than the *taxanalysts.com* article have satisfied the \$75,000 amount in controversy requirement. *See Burns v. King*, 160 F. App'x 108 (2d Cir. 2005) (non-precedential) (referencing district court's denial of Motion to Dismiss for failure to satisfy amount in controversy requirement where former law student sued associate law dean for defamation by sending letter to another law school saying she was no longer student in good standing); *Varga v. Heartland Hospice Servs., Inc.*, No. 05-10118, 2007 WL 2493762, at \*8 (E.D. Mich. Aug. 27, 2007) (finding that majority of plaintiff's damages arose from a defamation claim, where plaintiff alleged that false statements led to her termination even though plaintiff later withdrew her allegations of emotional injury, amount-in-controversy requirement was calculated when the claim was instituted). Given that the *taxanalysts.com* article has now been published, Koeck lacks any good faith basis to continue to argue the amount in controversy requirement has not been met, and she should have withdrawn her Motion to Dismiss.

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<sup>5</sup> Taxanalysts.com withdrew the article, at least pending further discussions, after GE brought to its attention the relevant facts and circumstances showing that the article contained numerous falsehoods and mischaracterizations.

**3. Attorneys' Fees Awarded Pursuant To An Underlying State Statute Count Toward The Amount In Controversy Requirement.**

In addition to GE's pre-litigation attorneys' fees and costs incurred in seeking to obtain Koeck's compliance with her obligations with the Confidentiality Agreement and compliance with her legal obligations to GE, the Kentucky Uniform Trade Secrets Act permits an award of reasonable attorneys' fees to GE upon a showing that Koeck willfully and maliciously misappropriated trade secrets. Ky. Rev. Stat. Ann. § 365.886. Kentucky law also permits recovery of attorneys' fees in a contract action where a defendant's actions leading up to the litigation were in bad faith. *Batson v. Clark*, 980 S.W.2d 566, 576-77 (Ky. App. Ct. 1998). Here, Koeck's disclosure to the press is particularly egregious, as her breach of confidences to the reporter can only be viewed as willful and malicious, and not for any conceivably proper purpose under any law or ethics rule.

Attorneys' fees awarded pursuant to an underlying state law have been held to count toward the amount in controversy requirement. *See Cradle v. Monumental Life Ins. Co.*, 354 F. Supp. 2d 632, 636 (E.D. Va. 2005) (noting that several appellate courts have found that amount in controversy may include attorney's fees even when an additional showing such as maliciousness must be made); *Velez v. Crown Life Ins. Co.*, 599 F.2d 471, 474 (1st Cir. 1979) (finding that attorney's fees could be included in amount in controversy when claimed under state law that awarded such fees when a party had been obstinate); *Clark v. Nat'l Travelers Life Ins. Co.*, 518 F.2d 1167, 1168-69 (6th Cir. 1975) (finding that plaintiff did not allege bad faith so attorney's fees could not be included despite statute allowing award of fees in cases of bad faith); *Batts Rest., Inc. v. Commercial Ins. Co. of Newark*, 406 F.2d 118, 120 (7th Cir. 1969) (finding that attorney's fees could be included in amount in controversy when claimed under state law that awarded such fees when insurer's refusal to pay was vexatious and without reasonable

cause). Therefore, even though GE's compensatory damages far exceed the amount in controversy requirement, its attorneys' fees should also be included in the calculation.

In short, given the damages that GE has suffered as a result of Koeck's wrongdoing and continues to suffer, it simply cannot be said that, to a legal certainty, the claims set forth in the Complaint are worth less than the required jurisdictional threshold of \$75,000. Therefore, Koeck's Motion to Dismiss for lack of subject matter jurisdiction should be denied.

**B. The Court Should Deny Koeck's Motion to Transfer Because She Has Not, And Cannot, Establish That The Convenience Of The Parties And The Interests Of Justice Favor Transferring This Action.**

In the alternative to dismissing the case, Koeck asks the Court to exercise the discretionary authority conferred by 28 U.S.C. § 1404(a) and to transfer the action to the Commonwealth of Kentucky or the District of Columbia. Assessing a motion under section 1404(a) requires the court to make two inquiries: "(1) whether the claims might have been brought in the transferee forum; and (2) whether the interests of justice and convenience of the parties and witnesses justify transfer to that forum." *Koh v. Microtek Int'l, Inc.*, 250 F.Supp.2d 627, 630 (E.D. Va. 2003). Deciding whether to transfer an action to another district is committed to the district court's sound discretion. *S. Ry. Co. v. Madden*, 235 F.2d 198, 201 (4th Cir. 1956).

A party wishing to transfer an action bears a heavy burden of showing that the balance of interests weighs strongly in her favor in a motion to transfer. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). Koeck has not remotely made such a showing. The initial choice of forum, from among those possible under the law, is a privilege given to the plaintiff. *Medicenters of Am., Inc. v. T & V Realty & Equip. Corp.*, 371 F. Supp. 1180, 1184 (E.D. Va. 1974). To overcome that privilege, a movant "bears the burden of demonstrating that the balance of convenience among the parties and witnesses is strongly in favor of the forum to which transfer is sought." *Id.*

Thus, Koeck carries a heavy burden in satisfying section 1404(a), which provides that “[f]or 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).

### 1. Plaintiff’s Choice of Forum Is Entitled To Substantial Weight

Koeck argues that the case could have been brought in the Commonwealth of Kentucky or the District of Columbia. While GE does not dispute that it could have brought this case in those forums, GE chose to file the case in the Eastern District of Virginia and “[a] plaintiff’s choice of venue is accorded great weight in a motion for transfer under § 1404(a).” *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 (1981); *see also Acterna, L.L.C. v. Adtech, Inc.*, 129 F.Supp.2d 936, 938 (E.D.Va. 2001).

Koeck suggests that a plaintiff’s choice is not given as much weight where the plaintiff’s choice of forum is not its “home forum.” (Koeck’s Brief, at p. 15-16). But not a single case cited by Koeck for this proposition actually stands for it. Rather, each case stands for the more general rule that a choice of forum is not given as much deference when it is not the “home forum” of the plaintiff *and* the case “bears little or no relation to that forum.” *See Telepharmacy Solutions, Inc. v. Pickpoint Corp.*, 238 F. Supp. 2d 741, 743 (E.D.Va. 2003) (holding that transfer was appropriate where the facts bore little relationship to the home forum and it was “*not the home forum of either plaintiff or defendant . . .*”) (emphasis added); *Koh*, 250 F. Supp. 2d at 635 (noting that where *none of the defendants or the plaintiff resided in the forum* and the record did not reflect that any infringing activity had ever occurred in the forum, transfer was warranted) (emphasis added); *Verosol B.V. v. Hunter Douglas, Inc.*, 806 F. Supp. 582, 593 (E.D.Va. 1992) (finding that transfer was appropriate and deference to plaintiff’s choice of forum was reduced where the *plaintiffs were not suing in their home forum or defendant’s home forum*

and where the cause of action was at best only tenuously related to it) (emphasis added); *Airport Working Group of Orange County, Inc. v. U.S. Dep't of Defense*, 226 F. Supp. 2d 227, 230 (D.D.C. 2002) (finding that deference to plaintiffs' forum choice is diminished where transfer is sought to plaintiffs' resident forum) (internal citations and quotations omitted).

Unlike the foregoing cases, Koeck both resides and works within the Eastern District of Virginia. Moreover, while GE is a New York corporation, it has a strong presence within the forum and regularly conducts business within its boundaries, therefore, GE is a resident of the Eastern District of Virginia for the purpose of determining whether venue is proper. *See Koh*, 250 F. Supp. 2d at 631 (explaining that the definition of "residence" is found in § 1391, which provides, in relevant part, "[f]or purposes of venue . . . 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.") (quoting 28 U.S.C. § 1391(c) (2003) and citing *L.G. Elecs. Inc. v. Advance Creative Computer Corp.*, 131 F. Supp. 2d 804, 809-10 (E.D. Va. 2001)). In addition, and as discussed below, the dispute bears great relation to this forum since Koeck resides here, the documents that GE seeks to have returned are presumably located here, and Koeck has made wrongful disclosures of GE's information from this District.

**2. Koeck Has Failed To Show That Any Of The Private Interests Favor Transfer.**

**a. Koeck has not established any party or witness inconvenience.**

Determination of a motion to transfer venue necessitates weighing the convenience to the parties and witnesses in litigating in either venue. *Acterna*, 129 F. Supp. 2d at 939. Koeck, a resident of the Eastern District of Virginia, asserts that the Commonwealth of Kentucky would be a more convenient forum for witnesses because "GE employees who will testify in this case are all employed at GE's Kentucky facility." (Koeck's Brief, at p. 16). However, this

unsupported claim is not enough to make the requisite showing as “[t]he party asserting witness inconvenience has the burden to proffer, by affidavit or otherwise, sufficient details respecting the witnesses and their potential testimony to enable the court to assess the materiality of evidence and the degree of inconvenience.” *Corry*, 16 F. Supp. 2d at 667. Therefore, particularized information, typically submitted in affidavit form, is necessary to enable the court to ascertain how much weight to give a claim of inconvenience. *Bd. of Trustees, Sheet Metal Workers Nat. Fund v. Baylor Heating & Air Conditioning, Inc.*, 702 F. Supp. 1253, 1258 (E.D.Va. 1988). Because Koeck has not proffered reliable information by identifying the witnesses she claims will be inconvenienced, nor has she specifically described their testimony, the Court cannot ascertain how much weight to give a claim of inconvenience. As a result, the argument should be disregarded.

Koeck’s claim of witness inconvenience is utterly belied by the fact that she resides and works within the Eastern District of Virginia. She cannot argue reasonably that it is inconvenient for her to litigate in the forum within which she lives and works, nor can she reasonably argue that the District of Columbia is a more convenient location than the Eastern District of Virginia. Moreover, GE regularly conducts business within the Eastern District of Virginia; therefore, Koeck cannot realistically claim that the convenience of the parties would be better served by transferring the case to either the Commonwealth of Kentucky or the District of Columbia. Finally, the parties have already secured counsel who practice within the Eastern District of Virginia to represent them in this matter. At this stage of the litigation, it would be inconvenient and inefficient for GE and Koeck to obtain new counsel and educate them on the facts of this case, which of course, would delay the proceedings. This, unfortunately, is her real and improper aim here.

In addition, Koeck claims that it would be more convenient to litigate in Kentucky because “virtually all of the documentary evidence is contained on computers at GE’s corporate facility in Kentucky.” (Koeck’s Brief, at p. 16). However, any information contained on GE’s computers in Kentucky can be easily transferred electronically to the Eastern District of Virginia. *More importantly*, the protected information that Koeck took upon her departure from GE is presumably located at her residence or at her workplace in the Eastern District of Virginia. Therefore, Koeck’s attempt to meet her burden of showing that the Commonwealth of Kentucky or the District of Columbia would be a more convenient forum is wholly inadequate because she has not made a particularized showing. Instead, she did nothing more than rely on baseless speculation about the location of witnesses and electronic documents.

**b. The location of events does not favor transfer.**

Upon Koeck’s separation from employment with GE, Koeck furtively copied and retained hundreds of pages of GE’s protected documents notwithstanding: (1) her agreement with GE to return all property and (2) her ethical obligations as an attorney for GE. Because she has refused to return said documents to GE, and because she resides and works within the Eastern District of Virginia, Koeck continues to breach her contract with GE from within the forum.

In addition, while the original unlawful retention of GE’s protected information may have occurred while Koeck was located in the Commonwealth of Kentucky, by her own admission Koeck has wrongfully disclosed GE’s protected information to multiple law firms, the U.S. Department of Labor, the Equal Employment Opportunity Commission, four other governmental agencies, and at least one news reporter in an attempt to generate negative publicity for GE. GE believes that at least some, if not all, of these unlawful disclosures of protected information were made by Koeck from within the Eastern District of Virginia given that she moved there soon

after her employment was terminated. Therefore, while certain events occurred within the Commonwealth of Kentucky, even more events relating to the present allegations have occurred within the Eastern District of Virginia.

**3. Koeck Has Failed to Show That The Interest of Justice Favors Transfer.**

The “interest of justice” category is intended to encompass all those “public interest” factors bearing on transfer that are unrelated to convenience of witnesses and parties. *Bd. of Trustees, Sheet Metal Workers Nat. Fund*, 702 F. Supp. at 1260. Koeck argues that the public interest favors transfer to the District of Columbia because of the pendency of a related Sarbanes Oxley claim there and that District of Columbia bar rules will apply. Paradoxically, Koeck also claims that the public interest favors transferring the case to Kentucky because witnesses and electronic documents are located at GE’s facility there and because Kentucky law is likely to be applied to the claims in this case and should be “decided in Kentucky by judges with substantial knowledge of the applicable law.” (Koeck’s Brief, at p. 17).

GE agrees that Kentucky law applies to the substantive claims and that the District of Columbia bar rules apply to the actions that Koeck took in her capacity as an attorney for GE.<sup>6</sup> But Koeck can point to no substantive difference between Kentucky contract law and Virginia contract law or either forum’s interpretation of the state tort claims at issue. Moreover, application of foreign law simply is not a significant factor given that federal courts routinely are called upon to apply the law of other forums. Regardless of where the case is adjudicated, whether it is in the Commonwealth of Kentucky, the District of Columbia, or the Eastern District of Virginia, the adjudicating court will need to apply the law of a foreign jurisdiction. GE has chosen the Eastern District of Virginia, in part, because of “[t]he nature of federal practice

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<sup>6</sup> Koeck’s only active bar membership is the District of Columbia.

[which] requires the Court to routinely interpret laws from jurisdictions across the nation.”

*Intranexus, Inc. v. Siemens Med. Solutions Health Servs. Corp.*, 227 F. Supp. 2d 581, 585 (E.D. Va. 2002); *see also JTH Tax, Inc. v. Lee*, 482 F. Supp. 2d 731, 739 (E.D. Va. 2007) (finding that the interest of justice did not weigh in favor of transfer because “[t]his court can familiarize itself with either Illinois or Iowa law, if it is required to do so.”).

In addition, courts within the forum have recognized that continued oversight of injunctive relief is a special consideration when a Motion to Transfer is sought in the context of a request for injunctive relief: “The prospect of having to monitor injunctive relief, if ordered, is one factor properly considered in determining whether transfer is appropriate.” *Board of Trustees, Sheet Metal Workers National Fund v. Baylor Heating and Air Conditioning, Inc.*, 702 F. Supp. 1253, 1262-63, n. 33 (E. D. Va. 1988) (denying motion to transfer) (citing *Central States, Southeast and Southwest Pension Fund v. Brown*, 587 F. Supp. 1067 (N.D.Ill. 1984)). Here, GE has asked the Court for (a) preliminary and permanent injunctive relief restraining and enjoining Koeck from further disclosing and privileged and/or confidential information that she misappropriated from GE and (b) preliminary and permanent injunctive relief compelling Koeck to return to GE all of its property and all privileged and/or confidential information in her or in her attorney’s possession. Because Koeck has been recalcitrant in acknowledging her obligations to GE and indiscriminate in disclosing GE’s confidential information to the media, to government agencies, and to her attorneys, GE anticipates that even if it were to obtain the injunctive relief that it seeks, this matter will require continued oversight and close monitoring of Koeck’s actions well into the future. Because Koeck lives and works within the confines of the forum, the Eastern District of Virginia is the most logical forum in which to hear the case

because any necessary oversight or continued monitoring would be most effective from a location proximal to Koeck's home and work.

Finally, the interests of justice would be better served if the Court retains venue because the action likely would proceed to trial faster in the Eastern District of Virginia than it would in the Commonwealth of Kentucky or the District of Columbia. *See Intranexus, Inc.*, 227 F. Supp. 2d at 585 (denying motion to transfer and noting that docket conditions are a relevant, if minor, consideration which must be viewed in light of other relevant factors in deciding a motion to transfer). Indeed, this Court is scheduled to hear GE's motion for preliminary injunction simultaneously with Koeck's Motion to Dismiss, and thus will already have knowledge of the issues in this lawsuit. Koeck has failed to show that private or public interests favor transfer to another forum, therefore, the Court should deny the instant Motion to Transfer.

### **III. CONCLUSION**

Given the facts of this case, and Koeck's clear violation of her contractual, fiduciary, and ethical obligations to maintain GE's confidences and secrets (and her continued threat to disclose GE's confidences and secrets), GE has clearly met the amount in controversy requirement. In addition, Koeck has failed to show that the claims at issue in this lawsuit would be better adjudicated in the Commonwealth of Kentucky or the District of Columbia. Accordingly, for these reasons and those set forth above, GE respectfully requests that the Court deny Koeck's Motions to Dismiss GE's Complaint and to Transfer Venue.



**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of July, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send notification of such filing (NEF) to the following:

Robert B. Nealon  
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I also hereby certify that the foregoing was served by electronic mail on the following non-users:

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