

Georgia is not “Clearly More Convenient” than W.D. Texas, in a Recent Order on a Motion to Transfer

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In its opposed motion, defendant NCR Corporation (NCR) argued the Northern District of Georgia was a proper and more convenient venue for the action. The court analyzed the four private and public factors laid out by the Fifth Circuit to determine whether transfer was appropriate.

Private Interest Factors. First, NCR maintained the bulk of relevant evidence and sources of proof is at its headquarters in Georgia, weighing in favor of transfer. Second, as to the availability of compulsory process to secure the attendance of witnesses, the factor weighed neutrally, as it was difficult to determine which witnesses would actually be used in trial and whether they were subject to the transferee venue’s subpoena power. Third, the cost of attendance for willing witnesses also weighed neutrally because party witnesses are typically compelled to attend trial by their employers and the potential non-party witnesses resided in both districts. Finally, the parties and the court agreed that the fourth factor, all other practical problems that make trial easy, expeditious, and inexpensive, weighed neutrally.

Public Interest Factors. First, the parties and the court agreed that trial would most likely resolve faster in the Western District of Texas. Specifically, Judge Albright noted that the median time to trial as a whole was “significantly less” than it would be in the Northern District of Georgia. Second, the court found that the Northern District of Georgia had more localized interests, as the accused products were designed and developed there. Third, the parties and the court agreed that the familiarity of the forum with the law that would govern the case was a neutral factor. Fourth, the parties and the court agreed that avoiding conflict of laws and application of foreign laws was a neutral factor.

Although two factors weighed in favor of transfer, and one was against transfer, the court held that NCR failed to demonstrate that the Northern District of Georgia was clearly more convenient. “To be clear, the Court [found] that the Northern District of Georgia [was] more convenient—but it [was] not **clearly** more convenient—than the Western District of Texas.” The court emphasized the heavy burden that defendants must meet for an inter-district transfer.

CloudfChange LLC v. NCR Corporation, 6:19-CV-00513 (Order Denying Defendant’s Motion to Transfer)

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Author

Ahtoosa Amini Dale

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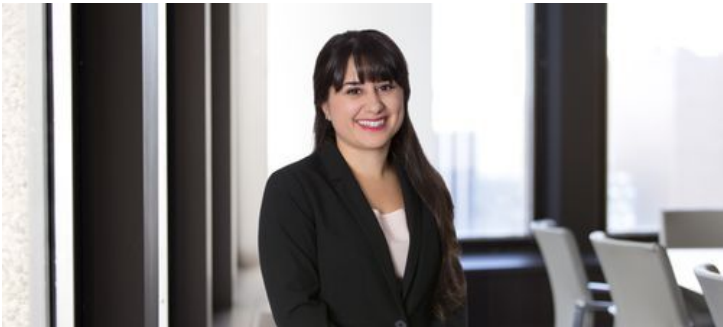
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