

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

McJUNKIN CORP. and
PRECISION CLEAN PIPING, INC.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:02-0062

CARDINAL SYSTEMS, INC. and
O'B, INC.,

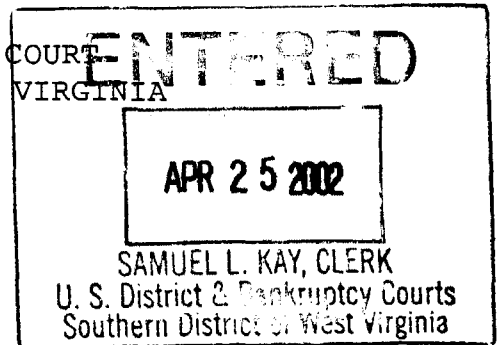
Defendants.

ORDER DENYING MOTION FOR RECONSIDERATION

Pending is Plaintiffs' motion for reconsideration of the Court's Memorandum Opinion and Transfer Order of March 26, 2002, which transferred this action to the Eastern District of Missouri. Plaintiffs object the Court failed to give appropriate deference to Plaintiffs under the first-filed rule. Defendants did not respond timely to the motion, which now is ripe for disposition.

The first-filed rule provides that "where concurrent actions are pending in two federal courts, the first filed should have priority, absent showing of a balance of convenience in favor of the second." McJunkin Corp. v. Cardinal Sys., Inc., 190 F.Supp.2d 874, slip op. at 3-4¹ (S.D. W. Va. 2002)(citing Learning Network,

¹Because page references are not yet available for this publication, slip opinion page references are provided.



Inc. v. Discovery Communications, Inc., 11 Fed. Appx. 297, 300 (4th Cir. 2001)(citing Ellicott Mach. Corp. v. Modern Welding Co., Inc., 502 F.2d 178, 180 n.2 (4th Cir. 1974)).

While the Court acknowledged Plaintiffs' suit was first-filed, it relied on other factors, in particular, convenience of the parties, to determine it should be transferred. As the Court analyzed the situation:

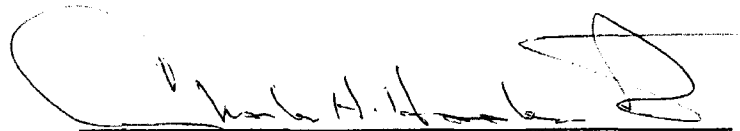
The inventory, the subject of dispute about its quality, is located in Missouri. The product returned for warranty work, the warranty claims, and the workers and facilities to perform those operations under the Agreement are all located in Missouri. Witnesses testifying about the quality of the product and the necessity for and cost of warranty work are located equally in Missouri, West Virginia, and elsewhere. While Cardinal and O'B have no corporate presence in West Virginia, McJunkin does have a corporate office in Granite City, Illinois, a short distance across the Mississippi River from St. Louis. This contract action is not local to either venue under consideration, and pursuant to the Agreement, Texas law will govern the dispute. Either district court is capable of applying the law of a third state.

Id., slip op. at 12. The Court then found: "Weighing all these factors, the balance tips slightly in favor of the Missouri venue as more convenient for parties and witnesses." Id. Upon reconsideration, however, the Court **FINDS** and **CONCLUDES** the balance tips definitely in favor of the Missouri venue. The Court also weighed "the suggestion of forum shopping and the slim basis for personal jurisdiction" over Defendants in this forum in reaching

its conclusion that transfer was warranted. See id.

For these reasons the Court **DENIES** Plaintiffs' motion for reconsideration of its Transfer Order. The Clerk is directed to send a copy of this Order to counsel of record and to the Clerk of the Eastern District of Missouri by facsimile transmission and first class mail, and to publish it on the Court's website at <http://www.wvsc.uscourts.gov>.

ENTER: April 25, 2002

A handwritten signature in black ink, appearing to read "Charles H. Haden II", written over a horizontal line.

Charles H. Haden II, Chief Judge

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