Received 6/12/2024 2:26:02 PM Supreme Court Eastern District

Filed 6/12/2024 2:26:00 PM Supreme Court Eastern District
18 EAP 2024

IN THE SUPREME COURT OF PENNSYLVANIA

Docket Nos. 18 EAP 2024–32 EAP 2024

MICHAEL TRANTER, as the Administrator of the Estate of J.V., a minor, and Administrator Ad Prosequendum of the Estate, et al.,
v.
Z&D TOUR, INC., et al.

TAYLOR TEETS,
v.
UNITED PARCEL SERVICE, INC. c/o Corporation Service Company, et al.

LUCERO VAZQUEZ, et al.,
v.
Z&D TOURS, INC., et al.

XUE-ZHEN CHEN, et al.,
v.
FEDEX GROUND PACKAGE SYSTEM, INC., et al.

BRIEF OF *AMICUS CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLANTS

Appeal from Opinion and Order of the Superior Court of Pennsylvania entered October 11, 2023 (Nos. 1746 EDA 2022, 2343 EDA 2022, 2421 EDA 2022, 2426 EDA 2022, and 2427 EDA 2022), vacating Orders Granting Motions to Transfer Venue entered June 2, 2022, August 3, 2022, and August 4, 2022, in the Philadelphia County Court of Common Pleas (Nos. 211001768, 2011201805, 211201583, and 211200570)

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. The Chamber regularly files amicus briefs in cases that raise issues of concern to the nation's business community.

This is one such case. It implicates the standard for forum non conveniens, a doctrine that has for decades served "to insure fairness and practicality." *Okkerse v. Howe*, 556 A.2d 827, 832 (Pa. 1989), *overruled on other grounds by Cheeseman v. Lethal Exterminator, Inc.*, 701 A.2d 156 (Pa. 1997); *see* Pa.R.C.P. 1006(d). This Court has made clear that a trial court may transfer a tort action to a more appropriate forum when the plaintiff's chosen forum would be "oppressive or vexatious to the defendant." *Cheeseman*, 701 A.2d at 162. While this showing must be

supported by "detailed information on the record," this Court has never specified what form that information must take. *Id.*

The Superior Court, however, has done just that. The decision below is just the latest in which that court has imposed a heightened, particularized evidentiary standard upon defendants seeking forum non conveniens transfer in tort and personal-injury suits. This trend cannot be reconciled with this Court's precedent—and even with other recent Superior Court decisions.

Being forced to litigate tort and personal-injury suits in forums that are oppressive or vexatious has negative consequences that extend well beyond the litigants in a particular case. The costs of such litigation on business defendants adversely affects their customers, their industries, and the broader economy. Because the Chamber and its members have an interest in avoiding these outcomes, and in an evidentiary standard that gives businesses a fair shot at doing so, they have an interest in this appeal.

At the petition stage, the Chamber, along with the Pennsylvania Coalition for Civil Justice Reform, the American Property Casualty Insurance Association, the University of Pittsburgh Medical Center, and

the Pennsylvania Motor Truck Association, filed an amicus brief urging this Court to grant review. Now, at the merits stage, the Chamber writes separately to address aspects of the issues raised by this case that are particularly salient in tort and personal-injury cases.

The Chamber files this brief in its own right and on behalf of its members. No person other than its members and counsel paid for or authored this brief in whole or in part. *See* Pa.R.A.P. 531(b)(2).

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Pennsylvania Rules of Civil Procedure anticipate and account for the possibility that, under some circumstances, a plaintiff's chosen forum might be "oppressive or vexatious" (*Cheeseman*, 701 A.2d at 162), and that another Pennsylvania county would be more appropriate. Rule 1006(d)(1) provides a remedy: the trial court may transfer the case "[f]or the convenience of parties and witnesses."[1] The doctrine of forum non conveniens thus serves as a "necessary counterbalance to insure fairness and practicality" in civil cases. *Okkerse v. Howe*, 556 A.2d 827, 832 (Pa. 1989), *overruled on other grounds by Cheeseman v. Lethal Exterminator, Inc.*, 701 A.2d 156 (Pa. 1997).

This purpose was frustrated here. The five lawsuits that gave rise to this consolidated appeal arose from a tragic 2020 bus crash on Interstate 70 in Mount Pleasant, Westmoreland County that killed five people and injured several others. The plaintiffs, who reside in New Jersey, New York, Ohio, Pennsylvania, and China, sued various defendants allegedly involved in the crash in the Philadelphia County

[1] If the appropriate forum is another state, the trial court may dismiss it for refiling there. 42 Pa.C.S. § 5322(e).

Court of Common Pleas, more than 250 miles from where the accident happened. None of the defendants is based in Philadelphia County; none of the plaintiffs is domiciled (or was treated) there either. Nor do any of the potential witnesses who responded to and investigated the crash—medical personnel, police, and other first responders—live or work in Philadelphia County. In fact, most live at least 240 miles away.

Philadelphia County has no connection to the claims, parties, and witnesses in this case. The trial court sensibly recognized this and transferred the cases to Westmoreland County, where the accident occurred. The Superior Court, however, overrode this decision. *Tranter v. Z&D Tour, Inc.*, 303 A.3d 1070, 1073 (Pa. Super. Ct. 2023). It concluded that the trial court abused its discretion in transferring the cases and vacated the transfer orders. *Id.* For reasons Defendants explain in their brief to this Court, this was error.

The Chamber writes separately to emphasize two aspects of this error, which marks the latest in a pattern of escalating missteps in the Superior Court's analysis of intrastate forum non conveniens in tort (and particularly personal-injury) cases. *First*, the Superior Court has undervalued the importance of the site of the tort. The place where the

accident that gave rise to the litigation occurred has an obvious and profoundly important connection to that forum. Substantively, the physical site is often relevant to issues of fault, causation, and damages. And procedurally, it makes civil litigation stemming from the accident more convenient. If it becomes necessary for the jury to view the premises, transporting a jury there poses less of a cost on the jurors and court. The same is true for the parties and witnesses, who are more likely to live and work nearby. First responders to the scene of an accident—police, firefighters, and EMTs—and medical personnel who rendered care in the critical early stages are especially likely to both have relevant information and to live within a short distance. The less time these indispensable workers spend traveling to faraway courthouses to testify, the more time they can spend serving their local communities—where they are already in desperately short supply.

Second, the Superior Court has with increasing regularity imposed procedural requirements that have artificially heightened the (already high) "oppressive or vexatious" standard for forum non conveniens in a way that makes it nearly impossible for defendants to meet it. Although this Court has expressly declined to "require any particular form of proof"

(*Bratic v. Rubendall*, 99 A.3d 1, 9 (Pa. 2014) (quotation omitted)), the Superior Court reversed the trial court's forum non conveniens transfer in this case for precisely that reason. The problem, according to the Superior Court, was that the trial court had not made specific findings that the witnesses who submitted affidavits attesting that traveling to Philadelphia would be a hardship "[we]re 'key witnesses' for the defense," or that those witnesses had "relevant" information "critical to [Defendants'] defenses." *Tranter*, 303 A.3d at 1076 (citation omitted). But the trial court was not required to do any of this. If it were, such a requirement would be manifestly unfair to defendants, who would be forced to (at best) disclose their trial strategy or (at worst) predict the future to determine in advance what each witness would testify to and how important each witness's testimony would turn out to be. This cannot be the rule.

If allowed to persist, the Superior Court's present approach to forum non conveniens in civil cases could have profound consequences for business defendants in Pennsylvania tort actions. This Court should take this opportunity to reaffirm the importance of the place of the accident in the forum non conveniens analysis in tort and personal-injury

cases like this one. And it should once again make clear that the defendant's showing need not take any particular form; "[a]ll that is required is that the moving party present a sufficient factual basis for the petition." *Bratic*, 99 A.3d at 9.

This Court should vacate the decision below.[2]

ARGUMENT

I. The private interest factors based on the place of the tort should be restored to their proper place in the forum non conveniens analysis.

The Superior Court fundamentally erred by failing to appreciate the full import of the place of the accident in the forum non conveniens analysis in tort and personal-injury cases like this one. The place of the tort bears directly on several of the factors this Court has always used to determine whether a forum is oppressive or vexatious, such as the ability to view the premises and the convenience of witnesses. Because many of these witnesses, including the first responders and medical personnel who treated the victims, are likely to live and work in the vicinity of the

[2] The considerations that should resolve the venue dispute in this matter, a tort action between private parties concerning an accident that occurred in one ascertainable place, are most relevant to personal-injury and other tort actions. The analysis is different where, for example, the defendant is the government and the matter concerns a law or regulation with statewide (or nationwide) effects.

place where the accident occurred, these factors will tend to favor the place of the accident as a convenient forum for the resulting litigation.

A. Geographical factors play an important role in the forum non conveniens analysis.

Historically, the place of the accident has played an important role in how procedural law applies in tort cases. For example, the original choice-of-law rule in tort cases in Pennsylvania was *lex loci delicti*, i.e., the substantive law of the place of the tort governed. *See* Restatement (First) of Conflict of Laws § 377 (1934) ("The place of wrong is in the state where the last event necessary to make an actor liable for an alleged tort takes place").[3] And venue is proper in an action against a corporate

[3] *Lex loci delicti* has long been "abandoned in favor of a more flexible rule which permits analysis of the policies and interests underlying the particular issue before the court." *See Griffith v. United Air Lines, Inc.*, 203 A.2d 796, 805 (Pa. 1964)). Still, ever since, commentators have questioned whether much has changed in tort cases, given the significance of the contacts associated with the place of the accident and the high correlation between where accidents happen and where the parties and witnesses involved tend to live and work. *See, e.g.*, Note, Laurence W. Grause, *Lex Loci Delicti or Significant Contacts—That Is Not the Question*, 54 Ky. L.J. 728, 737–38 (1966) (discussing *Griffith*, among others) ("In the preponderance of the multi-state tort cases, the place of the injury and the tortious conduct coincide in a place that cannot be properly considered fortuitous.").

entity where "a transaction or occurrence took place out of which the cause of action arose." Pa.R.C.P. 2179(a)(4).

The place of the accident has always played an important role in the forum non conveniens analysis, too. When the doctrine was first formalized at the federal level, the U.S. Supreme Court listed "ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; [and] possibility of view of premises" among the "private interest factors" affecting the litigants (as opposed to the "public interest factors" examining the burdens on the forum itself) that courts should consider in determining whether "it would be more convenient and less vexatious for the defendant if the trial were held in another jurisdiction." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). Specifically, the defendant had to "establish such oppressiveness and vexation . . . as to be out of all proportion to plaintiff's convenience." *Koster v. (Am.) Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 524 (1947).

These federal standards for forum non conveniens in private civil cases were eventually imported into the Commonwealth's jurisprudence interpreting Rule 1006(d)(1)'s "convenience of parties and witnesses"

language. *See Okkerse*, 556 A.2d at 832 (quoting *Reyno v. Piper Aircraft Co.*, 630 F.2d 149, 159 (3d Cir. 1980), for the "oppressiveness and vexation" standard (in turn quoting *Koster*, 330 U.S. at 524), *rev'd on other grounds by Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 238 (1981))).

Over time, however, confusion emerged as to whether trial courts could resolve a forum non conveniens petition by balancing the private and public interest factors in lieu of applying the oppressiveness and vexation standard. *Cheeseman*, 701 A.2d at 160–61. In *Cheeseman*, this Court held that they could not. *See id.* at 161–62. A defendant can meet his burden by showing that "the plaintiff's choice of forum is vexatious to him" or that "trial in the chosen forum is oppressive to him." *Id.* at 162.

This Court later clarified that *Cheeseman* did not change the forum non conveniens standard by "increas[ing] the level of oppressiveness or vexa[t]iousness a defendant must show." *Bratic*, 99 A.3d at 7–8. It "merely corrected the practice that developed in the lower courts of giving excessive weight to 'public interest' factors when ruling on a forum non conveniens motion." *Id.* at 8. Importantly, these factors were not abrogated entirely. *See id.* They are still factors to be considered "insofar as they bear directly on the ultimate ['oppressive or vexatious'] test." *Id.*

So too for the private interest factors: "oppressive or vexatious" is the standard, and the private interest factors are (along with the public interest factors) ways to meet it. As this Court explained in *Cheeseman*, a "defendant may meet his burden by establishing on the record that trial in the chosen forum is oppressive to him; for instance, that trial in another county would provide easier access to witnesses or other sources of proof, or to the ability to conduct a view of premises involved in the dispute." 701 A.2d at 162. These private interest factors are thus alive and well after *Cheeseman*—indeed, *Cheeseman* itself cited them as examples of means by which a defendant can establish entitlement to forum non conveniens transfer. *See id.*; *see also, e.g.*, *Bratic*, 99 A.3d at 7 (citing *Cheeseman*'s discussion of private interest factors).

B. In tort and personal-injury litigation, the place where the accident occurred bears heavily on whether litigation is convenient.

Indeed, these factors—the availability of a premises view and the convenience of the witnesses—are particularly salient to the forum non conveniens analysis in tort cases, especially personal-injury cases. In these cases, the place where the accident or injury occurred plays a central role in the ensuing litigation.

These cases turn on issues like fault, control, causation, and damages, and the site of the accident is often relevant to some or all of these issues. Depending on the circumstances, "the ability to conduct a view of premises involved in the dispute" can be critical. *Cheeseman*, 701 A.2d at 162. A trial court may grant permission for the jury to "view any premises involved in the litigation"—likely, the accident scene—even after trial has commenced. *See* Pa.R.C.P. 219 (application may be made "at the bar during the actual trial").

A premises view need not be imminent for purposes of the forum non conveniens analysis; at this early stage, the defendant need only "show[] 'on the record that . . . trial in another county would provide . . . *the ability* to conduct a view of premises.'" *See Wood v. E.I. du Pont de Nemours & Co.*, 829 A.2d 707, 712 (Pa. Super. Ct. 2003) (emphasis added) (quoting *Cheeseman*, 701 A.2d at 162); *cf. Burnett v. Penn Cent. Corp.*, 250 A.3d 1240, 1252–53 (Pa. Super. Ct. 2021) (affirming forum non conveniens dismissal where defendants averred that jury view would be appropriate). Should the defendant later decide to apply for a premises

view,[4] the logistics are significantly less onerous if the case is being tried in the same county as the premises to be viewed rather than hundreds of miles away. *See, e.g.*, *Powers v. Verizon Pa., LLC*, 230 A.3d 492, 500 (Pa. Super. Ct. 2020) ("if site visits are necessary to resolve the dispute over the exact site of the accident, then venue in Bucks County would provide better access to critical evidence and involve less time away from the courtroom"); *Wood*, 829 A.2d at 715 (no abuse of discretion in ordering transfer because, inter alia, "a Bradford County jury would be in a far better position to view the premises [where the alleged fall took place] than would a Philadelphia jury" 190 miles away); *Mateu v. Stout*, 819 A.2d 563, 567 (Pa. Super. Ct. 2003) (affirming transfer from Philadelphia County to Delaware County because, among other reasons, "the site of the automobile accident" was in Delaware County).

The other private interest factors relating to availability of proof are even more important. In a tort or personal-injury case, a critical mass of the evidence a defendant needs to disprove the plaintiff's claims and

[4] A formal application for a premises view is not a prerequisite. As will be explained below, the forum non conveniens standard does not require defendants to disclose the specifics of their trial strategy early in the case. *See infra* pp. 26–27.

support their own defenses is likely to be located where the accident occurred.

Most commonly, the witnesses to be called at trial live or work near the scene of the accident. *See, e.g.*, *Bratic*, 99 A.3d at 3–4 (transfer from Philadelphia to Dauphin County was not an abuse of discretion where seven witnesses who might have been called to testify lived in Dauphin County); *Mateu*, 819 A.2d at 567 (transfer from Philadelphia to Delaware County was not an abuse of discretion where, inter alia, all of the identified fact witnesses lived outside Philadelphia County, including the plaintiff's medical witness, who was based and treated the plaintiff in Delaware County).

This Court and other Pennsylvania courts have rightly recognized that forcing witnesses in private civil cases to travel, especially over long distances across the state, creates the sort of oppressiveness that justifies forum non conveniens transfer. *Bratic*, for example, arose from a tortious interference suit that itself arose from an earlier lawsuit filed in Dauphin County. 99 A.3d at 3. Seven of the defendants' witnesses signed affidavits stating that, because they lived more than 100 miles from Philadelphia, it "would be both disruptive and a personal and financial

hardship if [they] should be called to testify at deposition or trial," as they "would have to incur substantial costs for fuel, tolls and, if traveling overnight, for lodging and meals[, and for] every day of deposition or trial in Philadelphia, [they] would be forced to take at least one full day away from [work]." *Id.* at 3–4 (quoting affidavits) (alterations in original).

Although the Superior Court had overturned the trial court's order transferring the case to Dauphin County, this Court reversed, recognizing that "as between Philadelphia and counties 100 miles away, simple inconvenience fades in the mirror and we near oppressiveness with every milepost of the turnpike." *Id.* at 10.

A panel of the Superior Court later referenced this language in affirming a transfer from Philadelphia to the even more distant Butler County, where the workplace accident at issue there took place: "If inconvenience fades in the mirror and oppressiveness nears in that 100-mile stretch between Philadelphia and Harrisburg, oppressiveness is certainly reached before someone embarks on a 300-mile journey leaving from Butler, traveling past Bedford, Breezewood, and through the turnpike's tunnels, before reaching Harrisburg, with another 100

miles still to go before arriving in Philadelphia." *Smith v. CMS W., Inc.*, 305 A.3d 593, 599 (Pa. Super. Ct. 2023) (citing *Bratic*).

The fact is, for witnesses whose livelihoods are already disrupted by trial testimony, travel from one region of the Commonwealth to another "can be onerous." *Lee v. Bower Lewis Thrower*, 102 A.3d 1018, 1023 (Pa. Super. Ct. 2014). In *Lee*, the Superior Court recognized that "travel to and from State College, Pennsylvania," where the car accident that gave rise to the litigation occurred, "could take three or four hours each way." *Id.* The trial court had found that, in light of this distance, "trial in Philadelphia would be oppressive" to the defendants because seven of their witnesses had attested to having "family and childcare commitments," "job responsibilities," and "personal obligations" that "would make a multi-day trip burdensome and disruptive." *Id.* Were the trial to be held in Centre County, by contrast, "a witness who is on-call at a trial less than ten minutes from his office can go to work for at least some of the day." *Id.* at 1023 n.2. The trial court concluded that, because there were "multiple defendants, most of whom are based in Centre County," forcing them all to travel to Philadelphia would result in an

oppressive situation." *Id.* at 1023. On appeal, the Superior Court declined to disturb these findings. *Id.* at 1025.

The trial court in *Lee* had based its rationale in significant part on the incisive observation that forcing parties and witnesses to travel to another city for trial does not just burden them—it also inconveniences those who must cover for them at home or at work while they are gone. *See also Doe v. Bright Horizons Children's Ctr., LLC*, 261 A.3d 1065, 1071 (Pa. Super. Ct. 2021) (affirming forum non conveniens transfer to county where defendant childcare center was located so center could maintain staffing levels necessary to stay open).

This is especially problematic when—as in many tort cases that, like this one, arise from accidents—many of the witnesses are first responders and medical personnel who live and work near the accident scene. *See, e.g.*, *Powers*, 230 A.3d at 500 (affirming forum non conveniens transfer from Philadelphia to Bucks County where transfer was granted to, inter alia, reduce the commute of the "medical professional witnesses" who treated the plaintiff from "over one hour, not accounting for additional rush hour delays," to 15 minutes).

Compounding this problem are unprecedented shortages of doctors, police officers, firefighters, emergency medical technicians, and other first responders that the Commonwealth is currently experiencing—especially in rural areas. More than 380,000 Pennsylvanians live in areas that are experiencing a shortage of primary care physicians. Stephen Caruso and Marley Parish, *Nurse Practitioners Say They Could Ease Rural Health Care Shortage with More Authority, but Doctors Say It Won't Work*, SpotlightPA (June 6, 2024), https://perma.cc/HQ6U-WZ9X.[5] And because "Pennsylvania has the third largest rural population of any state," the issue is "particularly serious" here. Thomas Jefferson Univ., *supra* note 5.

[5] A growing and aging population, combined with a flat supply of new doctors and an "exodus of healthcare workers away from the profession over the last few years" due to the pandemic, has created the shortage. Jonathan Wolfson, *Physician Shortages Hurting Rural Areas*, Times Observer (Oct. 14, 2023), https://perma.cc/K2P5-4QUH. It is "most pronounced" in northern and central Pennsylvania. Mary Ann Slater, *Remedy for Rural Health*, IUP News (Oct. 9, 2023, 6:00 AM), https://perma.cc/GX8B-ES6D. Compounding the problem is the uneven distribution of physicians: half practice in three of the largest and most urban counties, where only a quarter of the population lives. Thomas Jefferson Univ., *Physician Shortage Area Program*, https://perma.cc/G5QK-XYRQ (last visited June 11, 2024).

A shortage of emergency responders has also reached crisis levels. Scott LaMar, *Shortage of Emergency Responders Is a Crisis in Pennsylvania*, WITF.org (Feb. 21, 2023), https://perma.cc/5MG8-6WAG. Governor Josh Shapiro's office reports that there is "a critical shortage of more than 1,200 municipal police officers," and Pennsylvania State Police applications are down 90% compared to 30 years ago. Press Release, Commonwealth of Pennsylvania, Governor Josh Shapiro Shares Plans to Recruit More Municipal Police Officers at Mercyhurst Municipal Police Academy in Erie (Mar. 23, 2023), https://perma.cc/G64A-ZAKG. And as of 2018, "Pennsylvania had 22,000 fewer volunteer firefighters than in the early 2000s and at least 6,000 fewer emergency medical technicians compared to 2012." Press Release, Commonwealth of Pennsylvania, Governor Shapiro Highlights Commitment to Creating Safer Communities Across Pennsylvania, Discusses Commonsense Budget Investments in Fire and EMS Services in Visit to Lancaster Fire Department (Apr. 5, 2023), https://perma.cc/F7NF-FWXD.[6]

[6] Since the 1970s, the number of volunteer firefighters in Pennsylvania has dropped from 300,000 to 37,000. *Firefighter, Paramedic and EMT Manpower Shortage Here a "Crisis,"* Clinton County News List (May 31, 2024, 11:37 AM) https://perma.cc/LYW2-RJTJ [hereinafter *Firefighter, Paramedic and EMT*].

In the summer of 2023, three local ambulance services in Pennsylvania ceased operations in three months. Ashley Adams, *Pennsylvania's EMS System on the Brink: Critical Shortages and Overwhelmed First Responders*, Keystone (Sept. 15, 2023), https://perma.cc/6C7T-59JP. The director of Clinton County's Department of Emergency Services called the statewide EMS shortage a "'code red status' problem." *Firefighter, Paramedic and EMT*, *supra* note 6.

These shortages are dangerous. The lack of access to physicians "is considered to be one reason rural Americans have higher rates of death, disability and chronic disease than their urban counterparts." Thomas Jefferson Univ., *supra* note 5. Patients must wait six months for an appointment, sometimes getting sicker all the while, and "pregnant women must drive hundreds of miles to deliver their babies." Wolfson, *supra* note 5; Slater, *supra* note 5.

The harm is even more acute when first responders like EMTs and firefighters are not readily available. "The longer it takes to get an ambulance to an emergency," the chief of one local EMS service explained, "the higher the chance of a negative result." Adams, *supra*. And when only one firefighter is available to battle a house fire that

would normally require 15 to 20 firefighters, it takes valuable time for other fire companies to be called in. LaMar, *supra*.

Forcing these indispensable employees to travel to an arbitrary forum across the state to testify diverts them from their essential jobs at a time when they simply cannot be spared. The Superior Court's rewriting of this Court's forum non conveniens standard counteracts the important policy considerations upon which that standard is based.

II. Establishing that litigating a tort where it happened is more convenient does not require a particular form of proof.

As the cases described above demonstrate, once these private interest factors are established, discerning their impact on the convenience of the forum requires only common sense. Litigating a case arising from a tort or accident far away from where it happened means that many of the people who witnessed it by virtue of living or working there will have their lives and jobs disrupted by having to travel to testify. Forcing third-party witnesses in private civil cases to endure such disruptions when they have no skin in the game—and when the case could be tried in a more convenient forum nearby—can, as these cases show, be oppressive. As this Court put it in *Bratic*, "trial 100 miles away . . . is manifestly troublesome." 99 A.3d at 10.

Because the circumstances that make it so are situational and humanistic, this Court has consistently—and sensibly—declined to prescribe any particular form of proof. *Cheeseman* said only that "the defendant may meet his burden by establishing on the record that trial in the chosen forum is oppressive to him; for instance, that trial in another county would provide easier access to witnesses or other sources of proof, or to the ability to conduct a view of premises involved in the dispute." 701 A.2d at 162. It said nothing about *how* those facts must make it into the record or how important the witnesses must ultimately prove to be.

This Court confirmed in *Bratic* that *Cheeseman* "do[es] not require any particular form of proof." *Bratic*, 99 A.3d at 9. Rather, "[a]ll that is required is that the moving party present a sufficient factual basis for the petition" from which the trial judge can determine that the vexatious or oppressive standard is met. *Id.* In *Bratic*, where the witnesses submitted affidavits, they were not required to specifically "detail what clients or tasks will be postponed or opportunities lost in order for the judge to exercise common sense in evaluating their worth." *Id.* "One hopes a judge may comprehend the existence of relevant general

disruption from the allegations in the affidavit, sufficiently to rule on the issue." *Id.*

In case after case, the Commonwealth's courts have done just that. *See, e.g.*, *id.* (transfer adequately supported by affidavits containing "identical language" addressing distance and burdens of travel and general disruption to witnesses' jobs and businesses); *Lee*, 102 A.3d at 1023–25 (affirming transfer based on affidavits from seven witnesses attesting to caregiving, work, and personal responsibilities that would make a 200-mile trip to Philadelphia for a multi-day trial "oppressive," "burdensome and disruptive"); *Wood*, 829 A.2d at 712–13 (affidavits explaining that employee witnesses would have to travel 190 miles from Bradford to Philadelphia for trial constituted "detailed information on the record" sufficient to support transfer to Bradford County).

This does not, however, create a requirement to submit affidavits in support of a forum non conveniens motion. *Wood*, 829 A.2d at 714 n.6 (declining to recognize "affidavit requirement" and collecting cases). To the contrary—and consistent with this Court's refusal to require a particular form of proof—record evidence supporting a finding of oppressiveness can take any form. *See, e.g.*, *Smith*, 305 A.3d at 596, 602

(affirming transfer order over plaintiffs' objection that defendants had provided "affidavits of a mere four individuals in a complex case certain to have dozens of witnesses"); *Powers*, 230 A.3d at 499–500 (affirming transfer from Philadelphia to Bucks on basis of defendant's "petition's general averment that all individual parties and eyewitnesses to the accident reside in Bucks County" and would therefore have to undertake longer commutes). Whether in affidavits or not, the commonsense inference that travel creates burdens for witnesses—especially for working people with other responsibilities and demands on their time—adequately supported a finding of oppressiveness here.

And the Superior Court did not limit its error to merely creating an affidavit requirement: it proceeded to require that affidavits specifically attest that the burdens of travel must fall upon "key witnesses" who must have "relevant and necessary" information. This is the essence of the novel, heightened standard for forum non conveniens that the court has imposed in this and other recent cases. *Cf. Tranter*, 303 A.3d at 1076 (overturning transfer order after concluding that "none of the [defendants] asserted in their motions to transfer that the witnesses who signed the affidavits were 'key witnesses' for the defense"); *Ehmer v.*

Maxim Crane Works, 296 A.3d 1202, 1207–08 (Pa. Super. Ct. 2023) (reversing transfer because trial court did not make preliminary determination that defendant had placed "detailed information on the record establishing that the witness [who would be forced to undertake burdensome travel] possesses information relevant to its defense"), *pet. for allowance of appeal filed*, No. 291 EAL 2023 (Pa.).[7]

The Superior Court's approach places a new burden on defendants to detail the specifics of their trial strategy in the opening stages of a case. This approach has no support in precedent, as this Court has *never* required a defendant to make even "a general statement of what testimony that witness will provide" to assist its consideration of "the alleged hardship posed to the witness." *Cf. Ehmer*, 296 A.3d at 1207–08 (citing *Bochetto v. Diemling, Schreiber & Park*, 151 A.3d 1072, 1083 (Pa. Super. Ct. 2016) (citing *Petty v. Suburban Gen. Hosp.*, 525 A.3d 1230, 1234 (Pa. Super. Ct. 1987))). If anything, this Court has expressly refrained from requiring litigants seeking forum non conveniens to predict the future, which "no one can foretell." *See Bratic*, 99 A.3d at 9

[7] Per this Court's May 14, 2024 order, the petition is being held in abeyance pending the disposition of this case.

(affidavits "need not detail what clients or tasks will be postponed or opportunities lost in order for the judge to exercise common sense in evaluating their worth; indeed, no one can foretell such detail").

Even if it were possible for defendants to predict in the early stages of the case the specifics of what discovery will reveal and who will ultimately testify in support of their defense, they should not have to. A requirement that makes transfer of a tort action out of an oppressive forum contingent on the defendant effectively disclosing their trial strategy by declaring in advance who their "key witnesses" will be and what they will say would put defendants at an unacceptable disadvantage, negating the common-law policy concerns of fairness at the root of the doctrine. *See Okkerse*, 556 A.2d at 832.

Upsetting the delicate balance of "fairness" that forum non conveniens was designed to "insure" is both unfair and unnecessary. *See id.* This Court should simply reaffirm that a tort defendant who can meet *Cheeseman*'s vexatious or oppressive standard based on detailed information in the record is entitled to a forum non conveniens transfer, no matter the form that record evidence might take.

* * *

There is more than enough evidence of oppressiveness here, where Defendants adduced 11 affidavits and 32 statements from potential witnesses, many of whom are doctors, police officers, and first responders who are irreplaceable to the communities near the scene of the accident where they live and work. Critically, all of these witnesses live at least 240 miles from Philadelphia County. The trial court thus properly concluded that trial in Philadelphia, which has no connection to the accident, would be oppressive. In the memorable words of this Court, "we near oppressiveness with every milepost of the turnpike," and many of them lie between Westmoreland and Philadelphia Counties. *Bratic*, 99 A.3d at 10.

CONCLUSION

For all of these reasons, the Chamber urges this Court to reaffirm the importance of the location of the accident in the forum non conveniens analysis, particularly in tort and personal-injury actions, as well as its precedent declining to require any specific form of proof for those private interest factors. The order of the Superior Court should be vacated.

Respectfully submitted,

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June 12, 2024

CERTIFICATE OF COMPLIANCE

I certify that this document complies with the word limit of Pa.R.A.P. 531(b)(3) because, excluding the parts exempted by Pa.R.A.P. 2135(b), it contains 5,629 words.

I also certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently from non-confidential information and documents.

s/ Lauren Gailey
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June 12, 2024

PROOF OF SERVICE

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