

# The EDVA Shows Its Reluctance to Transfer Cases Brought by Virginia Plaintiffs

## Virginia Rocket Docket Blog

### RELATED PROFESSIONALS

[Dabney J. Carr](#) | [Robert A. Angle](#) | [Laura Anne Kuykendall](#)

---

A long line of cases in the EDVA demonstrates that defendants seeking to transfer venue out of the EDVA under 28 U.S.C. 1404(a) face an uphill climb if the plaintiff is a Virginia resident.

First, where the plaintiff is a Virginia resident, the EDVA will give the choice of forum significant deference. Thus, a Virginia resident starts with a considerable leg up in the venue transfer analysis. Second, two of the three remaining factors in the venue transfer analysis — convenience of the parties and the interests of justice — will likely be neutral or only slightly favor transfer where the plaintiff is from Virginia. That leaves only the final factor — the convenience of the witnesses — that can tip the scale in favor of transfer. As a result, unless a defendant can identify specific relevant witnesses, especially nonparty witnesses, located outside of Virginia, transfer will typically be denied in the EDVA unless there are other special circumstances favoring transfer.

A recent decision illustrates how difficult it is for defendants to avoid a finding that the venue transfer factors do not strongly favor transfer. [Long v. Koninklijke Luchtvaart Maatschappij, N.V.](#), Civil Action No. 3:23CV435 (RCY), 2024 U.S. Dist. LEXIS 648 (E.D.Va. Jan. 2, 2024).

*Long* involved a class action complaint alleging that the plaintiff was misled by statements by the defendant, KLM, about its efforts to fight climate change, and he chose KLM over other airlines because of those statements. KLM, which is based in the Netherlands, sought transfer to New York, the location of its principal place of business in the U.S.

### **The Plaintiff's Choice of Forum and the Convenience of the Parties**

While the residence of the named plaintiff is typically given less weight in class actions, *Long* was brought on behalf of a Virginia-only class, and the lead plaintiff was a Virginia resident. Notably, the plaintiff's choice of forum received substantial deference even though the plaintiff's flight on KLM went from Amsterdam to Las Vegas and so none of the underlying events occurred in the forum.

The analysis of the convenience of the parties followed a similar course. Since the plaintiffs were located in Virginia and KLM's witnesses and evidence were located in New York or the Netherlands, the convenience of the parties did not tip in either party's favor.

## **The Interests of Justice**

As with the convenience of the parties, the interests of justice often favors neither forum. This factor looks to issues of systemic integrity and fairness, such as judicial economy, the avoidance of inconsistent judgments, docket congestion and the interest of having local controversies decided at home. Such factors rarely weigh strongly in favor of transfer, and some, like the interest in having local controversies decided at home and the unfairness of burdening forum citizens with jury duty, almost always weigh against transfer where the plaintiff is a forum resident.

In *Long*, the only relevant evidence relating to the interests of justice was that a near-identical complaint had previously been filed in New York. That suit, however, had been dismissed for lack of standing. Because the case had been dismissed on nonsubstantive grounds, there were no interests such as avoiding duplicative litigation or conserving judicial resources, which may have weighed in favor of transfer.

## **The Convenience of Witnesses**

This leaves only the convenience of witnesses, which can justify a venue transfer where the plaintiff is a Virginia resident. Moreover, it is usually only inconvenience to nonparty witnesses which can produce a successful motion to transfer because a judge will presume that witnesses associated with a defendant, such as employees, will be willing to travel to the plaintiff's chosen forum.

In *Long*, KLM's motion had a common shortcoming: it claimed that there were relevant nonparty witnesses, but it did not identify these witnesses or provide information about their location or the testimony they would provide. As a result, while there were several KLM employee witnesses located in New York, the convenience of witnesses only moved the needle slightly in favor of transfer.

**Takeaways:** The takeaway for defendants seeking transfer is to ensure they identify specific nonparty witnesses residing in the transferee forum and the testimony they would provide. For example, former employees with relevant knowledge often still reside near the defendant's home location and can be a powerful factor in persuading a judge to grant a motion to transfer.

For plaintiffs, the takeaway is to rely heavily on the choice of forum and to identify any witnesses or other ties to the EDVA. If there is any evidence of a connection between the parties or the dispute with the EDVA, chances are strong that transfer will be denied.

## **RELATED INDUSTRIES + PRACTICES**

- [Business Litigation](#)
- [Intellectual Property](#)