UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RAHN D. JACKSON, *et al.*,

Plaintiffs

v. **Civil Action No. 00-1457 (JGP)**

MICROSOFT CORPORATION,

Defendant

MEMORANDUM

This matter is before the Court on defendant Microsoft Corporation's **Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404**. For the reasons contained in this memorandum, the motion to transfer is granted.

BACKGROUND

Plaintiff Rahn Jackson originally filed a complaint against defendant Microsoft Corporation ("Microsoft") on June 20, 2000.[1] On January 3, 2001, plaintiff filed a Second Amended Complaint, adding six additional plaintiffs seeking to represent a nationwide class of all African-American employees of Microsoft. The Amended Complaint alleges a pattern and practice of discrimination by Microsoft. This discrimination is allegedly based on policies and practices crafted at Microsoft's corporate office in Redmond, Washington.

There is presently a similar lawsuit pending against Microsoft in the Western District of Washington. This suit, filed on October 4, 2000, by Monique Donaldson ("Donaldson"), purports to represent a nationwide class of "all current and former African American salaried employees who

[1] This matter was originally assigned to the Hon. Thomas Penfield Jackson. On March 12, 2001, Judge Jackson issued a Memorandum and Order in which he granted Microsoft's motion for his recusal. Pursuant to order of the Calendar Committee, this matter was then randomly reassigned to this Court.

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have been employed by defendant at any time from October 4, 1998 through the commencement of trial." Class Action Complaint, Donaldson v. Microsoft Corp., Case No. C00-1684P (W.D. Wash. filed Oct. 4, 2000)(attached to Microsoft's Motion to Transfer). That case is presently in discovery.

As already noted, the Second Amended Complaint ("Amended Complaint") added six additional plaintiffs. Three of these - James Pipkins ("Pipkins"), Pamela Odom ("Odom"), and Chima Echeruo ("Echeruo") - are current or former employees of Microsoft who reside in Bellevue, Washington, a suburb of Seattle that is within the Western District of Washington.[2] Am. Compl. ¶¶ 10-12. As defined in the Amended Complaint, the class plaintiffs seek to represent includes "all Black African American persons employed by Defendant Microsoft in the United States at any time from April 27, 1992 to the present, who are subject to Microsoft's employment and human resource policies and practices ..." Id. ¶ 18.

Other background information pertinent to the present motion includes data on the location of potential class members and witnesses, as well as relevant records and evidence. The location of class members is relevant because plaintiffs purport to represent a nationwide class. According to Microsoft, "Microsoft employs 26,720 persons nationwide, of whom 20,725 (78%) work in the State of Washington and 305 (1%) in the metropolitan area of the District of Columbia." Def.'s Memo. in support of Mot. to Transfer Venue ("Def.'s Memo.") at 7. Looking specifically at the potential class, there are "725 current African-American employees of Microsoft. Of these 725 employees, 378 (52%) work in Washington State, while only 45 (6%) are located in the D.C. area." Id. at 8. Furthermore, "[o]f the 6, 314 officials and managers who supervise Microsoft's domestic employees,

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[2] The three other added plaintiffs are Tanya Barbour ("Barbour"), Jozette Joyner ("Joyner"), and Derrick Washington ("Washington"). Barbour and Joyner reside in the District of Columbia. Am. Compl. ¶¶ 7-8.Washington resides in Maryland. Am. Compl. ¶ 9. It should also be noted that the original plaintiff, Jackson, resides in Maryland. Am. Compl. ¶ 6.

5,614 (89%) work in Washington State as compared to 36 (0.6%) in the Washington D.C. area." Id. at 7. Additionally, Microsoft avers that "the Vice President of Microsoft's Human Resources Group and the majority of employees who report directly to her work in the Redmond, Washington corporate office." Id. at 8.

DISCUSSION

Based on the similar pending lawsuit in Washington, as well as the location of the majority of its employees, Microsoft is seeking a transfer of this case to the Western District of Washington. Plaintiffs object to the proposed transfer. This motion, having been fully briefed, is ripe for consideration by the Court.

The Court's authority to transfer this case is found in 28 U.S.C. § 1404(a), which provides, in relevant part, 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." Thus, as a threshold question, the Court must first determine whether the Western District of Washington is a district where this action might have been brought. There is little controversy on this point. As defendant points out, since plaintiffs invoke this Court's federal question jurisdiction, venue is proper in "a judicial district where any defendant resides, if all defendants reside in the same State." 28 U.S.C. § 1391(b)(1). Microsoft, the sole defendant, is incorporated in and maintains its headquarters in Washington. Def.'s Memo. at 10. As such, the Western District of Washington is a proper forum for the lawsuit.

Having made the initial determination that the Western District of Washington is a proper forum for this matter, the Court must now determine whether transferring this matter from the Distict of Columbia to Washington is appropriate. Of course, "[p]laintiff's choice of forum is given paramount consideration and the burden of demonstrating that an action should be transferred is on

the movant." Air Line Pilots Assoc. v. Eastern Air Lines, 672 F. Supp. 525, 526 (D.D.C. 1987); see also Shapiro, Lifschitz & Schram v. Hazard, 24 F. Supp. 2d 66, 71 (D.D.C. 1998). However, the district courts have broad discretion to transfer cases based upon an "individualized, case-by-case consideration of convenience and fairness." Stewart Org. v. Ricoh Corp., 487 U.S. 22, 29, 108 S.Ct. 2239, 2243 (1988).

In making its determination as to whether a case should be transferred based on the convenience of the parties, the convenience of the witnesses, and the interests of justice, the Court's analysis is not limited to these three factors alone. Trout Unlimited v. U.S. Dep't of Agric., 944 F. Supp. 13, 16 (D.D.C. 1996)(Urbina, J.). Courts generally consider two different types of factors - "the private interests of the parties and the public interests of the court." Id. As Judge Urbina noted,

> the private interest considerations include: (1) the plaintiff's choice of forum, unless the balance of convenience is strongly in favor of the defendants; (2) the defendants' choice of forum; (3) whether the claim arose elsewhere; (4) the convenience of the parties; (5) the convenience of the witnesses of the plaintiff and the defendant, but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and (6) the ease of access to sources of proof. The public interest considerations include: (1) the transferee's familiarity with the governing laws; (2) the relative congestion of the calendars of the potential transferee and transferor courts; and (3) local interest in deciding local controversies at home.

Id. (citations omitted).[3]

A. Private Interest Factors

1. Plaintiffs' choice of forum

Customarily, plaintiff's choice of forum is to be afforded "substantial deference." Shapiro, Lifschitz & Schram v. Hazard, 24 F. Supp. 2d 66, 71 (D.D.C. 1998). However, that deference is not

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[3] In considering "the interests of justice," the Court may also consider "the desire to avoid multiple litigation from a single transaction, to try related litigation together, to conserve judicial resources, and to consider the regional nature of a dispute." Hawksbill Sea Turtle v. Federal Emergency Management Agency, 939 F. Supp. 1, 4 (D.D.C. 1996)(Kessler, J.).

without limits and is diminished when a plaintiff's choice of forum has "no meaningful ties to the controversy and no particular interest in the parties or subject matter." Chung v. Chrysler Corp., 903 F. Supp. 160, 165 (D.D.C. 1995)(quoting Islamic Republic of Iran v. Boeing Co., 477 F. Supp 142, 143-43 (D.D.C. 1979)). Furthermore, several courts have held that when an individual files a class action or derivative suit, the named plaintiff's choice of forum is accorded less deference. See, e.g., In re Warrick, 70 F.3d 736, 741 n.7 (2d Cir. 1995)(holding that plaintiff's choice of forum is a less significant consideration in a class action than in an individual action); Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987)(holding that when an individual represents a class, the named plaintiff's choice of forum is given less weight); Job Haines Home for the Aged v. Young, 936 F. Supp. 223, 228 (D.N.J. 1996)("weight of authority holds that in class actions and derivative lawsuits the class representative's choice of forum is entitled to less deference"). While the D.C. Circuit has not yet had occasion to address this specific point, this Court has reached a similar result. See Diemer v. U.S. Postal Service, 1987 WL 9037, at *2 (D.D.C. Mar. 19, 1987)(Gasch, J.)(holding that the significance of plaintiff's choice of forum is diminished if plaintiffs' cause of action may involve a broad class of persons). Since this action is a putative class action, the Court concludes that plaintiffs' choice of forum is not entitled to substantial deference, and thus will not be given priority over the other factors.[4]

2. Defendant's choice of forum and whether the claim arose elsewhere

Defendant's choice of forum, the Western District of Washington, is to be accorded appropriate deference in relation to plaintiff's choice of forum. In this case, defendant's choice of

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[4] Even if this was not a putative nationwide class action, the Court would still not feel compelled to give plaintiffs' choice of forum substantial deference since only two of the seven named plaintiffs reside in the District of Columbia.

forum is a neutral factor, since many of the reasons Microsoft makes for the transfer are properly considered under the other private interest factors.

The Court must also consider where the claim arose. In this case, the Court must conclude that plaintiff's claims arose in Washington State more so than in any other jurisdiction. As defendant argues, since most of the African-American class members work in Microsoft offices in Washington State, most of the claims of discrimination must have arisen there. Additionally, plaintiffs are challenging Microsoft's personnel policies, which are developed and overseen by Microsoft's Human Resources Group, located at Microsoft's corporate headquarters in Redmond, Washington.

Plaintiffs do not dispute that development and oversight of Microsoft's personnel policies occurred in Washington, however they dispute that the majority of the discrimination claims originated there. Plaintiffs contend that only 52% of the putative class members live and work in Washington State and that therefore, 42% of the claims are not localized in Washington. See Pls.'s Opp'n at 13. The Court finds this argument unpersuasive. Since the personnel policies were overseen and developed in Washington State, and since the majority of the putative class members potentially claiming discrimination reside and work in Washington State, it can fairly be said that these claims arose in Washington State.

3. Convenience of the parties

As for the convenience of the parties, Microsoft argues that the Western District of Washington would be more convenient since its corporate headquarters is located there. Defendant also argues that the Western District of Washington would be most convenient for both a plurality of the named plaintiffs and a majority of putative class members. Microsoft avers that three of the

seven named plaintiffs reside in Washington State.[5] Furthermore, "[of] the 725 African-American employees of Microsoft in the United States, only 45 (6%) of the putative class members work in Microsoft's D.C. area office. By contrast, 378 (52%) work in Microsoft's Corporate office in Redmond, Washington, or in other offices located in Washington State." Def.'s Mot. at 11. Plaintiffs do not really dispute this assertion, except to argue that since some of the named plaintiffs and putative class members reside in the District of Columbia, it is no less convenient a forum than the Western District of Washington. The Court disagrees with this assertion and concludes that since the vast majority of the parties in this case are located in the Western District of Washington, that forum is more convenient for the parties than this one.

4. Convenience of the witnesses

Regarding the convenience of the witnesses, Microsoft has offered undisputed evidence that the vast majority of potential witnesses reside in the Western District of Washington. According to Microsoft, "of the 6,314 officials and managers employed by Microsoft nationwide, 5,614 (89%) work in the Corporate Office or other Microsoft office in Washington State, while only 36 (0.6%) work in the Washington, D.C. area." Def.'s Mot. at 12. Thus, defendant asserts, most of the former Microsoft supervisors who may be called as third-party witnesses live outside the subpoena power of this Court.

Plaintiffs counter with three arguments. First, plaintiffs state that their counsel is willing to travel and depose witnesses outside the District of Columbia. Second, plaintiffs reason that the Court should only consider the convenience of witnesses who are not presently employed by Microsoft, since Microsoft can arrange for their presence in this forum. Finally, plaintiffs reason that

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[5] Two additional named plaintiffs live in Maryland, the remaining two reside in the District of Columbia.

"[i]t is just as likely that former supervisors will also reside in the District of Coumbia." Pls.'s Opp'n at 10.

Considering all of these arguments, the Court concludes that the convenience of the witnesses tips in favor of the proposed transfer. It is uncontested that the vast majority of the witnesses do live in Washington State. Even if most of those witnesses are employees whom Microsoft could compel to appear in the District of Columbia, the Court is not required to ignore the burden that would be placed on these individuals if they were required to travel across the country to testify here. In light of the total circumstances of this case, it is clear that the convenience of the witnesses requires a transfer.

5. Ease of access to sources of proof

The final private interest factor pertains to the ease of access to sources of proof. Defendant asserts that all of the relevant records in this case are concentrated in Washington State. Defendant anticipates that plaintiffs will request "all corporate personnel policies and procedures, all documents relating to job classifications at Microsoft, all complaints of discrimination against Microsoft, and all data relating to evaluation, discipline, compensation, and promotion of all Microsoft employees." Def.'s Mot. at 15. Defendants asserts that the "vast majority of these documents and data are housed in Redmond, Washington." Id.

Plaintiffs respond that, no matter where the trial is held, defendant will have to produce these documents. The Court agrees with the plaintiffs that a "greater burden will not be placed on Microsoft because they have to mail responses [and documents] to Florida or the D.C. metropolitan area. Nor will any greater burden be imposed upon Microsoft if plaintiffs' counsel is required to travel to Washington State to review documents. Under either scenario, Microsoft's burden will be minimal at best." Pls.' Opp'n at 12. Considering this argument, the Court concludes that this factor

is neutral, and does not weigh in favor of the proposed transfer.

B. Public Interest Factors

The Court now turns to the public interest factors Judge Urbina outlined in Trout Unlimited, which the Court concludes all come out as neutral with regards to whether this case should be transferred. As for the transferee's familiarity with the governing laws, neither party has demonstrated that the Western District of Washington is any more or less familiar with the laws governing plaintiffs' discrimination claims. A similar conclusion must be reached with regards to the relative congestion of the two courts' dockets. While both sides have quoted and examined statistics about the number of pending cases in the District of Columbia and the Western District of Washington, defendants have not persuaded this Court that the docket in Washington State is so much lighter as to render it the more preferable forum. As for the local interest in deciding local controversies at home, this factor is also neutral. While Microsoft is a major corporation located in Washington, its alleged discriminatory personnel practices do have nationwide ramifications. Therefore, while Washington State might have an interest in the outcome of a suit involving Microsoft, the District of Columbia also has an interest in vindicating the rights of its citizens who might have been discriminated against.

C. Interests of Justice

As noted above, in Hawksbill Sea Turtle v. Federal Emergency Management Agency, Judge Kessler identified several factors which comprise the "interest of justice," such as "the desire to avoid multiple litigation from a single transaction, to try related cases together, to conserve judicial resources, and to consider the regional nature of a dispute." 939 F. Supp. at 4. These considerations weigh in favor of a transfer, particularly the desire to try related cases together and to conserve judicial resources.

Defendants point out that a similar Title VII class action involving African-American Microsoft employees is currently pending in the Western District of Washington, which is captioned as Donaldson v. Microsoft Corp., Case No. C00-1684P (W.D. Wash. filed Oct. 4, 2000).[6] The Donaldson class claims a similar pattern and practice of discriminating against African-Americans in personnel practices such as evaluations, promotions, compensation and stock options. Defendant argues that although there are differences in the classes, "those differences are insignificant in light of the substantial similarity between the allegations of discrimination in the two complaints" and that it is likely that the "two cases will cover essentially the same issues." Def.'s Mot. at 17. In its reply, defendant also notes that two other similar race discrimination class suits against Microsoft were filed in the Western District of Washington on February 14, 2001, and February 15, 2001. Def.'s Reply at 2-3. Defendant avers that the plaintiffs in these two actions "have indicated that they plan to move for consolidation of those actions with Donaldson." Id. at 3.

Plaintiffs argue that any transfer for the purpose of consolidation would be prejudicial, and that consolidation would likely be untenable since

> the two cases represent conflicting classes ... and cover discrimination by Microsoft over conflicting periods of time. Moreover, each case has divergent theories of discrimination and evidence. Ultimately a court would likely have to sever or create subclasses to fully adjudicate such divergent theories, competing interests, and differing evidentiary matters that would be contrary to judicial economy and the efficient administration of these classes.

Pls.'s Opp'n at 3-4.

Plaintiffs also argue that judicial economy is best served by keeping this case in this court since this court is already familiar with defendant Microsoft. Plaintiff makes reference to two

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[6] Although this matter was filed before the Donaldson case, the amended complaint, which asserted a class action, was filed well after Donaldson was.

antitrust cases recently brought against Microsoft and decided by Judge Thomas Penfield Jackson. As a result of this, plaintiffs argue that this Court is "intimately familiar and well versed in the defendant's industry, corporate structure, personnel, and management structure." Id. at 7.

Considering this information, the Court must conclude that judicial economy would best be served by transferring this case to the Western District of Washington. While it might end up that this case is not consolidated with Donaldson and the other pending class actions in the Western District of Washington, there are enough similarities between the cases to transfer this case to that district for such a determination. If the Western District of Washington determines that consolidation is appropriate, then judicial resources will have been greatly conserved. If that court determines that consolidation is not appropriate, this case can proceed on its own. Plaintiffs have failed to demonstrate that giving the Western District of Washington the opportunity to make a determination with regards to consolidation would be overly prejudicial to their case.

Even if these cases are not suitable for consolidation, they are certainly related cases in that they both represent classes alleging racially discriminatory personnel policies and practices by Microsoft. As this Court has previously held, "[t]he interests of justice are better served when a case is transferred to the district where related actions are pending." Martin-Trigona v. Meister, 668 F. Supp. 1, 3 (D.D.C. 1987); see also Professional Ass'n. Travel Service v. Arrow Air, Inc., 597 F.Supp. 475, 477 (D.D.C.1984) (transferring to New York, where pending action raised "quite similar claims"); Islamic Republic of Iran v. Boeing Co., 477 F.Supp. 142 (D.D.C.1979) (transferring where liability issues were "closely similar to issues pending for over two years" in W.D. Wash.).

The Court has considered plaintiffs' argument regarding this Court's "familiarity" with Microsoft due to its handling of the antitrust cases. However, even if that familiarity was relevant to this proceeding, any such familiarity ceased when Judge Jackson recused himself from this matter.

This Court is no more familiar with Microsoft, its corporate structure, and other pertinent information, than any judge in the Western District of Washington. Plaintiffs will, therefore, not suffer a loss in background knowledge if this case is transferred.

CONCLUSION

The Court has reached the following conclusions with regards to the motion to transfer: 1) a vast majority of the potential plaintiffs and defendants reside in the Western District of Washington and would find that forum more convenient; 2) a vast majority of potential witnesses live and work in the Western District of Washington and would find that forum more convenient; 3) the Western District of Washington would likely have subpoena power over former Microsoft supervisors whose presence can no longer be compelled by Microsoft; 4) far more claims arose in Washington State (52%) than in the District of Columbia (6%); and 5) three related Title VII class action lawsuits against defendant are pending in the Western District of Washington.

For these reasons, the Court concludes that transferring this case to the Western District of Washington is appropriate for the convenience of the parties and witnesses, and in the interests of justice. Defendant's motion to transfer venue is granted. An appropriate order accompanies this memorandum.

Date: MAY 3 2001

JOHN GARRETT PENN
United States District Judge