



Crown Central LLC v. Anderson **The Ninth District Court of Appeals Splinters Multi-Plaintiff Case for Litigation in Several Texas Counties**

It is well settled procedure that plaintiffs have the first crack at choosing venue. That choice will stand so long as the plaintiffs choose a court of proper venue per the rules. However, failure to do so can lead to the splintering of a case into several fragments – with the plaintiffs prosecuting cases against different defendants in several different counties. And this is all possible thanks to the recently issued opinion by a panel of the Texas Ninth District Court of Appeals which found venue in Orange County improper in a multi-plaintiff, multi-defendant Benzene lawsuit. See *Crown Central LLC, et al v. Anderson*, No. 09-07-308CV, 2007 WL 2962804 (Tex.App.—Beaumont, October 11, 2007).

In *Crown Central*, several defendants moved the trial court to transfer venue, denying the plaintiffs' venue allegations and arguing Orange County was not a proper venue. The trial court found that each of the five plaintiffs in the lawsuit independently established proper venue in Orange County. The plaintiffs alleged venue was proper in Orange County under Texas Civil Practice and Remedies Code section 15.003(a)(1), (3) because all or a substantial part of the events or omissions giving rise to their claims occurred in Orange County and/or one of the defendants, DuPont, maintained a principal office in Orange County. The appellants contended, and the panel agreed, that the trial court erred in determining each plaintiff independently established proper venue when the plaintiffs failed to properly plead or present any evidence to support their venue allegations.

The appellate panel determined that the plaintiffs neither provided facts in their petition, nor provided any affidavits or attachments to support their allegations that all or a substantial part of the events giving rise to their causes of action occurred in Orange County. Moreover, the court specifically rejected the plaintiffs' main contention that venue was proper in Orange County because DuPont has a principal office in the county. The plaintiffs merely pled that their claims arose out of the same transaction, occurrence, or series of transactions or occurrences because they each suffered from an indivisible injury and provided evidence that DuPont had a principal office in Orange County. Since this is a multi-defendant case, the court determined that plaintiffs cannot maintain venue as to all other named defendants unless the plaintiffs allege and show by prima facie evidence that their claims arise out of the same transaction, occurrence, or series of transactions or occurrences. See TEX. CIV. PRAC. & REM. CODE § 15.005. To their detriment, the plaintiffs neither pled facts nor offered any prima facie proof to support their contentions.

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Upon remand, the panel instructed the trial court to transfer the plaintiffs' claims against Berryman Products, Inc. to Tarrant County and the claims against Dow Chemical Co., Shell Oil Co., and Shell Chemical LP. to Harris County. The trial court was invited to direct the thirteen other appellants-defendants to make further venue proof in support of transferring the claims to a county of proper venue or dismiss the claims as appropriate, in accordance with Texas Civil Practice and Remedies Code section 15.003(a). The plaintiffs' claims against the non-appealing defendants and the two defendants who failed to specifically deny plaintiffs' venue facts shall remain in Orange County.

Crown Cork offers a word of caution that defendants specifically deny all of plaintiffs' venue allegations, thereby shifting the burden to plaintiffs to provide prima facie evidence of their venue claims or risk defending a case in an improper venue. Moreover, even as plaintiffs sever their claims into single-plaintiff suits, defendants must focus on whether the claims against it and the "venue" defendant truly arise out of the same transaction, occurrence, or series of transactions or occurrences. As for the five plaintiffs in the instant case, the number of venues wherein they will ultimately litigate their claims is still uncertain.

This article is not intended as legal advice to a specific problem or issue. If you have a question about toxic tort law, please contact the Powers & Frost attorney with whom you work or Lori Wiese, Partner, Head of Product Liability Litigation.

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