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**Windows are broken on a Chicago-bound Megabus that crashed on Interstate 65 in Greenwood, Ind., on Oct. 14, 2014. The double-decker passenger bus flipped onto its side after swerving to avoid an earlier crash, badly injuring one person and hurting more than a dozen others, officials said. This week, a 1st District Appellate Court panel affirmed a Cook County judge's ruling that a consolidated case filed in Chicago by 12 injured passengers should not be transferred to a trial court near the crash site in Indiana. AP Photo/The Daily Journal, Scott Roberson**

# Megabus crash suit staying in Illinois

BY DAVID THOMAS  
*Law Bulletin staff writer*

A collection of personal-injury lawsuits that arose from an October 2014 Megabus crash will remain in Cook County Circuit Court where they were originally filed and where most of the plaintiffs and defendants live, a state appeals panel ruled Friday.

The 1st District Appellate Court rejected defendants Megabus USA, Coach Leasing Inc., and bus driver Randall Flowers' attempt to transfer the lawsuit filed by 12 plaintiffs to Indiana, where the Megabus crash occurred along Interstate 65 near Indianapolis.

The defendants filed a forum non conveniens petition, which led to the panel weighing nine different factors a trial court must consider if there is more than one viable courtroom for a particular tort.

After weighing those factors, the 1st District panel found the defendants failed to show how it was essential to have the lawsuit play out in Indiana rather than Illinois.

"To hold as [defendants] wish, we would have to reweigh the factors, giving disproportionate weight to the situs of the accident, and substitute our judgment for that of the trial court, something we may not do," Justice Mathias W. Delort wrote in the unpublished order.

It's the second time the 1st District panel addressed the forum change petition from the defense.

In February 2016, the panel

## Defense wanted case in Indiana where crash happened; panel affirms trial judge's ruling

rejected the defendants' interlocutory appeal and petition outright.

But the Illinois Supreme Court in May vacated the panel's order and directed it to consider the defendants' petition on its merits.

At around 4:30 a.m. on Oct. 14, 2014, Logan Thompson was driving his car northbound on Interstate 65 when he drifted into the median and struck a barrier. Thompson was looking at his cellphone while driving and the road was slippery from rain.

Thompson overcorrected his steering and spun the car out of control, coming to a rest between the right lane and the right shoulder of the northbound roadway. Thompson then got out of his car and walked over to another car that pulled over to help.

The Megabus driven by Flowers approached the scene minutes later. Flowers tried to swerve into the left lane to avoid Thompson's car, but he still hit it, sending the car into the roadside ditch.

Flowers also overcorrected his turn, causing the bus to flip onto the driver's side. 18 people were injured in the accident, according to a report from WLS-TV Channel 7.

The first lawsuit in this case was filed the next day in Cook County Circuit Court. Eleven more plaintiffs

would file suit — nine in all from Illinois and one each from Kentucky, Georgia and Indiana.

Thomas A. Zimmerman Jr., the shareholder of Zimmerman Law Offices P.C., said his clients suffered the several injuries as a result of the crash — including broken bones, knocked-out teeth and various injuries requiring surgery.

He declined to say how much in damages his clients are seeking, noting that some of them have completed their medical treatments while others have not.

The 12 lawsuits were consolidated. The plaintiffs allege Flowers did not operate the bus safely and argue the corporate defendants are vicariously liable for his actions and for maintaining policies that led to the crash.

The defendants filed forum non conveniens petitions in each lawsuit, arguing Indiana was a more convenient forum than Illinois.

Among their arguments was the notion that an Illinois trial court could not compel a nonresident witness such as Thompson to testify, and that the defendants would not be able to file a third-party claim against him.

Circuit Judge Larry G. Axelrood rejected the defendants' petition in October 2015. Since then, the underlying case has entered

discovery, Zimmerman said.

Both Axelrood and the 1st District panel considered nine public and private interest factors to determine whether Illinois was the better forum to hear this case than Indiana.

From the start, the odds were stacked against the Megabus defendants. The panel noted that plaintiffs in general are given deference on where they file lawsuits.

The panel only reviewed whether Axelrood abused his discretion in this case and would not "substitute our judgment for that of the trial court," Delort wrote.

Axelrood found and the panel affirmed that the public- and private-interest factors favored keeping the case in Cook County. For instance, nine of the plaintiffs and three of the defendants either live in or are based in Illinois.

The defendants argue that the accident occurred in Indiana and contend an Illinois trial court could not compel Indiana witnesses to testify.

But the panel found the crash site was not preserved and that most of the evidence documenting plaintiffs' medical treatments are in Illinois. Additionally, it found the defendants did not present any proof that there are Indiana witnesses who would refuse to testify across the state line.

The panel also rejected the defendants' attempt to cite Thompson's potential involvement in the

**MEGABUS, Page 6**

# Panel won't insert own evaluation, only reviewing judge's discretion

MEGABUS, FROM PAGE 1

case as evidence for moving the case to Indiana, finding Thompson could testify by deposition.

Whether or not a third-party claim could be filed against him is speculative and has no effect on the plaintiffs' case against the defendants, Delort wrote.

Some factors favored relocation to Indiana, but the panel regarded most of them as insignificant.

The added cost of travel to a neighboring state does not warrant moving the case, nor does the higher volume of cases Cook County judges typically hear compared to those in Johnson County, Ind., De-

lort wrote.

Moreover, Illinois residents have an interest in the conduct of its corporate residents and in deciding local controversies locally, he wrote.

"[Defendants] claim that a transfer to Indiana is required because Indiana was the scene of the accident. We disagree," Delort wrote. "As noted above, Illinois has an interest in resolving matters between its residents."

All 12 plaintiffs were also represented by Amelia S. Newton and Matthew C. De Re of Zimmerman Law Offices.

"We thought the trial judge reasoned through each of the public-

interest and private-interest factors that go into determination of which is the appropriate forum for the lawsuit, and we think the appellate court reached the best decision," Zimmerman said.

The defendants were represented by Melissa A. Murphy-Petros and David M. Goldhaber of Wilson Elser Moskowitz Edelman & Dickler LLP. They did not return a request for comments.

Justices Thomas E. Hoffman and Joy V. Cunningham concurred with the opinion.

The case is *Bridgette Humbert, et al., v. Megabus USA LLC, et al.*, 2017 IL App (1st) 153165-U.

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Mathias W. Delort