

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-25-0440

James Calvin Sizemore

Bowater Paper Mill, et al.

RECEIVED

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: SC Court of Appeals	OCT 20 2017	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Defendants' Motion to Change Venue is DENIED.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

See attached order

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

[Signature]
Circuit Court Judge

2798
Judge Code

9-21-17
Date

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
 (Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

alleges that he filed this asbestos exposure case in Hampton County because of a 3-4-week project he worked on a medical incinerator located at the former Chamber Medical premises in Hampton County. Waste Management is the ultimate successor by merger to Chamber Medical and the responsible party for the exposures attributable to the medical incinerator premises in Hampton County at which Mr. Sizemore worked in approximately 1996. It is alleged that this exposure in Hampton County is the sole basis for Plaintiff's claims against Waste Management in the present case.

ISSUES

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The issues presented are whether venue is proper in Hampton County under S.C. Code Ann. § 15-7-30 when a substantial part of the acts or omissions giving rise to the claim against one of several defendants occurred in Hampton County, and, if so, whether venue should be transferred from Hampton County under S.C. Code § 15-7-100 for reasons of fairness and convenience of the witnesses.

CONCLUSIONS OF LAW

A. S.C. Code Ann. § 15-7-30

Defendants have moved to transfer venue pursuant to S.C. Code Ann. § 15-7-30 on the grounds that each have their principal place of business in Greenville County, as well as on the grounds that the most substantial part of the alleged act or omission giving rise to the cause of action occurred outside of Hampton County.

S.C. Code Ann. § 15-7-30(E) states:

(E) A civil action tried pursuant to this section against a domestic corporation, must be brought and tried in the county in which the:

- (1) corporation has its principal place of business at the time the cause of action arose; or

(2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

S.C. Code Ann. § 15-7-30(E)(1-2).

Plaintiff filed this lawsuit pursuant to section 15-7-30(E)(2) of the South Carolina Code, based on the most substantial part of the act or omission giving rise to the cause of action occurring in Hampton County. Subsection (E) of section 15-7-30 gives the plaintiff the choice of venue between the county in which the principal place of business of any defendant is located, or the county in which the most substantial part of the act or omission giving rise to the cause of action occurred. Given that Section 15-7-30 provides Plaintiff a choice of venue, Defendants are incorrect that venue is only proper where their principal place of business is located.

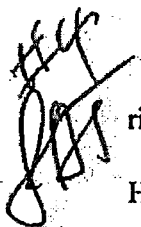
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Defendants contend that Hampton County is not the place where the most substantial part of the events giving rise to this suit occurred. They point out that Mr. Sizemore was exposed to asbestos over a 47-year career, at over forty (40) industrial facilities including paper mills, textile mills, chemical plants, nuclear power plants, sugar refineries and shipyards, in many instances for periods far longer than the 3-4 weeks of alleged exposure to have taken place in Hampton County in approximately 1996.¹ Daniel points to Rule 10(b)'s requirement that, "Each cause of action and each defense shall be stated in a separate cause of action or defense." It then observes that Plaintiff pled six causes of action (including a cause of action for Premises Liability), each against the combined Defendants, and with admirable forthrightness alleged, "Plaintiff James C.

¹ Defendant also argued at length regarding the historical negative bad press about railroad lawsuits, mostly in the 1980s and 1990s, which took place in Hampton County because CSX owned railroad tracks in Hampton County. This case has nothing to do with the railroad, or any other issue involved with the venue abuse previously focused in Hampton County, South Carolina, and the arguments therefore had no bearing on this Court's decision.

Sizemore's cumulative exposure to asbestos . . . was a substantial factor in causing Plaintiff's mesothelioma. . ." Complaint at ¶ 4.²

Defendants argue that since Plaintiff pled these causes of action with admittedly cumulative causation, the "most substantial part" of the "alleged act or omission giving rise to the cause of action" (as pled) did not occur in Hampton County. In fact, Defendants argue that even if Waste Management is considered alone, it is difficult to say that the "alleged act or omission" occurred in Hampton County without more evidence of the contracts, communications, etc. forming the basis of Plaintiff's failure to warn claim.

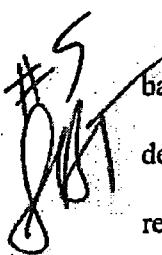
 Therefore, Defendants argue that the most substantial part of the act or omission giving rise to Mr. Sizemore's causes of action for his asbestos cancer could not have occurred in Hampton County, when the alleged Hampton County exposures represent a very small percentage of time during his overall working life.

This case involves twenty-one defendants. S.C. Code Ann. § 15-7-30(B) provides that, "[i]f there is more than one defendant, the action may be tried in *any* county where the action properly may be maintained against *one* of the defendants. [...]. S.C. Code Ann. § 15-7-30(B) (emphasis added).

Plaintiff argues that the most substantial part of the alleged act or omission giving rise to his causes of action as to Waste Management occurred in Hampton County, and that venue is therefore proper in Hampton County against all Defendants pursuant to section 15-7-30(B) of the South Carolina Code. This Court agrees.

²This was consistent with Plaintiff's doctor's statement in support of Plaintiff's motion for an expedited trial.

In *Jeter v. South Carolina Department of Transportation*, 369 S.C. 433, 633 S.C.2d 143 (2006), the South Carolina Supreme Court addressed the impact of subsection 15-7-30(B) on venue in multi-defendant cases. The Court held that, “where there are multiple defendants residing in different counties, the plaintiff may properly bring the action in the county where any one of the defendants resides at the time of the commencement of the action.” *Id.* at 442, 633 S.C.2d at 147-148. Under circumstances where venue would be proper in multiple counties, “the plaintiff ordinarily has the right of election as to the county in which an action will be brought.” *Id.*

 The Court finds *Jeter* to be controlling. Although the plaintiff in *Jeter* chose his venue based on the home county of one of the defendants, the Court made clear that in multiple defendant cases the plaintiff may choose any venue that is proper as to one defendant. This reasoning permits a plaintiff in a multi-defendant case to choose venue based on where the most substantial part of the act or omission giving rise to the cause of action occurred as to one defendant.

Here, all the alleged acts or omissions giving rise to Plaintiff's injury as to Defendant Waste Management occurred in Hampton County. Because venue is proper in Hampton County against Defendant Waste Management, venue is proper in Hampton County as to all Defendants. Accordingly, Defendants motions for change of venue based on section 15-7-30 of the South Carolina Code are denied.

B. S.C. Code Ann. § 15-7-100

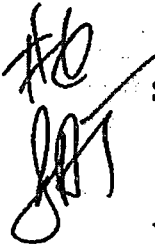
Waste Management moved in a separate motion to transfer venue under subsection 15-7-100(A) of the South Carolina Code on the grounds that there is reason to believe Defendants

cannot receive a fair trial in Hampton County, as well as that the convenience of witnesses and the ends of justice would be promoted by a change of venue from Hampton County.³

South Carolina Code Ann. § 15-7-100(A) states:

(A) The court may change the place of trial if:

- (1) it is a court in a county designated for that purpose in the complaint, but the designated county is not a proper county pursuant to the provisions of Chapter 7 of Title 15 of the 1976 Code or other statutes providing for the venue of actions;
- (2) there is a reason to believe that a fair and impartial trial cannot be had there; or
- (3) the convenience of witnesses and the ends of justice would be promoted by the change.

 S.C. Code Ann. § 15-7-100(A)(1-3).

Waste Management argues that due to historic bad press regarding Hampton County as a venue generally, and the negative media treatment given to the medical incinerator in question, a fair and impartial trial cannot be had in Hampton County. Defendant cites no factual basis to believe the current residents of Hampton County would be unfair or partial against Waste Management, and relies only on a decades-old newspaper article from the Los Angeles Times. Defendant has not met its burden under subsection 15-7-100(A)(2).

Waste Management and Daniel further argued that the convenience of the witnesses and the ends of justice require venue to be changed from Hampton County to Greenville County. In support of this argument, Defendants could name only one potential witness, Daniel's corporate

³ Defendant Daniel International Corporation, while not moving in a separate motion, also raised the issue of convenience of the witnesses and the ends of justice, pursuant to §15-7-100, for change of venue. Additionally, counsel for Defendant Daniel International Corporation argued at the hearing on June 5th for transfer pursuant to §15-7-100.

representative, who resides in or near Greenville County. The convenience of a single witness who may or may not testify at trial does not warrant transfer under subsection 15-7-100(A)(3).

All parties to this action have designated expert witnesses who live outside the state of South Carolina. In fact, no expert witness has been named who resides in South Carolina. These expert witnesses will be flying to South Carolina via commercial airlines to testify at Mr. Sizemore's trial. Defendants argue, therefore, that consideration should be given to the lack of a commercial airport in Hampton County when analyzing convenience of the witnesses.

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The Court agrees that access to an airport is a consideration in a case with exclusively out-of-state expert witnesses. This is not, however, the only factor in evaluating whether a transfer of venue is appropriate. If the lack of a commercial airport alone was grounds to transfer venue under § 15-7-100(A)(3), then Hampton County (or any other of our rural counties in South Carolina) could never host a trial of complex litigation where the experts are exclusively from outside of South Carolina.

Moreover, subsection 15-7-100(A)(3) requires a showing of *both* convenience of the witnesses and the ends of justice being promoted. Defendants cite no facts that would indicate a transfer of venue to Greenville County would promote the ends of justice. Therefore, Defendants did not meet their burden of showing that transfer is warranted under subsection 15-7-100(A)(3). Accordingly, Defendants motions for transfer of venue based on section 15-7-100 of the South Carolina Code are denied.

CONCLUSION

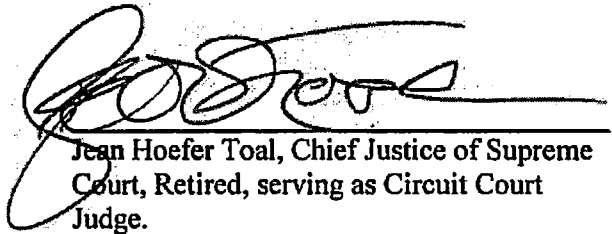
Pursuant to subsection 15-7-30(B) of the South Carolina Code, venue is proper in Hampton County against Defendant Waste Management, and is therefore proper in Hampton

County as to all Defendants. Accordingly, Defendants motions for change of venue based on section 15-7-30 of the South Carolina Code are denied.

Additionally, after due consideration, Defendants did not meet their burden of showing either the convenience of the witnesses or the ends of justice would be promoted by transfer of venue from Hampton County to Greenville County. Accordingly, Defendants motions for transfer of venue based on section 15-7-100 of the South Carolina Code are denied.

SO ORDERED:

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Jean Hofer Toal, Chief Justice of Supreme Court, Retired, serving as Circuit Court Judge.

Sept. 21
June _____, 2017

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September 20, 2017

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OCT 20 2017

SC Court of Appeals

The Honorable Mylinda Nettles
Hampton County Clerk of Court
One Elm Street
Hampton, South Carolina 29924


Re: *Sizemore v. Bowater Paper Mill, Inc.*; C/A No.: 2016-CP-25-0440

Dear Ms. Nettles:

Enclosed herewith please find an Order signed today by Chief Justice Toal Denying Defendants' Motion to Change Venue. The filing fee for the Motion to which this Order applies has already been paid. Because I am unable to file Orders through electronic filing, I am asking that you do so upon your receipt of this letter, pursuant to Justice Toal's instructions.

Thank you for your kind consideration and assistance. If you have any questions or concerns, please do not hesitate to call.

Yours very truly,


Elizabeth C. Moultrie
Senior Paralegal to John D. Kassel
and Theile B. McVey

ECM:bmh

Enclosures

cc: Jonathan Holder, Esquire (w/enclosure; via email only)
ACOR (w/enclosure; via email only)

JOHN D. KASSEL, ATTORNEY AT LAW, LLC

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